

OFCOM BROADCAST AND ON DEMAND BULLETIN

Issue number 365
5 November 2018



Contents

Introduction	3
Notes to Broadcasters	
Monitoring of equality of opportunity and training in radio broadcasting	5
Statement: Changes to the Mandatory Daytime PIN Protection rules	7
New application process for short-term restricted service licences ("SRSLs")	8
Broadcast Standards cases	
In Breach	
Jonny Park <i>Capital Xtra, 2 September 2018, 13:45</i>	9
5 News Update <i>Channel 5, 6 September 2018, 21:00</i>	12
Text Dating <i>Kiss Me TV, 8 January 2018, 20:45</i>	15
Broadcast Licence Conditions cases	
In Breach	
Providing a service in accordance with 'Key Commitments' <i>TMCRFM Limited, 9 to 11 August 2018</i>	18
Broadcast Fairness and Privacy cases	
Not Upheld	
Complaint by Mr Peter Lilley <i>Dispatches: Politicians for Hire: Cashing in on Brexit, Channel 4, 28 January 2018</i>	21
Tables of cases	
Investigations Not in Breach	47
Complaints assessed, not investigated	48
Complaints outside of remit	56
BBC First	58
Investigations List	60

Introduction

Under the Communications Act 2003 ("the Act"), Ofcom has a duty to set standards for broadcast content to secure the standards objectives¹. Ofcom also has a duty to ensure that On Demand Programme Services ("ODPS") comply with certain standards requirements set out in the Act².

Ofcom reflects these requirements in its codes and rules. The Broadcast and On Demand Bulletin reports on the outcome of Ofcom's investigations into alleged breaches of its codes and rules, as well as conditions with which broadcasters licensed by Ofcom are required to comply. The codes and rules include:

- a) [Ofcom's Broadcasting Code](#) ("the Code") for content broadcast on television and radio services licensed by Ofcom, and for content on the BBC's licence fee funded television, radio and on demand services.
- b) the [Code on the Scheduling of Television Advertising](#) ("COSTA"), containing rules on how much advertising and teleshopping may be scheduled on commercial television, how many breaks are allowed and when they may be taken.
- c) certain sections of the [BCAP Code: the UK Code of Broadcast Advertising](#), for which Ofcom retains regulatory responsibility for television and radio services. These include:
 - the prohibition on 'political' advertising;
 - 'participation TV' advertising, e.g. long-form advertising predicated on premium rate telephone services – notably chat (including 'adult' chat), 'psychic' readings and dedicated quiz TV (Call TV quiz services); and
 - gambling, dating and 'message board' material where these are broadcast as advertising³.
- d) other conditions with which Ofcom licensed services must comply, such as requirements to pay fees and submit information required for Ofcom to carry out its statutory duties. Further information can be found on Ofcom's website for [television](#) and [radio](#) licences.
- e) Ofcom's [Statutory Rules and Non-Binding Guidance for Providers of On-Demand Programme Services](#) for editorial content on ODPS (apart from BBC ODPS). Ofcom considers sanctions for advertising content on ODPS referred to it by the Advertising Standards Authority ("ASA"), the co-regulator of ODPS for advertising, or may do so as a concurrent regulator.

[Other codes and requirements](#) may also apply to broadcasters, depending on their circumstances. These include the requirements in the BBC Agreement, the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code.

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

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

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

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

Note to Broadcasters

Monitoring of equality of opportunity and training in radio broadcasting

On 13 June 2018, Ofcom published its first Diversity and equal opportunities in radio report.¹ It set out how the industry is performing on equality and diversity overall, both in terms of what it's doing well and what it could improve. The report contained our key recommendations on where the industry needs to do more. We also made clear that:

- We would take enforcement action against those licensees who failed to respond to our information request;
- We would assess the arrangements each licensee has in place to promote equal opportunities; and that
- We would continue to review our guidance in this area as part of the evaluation of the monitoring process.

This note is aimed specifically at radio broadcasters and provides an update on the next round of information gathering.

Monitoring of the radio industry

Stage one information request

In the week beginning **26 November 2018** we will be sending an initial information request to each licensee who told us last year that their employees totalled 50 or under and to any new licensees. Broadcasters with more than 50 employees will not be involved at this stage. This request will be sent to company secretaries by post and to licence contacts by email. The questionnaire will take the form of an online survey, which can be accessed via a link, included as part of the email sent to licence contacts. The stage one information request will ask for information related to your number of employees and the number of days you are licensed to broadcast per year, to identify whether you are required to complete a full questionnaire at stage two.

