

# **Ofcom Broadcast Bulletin**

**Issue number 230  
20 May 2013**

# Contents

Introduction	3
<b>Standards cases</b>	
<u>In Breach</u>	
<b>Provision of recording</b> <i>Amber Sound FM, 1 January 2013, 11:45 to 14:00</i>	5
<b>Fairness and Privacy cases</b>	
<u>Upheld</u>	
<b>Complaint by Mr Mark Thorburn</b> <i>Tony Horne Radio Show, NE1 FM, 27 October, 3 and 10 November 2012</i>	7
<u>Upheld in Part</u>	
<b>Complaint by Mrs Janet Neal on her own behalf and on behalf of Mr John Neal (her husband) and her grandchildren (minors)</b> <i>East Midlands Today, BBC East Midlands, 16 November 2012</i>	18
<u>Not Upheld</u>	
<b>Complaint by Mrs Victoria O'Neill</b> <i>Rip Off Britain, BBC 1, 10 January 2013</i>	29
<b>Other Programmes Not in Breach</b>	34
<b>Complaints Assessed, Not Investigated</b>	35
<b>Investigations List</b>	41

## Introduction

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

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

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

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

---

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

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

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

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

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

## Standards cases

### In Breach

#### Provision of recording

*Amber Sound FM, 1 January 2013, 11:45 to 14:00*

---

##### Introduction

Amber Sound FM (“the Service”) is a Community radio station that broadcasts to the inhabitants of Ripley, Derbyshire, and the surrounding area. The licence is held by Amber Sound FM Limited (“Amber Sound” or “the Licensee”).

Ofcom received a complaint about material broadcast by Amber Sound on 1 January 2013. We therefore requested an off-air recording of the material in order to assess the complaint.

In response Amber Sound stated that its off-air hard-disk recorder had not been functioning on 1 January 2013 and therefore it was not able to comply with Ofcom’s request.

Ofcom considered this raised issues warranting investigation under Condition 8 of Amber Sound’s Community Radio Licence. Condition 8(2) states that:

“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; and
- (b) at the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction; ...”.

Ofcom therefore asked the Licensee for its formal comments on how it had complied with these Licence Conditions.

##### Response

The Licensee explained that its off-air recording system had not been working between 1 and 6 January 2013 and as a result it “had no recordings of the output” for this period. In its representations on Ofcom’s Preliminary View in this matter, the Licensee stated that it planned to acquire an additional off-air recorder to act as a back-up to its existing recorder in order to prevent similar breaches happening in future.

##### Decision

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. In the case of Community radio licensees, this duty is reflected 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 broadcast. Under Licence Condition 8(2)(b), Ofcom requires licensees to produce such recordings “forthwith” upon request.

Breaches of Licence Conditions 8(2)(a) and (b) are serious because they impede Ofcom’s ability to assess whether a particular broadcaster’s output raises potential issues under the relevant codes. This can therefore affect Ofcom’s ability to carry out its statutory duties in regulating broadcast content.

In this case, the Licensee failed to make and retain recordings of broadcast output between 1 and 6 January 2013 and failed to provide a copy of the output of 1 January 2013 which had been requested by Ofcom. This was a clear breach of Conditions 8(2)(a) and (b) of its licence.

While we note that the Licensee explained it had experienced technical issues with its off-air hard-disk recorder, which it planned to address by acquiring an additional off-air recorder, Ofcom reminds the Licensee that it must have arrangements in place to ensure compliance with Condition 8(2) at all times.

### **Breaches of Licence Conditions 8(2)(a) and 8(2)(b)**

## Fairness and Privacy cases

### Upheld

#### Complaint by Mr Mark Thorburn

*Tony Horne Radio Show, NE1 FM, 27 October, 3 and 10 November 2012*

---

#### Summary

Ofcom has upheld this complaint by Mr Mark Thorburn that he was unjustly or unfairly treated in the programmes as broadcast.

In the programmes complained of, the presenter, Mr Tony Horne, made a number of statements about Mr Thorburn. In particular, Mr Horne claimed that Mr Thorburn had conducted a campaign of abuse against him by using the internet and the social-networking service Twitter, to disseminate false and abusive information about Mr Horne.

Mr Thorburn complained to Ofcom that he had been treated unjustly and unfairly in the programmes.

Ofcom found that:

- The broadcaster had not taken reasonable care to satisfy itself that the material facts were not presented, omitted or disregarded in a way that portrayed Mr Mark Thorburn unfairly.
- The broadcaster failed to provide Mr Thorburn with an appropriate and timely opportunity to respond to significant allegations made in the programme about his conduct.

#### Introduction

On 27 October, 3 and 10 November 2012, NE1 FM, a community radio station which broadcasts to the Newcastle-upon-Tyne and Gateshead areas of north east England, broadcast three episodes of the *Tony Horne Radio Show* presented by Mr Tony Horne. The programmes, which were broadcast on Saturday mornings between 10:00 to 12:00 hours, were part of the station's speech and music-based output, and in the parts of the programmes complained of, Mr Horne presented the programme alone and addressed listeners directly.

In the three programmes complained of, Mr Horne identified the complainant Mr Thorburn by name and accused him of using the internet, particularly the online social networking service Twitter, to conduct a "*smear campaign*" against him during a period that followed Mr Horne's departure from a previous presenting job at a Newcastle-based commercial radio station, Metro Radio, in July 2011.

#### 27 October 2012

In this episode, Mr Horne introduced the part of the programme complained of by stating:

*"I'll be filling you in on a Twitter campaign of abuse that was wielded out against me which began on July 14 2011 and will be filling you in and pointing you in the direction of the culprits a little bit later on [in] the show this morning".*

Mr Horne then related to the listeners how, following his departure from Metro Radio, which he said was precipitated by a period of depression brought on by the breakup of his marriage and the death of a close friend, he *"was the subject of a Twitter smear campaign after a fake Twitter account was set up to abuse me within hours of me leaving Metro"*, and which he said continued for a period of six to eight weeks. Mr Horne continued that a former acquaintance had recently told him who was responsible for the *"fake Twitter account"*. In relation to this, Mr Horne said:

*"I questioned them [the former acquaintance] if they knew anything about this fake Twitter account. I received a reply with words to the effect of 'Yes, Mark made me set it up'. The text I received also detailed the plan to ruin me: 'He hates you with a massive passion...I can't even begin to try to put it into words, the problem is he's devious and slippery. They were plotting your demise because of all the terrible things you were responsible for'".*

Mr Horne went on to describe how unpleasant the alleged Twitter *"campaign"* against him had been for himself and his family, concluding:

*"I could accept it perhaps from a member of the public who didn't agree with your radio show, but not someone of the same industry. I found it particularly appalling. If you don't know who I'm talking about, the person's name is Mark".*

### 3 November 2012

In this episode, Mr Horne informed listeners about his on-going struggle with depression and referred back to the episode broadcast on 27 October 2012 stating:

*"One of the other things you might have heard me mention last week was that I mentioned the fact that Mark Thorburn had led an internet campaign against myself. There was a fake Twitter account set up after I left Metro on the 14 July 2011".*

Mr Horne then went on to accuse two unnamed presenters at another radio station in the North East of England of making false statements to the police about him.

### 10 November 2012

In this episode, Mr Horne explained to listeners that he had recently received a solicitor's letter objecting to allegations that he had made on Twitter about the purported drug habits of two radio presenters at another radio station. He introduced his comments by stating:

*"In the last few weeks or so I've told you the stories of how I left Metro Radio...and was subjected to an internet smear campaign which was fronted by the ex-broadcaster Mark Thorburn..."*

The content of the programmes complained of and outlined above was pre-recorded and not broadcast live.

Following the broadcast of these programmes, Mr Thorburn complained to Ofcom that he was treated unjustly or unfairly in the programme as broadcast.

## Summary of complaint and broadcaster's response

Mr Thorburn complained to Ofcom that he was treated unjustly or unfairly in the programmes as broadcast in that:

- a) Mr Horne made wholly inaccurate and inflammatory comments about him and incorrectly accused Mr Thorburn of conducting a campaign of abuse against him using Twitter and the internet. Mr Thorburn said that Mr Horne had used his privileged position as a radio broadcaster to pursue a personal vendetta against him.

The broadcaster responded to the complaint in a series of emails to Ofcom dated between 4 January 2013 and 11 February 2013.

NE1 FM stated that it “fully [stood] by the comments made in the show”, however, it said it was reluctant to respond in detail to Ofcom’s investigation of Mr Thorburn’s complaint because it claimed the issues underlying Mr Horne’s comments were the subject of an police investigation. It said that the investigation substantiated that “Mr Thorburn was not treated unfairly or unjustly” and that “Mr Horne’s comments are completely true” which was the reason for him instigating the police investigation. The broadcaster denied that Mr Horne was using his position as a broadcaster to conduct a vendetta against Mr Thorburn.

NE1 FM said that it had decided to allow Mr Horne to make the comments complained of after it had been shown documentary evidence of Mr Thorburn’s purported wrongdoing before the programmes were broadcast. The broadcaster said that it had been shown a “confession” written by a “third party”, who claimed that they had also been involved in the alleged “campaign of abuse” against Mr Horne together with Mr Thorburn. The broadcaster said that Mr Horne’s statements in programmes had been based on this “confession”.

NE1 FM contextualised Mr Horne’s comments as being part of an on-going theme of Mr Horne’s broadcasts, in which he reminisced about his time as a former presenter on Metro Radio. The broadcaster said that Mr Horne frequently told stories of his “radio days in the North East”, adding that he had once been a household name, whose sudden disappearance from the “air” in 2011 was a matter of considerable local interest.

The broadcaster said that it did not consider the fact that the programme was pre-recorded to be in any way related to the content of the complaint. It stated that the station regularly produced a variety of live and pre-recorded content for broadcast.

- b) Mr Thorburn said that he was not made aware by NE1FM before the programmes were recorded that it was intending to make serious allegations of wrongdoing in the programmes. Mr Thorburn said that he was not given a right to reply to the allegations made against him, despite the fact that he was referred to by name in the three programmes.

NE1 FM did not respond directly to this head of complaint.