Licensees are reminded that failure to submit the requested information by the specified date, **may result in a breach of your licence.**

Stage two information request

Licensees identified at stage one as meeting the relevant thresholds², along with licensees who told us last year that they have over 50 employees, will receive the stage two information request in January 2019. This will consist of a detailed questionnaire asking about your equal opportunities arrangements and your workforce, which will need to be completed and returned to Ofcom. The details of how and when to do this will be included with the questionnaire.

¹ https://www.ofcom.org.uk/_data/assets/pdf_file/0025/114829/Diversity-in-radio-2018.pdf.

² Have more than 20 employees and licensed to broadcast for more than 31 days per year.

How will the information be used?

We will use the information to produce our second annual diversity and equal opportunities in radio report in Summer 2019.

Any broadcasters who have questions related to this note please contact

diversityinbroadcasting@ofcom.org.uk

For guidance and resources on how broadcasters can improve the diversity of their organisations please visit: www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/guidance/diversity

Finally, we would like to remind you that it is your responsibility to ensure that your contact details held by Ofcom are accurate and up-to-date. Therefore, if this isn't the case, we ask that you email Broadcast.Licensing@ofcom.org.uk with your correct contact details.

Note to Broadcasters

Statement: Changes to the Mandatory Daytime PIN Protection rules

On 5 November 2018, Ofcom published a statement setting out its decision to make changes to the rules about the use of mandatory PIN codes in Section One of the Broadcasting Code.

Ofcom has a duty to review and revise the rules in the Broadcasting Code from time to time when we consider it appropriate. We publicly consulted on our proposals to update the mandatory daytime PIN rules in March 2018, and the statement concludes our review.

Section One of the Code currently allows for 15-rated films to be broadcast during the daytime on subscription film channels and up to 18-rated films on pay per view film channels, provided a mandatory PIN is in place. Mandatory PIN protection cannot be removed by the user and restricts access solely to those authorised to view.

The statement sets out Ofcom's decision to extend the application of the mandatory PIN rules in Section One of the Code to permit scheduled television channels to show programmes, which can currently only be shown after the 9pm watershed, before this time, but only if mandatory daytime protection is in place. We consider mandatory daytime protection to complement the existing 9pm watershed in providing a strong level of protection for children against programmes on broadcast services which might be unsuitable for them.

The changes to the rules include a requirement for broadcasters to clearly explain the new mandatory PIN systems in place to all users, and to provide clear guidance information with programmes to assist adults in assessing whether content is suitable for children.

The revisions to the relevant rules to extend mandatory daytime protection beyond premium film content will come into force on 1 January 2019.

We expect broadcasters and platform providers who intend to make use of mandatory daytime protection to inform their viewers about the new regime, and about the importance of parents setting strong PIN codes in advance.

We set out our expectations in more detail in the statement, which can be found at the following link: <https://www.ofcom.org.uk/consultations-and-statements/category-2/mandatory-daytime-protection>

Broadcasters should note that the current Code rules remain in force until 1 January 2019.

Note to Broadcasters

New application process for short-term restricted service licences ("SRSLs")

Ofcom has today outlined a new application process for short-term restricted service licences ("SRSLs").

Under the new process, applications should now be submitted by email. Other changes include requiring applicants to provide more detailed information to help us better assess whether they have appropriate processes for ensuring compliance with broadcasting standards.

The new process must be followed for all future SRSL applications from today. A revised application form¹ and notes of guidance² on the new process are available on Ofcom's website.

Ofcom has also today opened the window for SRSL applications to run radio stations on any dates between 3 May and 7 June 2019. We expect to receive a large number of applications because Ramadan falls within this period.

As in previous years, given high demand for SRSLs and the limited FM frequencies available, we expect to allocate licences by way of a draw.

The new application process is set out in detail in our statement³; we recommend all potential applicants read this carefully before submitting an application to broadcast during this period.

Those wishing to provide a service between 3 May and 7 June 2019 are asked to submit their application between **5 and 23 November 2018**.

¹ https://www.ofcom.org.uk/_data/assets/file/0019/10576/rsl-application-form.docx

² https://www.ofcom.org.uk/_data/assets/pdf_file/0022/125527/Short-term-RSL-guidance.pdf

³ https://www.ofcom.org.uk/_data/assets/pdf_file/0025/125377/application-process-short-term-RSLs-May-June-2019.pdf

Broadcast Standards cases

In Breach

Jonny Park

Capital Xtra, 2 September 2018, 13:45

Introduction

Capital Xtra is a national commercial radio station broadcasting urban dance music. The licence for this service is held by Capital Xtra Limited ("Capital Xtra" or "the Licensee").

Ofcom received a complaint about offensive language in the track *Lucky You (Featuring Joyner Lucas)* by Eminem, which was broadcast at 13:45 on Sunday 2 September 2018. The track included 13 instances of the word "fuck" or its variations which appeared to be poorly masked.

We considered this raised potential issues under the following Code rules:

Rule 1.14: "The most offensive language must not be broadcast when children are particularly likely to be listening..."

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

We therefore requested comments from the Licensee about how the content complied with these rules.

Response

Capital Xtra said that, before Ofcom had contacted it about the complaint, senior staff had identified that the track potentially did not meet its "stringent standards on language masking". It said it had therefore edited the track further and moved it to a "post 21:00 rotation on the main station playlist..."

The Licensee added that, "although no offensive word was aired in its full form, [it] believe[d] that the initial level of editing of the offensive language in this song did not meet [its] extremely high internal standards on material broadcast during slots when children may be listening".

Capital Xtra said "...measures are being implemented internally to ensure that no offensive language is identifiable in edits played out during daytime scheduling, and a review of [its] internal clearance procedure is being carried out, including training of all Capital Xtra staff".

Decision

Reflecting our duties under the Communications Act 2003¹, Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes. Section Two of the Code requires that generally accepted standards are applied to provide adequate protection for members of the public from the inclusion of offensive and harmful material in programmes.

Rule 1.14

This rule states that the most offensive language must not be broadcast on radio when children are particularly likely to be listening.

The programme included ineffectively masked uses of the word “fuck” and its variations. Ofcom’s 2016 research² on offensive language clearly indicates that this word is considered by audiences to be among the strongest examples of offensive language.

The Code states that the times “when children are particularly likely to be listening” to radio are “the school run and breakfast time, but might include other times”. Ofcom’s guidance on offensive language on radio³ states that:

“...broadcasters should have particular regard to broadcasting content...between 06:00 and 19:00 at weekends all year round...”.

We therefore considered that the ineffectively masked uses of the word “fuck” and its variations at 13:45 on a Sunday was an example of the most offensive language being broadcast at a time when children were particularly likely to have been listening.

We took into account the steps being taken by the Licensee to improve its compliance. However, Ofcom’s Decision is that the broadcast was in breach of Rule 1.14.

Rule 2.3

This rule requires broadcasters to ensure that the broadcast of potentially offensive material is justified by the context. Context includes for example: the editorial content of the programme, the service on which it is broadcast, the time of broadcast; and the likely expectation of the audience.

As outlined above, Ofcom’s research on offensive language indicates that the word “fuck” and its variations are considered by audiences to be among the most offensive language. Therefore the ineffectively masked use of the word and its variations in this case clearly had the potential to cause offence to listeners.

¹ See: [Communications Act 2003, c.21, Part 3, Chapter 4, Programme and fairness standards for television and radio, Section 319](#)

² On 30 September 2016, Ofcom published updated research in this area. See: [Attitudes to potentially offensive language and gestures on television and on radio](#).

³ See: [Ofcom Guidance: Offensive language on radio](#)

Ofcom therefore considered whether the content was justified by the context.

Our guidance on offensive language in radio states that “in reaching any decision about compliance with the Code, Ofcom will take into account the likely audience expectations of a particular radio station at the time of broadcast”. In our view, the majority of listeners of Capital Xtra would be unlikely to expect to hear a music track containing repeated ineffectively masked uses of the most offensive language at the time this song was broadcast.

We took into account that Capital Xtra said “...measures are being implemented internally to ensure that no offensive language is identifiable in edits played out during daytime scheduling...”. However, Ofcom's Decision is that this broadcast also breached Rule 2.3.