## Representations on Ofcom’s Preliminary View

Ofcom prepared a Preliminary View in this case that Mr Thorburn’s complaint of unjust or unfair treatment in the programme as broadcast should be upheld.

Mr Thorburn did not make any representations on the Preliminary View.

NE1 FM submitted representations on the Preliminary View, which are summarised, insofar as they are directly relevant to the complaint considered by Ofcom, below.

NE1 FM said that Mr Horne was a very experienced broadcaster “who neither publishes nor broadcasts facts, which he cannot support”, and that he did not abuse his position as a broadcaster, when making the statements complained of. It said that Mr Horne’s comments should not be regarded as a vendetta directed specifically against the complainant because Mr Horne also made critical remarks during his radio broadcasts about other national and local organisations, which he felt had chosen “to target [him] at a time which he personally was at a low point” (i.e. the period following his departure from Metro Radio). NE1 FM said that none of the other organisations had made complaints about Mr Horne’s remarks about them.

NE1 FM also said that both the complainant and Mr Horne were arguably public figures, or alternatively, figures whose actions and comments were to a certain extent of public interest, whose private lives had previously been the subject of local media attention in the north east of England.

In relation to whether the complainant Mr Thorburn was identified in all the broadcasts being considered in this case, NE1 FM said that “...it is almost beyond the realms of expectation in the modern era that referring to ‘Mark’ on October 27<sup>th</sup> bears relevance one week later to the identification of an individual within the output of a community station whose audience could potentially sometime be in single figures”.

With regard to the second head of Mr Thorburn’s complaint, NE1 FM said that it did not consider itself to be under an obligation to offer the complainant a right to reply, or that its failure to do so was a breach of the Code. It said that Mr Thorburn was clearly aware (having recorded it) of the material being broadcast about him, yet he made no attempt to contact the station either to complain, or to request that his version of events be reflected in future broadcasts. NE1 FM also said that “...every single day around the world news and comments are broadcast where individuals and corporations do not – despite all good intentions – get a right to reply. It is naive to suggest otherwise”. In the circumstances, NE1 FM stated that it was of the opinion that to have offered Mr Thorburn a right to reply would have compounded any unfairness Mr Horne’s remarks might have caused Mr Thorburn.

In support of the comments made on air by Mr Horne about Mr Thorburn, NE1 FM submitted to Ofcom a number of documents. These consisted of copies of messages posted on Twitter and other websites, and a transcription of a mobile telephone text message that NE1 FM stated had been sent by a third party to Mr Horne, in which the third party purportedly implicated him/herself and Mr Thorburn in a conspiracy to cause Mr Horne’s “demise”. NE1 FM argued that these documents suggested that there was a reasonable basis for Mr Horne making the comments he did about Mr Thorburn on air.

In conclusion, NE1 FM said that Mr Horne had taken a break from presenting on the station. In response to the issues surrounding its use of Twitter and other social media services, the station was reviewing its in-house style and planning to undertake additional legal training.

## Decision

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

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

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

When considering the complaint, Ofcom had regard to whether the portrayal of Mr Thorburn in the programmes complained of was consistent with the broadcaster's obligation to avoid unjust or unfair treatment of individuals in programmes, as outlined in Rule 7.1 of the Ofcom's Broadcasting Code ("the Code"). Ofcom had regard to this rule when reaching its Decision on both heads of Mr Thorburn's complaint as detailed below.

- a) Ofcom first considered Mr Thorburn's complaint that he had been treated unfairly and unjustly in the programmes as broadcast, in that Mr Horne made inaccurate and inflammatory comments about him and incorrectly accused Mr Thorburn of conducting a campaign of abuse against him using Twitter and the internet. He said that Mr Horne had used his privileged position as a radio broadcaster to pursue a personal vendetta against him.

In considering this head of complaint, Ofcom also had regard to whether reasonable care was taken by the broadcaster to satisfy itself that material facts had not been presented, disregarded or omitted in its programmes in a way which was unfair to Mr Thorburn (as outlined in Practice 7.9 of the Code).

Ofcom first considered the content of the broadcasts. Ofcom noted that the content of the programmes consisted of a mixture of popular commercial music, comic sketches, interviews with local people of interest, wind-up prank telephone calls, and sections in which Mr Horne spoke directly to the audience about subjects such as his self-described on-going struggle with depression, and his former career as a radio presenter at the commercial radio station Metro Radio.

In the programme broadcast on 27 October 2012, Ofcom noted that Mr Horne told his audience that he had been the victim of serious wrongdoing and said that he would be naming the person he held to be responsible later in the programme, stating:

*"...I'll be filling you in on a Twitter campaign of abuse that was wielded out against me which began on July 14 2011, and I'll be filling you in and pointing you in the direction of the culprits a little bit later on, on the show this morning".*

Later in the programme, Ofcom noted that Mr Horne returned to the subject of the alleged “*Twitter campaign of abuse*”, which had purportedly disseminated negative and untruthful information about him. He said that he had recently been contacted by a person who claimed to have been involved in the alleged “*smear campaign*”, and who had given Mr Horne the name of another individual who was allegedly the person primarily responsible for the “*Twitter campaign of abuse*” against Mr Horne. Mr Horne went on to name that person in the broadcast, stating:

*“On the 5 August this year I received a text from this person [the person who claimed to have been involved in the alleged “smear campaign”] after I’d questioned them if they knew anything about this fake Twitter account. I received a reply with words to the effect of ‘Yes, Mark made me set it up’. The text I received also detailed the plan to ruin me. ‘He hates you with a massive passion’ I quote ‘I can’t even begin to try to put it in words. The problem is he’s devious, he’s slippery. They were plotting your demise because of all the terrible things you were responsible for’”.*

Mr Horne then provided his audience with some background information about the man he had identified as “*Mark*”, and went on to describe the effect that the alleged activities of “*Mark*” had had on himself and his family:

*“As you can image when you are subject to over 40 days of abuse on Twitter, and this runs into when your daughter is starting secondary school, that is not a very nice thing to have to endure. You can accept it perhaps from a member of the public who didn’t agree with your radio show, but from a member of the same industry I found it pretty appalling. If you don’t know who I’m talking about, the person’s name is Mark, and that’s all I have to say at this point”.*

In the programme broadcast on 3 November 2012, Ofcom noted that Mr Horne spoke again about his depression and how it had been brought on by the failure of his marriage and the death of a close friend, before returning to the subject of the allegedly fake Twitter account, and on this occasion naming in full the person he considered to be responsible for the account and its contents:

*“So all those years that you were listening to the Tony Horne Radio Show [i.e. his former show on the commercial radio station Metro Radio] I was fighting an illness and I’m still fighting it...And one of the other things you might of have heard last week was that I mentioned the fact that Mark Thorburn had led a internet campaign against myself that was a fake Twitter account set up after I left Metro Radio on 14 July 2011. I’d like to add a little more to that if I could ...”.*

Ofcom noted that Mr Horne went on to accuse two unnamed presenters from a radio station called Real Radio of making false statements about him to the police before making a further allegation that a different third party had been spreading a false rumour that Mr Horne had “*broken down*” in the back of police van.

In the programme broadcast on 10 November 2012, Ofcom noted that Mr Horne again returned to the subject of the alleged “*internet smear campaign*” against him and again gave the complainant’s full name in connection with it, stating:

*"I left Metro Radio on July the 14<sup>th</sup> 2011, and was subject to an internet smear campaign, which was fronted by ex-broadcaster Mark Thorburn and ably assisted by a couple of people at Real Radio".*

Having noted the content of the programmes, Ofcom went on to consider whether the nature of the statements and the language used in the programmes together, with the tone in which it was delivered, were capable of creating unfairness to the complainant. Ofcom considered that the language used by Mr Horne was accusatory in nature, and that it would have left listeners in no doubt that Mr Horne regarded Mr Thorburn to be the person responsible for the instances of wrongdoing he claimed to have suffered.

In the programmes of 27 October 2012 Ofcom noted that the complainant was referred to by his first name "*Mark*", while in the programme of 3 November 2012 the complainant was referred to by his full name "*Mark Thorburn*", and in the programme of 10 November 2012 he was also clearly identified by his full name and previous occupation as "*ex-broadcaster Mark Thorburn*". In Ofcom's view, it would have been likely that when, in the programme of 27 October 2012, Mr Horne referred to "*Mark*" and said he would be naming "*the culprit*" responsible for conducting a "*campaign of abuse*" against him, that a certain number of listeners would have understood that the person he was referring to was Mr Thorburn. NE1 FM broadcasts to a limited number of listeners and some of them in Ofcom's view would probably have been aware of Mr Horne's personal history and tensions between him and Mr Thorburn. In any event, Mr Horne's comments in the programme of 3 November 2012, that "*Mark Thorburn had led an internet campaign against myself that was a fake Twitter account set up after I left Metro Radio on 14<sup>th</sup> July 2011*", and his comments in the 10 November 2012 programme that he had been subjected to "*an internet smear campaign, which was fronted by the ex-broadcaster Mark Thorburn*", would have left listeners in no doubt as to Mr Thorburn's identity and the inappropriate conduct or wrongdoing he was alleged to have committed.

In view of the above, Ofcom considered that Mr Horne's comments made in the programmes had the potential to lead listeners to the view that Mr Thorburn was a malicious and devious man who was possibly also engaged in some form of wrongdoing. Ofcom considered that as a consequence of this the statements were capable of creating unfairness to Mr Thorburn.

Given that the statements included in the programmes were capable of being unfair to Mr Thorburn, Ofcom went on to consider whether the broadcaster had taken reasonable steps to satisfy itself that material facts were not presented, omitted or disregarded in a way that portrayed Mr Thorburn unfairly.

From listening to the content of the programmes, and having regard to the submissions of the parties, Ofcom noted that it was apparently an established part of Mr Horne's presenting style to be direct and confrontational while on-air, and to reminisce about his time as a presenter at Metro Radio, and the events and experiences he had encountered since leaving Metro Radio in July 2011. Ofcom took account of the broadcaster's submission that because Mr Horne was a "*household name*", his "*stories*" were of "*significant interest*" to local listeners. However, in Ofcom's view, despite Mr Horne being well known locally for being outspoken, Mr Horne made a number of significant allegations about a particular individual and although they formed part of one of his series of "*reminiscences*" this factor did not detract from the unfairness his comments were capable of creating. Rather, Ofcom considered that Mr Horne's local reputation for being

outspoken would have lent credibility to the allegations made against Mr Thorburn, thereby increasing the capacity to cause unfairness.