Breaches of Rules 1.14 and 2.3

In Breach

5 News Update

Channel 5, 6 September 2018, 21:00

Introduction

5 News Update is broadcast at different times throughout the day. The programme is produced and compiled by ITN on behalf of Channel 5 Broadcasting Limited ("Channel 5" or "the Licensee").

This news bulletin reported on the latest developments surrounding the poisoning¹ of the former FSB secret service officer Sergei Skripal and his daughter Yulia in Salisbury on 4 March 2018. We received a complaint that the news presenter falsely stated that Sergei and Yulia Skripal had been killed as a result of the events in Salisbury.

During this programme, the news presenter said:

"World leaders joined the UK in condemning the Russian Government for almost certainly approving a poisoning in Salisbury. Alexander Petrov and Ruslan Boshirov were named as the main suspects that killed former spy Sergei Skripal and daughter Yulia in March, using the deadly nerve agent Novichok. Russia denies any involvement".

Given that Sergei and Yulia Skripal had survived the nerve agent attack in March 2018, Ofcom considered the programme raised issues under Rules 5.1 and 5.2 of the Code:

Rule 5.1: "News, in whatever form, must be reported with due accuracy and presented with due impartiality".

Rule 5.2: "Significant mistakes in news should normally be acknowledged and corrected on air quickly...Corrections should be appropriately scheduled...".

We therefore requested comments from the Licensee about how the content complied with these rules.

Response

Channel 5 accepted that the presenter's statement about Sergei and Yulia Skripal was "inaccurate". It said that a script had been "prepared and agreed to be read out" by the presenter for this item, including the following statement:

"...Alexander Petrov and Ruslan Boshirov – believed to be from Russian military intelligence – were named as the main suspects that poisoned former spy Sergei Skripal in March – using the deadly nerve agent Novichok...".

The Licensee said that the bulletin was rehearsed with the correct wording before broadcast. However, the Licensee confirmed that during the actual broadcast, the presenter "failed to read out what was on the autocue" and "deviated from the script", stating that:

¹ It had been widely reported that the Skripals had been poisoned by a nerve agent, Novichok.

“Alexander Petrov and Ruslan Boshirov were named as the main suspects that killed former spy Sergei Skripal and daughter Yulia in March”.

The Licensee stated that the error was not identified by Channel 5 at the time of broadcast, and that neither ITN nor Channel 5 received any complaints about it. After being notified by Ofcom of this matter on 13 September 2018, Channel 5 broadcast the following apology after the 9pm 5 News Update broadcast that day:

“And a correction, our bulletin on 6 September mistakenly said Sergei Skripal and his daughter Yulia had been killed rather than poisoned. Our apologies for this error”.

Channel 5 explained that the mistake had occurred due to “human error” and was “regretted”. It added that: the script was “factually correct”; the presenter, who is experienced, deviated from this script “for no apparent reason”; and, that the Licensee had “no reason to anticipate” the presenter’s deviation. The Licensee confirmed that the presenter has apologised and was “reminded of the obligation to keep to the agreed script and not to ad-lib”. It also said there would be a “refocus on presenters not ad-libbing” and the Channel 5 News editorial team who were working on the bulletin would be “required to attend training”.

Channel 5 said it was “not completely clear why this issue was not spotted at the time of the broadcast”. However, it stressed that it “takes accuracy extremely seriously”. The Licensee also considered that it has a “strong” compliance system in place with: a duty editor for each bulletin; a duty lawyer available; and regular internal training on the Code within ITN. Channel 5 also considered that it had dealt with the error “appropriately” as soon as Ofcom notified Channel 5 of it, and requested that Ofcom consider this matter as resolved.

Decision

Reflecting our duties under the Communications Act 2003², Section Five of the Code requires that the accuracy and impartiality requirements are met.

Rule 5.1 requires that news, in whatever form, must be reported with due accuracy and presented with due impartiality. Rule 5.2 states that “Significant mistakes in news should normally be acknowledged and corrected on air quickly...corrections should be appropriately scheduled”. These rules are primarily intended to ensure that viewers can trust news broadcasters to report the facts of the news, and the factual background to it, with appropriate accuracy. They go to the heart of the relationship of trust between a news broadcaster and its audience.

Ofcom’s published Guidance to Section Five makes clear that “due” means adequate or appropriate to the subject and nature of the programme. The approach may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signalled to the audience.

Ofcom takes account of the audience’s and the broadcaster’s right to freedom of expression set out in Article 10 of the European Convention on Human Rights. Ofcom must seek to balance broadcasters’ freedom to discuss any controversial subject or point of view in their programming and compliance with Section Five.

² <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

Rule 5.1

Ofcom first considered whether the material in this case was duly accurate.

Ofcom's Guidance to Section Five of the Code makes clear that "where a matter is of particular public interest, the requirement to present the matter with due accuracy will be correspondingly higher". The poisoning of Sergei and Yulia Skripal was a matter of significant public interest, and therefore we considered there was a particular need for accuracy when reporting on this matter.

In the bulletin on 6 September 2018, the news presenter referred to the "*...main suspects that killed former spy Sergei Skripal and his daughter Yulia*". Channel 5 accepted that this statement was "inaccurate". We took into account that a script had been prepared and rehearsed which accurately described the events in Salisbury in March 2018, and that the Licensee had not expected the news presenter to deviate from this script. However, the statement as broadcast was clearly inaccurate.

We acknowledged that Channel 5 said the error was the result of "human error" and was "regretted". We also took into account the Licensee's argument that it had a "strong" compliance system in place for this programme. However for the reasons set out above, our Decision is that the programme was not duly accurate and therefore in breach of Rule 5.1.

Rule 5.2

The Licensee acknowledged that it did not identify the error at the time of broadcast and did not receive any complaints about it. It added that, on being notified of the error by Ofcom on 13 September 2018, it broadcast a correction and apology during the 9pm *5 News Update* that day.

We first considered whether the inaccuracy in this case was a "significant mistake" which required an on-air correction. For the reasons set out above under Rule 5.1, we considered that it was.

Rule 5.2 also requires on air corrections to be broadcast "quickly". We considered that the Licensee took appropriate action to correct the error once made aware of it by Ofcom. However,

Channel 5 failed to identify the error at the time of broadcast or in the following week. Therefore, there was a period of one week between the broadcast of the original programme on 6 September 2018 and the correction on 13 September 2018. Our Decision is that a significant mistake was not corrected on air quickly, in breach of Rule 5.2.

Breaches of Rules 5.1 and 5.2

In Breach

Text Dating

Kiss Me TV, 8 January 2018, 20:45

Introduction

Kiss Me TV is a dating channel that broadcasts on digital terrestrial platforms. The licence for Kiss Me TV is held by BoxBeat Media Limited ("BoxBeat Media" or "the Licensee").

Text Dating broadcasts dating profiles, usually comprising a photograph and short message. Each profile features a personal identification number ("PIN") and viewers are invited to "text on TV" or "chat privately" with users via an SMS shortcode charged at a premium rate (60p and £1.20 respectively).

Ofcom received a complaint about an image of a woman featured in a dating profile, which was broadcast twice between 20:43 and 20:45. The complainant informed Ofcom that she was the individual featured in the photo, it had been taken when she was 15 years old and it had been used without her permission.

The channel is licensed as a teleshopping service because the content shown is predicated on the use of premium rate telephony services ("PRS")¹. As teleshopping, the channel's content is subject to the UK Code of Broadcast Advertising ("the BCAP Code")².

We considered that this material raised potential issues under Rule 6.1 of the BCAP Code which states that:

Rule 6.1: "With limited exceptions, living persons must not be featured, caricatured or referred to in advertisements without their permission. Exceptions are made only for brief and incidental appearances, such as crowd scenes, and advertisements that refer to a person featured in publications, programmes, films and the like, providing that the reference to or portrayal of that person is neither offensive nor defamatory".

Ofcom requested comments from the Licensee on how the content complied with this rule.

Response

The Licensee did not dispute the facts of the matter. It explained that a "user" of the dating service had uploaded a picture "which was not of themselves", and that this picture was broadcast twice "for a total duration of less than a minute". The Licensee said that the

¹ In June 2010, Ofcom published a statement confirming that Participation TV services (including dating services) predicated on the use of PRS were regulated as teleshopping (or long-form advertising). The statement can be found at <https://www.ofcom.org.uk/consultations-and-statements/category-1/participationtv3/statement>

² For most matters the BCAP Code is enforced by the Advertising Standards Authority. Ofcom, however, is responsible for enforcing the rules for certain types of advertising, including long-form broadcast content that is based on paid for viewer interaction, such as the content shown on Kiss Me TV.

picture appeared to have been taken “at random from social media” and uploaded by a user without the subject’s permission.