In relation to the context in which the statements were made, Ofcom noted that Mr Horne made the comments directly to his audience and that at no point did Mr Horne, or the broadcaster, attempt to frame the statements as anything other than statements of unchallenged fact. There was for example no attempt to present Mr Thorburn's version of events, or to present Mr Horne's statements as just an expression of Mr Horne's opinion. It was not suggested at any point that there could be another, alternative explanation for the inappropriate conduct or wrongdoing of which Mr Horne was allegedly the victim, and as dealt with in more detail under Head b), at no point during the broadcasts was Mr Thorburn given an opportunity to respond to the significant allegations made against him.

In its response to the complaint, NE1 FM questioned the relevance of Ofcom's observation that the material complained of was pre-recorded. Ofcom considered, as was made clear in its Preliminary View, that relevance to the complaint of the fact that the programme was pre-recorded was that the programmes' pre-recorded nature, taken together with the documents Mr Horne provided to the broadcaster before the programmes were recorded, would have given the NE1 FM a number of different occasions on which to fulfil its compliance obligations in relation to Mr Horne's statements against Mr Thorburn, before the programmes were broadcast.

In its representations on Ofcom's Preliminary View, NE1 FM stated that Mr Horne should not be regarded as having abused his position as a broadcaster by making the statements he did about the complainant, Mr Thorburn, because Mr Horne was an experienced broadcaster "who neither publishes nor broadcasts facts, which he cannot support". Mr Horne had only been allowed to make the allegations against Mr Thorburn in the programmes, NE1 FM stated, because it had had sight of a number of documents that it regarded to be evidence in support of Mr Horne's comments, before the programmes were broadcast.

In support of this, NE1 FM submitted to Ofcom a number of documents. These included: a printout of some negative messages about Mr Horne posted on the social networking website Twitter and a celebrity gossip internet site; and, a transcript of a mobile telephone text message from a third party to Mr Horne, detailing the sender's purported collaboration with the complainant, Mr Thorburn, in a "plot" to discredit Mr Horne.

Having considered this material provided by NE1 FM, together with the content of Mr Horne's broadcasts and both parties' representations, Ofcom acknowledges that a number of negative comments do appear to have been posted about Mr Horne on the internet in the period following his departure from Metro Radio. However, on the basis of the material provided by NE1 FM it was not possible for Ofcom to identify the person(s) posting the negative comments. Nor was Ofcom, based on the evidence provided, in a position to attest to the veracity, or otherwise, of the transcript of the mobile telephone text message to Mr Horne.

It appeared to Ofcom, on the basis of NE1 FM's representations, that the station did take some steps before allowing Mr Horne to broadcast the critical remarks he did about Mr Thorburn to establish if there was some basis for him to do so. Mr Thorburn however denies behaving in the way he was accused of doing by Mr Horne. There is therefore a conflict of evidence between the parties. Ofcom is not a fact-finding tribunal. Its role is confined to assessing the submissions made by

the parties together with any other relevant evidence in the public domain to reach a decision on whether the Code has been complied with. Regarding NE1 FM's taking into account these documents submitted to Ofcom, Ofcom was assessing whether the broadcaster had proper regard to Practice 7.9: whether it had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to the complainant, Mr Thorburn. The station said it has taken some steps to do this by, it said, reviewing the material submitted to Ofcom before allowing Mr Horne to broadcast his comments. In Ofcom's opinion, however, bearing in mind that many unsubstantiated rumours and allegations circulate on the internet, Twitter, and are made in private phone calls, on balance the station did not take reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to the complainant, Mr Thorburn.

In its representations, NE1 FM stated that Mr Horne should not be regarded as having a vendetta against Mr Thorburn in particular because Mr Horne had also made critical remarks about a number of other organisations and individuals in his NE1 FM radio broadcasts, none of whom had subsequently complained. In response, Ofcom noted that while the other organisations referred to by Mr Horne in his broadcasts may not have complained, either to NE1 FM or Ofcom, Mr Thorburn had complained, and consequently it was Ofcom's duty to investigate his complaint, following the appropriate procedures.

NE1 FM also attempted to justify the statements Mr Horne made about the complainant, Mr Thorburn, by arguing that both Mr Horne and Mr Thorburn were public figures who had both previously received coverage in the press by dint of their high profile careers as radio presenters. In response Ofcom points out that the fact that a complainant is a public figure to some extent does not negate the broadcaster's obligation to take reasonable steps to satisfy itself that material facts have not been presented, disregarded or omitted in a way that is unfair to that individual.

Ofcom recognises Mr Horne's and the broadcaster's right to freedom of expression, and the right of the community served by the broadcaster to receive information and ideas without unnecessary interference. However, with this right comes the responsibility for the broadcaster to ensure that material facts are not presented, omitted or disregarded in a way that creates unfairness to an individual or organisation.

Given the factors set out above, Ofcom considered that Mr Horne's comments made in the three programmes as broadcast amounted to significant allegations of inappropriate conduct or wrongdoing against Mr Thorburn, who was clearly and repeatedly identified by his name and his former profession, and that these allegations were capable of being unfair to Mr Thorburn.

Ofcom considered that, although the broadcaster claimed in its submissions that the allegations made by the presenter in the programmes were supported by the written evidence, as discussed above, that evidence only related to a third party's admissions as to his own activities, and further allegations against Mr Thorburn. None of the material submitted to Ofcom amounted to direct evidence of the claims made and accordingly did not amount to a sufficient justification for concluding that the station had taken reasonable care to satisfy itself that material facts would be presented, and not disregarded or omitted in a way that was unfair to the complainant, Mr Thorburn.

The allegations made against Mr Thorburn in the programmes were, in Ofcom's view, presented as statements of fact and no attempt was made by Mr Horne or the broadcaster to put forward any alternative opinion or version of events, or to place the allegations in a context in which those listening would consider the statements as anything other than objective, unquestionable statements of fact.

Taking all these factors into account, Ofcom concluded that on balance the broadcaster had not taken reasonable care to satisfy itself that the material facts surrounding Mr Horne's statements about the internet campaign of abuse of which Mr Horne was a victim, were not presented, disregarded or omitted in a way that was unfair to the complainant, Mr Thorburn.

Ofcom's decision therefore is that considering the broadcasts as a whole Mr Thorburn was portrayed unfairly in the programmes as broadcast.

- b) Ofcom next considered Mr Thorburn's complaint that he was not made aware by NE1 FM before the programmes were recorded that it was intending to make significant allegations of wrongdoing in the programmes. Mr Thorburn said that he was not given a right to reply to the allegations made against him, despite the fact that he was referred to by name in the three programmes.

In considering this head of complaint, Ofcom paid particular regard to Practice 7.11 of the Code which states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

For the reasons given in Head a) above, Ofcom considered that the statements made in the programmes by Mr Horne about Mr Thorburn's purported activities amounted to significant allegations of wrongdoing against Mr Thorburn, namely that he was personally responsible for conducting a "campaign of abuse" against Mr Horne through Twitter and the internet. Normally, where significant allegations are made about an individual in a programme, as they were in this particular case, then that individual should be given an appropriate and timely opportunity to respond to them.

Ofcom noted that the content complained of was pre-recorded and that the broadcaster therefore had the opportunity to discuss the content with Mr Horne and assess any documents he was going to base his statements on, before the programmes were broadcast. In its initial submissions to Ofcom, the broadcaster stated that it was:

"...the opinion of the station that the fact the programme was pre-recorded is not in any way related to the content of the complaint..."

In the circumstances of this particular case, Ofcom considered that the pre-recorded nature of the programmes would have given the broadcaster an opportunity to note the significant nature of the allegations being made and that it should have taken the steps necessary to mitigate any potential unfairness to Mr Thorburn in the broadcasts, by for example, providing him with an appropriate and timely opportunity to respond.

In its representations on the Preliminary View, NE1 FM stated that it did not regard itself to be under an obligation to offer Mr Thorburn a right to reply, or that its failure to do so was a breach of the Code because Mr Thorburn was clearly aware of the nature of the material being broadcast about him, yet he did not

complain directly to the station about Mr Horne's statements, or request that future broadcasts reflect his version of events. NE1 FM also said that to have given Mr Thorburn a right to reply would have compounded any damage caused by Horne's statements.

As already referred to above, Ofcom considered that the comments made by Mr Horne contained significant allegations of inappropriate conduct or wrongdoing by Mr Thorburn, and therefore the broadcaster was obliged to offer Mr Thorburn an opportunity to respond to them. Given this conclusion, Ofcom did not consider that the availability of other means (as suggested by the broadcaster in its representations) for Mr Thorburn to respond to the comments made in the broadcasts by Mr Horne was relevant to the obligation on NE1 FM to take care to avoid unfairness to him.

In view of the above, Ofcom considers that the comments made by Mr Horne in the programmes amounted to significant allegations of wrongdoing by Mr Thorburn, to which he was not given an appropriate and timely opportunity to respond. As a consequence of this, Mr Thorburn was treated unfairly in the programmes as broadcast.

**Accordingly, Ofcom has upheld Mr Thorburn's complaint of unjust and unfair treatment in the programmes as broadcast.**

## Upheld in Part

### **Complaint by Mrs Janet Neal on her own behalf and on behalf of Mr John Neal (her husband) and her grandchildren (minors)**

*East Midlands Today, BBC East Midlands, 16 November 2012*

---

#### **Summary**

Ofcom has upheld in part this complaint of unwarranted infringement of privacy made by Mrs Janet Neal on her own behalf and on behalf of Mr John Neal (her husband) and her grandchildren.