BoxBeat Media stated that its terms and conditions require all users of the service to be aged 18 or over, and that users must provide their date of birth when registering. With regards to the use of images, users must have the copyright holder’s permission for any image, and that images “must be a likeness of the user of the service”. The Licensee told Ofcom that all images it receives are checked by a “team of trained moderators” prior to broadcast to “ensure that they are compliant with all applicable rules and codes of practice”. It added, however, that despite “rigorous checking” of all pictures it is “unable to verify that an image is of the user of the service”. It said that, to the best of its knowledge, this is “a common challenge” facing the providers of all dating services, whether broadcast or online.

BoxBeat Media informed Ofcom that the user responsible for uploading the image had breached its terms and conditions by “uploading a picture that was not of themselves and for which they did not have the copyright holder’s permission”, and that it had “barred” the user as a result of this breach.

Decision

Reflecting our duties under the Communications Act 2003³, the rules set out in the BCAP Code prevent advertising which may be misleading, harmful or offensive in television and radio services.

Under Rule 6.1 of the BCAP Code, living persons must not be featured in advertisements without their permission, subject to limited exceptions. In this case, an image of the complainant was featured during the broadcast without her permission. Kiss Me TV broadcasts dating profiles on a rolling basis, and Ofcom is aware of two instances of the complainant’s image being broadcast during its output.

Ofcom acknowledged that the Licensee has in place terms and conditions intended to prevent unauthorised use of images on its service and to ensure that the images broadcast are done so with the explicit permission of the individual featured. However, these terms and conditions were clearly not effective in this case. We are concerned that, despite requiring images to “be a likeness of the user”, the Licensee did not provide details of the “rigorous steps” its team of moderators had taken to verify the image in this case, or any other information to demonstrate that it has a reliable process in place for checking images submitted to it by users comply with its terms and conditions.

We did not consider the Licensee’s submission that verifying images is “a common challenge” across dating services mitigated the broadcast of an image of the complainant, taken when she was 15 years old, in a television dating service without her permission.

³ <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

Ofcom reminds the Licensee that it is responsible for ensuring that material broadcast on its service complies with the BCAP Code. We recognise the steps taken by the Licensee to bar the user in this case once it had been alerted to the issue, however we are concerned that this action was taken four weeks after the date of broadcast. Our Decision is that this was a clear breach of Rule 6.1. Ofcom will also be requesting that BoxBeat Media attends a meeting at Ofcom to address our concerns about its compliance procedures.

Breach of BCAP Rule 6.1

Broadcast Licence Conditions cases

In Breach

Providing a service in accordance with 'Key Commitments' *TMCRFM Limited, 9 to 11 August 2018*

Introduction

TMCR is a community radio station broadcasting to the populations of Thorne, Moorends and surrounding areas in north-east Doncaster. The licence is held by TMCRFM Limited ("TMCR" or "the Licensee").

As with all community radio stations, TMCR is required to deliver the 'Key Commitments' which form part of its licence¹. The station's Key Commitments set out how the station will serve its target community and includes a description of the service.

Ofcom received a complaint indicating that the Licensee's original and locally-produced output fell short of the levels required in its Key Commitments. We therefore requested a programme schedule and recordings of three days of TMCR's output covering 9, 10 and 11 August 2018.

Having assessed the recordings and associated programme schedule, it appeared that TMCR was not delivering the following Key Commitments in full:

- The service provides original output² for a minimum of 12 hours per day on weekdays and for 11 hours per day on weekends.
- The service provides locally-produced output³ for a minimum of 13 hours per day.

Ofcom considered that this raised potential issues under Conditions 2(1) and 2(4) in Part 2 of the Schedule to TMCR's licence. These state, respectively:

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

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

¹ The Key Commitments are contained in an annex to TMCR's licence. They can be viewed in full at <http://static.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000154.pdf>

² Original output is output that is first produced for and transmitted by the service, and excludes output that was transmitted elsewhere before. Original output can be live or voice-tracked. Repeat broadcasts of original output do not count towards the minimum requirement.

³ Locally-produced output is any output made and broadcast from within the service's licensed coverage area. It may include all types of local production.

We requested comments from TCRM on how it was complying with these conditions, with reference to the specific Key Commitments set out above.