On 16 November 2012 *East Midlands Today* broadcast three editions of its regional news bulletin. Each edition of the programme contained a report, of varying length and containing various elements, about the coroner's inquest into the deaths of Mr Tobias Day, Mrs Samantha Day and their daughter Ms Genevieve Day. The reports explained that in December 2011, Mr Tobias Day had killed his wife and one of their daughters following his dismissal from the police force, but that their two other children had survived the attack. One edition of the programme featured a photograph of the Day family including the two surviving children, with their faces unobscured – then 14 and 16 years old. Two editions of the programme included previously filmed footage of Mr John Neal and Mrs Janet Neal, the parents of Mrs Samantha Day. The later editions of the programme also included footage of Mr Day, filmed before the tragedy, in which he spoke in his capacity as a police officer.

Mrs Neal complained to Ofcom that her privacy and that of her husband and her grandchildren was unwarrantedly infringed in the programme as broadcast.

Ofcom found that:

- Mr and Mrs Neal had no legitimate expectation of privacy in relation to the re-use of the footage from the interview they had previously given to the BBC, in that they had talked publicly about events which were related to the coroner's inquest during the course of that interview.
- Mrs Neal's grandchildren had a legitimate expectation of privacy in the unobscured photograph of them which was broadcast in the 13.30 edition of the report. Ofcom's decision is that their privacy was unwarrantably infringed in this respect.
- Mrs Neal and her family did not have a legitimate expectation of privacy in relation to the footage broadcast of Mr Day in the report, in that the footage itself did not reveal anything that was of a private or sensitive nature.

#### **Introduction**

On 16 November 2012, BBC 1 East Midlands broadcast a number of editions of its regional daily news programme *East Midlands Today*. Each edition contained a news report about the coroner's inquest into the deaths of Mr Tobias Day, referred to the report as "Toby", his wife, Mrs Samantha Day, and their daughter, Ms Genevieve Day. The report explained that the inquest had heard that in December 2011 Mr Day, a former police inspector, had killed himself, his wife and their youngest daughter after being dismissed from his job in the police force.

In the edition of the report broadcast at 13:30 hours, a still photograph of the Day family was shown which included unobscured images of the two older children who had survived the attack. While this photograph was shown on screen, the reporter gave details of the attack. The later editions of the news report broadcast in the bulletins at 18:30 and 22:30 hours showed the same photograph but the faces of the two older children were obscured.

In the 18:30 edition of the news report, footage of Mrs Day's mother and father, Mrs Janet Neal and Mr John Neal was broadcast. Mr and Mrs Neal were shown on a sofa looking at photographs of their daughter and the commentary explained that almost £200,000 had been raised for a charity to support the family<sup>1</sup>.

In the two later editions of the reports, previously filmed footage of Mr Tobias Day in his role as a police officer was also included. The 18:30 report included footage of Mr Day walking through a room, along with a small part of a previously filmed interview with Mr Day in which he spoke in his capacity as a police officer. In the 22:30 bulletin the moving footage of Mr Day walking through the room was used but the clip of interview was not.

Following the broadcast of the programme, Mrs Neal complained to Ofcom that her privacy and that of her husband and grandchildren was unwarrantably infringed in the programme as broadcast.

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

Mrs Neal complained that her privacy and that of her husband and grandchildren was unwarrantably infringed in the programme as broadcast in that:

- a) Footage of Mr and Mrs Neal was used in two editions of a news report broadcast on 16 November 2012 without their knowledge or consent. Mrs Neal said that the footage was taken from an interview they had previously given to *East Midlands Today*, regarding a charity which they had started in July 2012. Mrs Neal stated that the footage did not relate to the inquest into the deaths of Mr Day, his wife and their daughter, which was the subject of the 16 November 2012 report.

By way of background, Mrs Neal said that she and her husband were now associated with the tragedy and had subsequently received unwanted attention and sympathy from their community as a result.

The BBC explained that the footage of Mr and Mrs Neal used in the report was taken from an interview that they had given earlier to the BBC in July 2012 ("the July 2012 interview"). The subject of the interview was a charity, the "Sam Day Foundation", which Mr and Mrs Neal had set up in July 2012 in memory of their daughter after she had been killed. (At that time it was thought she had been killed by her husband, Mr Day, but this had not yet been established by the coroner). The purpose of the charity, expressed in the interview by Mrs Neal, was to keep Mrs Day's memory alive by providing excursions for hard pressed families.

The BBC stated that the footage used in the report showed Mr and Mrs Neal handling photographs of their daughter. It argued that this was connected to the report, in that the footage related directly to the "tragic events" which were the

---

<sup>1</sup> The figure of almost £200,000 was stated in the news report, for the purposes of clarity Mrs Neal stated to Ofcom that she does not recognise this figure as correct.

subject of the coroner's inquest being reported. It stated that there was a direct connection between the July 2012 interview and the inquest and the complainants did not have a reasonable expectation that the footage would only be re-used with their consent.

The BBC also added that they did not believe that the re-use of the footage had the effect of linking Mr and Mrs Neal to the tragedy, as they had already publicly spoken about the events of the tragedy in the July 2012 interview, which had been broadcast with their consent.

- b) The faces of Mr and Mrs Neal's grandchildren (who are now 14 and 16 years old) were shown in a photograph in one edition of the programme. Mrs Neal said that their faces were unobscured and they could be recognised by the wider public.

The BBC said that, although Mrs Neal's grandchildren's faces were shown in the earlier bulletin, they were obscured in later bulletins, following a request from Mr and Mrs Neal. This action was "taken entirely out of consideration for the feelings of the family" and not because the unobscured picture breached the privacy of the two teenage children.

The BBC stated that the identity of Mrs Neal's grandchildren was "widely reported in the local and national press" and "at no time was there any request from the family for their identities" to be withheld. It further stated that Mrs Neal's grandchildren did not enjoy a statutory right to anonymity.

The BBC also noted that Mr and Mrs Neal had named and discussed their grandchildren in the July 2012 interview. The BBC said that in the course of the interview Mrs Neal had requested that the broadcaster should not mention some specific details relating to the day of the tragedy (which the BBC adhered to) but that no such request was made in relation to the names of the children. It added that the children had been identified in the past with Mr and Mrs Neal's agreement.

The BBC said that some weeks after the inquest, in December 2012, Mrs Neal's grandchildren had issued a "public message of thanks, in their own names" to a local newspaper which had raised funds to support them. It argued that the use of the photograph in the report did not add to their public identification in any way that might breach their reasonable expectation of privacy.

- c) Mrs Neal said that she and her family had found it distressing and unnecessary that archive interview footage of Mr Day was used in the news reports. Mrs Neal stated that she had previously complained to the broadcaster about the inclusion of this footage.

The broadcaster said that it could understand that the use of particular pieces of footage might cause distress to Mr and Mrs Neal and that, given the tragic nature of the events, the possibility of causing distress attached to "almost every aspect of reporting them." However, the BBC stated that it did not see how the broadcast of the footage of Mr Day could infringe Mrs Neal's privacy.

The BBC added that it had not received the complaint referred to by Mrs Neal after the same footage of Mr Day had been used in the July 2012 report. The BBC said that, following the July 2012 broadcast, the reporter had contacted Mrs Neal to ensure she had been happy with the report and Mrs Neal had volunteered that she had found the footage of Mr Day upsetting. The BBC said

that the reporter had explained why the broadcast of the footage was considered “editorially appropriate” and that “Mrs Neal seemed content with that explanation”. The BBC said there had been no further discussion about the future re-use of the footage and that “no undertakings were asked for or given”.

The BBC said that the programme makers had received an email from Leicestershire Police, forwarding an email which Mrs Neal had sent to Nottinghamshire Police in July 2012 following the broadcast of the interview. In the email Mrs Neal complained that the family had found the images of Mr Day included in the July report “particularly traumatic” and were extremely upset by the report.

The BBC stated that the programme makers had received this email on 21 November, after the inquest and after the broadcast of the reports on 16 November 2012. It said that at the time of the inquest the BBC had no reason to believe that the use of the footage of Mr Day might cause Mr and Mrs Neal distress, over and above the distress caused by the reporting of the events themselves.

The BBC further argued that the possibility of distressing victims could not be allowed to be the determining consideration in the selection of “illustrative material”. It argued that such an approach would “amount to a ban on the use of the image of perpetrators of crime” and would be an “unacceptable restriction” on the ability of the media to report criminal proceedings.

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

Ofcom prepared a Preliminary View in this case that Mrs Neal’s complaint should be upheld in part. In commenting on this Preliminary View Mrs Neal made two factual points of clarification which Ofcom has reflected in its decision. Specifically, Mrs Neal disputed the charity set up in the name of her daughter, or the Trust fund set up by a local newspaper to help the surviving children, had raised the figure of £200,000 which was the amount referred to in the news report. The BBC did not submit any representations on Ofcom’s Preliminary View.

### **Decision**

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

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programmes as broadcast, an audio recording and transcript of the July 2012 interview, and both parties’ written submissions, including supporting material. Ofcom also took careful consideration of the representations made by Mrs Neal and reflected her factual clarifications in the decision.

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

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

- a) Ofcom first considered the complaint that footage of Mr and Mrs Neal was used in two editions of a news report broadcast on 16 November 2012 without their knowledge or consent. Mrs Neal said that the footage was taken from an interview they had previously given to *East Midlands Today*, regarding a charity which they had started in July 2012. Mrs Neal stated that the footage did not relate to the inquest into the deaths of Mr Day, his wife and their daughter, which was the subject of the 16 November 2012 report.

By way of background, Mrs Neal said that she and her husband were now associated with the tragedy and had subsequently received unwanted attention and sympathy from their community as a result.

In considering Mr and Mrs Neal's complaint, Ofcom had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. Ofcom also had regard to Practice 8.10 which states that broadcasters should ensure that the re-use of material (i.e. use of material originally filmed or recorded for one purpose or used or in a later or different programme) does not create an unwarranted infringement of privacy. This applies both to material obtained from others and the broadcaster's own material.

In considering whether Mr and Mrs Neal's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first considered the extent to which they had a legitimate expectation in the footage of the July 2012 interview.

Ofcom considered the context in which the footage from the July 2012 interview was used in the 16 November 2012 reports. Ofcom noted that the footage of Mr and Mrs Neal shown in the programme lasted for around five seconds and that the accompanying commentary said that:

*"Almost two hundred thousand pounds<sup>2</sup> has been raised locally to help support the family".*

Although the commentary did not refer to Mr and Mrs Neal directly, the mention of "the family" in commentary clearly implied that Mr and Mrs Neal were related to the Day family. Mr and Mrs Neal were clearly recognisable from the footage in that their faces were shown in close up shot. Mr and Mrs Neal were not heard talking in the footage but were seen looking at family photographs.

---

<sup>2</sup> The figure of almost £200,000 was stated in the news report, for the purposes of clarity Mrs Neal stated to Ofcom that she does not recognise this figure as correct.

The BBC was unable to provide the unedited footage of the July 2012 interview, but it was able to provide an audio recording and transcript of the interview. Ofcom carefully considered this material and noted that the context of the interview was that Mr and Mrs Neal spoke about a charity they had set up in their daughter's name, which would provide days out for children and families who might not otherwise be able to afford them. The charity had been set up in July 2012 following the killing of Mrs Day in December 2011, when it was widely thought that Mr Day was responsible for his wife's death<sup>3</sup>. Mrs Neal stated that she wanted "*Sam's name to live [on]*". Ofcom considered that the filming and broadcast of the July 2012 footage took place with Mr and Mrs Neal's consent, in that they had granted the interview with the BBC and, with the exception of one detail of the interview (which was not broadcast), they did not have any reasonable expectation that other parts of the interview would not be broadcast in the July 2012 report. Ofcom noted that consent to reuse this footage was not sought, or given, in relation to the 16 November 2012 reports.

Ofcom considered that, although the first section of the July 2012 interview focused on the aims of the charity and their daughter's life, Mr and Mrs Neal also spoke about the tragic events which had led to her death.

Ofcom noted that when the reporter asked Mr and Mrs Neal about the events of that day, Mrs Neal replied:

*"It's just a complete mystery really, as to what triggered anything. But we just have to accept what happened".*

Mr Neal then added:

*"We'd been with the two of them in the morning. We were over at the lodge cafe, and he [Mr Day] looked a little bit nervous, didn't he? But we just thought it was maybe a little bit of an off day for him. And, [we] said cheerio to them and when they drove off not realising that I wouldn't be seeing either of them again".*

Mrs Neal also spoke specifically about her feelings towards Mr Day:

*"You don't feel anger. You feel really sorry that somebody was in that mental state, that they couldn't cope...it must have been terrible for him, to have come to the idea that that's all there was...we just have to accept that he was not in a good place himself".*

Ofcom also noted that Mr Neal spoke about the reaction he and his wife had received from the community, saying that "*the village itself was fantastic, even now, we will go out doing something in the village and one of them will come up and give Janet a hug...*".

Ofcom considered that in the July 2012 interview Mr and Mrs Neal talked publicly in general terms about the charity they had set up in their daughter's name. However, it is clear from the quotations above that they also spoke more specifically about the tragic events of the day and the personal impact in some detail in the July 2012 interview. In Ofcom's view Mr and Mrs Neal's comments in the July 2012 interview were therefore linked to the inquest, the purpose of which was to examine the same events.

---

<sup>3</sup> See for example: <http://www.bbc.co.uk/news/uk-england-leicestershire-18788228>

Ofcom considered that the only detail relating to Mr and Mrs Neal in the 16 November report was that the charity they had set up had by that stage raised £200,000, a figure that Mrs Neal disputes is correct. In any regard, Ofcom did not consider this piece of information (whether correct or incorrect) to be of a private or sensitive nature and did not consider that it went beyond what Mr and Mrs Neal had themselves publicly discussed in relation to the charity.

Taking into account all the factors set out above Ofcom's decision is that Mr and Mrs Neal did not have a legitimate expectation of privacy in relation to the re-use of the footage from the July 2012 interview. Given this conclusion it was not necessary for Ofcom to consider whether any intrusion into Mr and Mrs Neal's privacy in the broadcast was warranted.

Ofcom's decision therefore is that Mr and Mrs Neal's privacy was not unwarrantably infringed in the programme as broadcast in this respect.

- b) Ofcom next considered the complaint that the faces of Mr and Mrs Neal's grandchildren (who are now 14 and 16 years old) were shown in a photograph in one edition of the programme. Mrs Neal said that their faces were unobscured and they could be recognised by the wider public.

In considering this complaint, Ofcom had regard to Practice 8.6 of the Code, as set out under head a) above. It also had regard to Practice 8.20, which states that broadcasters should pay particular attention to the privacy of people under sixteen. Ofcom also took account of Practice 8.21, which states that where a programme features an individual under sixteen or a vulnerable person in a way that infringes privacy, consent must be obtained from: a parent, guardian or other person of eighteen or over in loco parentis; and wherever possible, the individual concerned; unless the subject matter is trivial or uncontroversial and the participation minor, or it is warranted to proceed without consent.

With reference to Practices 8.20 and 8.21, Ofcom noted that particular attention must be paid to the privacy of people under the age of 16 years and to vulnerable people. In this context, Ofcom noted that one of Mrs Neal's grandchildren was 16 years old and that the other was 14 years old at the time that the photograph was broadcast. Ofcom considered that the meaning of "vulnerable" people varies but may include the bereaved and people who have been traumatised. Ofcom considered that both grandchildren should have been considered vulnerable by the broadcaster.

In considering whether Mrs Neal's grandchildren's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first considered the extent to which they had a legitimate expectation of privacy in the unobscured photograph of them.

Ofcom considered the context in which the photograph appeared and noted that it was used in the report to show the Day family, the commentary stated that:

*"He [Tobias Day] then strangled their six year old daughter, Genevieve, before stabbing her three times. Afterwards he stabbed himself six times..."*

Shortly after the photograph was shown the report explained that the two older children had survived. It would have been clear to viewers that the two children shown shortly before were the ones who had been the victims of the attack.

Ofcom clearly did not believe the subject matter of the report to be “trivial or uncontroversial” (see the wording of Practice 8.21) because it was a matter of the utmost seriousness.

Ofcom noted that the details of the murders had been the subject of a coroner’s inquest and had therefore been heard in public. Ofcom also noted the BBC’s submission that Mrs Neal’s grandchildren’s names had not been subject to a statutory order granting them anonymity and that their names had appeared in the local and national media. Ofcom further noted the newspaper article from December 2012 in which Mrs Neal’s grandchildren had thanked a local newspaper for the support they had received from its readers. Mrs Neal’s grandchildren were named in the newspaper report and quoted directly, and in the online version of the newspaper no photograph of the children was shown. The BBC did not provide Ofcom with the hardcopy of the newspaper so it was not possible to determine whether a photograph was included in this version. Ofcom noted that the December 2012 article was published a number of weeks after the 16 November report and that therefore when the BBC broadcast the unobscured images of the children, they do not appear to have spoken publicly. Ofcom also noted that the children’s statement, as reported in the local newspaper, was brief and stated:

*“We would like to say a massive thank you to everyone who has helped us this year. The people who have contributed to the Trust Fund, and also people who have done little things like put a smile on our faces. The public support has been amazing; it really does show that great things can come out of terrible things”.*

Ofcom considered that this quotation was limited in its scope and focused on thanking those who had contributed to the Trust Fund. It referred in a restricted way to the “terrible things” that they had been through and they did not talk in any detail about the events of the day of the attack or their lives since.

Ofcom noted that the BBC obscured the faces of the children in the later bulletins after being contacted by Mr and Mrs Neal “out of consideration for the family and not because...the picture unobscured in any way breached the privacy of the two teenage children.”

Ofcom took account of the fact that Mr and Mrs Neal had named and spoken publicly about their grandchildren in the July 2012 interview and considered that this may have indicated to the BBC that Mr and Mrs Neal did not consider it necessary for the children to receive absolute anonymity. Ofcom also noted that the children had been named by local and national media, but that the newspaper article cited by the BBC had not been published at the time of the November 2012 broadcast. In any event, the newspaper article contained very limited details from the children about the deaths of their parents and sister and the online version was not accompanied by any photograph.

Ofcom therefore considered that Mrs Neal’s grandchildren had experienced a traumatic event deeply linked to their family and private lives. The broadcaster needed to pay particular attention to their privacy given they were “vulnerable” people and one of the grandchildren was under 16 years old. Although Mrs Neal’s grandchildren had been named publicly, Ofcom took the view that by including an unobscured image of the children’s faces, the BBC identified them with the private and tragic events of the killings of their parents and sister and the attacks they themselves had experienced and survived. Broadcasting

unobscured images of the two grandchildren went beyond previous information about them that had already been made public. In these circumstances, Ofcom took the view that Mrs Neal's grandchildren had a legitimate expectation in the unobscured images in the photograph.

Having found that Mrs Neal's grandchildren had a legitimate expectation of privacy, Ofcom went on to weigh the broadcaster's competing right to freedom of expression and the audience's right to receive information and ideas without unnecessary interference. Ofcom also considered whether there was a sufficient public interest or other reason to justify the intrusion into Mrs Neal's grandchildren's privacy without consent.

Ofcom noted the public interest in the subject matter of the news item, namely the inquest into the deaths of Mr Day, his wife and his daughter. However, Ofcom considers that the publication in a family photograph of unobscured images of the faces of the two grandchildren who survived the attack by their father was no more than illustrative in its nature. In Ofcom's view, it did not contribute any information to the reporting of the inquest that was necessary in the public interest<sup>4</sup>. Ofcom noted that the BBC did not put forward any reason as to why the broadcast of the unobscured images of the two grandchildren's faces was warranted. While Ofcom appreciates that television is a visual medium and that in accordance with their editorial freedom and their right to freedom of expression, broadcasters must be able to illustrate events in the news, including tragic and traumatic ones, Ofcom noted that in this case, the two grandchildren had no statutory right to anonymity and that the BBC had voluntarily in this case obscured the faces of the two young people when the family photograph was broadcast in later editions of *East Midlands Today*. On balance, after careful consideration, Ofcom concluded that there was insufficient public interest and no other reason which warranted the BBC infringing Mrs Neal's grandchildren's expectation of privacy by broadcasting their unobscured photograph in the first edition of the programme, especially given that one of the grandchildren was 14 years old at the time and both this grandchild and the other (aged 16) could be considered as being "vulnerable people" in the circumstances.

Taking all the above factors into account, Ofcom's decision is that, on balance and in the particular circumstances of this case, the broadcaster's right to freedom of expression and to impart information and ideas and the audience's right to receive this information without interference did not outweigh the intrusion into Mrs Neal's grandchildren's expectation of privacy.

Ofcom's decision therefore is that Mrs Neal's grandchildren's privacy was unwarrantably infringed in this respect.

- c) Ofcom next considered Mrs Neal's complaint that she and her family had found it distressing and unnecessary that archive interview footage of Mr Day was used in the news reports. Mrs Neal stated that she had previously complained to the broadcaster about the broadcast of this footage.

In considering this aspect of Mrs Neal's complaint Ofcom had regard to Practice 8.19 of the Code which states that broadcasters should try to reduce the potential

---

<sup>4</sup> See the section in the Code after Rule 8.1 headed 'Meaning of "warranted"'. Examples of the public interest would include revealing or detecting crime, protecting public health or safety, exposing misleading claims made by individuals or organisations or disclosing incompetence that affects the public.

distress to victims and/or relatives when making or broadcasting programmes intended to examine past events that involve trauma to individuals (including crime) unless it is warranted to do otherwise. Practice 8.19 goes on to state that surviving victims whose experience is to feature in a programme should be informed of the plans for the programme and its intended broadcast even if the events or the material to be broadcast have been in the public domain in the past.

In considering whether Mrs Neal's privacy and that of her husband and grandchildren was unwarrantably infringed in the programme as broadcast, Ofcom first considered the extent to which they had a legitimate expectation of privacy in the footage broadcast of Mr Day talking about his role as a police officer.

Ofcom noted that Mrs Neal's grandchildren were victims of a violent and traumatic crime which was the subject of the report and that Mr and Mrs Neal were the immediate family of those involved in this violent crime.

Ofcom then considered the content of the broadcasts and noted that the 18:30 broadcast included footage of Mr Day in which he was seen walking through a room and giving a brief interview on his work as a police officer in which he said:

*"This is not acceptable to make off from the Police, to drive dangerously purely to evade capture".*

In the 22:30 bulletin the moving footage of Mr Day walking through the room was used but the clip of the interview was not. The report broadcast at 13:30 did not contain any moving footage of Mr Day, only a still photograph.

Ofcom noted that the context in which the footage was used on 16 November 2012 was in a bulletin reporting on the inquest, which had taken place that day. Ofcom considered it was likely that Mrs Neal and her family could have expected a report to appear in the regional news, given the press interest in the tragedy. Given this, Ofcom did not consider it was necessary for the programme makers to have informed Mrs Neal and her family that they intended to broadcast a report about the inquest.

Ofcom noted the broadcaster's representations that following the broadcast of the July 2012 interview Mrs Neal had told the reporter that she had found the footage of Mr Day distressing, but that following a conversation about the reasons for its inclusion no undertakings were given by the BBC about the re-use of the footage. Ofcom also considered the broadcaster's submission that the programme makers did not receive Mrs Neal's email complaining about the use of the footage of Mr Day in the July 2012 report until 21 November 2012, a number of days after the reports in *East Midlands Today* on 16 November 2012. The BBC was therefore unaware of Mrs Neal's feelings about the footage, beyond what she had said to the reporter, and believed that the issue had been resolved at that point.

Ofcom noted that the BBC said the footage of Mr Day was illustrative. Having examined the report, Ofcom noted that Mr Day could be heard speaking very briefly in his capacity as a police officer. However, the footage did not disclose anything of a personal or sensitive nature. Whilst Ofcom understood how the inclusion of this footage may have been distressing to the family, Ofcom's decision is that Mrs Neal and her family did not have a legitimate expectation of privacy in relation to the footage broadcast of Mr Day.

Given this conclusion it was not necessary for Ofcom to consider whether any intrusion into Mrs Neal's privacy and that of her husband and grandchildren in the broadcast was warranted.

Ofcom's decision therefore is that Mrs Neal's privacy and that of her husband and grandchildren was not unwarrantably infringed in the programme as broadcast in this respect.

**Accordingly, Ofcom has upheld Mrs Neal's complaint that the privacy of Mrs Neal's grandchildren was unwarrantably infringed in the broadcast.**

## Not Upheld

### Complaint by Mrs Victoria O'Neill

*Rip Off Britain, BBC 1, 10 January 2013*

---

#### Summary

Ofcom has not upheld Mrs O'Neill's complaint of unjust or unfair treatment in the programme as broadcast.

During this episode of *Rip Off Britain*, Mrs O'Neill, a veterinary nurse, was shown attending to a dog with a colleague in a brief clip intended to illustrate a vaccination for rabies. It was included in the programme as part of its report on the complexity and expense associated with people travelling abroad with their pets.

Mrs O'Neill complained to Ofcom that she had been treated unjustly or unfairly in the programme as broadcast in that the programme reused footage of her in a way that portrayed her unfairly and in a negative light.

Ofcom found that the reuse of the footage of Mrs O'Neill in the programme did not amount to unfairness to her in that she was not misrepresented or portrayed in a way that would be likely materially and adversely to affect viewers' opinion of her or her professional reputation. Ofcom therefore considered that Mrs O'Neill was not treated unjustly or unfairly in the programme as broadcast.

#### Introduction

On 10 January 2013, BBC 1 broadcast an episode of its consumer affairs programme *Rip Off Britain*. This episode was one in a series focusing on holidays and which told the stories of members of the public who had had unsatisfactory experiences while travelling. The programme sought explanations and redress from the organisations deemed responsible for these experiences, as well as providing general consumer advice. Part of the programme examined the difficulties associated with taking pets abroad and complying with the rules of the Government's Pet Travel Scheme. By way of illustration, Mrs Anne Denton and Mr Chris Denton described in the programme the expense and inconvenience they experienced in travelling with a dog to Canada. One of the programme's presenters said in voiceover that the process was "*pretty expensive*" and listed a number of requirements for taking a pet abroad. These requirements included: a pet passport; a vaccination for rabies; a specialised crate for transportation; and, a microchip implanted for the purpose of identification. A short clip of footage was used to illustrate each requirement, and a caption showing the price associated with it was superimposed over the footage shown on-screen. In the case of the vaccination for rabies, a veterinary nurse was shown in profile with a colleague attending to a dog, while the voiceover and on-screen caption relayed the information that this procedure cost approximately £50. The veterinary nurse shown in the clip was the complainant, Mrs Victoria O'Neill. The footage of Mrs O'Neill remained on screen for no longer than five seconds.

Following the broadcast of the programme, Mrs O'Neill complained to Ofcom that she was treated unjustly or unfairly in the programme as broadcast.

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

Mrs O'Neill complained that she was treated unjustly or unfairly in the programme as broadcast in that the programme re-used footage of her in a way that portrayed her unfairly and in a negative light.

In particular, Mrs O'Neill said that the footage of her was obtained approximately two years ago during filming for a feature about The Dogs Trust, a charity that provides free veterinary treatment to stray and abandoned dogs. Mrs O'Neill said that she had not signed a consent form at the time, but had been happy for the footage to be used in the original context for which it was filmed, namely a light-hearted and informative feature about animal welfare. However, Mrs O'Neill said the programme *Rip Off Britain* implied through the voiceover, the on-screen caption and, indirectly, the title of the programme, that the service she provided was a "rip off". Mrs O'Neill said that in reusing the footage of her in this way in the programme had portrayed her in a negative light which was unfair.

By way of background, Mrs O'Neill said that she felt that being included in the programme was potentially damaging to her professional reputation and to being personally embarrassing to her.

In response and before addressing the substance of Mrs O'Neill's complaint, the BBC said that subsequent to the broadcast of the programme, the Executive Producer of the programme had apologised to Mrs O'Neill in correspondence for any upset inadvertently caused by the inclusion of the footage and undertaken to remove it from any repeat of this episode of the programme. The BBC had also explained to her that it was standard practice to take generic or straightforward footage from an internal archive of previously transmitted material, rather than go to the expense of filming new material for programmes. The BBC stated, however, that it was careful to make sure that the re-use of the footage was not misleading or unfair and that it did not believe that it had been so in this instance. The BBC said that, nevertheless, it acknowledged that with hindsight it would have been better to use footage where individuals were not so obviously identifiable, but that the footage had been included in good faith, and would not have been utilised had the programme makers thought there would be a problem with doing so. The BBC said that Mrs O'Neill had not been satisfied with this response, and complained to Ofcom.

In response to the complaint itself, the BBC stated that it did not believe that the re-use of the footage in question was unfair to Mrs O'Neill. It said that the footage complained of was shown fleetingly over the commentary about vaccination. The BBC said that when considered as a whole, it was clear that the footage formed a series of generic background shots illustrating the information provided at each point and that no allegation of wrongdoing was being made. It said that the manner in which the footage was presented was an example of a commonly-used visual device intended to help the viewer keep track of the numbers involved.

The BBC said that the feature on the difficulties associated with taking pets abroad was informative rather than critical. It said that there was no suggestion that the costs of the Pet Travel Scheme were exorbitant or in any way a "rip-off". It was simply described as "pretty expensive", which, the BBC believed, was a fair and neutral comment. The BBC added that the main focus of this part of the programme was the complexity, rather than the expense, of the Pet Travel Scheme.

Finally, the BBC stated that the title of the programme did not indirectly suggest that veterinary services are a “rip off”, as its remit was broader than the title suggested, as set out in the introduction spoken by one of the presenters:

*“Whether it’s a deliberate rip-off, a simple mistake, or a catch in the small print, we’ll find out why you’re out of pocket and what you can do about it”.*

The BBC said that the programme provided general consumer advice, as well as exposing wrongdoing, and the section of the programme in which footage Mrs O’Neill was shown focused on the former. In combination with the brevity of the footage and the manner in which it was presented, the BBC said that there was no unfairness to Mrs O’Neill.

## **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, a transcript of the programme and both parties’ written submissions along with supporting material. Ofcom provided the parties with the opportunity to make representations on Ofcom’s Preliminary View (which was not to uphold the complaint). Neither party made any representations on the Preliminary View.

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster’s actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of Ofcom’s Broadcasting Code (“the Code”).

Ofcom considered Mrs O’Neill’s complaint that she was treated unjustly or unfairly in the programme as broadcast in that the programme re-used footage of her in a way that portrayed her unfairly and in a negative light.

In considering Mrs O’Neill’s complaint, Ofcom not only had regard to Rule 7.1 of the Code, it also took account of Practice 7.8 of the Code which states that broadcasters should ensure that the re-use of material, i.e. use of material originally filmed or recorded for one purpose and then used in a programme for another purpose or used in a later or different programme, does not create unfairness. This applies both to material obtained from others and the broadcaster’s own material.

Ofcom noted the footage of Mrs O’Neill included in the programme (as described in the “Introduction” above) and considered that Mrs O’Neill would have been identifiable from the albeit very brief footage shown in the programme as would her profession, i.e. a veterinary nurse.

Ofcom then noted from the BBC's submissions that the footage of Mrs O'Neill had been originally recorded for a feature on The Dogs' Trust for *BBC Breakfast*<sup>1</sup>. It noted that Mrs O'Neill had said in her complaint that she had been happy for it to be used in its original context, which she said was light-hearted and informative, and concerned animal welfare. Ofcom noted the genre of programme that the footage was re-used, namely a consumer affairs programme, and context in which the footage appeared, i.e. the complexity of and the expense associated with travelling abroad with a pet. In Ofcom's view, the context in which the footage of Mrs O'Neill was re-used was markedly different from the programme for which it was originally recorded. Having taken this view, Ofcom considered whether the re-use of the footage created any unfairness to Mrs O'Neill in the programme as broadcast.

Ofcom again noted the footage used in the programme and, in particular, the presenter's commentary that accompanied the sequence in which Mrs O'Neill appeared. The footage appeared in the part of the programme that looked at the difficulties associated with taking pets abroad and complying with the Pet Travel Scheme. It noted that Mr and Mrs Denton, who contributed to the programme, described the expense and inconvenience they experienced in travelling with a dog to Canada. Ofcom noted the following commentary that accompanied the sequence in which the footage of Mrs O'Neill appeared:

*"With the decision made to take Pearl [Mr and Mrs Denton's dog] on a plane for the first time, there was just the question of making the arrangements. But before their four legged friend could even make it to the airport here, she would need a pretty expensive shopping list to comply with the new rules:*

*A Pet Passport – with a price tag of around thirty pounds.*

*A vaccination against rabies - roughly another fifty quid.*  
[footage of Mrs O'Neill was shown along with this commentary]

*A specialised crate for the dog to go in the hold - about £140*

*And a microchip implanted so customs can ID her – adding around £20 to the bill. Without one of those your pet WON'T be able to travel.*

*Oh, and your dog needs to be measured too".*

Ofcom considered that the purpose of the programme was to provide general consumer advice as well as exposing wrongdoing. In this episode, the programme looked at the cost and inconvenience that can be encountered by people wanting to travel abroad with their pets and, in particular, it looked at the Pet Travel Scheme. The programme presented a breakdown of some of the requirements of the scheme and the approximate cost of each requirement. Ofcom considered that the main focus of this part of the programme was the complexity of the scheme, and the total cost of the various requirements needed, rather than the individual cost of each requirement. To illustrate the costs incurred in meeting the requirements of the scheme, the programme used a sequence of generic footage to reflect each requirement and the approximate cost. In the complainant's case, it was footage of her attending to a dog with a colleague in a veterinary surgery. In this context, Ofcom considered that the footage was used solely as a visual device to illustrate to viewers the programme's assertion that one of the requirements of the Pet Travel Scheme

---

<sup>1</sup> The BBC's daily, early morning news and current affairs magazine programme.

was for the pet to be vaccinated against rabies which incurred the approximate cost of *“fifty quid”*.

Ofcom appreciated that Mrs O’Neill felt concern about footage of her being included in a programme entitled *“Rip off Britain”*. However, having considered the context in which the footage of Mrs O’Neill was shown and the commentary accompanying it, and the on-screen caption, Ofcom was satisfied that the inclusion of the footage was incidental and used as a visual device to illustrate a point and that, in its view, viewers would have been likely to have understood this as being the purpose of its inclusion. In addition, Ofcom considered that the manner in which the footage of Mrs O’Neill was presented in the programme, i.e. in a sequence of generic images used to illustrate a particular point, was unlikely to suggest to viewers that there was an allegation of wrongdoing against those shown in it. Neither would it have been likely, in Ofcom’s view, for viewers have understood from the particular reference to a rabies vaccination costing *“roughly fifty quid”* to suggest that such veterinary vaccinations were a “rip-off” or that the veterinary services offered by Mrs O’Neill and the other individual shown in the footage were, in some way, questionable or being criticised.

Taking all these factors into account, Ofcom considered that the re-use of the footage of Mrs O’Neill in the programme did not amount to unfairness to her in that she was not misrepresented or portrayed in a way that would be likely materially and adversely to affect viewers’ opinion of her or her professional reputation. Ofcom therefore considered that Mrs O’Neill was not treated unjustly or unfairly in the programme as broadcast.

**Accordingly, Ofcom has not upheld Mrs O’Neill’s complaint of unjust or unfair treatment in the programme as broadcast.**

## Other Programmes Not in Breach

Up to 6 May 2013<sup>1</sup>

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>
40 Year Old Virgins (trailer)	Channel 4	23/03/2013	Scheduling
News	ATN Bangla UK	15/02/2013	Due impartiality/bias
News	CHSTV	28/02/2013	Due impartiality/bias

---

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

## Complaints Assessed, not Investigated

### Between 23 April and 6 May 2013

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
300	Sky Movie channels	n/a	Scheduling	1
10 o'Clock Live	Channel 4	24/04/2013	Generally accepted standards	1
10 o'Clock Live	Channel 4	26/04/2013	Generally accepted standards	1
4OD promotion	E4	23/04/2013	Materially misleading	1
A Town Called Eureka	SyFy	19/09/2012	Television Access Services	1
Absolute 70s	Absolute Radio	n/a	Materially misleading	1
Advertisements	Channel 5	n/a	Advertising minutage	1
Advertisements	ITV	n/a	Advertising scheduling	1
Advertisements	Sky channels	n/a	Advertising minutage	1
Ahlebait TV	Ahlebait TV	03/04/2013	Appeals for funds	1
Andrew Gilligan	LBC 97.3FM	21/04/2013	Race discrimination/offence	1
Barely Legal Drivers	BBC 3	28/04/2013	Generally accepted standards	1
BBC News	BBC 1, BBC 2, BBC 3 and BBC 4	n/a	Outside of remit / other	1
BBC News	BBC News Channel	15/04/2013	Generally accepted standards	1
BBC News	BBC News Channel	22/04/2013	Violence and dangerous behaviour	1
BBC News	BBC Radio 4	22/04/2013	Religious/Beliefs discrimination/offence	1
BBC News at Ten	BBC 1	23/04/2013	Violence and dangerous behaviour	1
Big Fat Gypsy Weddings	Channel 4	26/04/2013	Offensive language	1
Brainiac: Science Abuse	Sky1	02/05/2013	Generally accepted standards	1
Breakfast Show	Capital Radio	n/a	Scheduling	1
Broadchurch	ITV	22/04/2013	Generally accepted standards	1
Broadchurch	ITV	22/04/2013	Information/warnings	2
Broadchurch	ITV	22/04/2013	Outside of remit / other	1
Burn Notice	FX	22/10/2012	Television Access Services	1
Capital Breakfast	Capital FM	25/04/2013	Generally accepted standards	1
Channel 4 News	Channel 4	22/04/2013	Due accuracy	1
Channel 4 News	Channel 4	22/04/2013	Violence and dangerous behaviour	1
Channel 4 News	Channel 4	26/04/2013	Harm	1
Channel 4 News	Channel 4	30/04/2013	Due accuracy	1

Channel ident	ITV2	05/04/2013	Violence and dangerous behaviour	1
Channel ident	ITV2	21/04/2013	Violence and dangerous behaviour	1
Channel promotion	E4	26/04/2013	Generally accepted standards	1
Channel promotion	E4 +1	25/04/2013	Generally accepted standards	1
Christian O'Connell Breakfast Show	Absolute Radio	17/04/2013	Due impartiality/bias	1
Christian O'Connell Breakfast Show	Absolute Radio	19/04/2013	Scheduling	1
Coronation Street	ITV	15/02/2013	Generally accepted standards	6
Coronation Street	ITV	24/04/2013	Outside of remit / other	1
Coronation Street	ITV	26/04/2013	Drugs, smoking, solvents or alcohol	1
Dateline	BBC News Channel	20/04/2013	Race discrimination/offence	1
Dave Ja Vu promotion	Dave Ja Vu	22/04/2013	Generally accepted standards	1
Daybreak	ITV	26/04/2013	Generally accepted standards	1
Deal or No Deal	Channel 4	22/04/2013	Disability discrimination/offence	1
Dexter (trailer)	Film4	04/04/2013	Scheduling	1
Dickinson's Real Deal	ITV	24/04/2013	Generally accepted standards	1
Dispatches: Syria Across the Lines	Channel 4	17/04/2013	Due impartiality/bias	2
Dogging Tales	Channel 4	04/04/2013	Generally accepted standards	1
Dogging Tales	Channel 4	09/04/2013	Generally accepted standards	1
Dumfries and Galloway Housing Partnership advertisement	West Sound Radio	02/04/2013	Political advertising	1
E4 promo	E4	25/04/2013	Generally accepted standards	1
EastEnders	BBC 1	28/03/2013	Violence and dangerous behaviour	2
EastEnders	BBC 1	02/05/2013	Generally accepted standards	1
Edward VIII's Murderous Mistress	Channel 4	23/04/2013	Generally accepted standards	1
Electronic Programme Guide	Freeview	n/a	Digital Switchover	1
Embarrassing Bodies: Live from the Clinic	4seven	24/04/2013	Generally accepted standards	1
Embarrassing Bodies: Live from the Clinic	4seven	01/05/2013	Scheduling	1
Embarrassing Bodies: Live from the Clinic	Channel 4	23/04/2013	Scheduling	3
Embarrassing Bodies: Live from the Clinic	Channel 4	30/04/2013	Scheduling	5
Embarrassing Bodies: Live from the Clinic (trailer)	Channel 4	22/04/2013	Scheduling	1

Embarrassing Bodies: Live from the Clinic (trailer)	Channel 4	n/a	Scheduling	2
Embarrassing Bodies: Live from the Clinic (trailer)	Channel 4 / 4Seven	n/a	Scheduling	1
Embarrassing Bodies: Live from the Clinic (trailer)	E4	23/04/2013	Scheduling	1
Emmerdale	ITV	22/04/2013	Violence and dangerous behaviour	1
Emmerdale	ITV	02/05/2013	Disability discrimination/offence	1
Endeavour	ITV	28/04/2013	Advertising minutage	1
Endeavour	ITV	28/04/2013	Drugs, smoking, solvents or alcohol	1
Fit	CBBC	24/04/2013	Offensive language	1
Foyle's War	ITV	n/a	Violence and dangerous behaviour	1
Generation Sex	5*	01/04/2013	Generally accepted standards	1
Grand Designs	Channel 4	20/04/2013	Offensive language	1
Grey's Anatomy (trailer)	Sky Living	04/04/2013	Hypnotic and other techniques	1
Halfords' sponsorship of Dave	Dave	30/04/2013	Scheduling	1
Halfords' sponsorship of Happy Motoring on Dave	Dave	n/a	Outside of remit / other	1
Have I Got a Bit More News for You	BBC 1	29/04/2013	Race discrimination/offence	3
Have I Got News for You	BBC 1	26/04/2013	Race discrimination/offence	8
Hollyoaks	Channel 4	01/04/2013	Materially misleading	1
Huw Stephens	BBC Radio 1	20/04/2013	Offensive language	1
ITV News and Weather	ITV	22/04/2013	Violence and dangerous behaviour	1
ITV News and Weather	ITV	30/04/2013	Generally accepted standards	1
ITV News on Channel TV	ITV Channel Television	24/04/2013	Outside of remit / other	1
Jeremy Vine	BBC Radio 2	24/04/2013	Outside of remit / other	1
Kick Off	Talksport	22/04/2013	Disability discrimination/offence	1
King Ralph	ITV2	28/04/2013	Offensive language	1
Live UEFA Champions League	ITV	23/04/2013	Competitions	1
Live UEFA Champions League	ITV	23/04/2013	Competitions	1
Loose Women	ITV	30/04/2013	Materially misleading	1
Magic Breakfast with Neil Fox	Magic FM	22/04/2013	Commercial communications on radio	1
Margaret	Sky Select	10/04/2013	Scheduling	1
Margaret: Death of a Revolutionary	Channel 4	13/04/2013	Due impartiality/bias	1

Margaret: Death of a Revolutionary	Channel 4	13/04/2013	Generally accepted standards	1
MasterChef	BBC 1	25/04/2013	Generally accepted standards	1
Most Haunted	Pick TV	22/04/2013	Exorcism, the occult and the paranormal	1
Most Haunted	Pick TV	23/04/2013	Exorcism, the occult and the paranormal	1
Music N Adda	NTV	21/03/2013	Premium rate services	1
My Big Fat Gypsy Fortune	Channel 4	14/04/2013	Outside of remit / other	1
News programming	BBC channels, ITV channels and Sky channels	n/a	Outside of remit / other	1
Newsnight Scotland	BBC 2	n/a	Outside of remit / other	1
Newsround	CBBC	01/05/2013	Scheduling	1
Noor TV	Noor TV	n/a	Religious/Beliefs discrimination/offence	1
Not the Nine o'Clock News	UK Gold +1	03/04/2013	Scheduling	1
Off the Ball	BBC Radio Scotland	20/04/2013	Offensive language	1
Off Their Rockers	ITV	21/04/2013	Generally accepted standards	1
Off Their Rockers	ITV	21/04/2013	Nudity	1
Party Election Broadcast by the Conservative Party	BBC / ITV / Channel 4 / Channel 5	n/a	Outside of remit / other	2
Party Election Broadcast by the Conservative Party	BBC 1	30/04/2013	Outside of remit / other	1
Party Election Broadcast by the Conservative Party	ITV	30/04/2013	Outside of remit / other	1
Party Political Broadcast by the Conservative Party	ITV	23/01/2013	Outside of remit / other	1
Premier League Football	Sky Sports 1	22/04/2013	Generally accepted standards	2
Press Preview	Sky News	17/04/2013	Undue prominence	1
Programming	BBC channels	n/a	Outside of remit / other	1
Programming	Channel 5	n/a	Outside of remit / other	1
Programming	Various	n/a	Outside of remit / other	1
Programming	Various	n/a	Religious/Beliefs discrimination/offence	2
Psychic Sally: On The Road	Pick TV	22/04/2013	Exorcism, the occult and the paranormal	1
Psychic Sally: On The Road	Pick TV	23/04/2013	Exorcism, the occult and the paranormal	1
QI XL	BBC 2	20/04/2013	Religious/Beliefs discrimination/offence	1
Regional News and Weather	BBC 1	24/04/2013	Outside of remit / other	1
Reporting Scotland	BBC 1 Scotland	30/04/2013	Outside of remit / other	1
Revolution (trailer)	Challenge	05/04/2013	Scheduling	1
Rich Clarke	Capital FM	24/04/2013	Offensive language	1

Richard Bacon	BBC Radio 5 Live	24/04/2013	Outside of remit / other	1
Scotland Tonight	STV	04/04/2013	Due impartiality/bias	1
Scott and Bailey	ITV	24/04/2013	Generally accepted standards	1
Secret Eaters	Channel 4	18/04/2013	Harm	1
Sky News	Sky News	30/04/2013	Generally accepted standards	1
Sky News	Sky News	n/a	Advertising/editorial distinction	1
South East Today	BBC 1	29/04/2013	Generally accepted standards	1
South Park	Various	n/a	Generally accepted standards	1
Spartacus: Vengeance	Pick TV	20/04/2013	Generally accepted standards	1
Steve Wright in the Afternoon	BBC Radio 2	30/04/2013	Fairness & Privacy	1
Storage Wars	History HD	07/04/2013	Product placement	1
Storm Late Night	Storm	27/03/2013	Sexual material	1
Sweat the Small Stuff	BBC 3	30/04/2013	Animal welfare	3
Television Access Services / Electronic Programme Guides	Various	n/a	Television Access Services	1
The Andrew Marr Show	BBC 1	28/04/2013	Outside of remit / other	1
The Body Shocking Show	E4	25/04/2013	Outside of remit / other	1
The Chase	ITV	09/04/2013	Competitions	1
The Chase	ITV	10/04/2013	Competitions	1
The Chase	ITV	22/04/2013	Materially misleading	16
The Guest Wing	Sky Atlantic	16/03/2013	Race discrimination/offence	1
The Ice Cream Girls	ITV	19/04/2013	Violence and dangerous behaviour	1
The Jeremy Kyle Show	ITV	23/04/2013	Generally accepted standards	1
The Job Lot	ITV	29/04/2013	Disability discrimination/offence	2
The Job Lot	ITV	29/04/2013	Race discrimination/offence	1
The Jonathan Ross Show	ITV	30/03/2013	Generally accepted standards	1
The Official Chart with Jameela Jamil: One Direction Competition	BBC Radio 1	10/03/2013	Competitions	1
The Prisoners	BBC 1	n/a	Outside of remit / other	1
The Repo Man	Channel 4	02/05/2013	Violence and dangerous behaviour	1
The Rob Brydon Show	Dave	10/04/2013	Race discrimination/offence	1
The Today Programme	BBC Radio 4	26/04/2013	Outside of remit / other	1
The Wrong Show	TFM Radio	28/04/2013	Scheduling	1
This Morning	ITV	18/04/2013	Competitions	1
This Morning	ITV	22/04/2013	Generally accepted standards	1

This Morning	ITV	29/04/2013	Religious/Beliefs discrimination/offence	2
Today	BBC Radio 4	23/04/2013	Generally accepted standards	1
Tomorrow's World	BBC 2	11/04/2013	Product placement	1
Undercover Boss Australia	Channel 4	01/04/2013	Product placement	1
Various	SyFy	n/a	Television Access Services	1
Vicious	ITV	29/04/2013	Sexual orientation discrimination/offence	6
Vicious (trailer)	ITV	27/04/2013	Scheduling	1
Waterloo Road	BBC 1	02/05/2013	Scheduling	1
Who's On Heart Competition	Heart FM	23/04/2013	Competitions	1
Win a Wedding Competition	Lincs FM	n/a	Competitions	1
World Snooker Championship	BBC 2	25/04/2013	Flashing images/risk to viewers who have PSE	1
X-Men: The Last Stand	Film4	03/03/2013	Scheduling	1
Youngers	E4	01/05/2013	Outside of remit / other	1
You've Been Framed!	ITV	27/04/2013	Generally accepted standards	1
You've Been Framed!	ITV2	23/04/2013	Generally accepted standards	1

## Investigations List

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

Here is an alphabetical list of new investigations launched between 25 April and 8 May 2013.

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission date</b>
Advertising minutage	Aaj Tak	Various
Advertising minutage	Attheraces	10/03/2013
Advertising minutage	UMP Movies	18/03/2013
Advertising minutage	Zing	17/03/2013
Christian O'Connell Breakfast Show	Absolute Radio	17/04/2012
Community Roundup	Channel Nine UK	24/03/2013
Daily News	CHSUK	01/03/2013
Keiser Report	RT	30/03/2013
Little Man	Comedy Central	06/04/2013
Moddhorater Khobor	NTV	14/04/2013
Oggerz Breakfast	Kane FM 103.7	05/04/2013
On-Air Announcement	Star Radio North East	11-Mar-13
Studio 66 TV1	Studio 66 TV1	04/04/2013
The Incredible Hulk	ITV	30/03/2013
The Mummy: Tomb of the Dragon Emperor	ITV	31/03/2013
Tosh.o	Comedy Central	11/04/2013
Various	CNN	04/07/2012
Various	Studio 66 TV2 Studio 66 TV3	17/04/2013

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

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

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

For fairness and privacy complaints go to:

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