Response

TMCR accepted that it had failed to deliver the minimum number of hours of original and locally-produced output specified in its Key Commitments. In mitigation, the Licensee stated that it had been operating under new management during the period and had been attempting to “turn the stations [sic] misfortunes around”.

The Licensee explained that on 9 and 10 August 2018, “out of a total of four presenters, one was on holiday and one phoned in sick”. The Licensee explained that on 11 August 2018 its presenters could not broadcast because it provided a free of charge PA facility for a local charity event, “honouring a commitment made the year before”.

TMCR stated that it now has nine full-time presenters and three more in training, which it considered may address any potential shortfall in the future.

Decision

Reflecting our duties to ensure a diverse range of local radio services, community radio licensees are required to provide the specified licensed service.

During the period monitored, TMCR failed to deliver its Key Commitments relating to the number of hours of original and locally-produced output. On 9 and 10 August it was required to broadcast 12 hours each day of original output and 13 hours of locally-produced output. However, Ofcom found that the station had broadcast seven hours of original and locally-produced output on 9 August and four hours on 10 August. No original or locally-produced output was broadcast on 11 August.

Ofcom acknowledged the benefit to the local community of TMCR's local charitable contribution on 11 August, but we considered that contingency plans should have been in place, especially given the Licensee was aware of the charity event a year in advance.

We noted that TMCR had subsequently increased the number of available presenters. However, the Licensee did not meet its Key Commitments to broadcast original, locally-produced programming during the period monitored. Ofcom's Preliminary View is therefore that TMCR is in breach of Licence Conditions 2(1) and 2(4).

We noted that the Licensee was previously found in breach of Licence Condition 9(1) on 28 August 2018 for failing to make and retain recordings and provide them to Ofcom on request⁴. Ofcom is concerned about this second breach of licence conditions within a short space of time. We are therefore putting the Licensee on notice that Ofcom will monitor this service again to check both recording retention and Key Commitments compliance, and should further breaches occur, we may consider further regulatory action including the imposition of a statutory sanction. Commenting on this aspect of the Preliminary View, the licensee stated, “We are a new team and are all trying to pull together to get the station back from the brink of collapse, and for the best part we are succeeding”.

⁴ See issue 360 of Ofcom's Broadcast and On Demand Bulletin:
https://www.ofcom.org.uk/_data/assets/pdf_file/0020/119162/issue-360-ofcom-broadcast-on-demand-bulletin.pdf

We would remind all community radio licensees of the importance of ensuring they are practically able to deliver their Key Commitments, and that if they are unable to they should ask to change them accordingly⁵.

Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by TMCRFM Limited; licence number CR000154.

⁵ There is a specific process, under which Ofcom can consider a request to change Key Commitments against various criteria before deciding whether to agree to it. Further information is available at <https://www.ofcom.org.uk/manage-your-licence/radio-broadcast-licensing/amend>

Broadcast Fairness and Privacy cases

Not Upheld

Complaint by Mr Peter Lilley

Dispatches: Politicians for Hire: Cashing in on Brexit, Channel 4, 28 January 2018

Summary

Ofcom has not upheld this complaint of unjust or unfair treatment made by Mr Peter Lilley.

The programme explored the extent to which three former cabinet ministers, including the complainant, were willing to use their positions and contacts within government for personal gain and whether their behaviour fell short of public expectations, regardless of whether Parliamentary rules had been broken. It included secretly filmed footage of Mr Lilley meeting with representatives of a fictitious Chinese company, Tianfen Consulting, to discuss whether he would be interested in a role on the company's advisory board. The representatives were undercover reporters who recorded the meeting.

Ofcom found that:

- The use of secret filming to obtain the footage for the programme, and its subsequent inclusion in the programme as broadcast, was warranted in the circumstances;
- Channel 4 took reasonable care to ensure that material facts were not presented, disregarded or omitted in a way that portrayed Mr Lilley unfairly; and,
- Mr Lilley was provided with an appropriate and timely opportunity to respond to the allegations made about him in the programme.

Programme summary

On 28 January 2018, Channel 4 broadcast an edition of *Dispatches*, entitled *Politicians for Hire: Cashing in on Brexit*, which investigated three former cabinet ministers, including the complainant, Mr Lilley, and the services they may have been willing to offer to a fictitious company as "Brexit" advisers. The programme considered whether, despite Parliamentary rules not being broken, their behaviour fell short of public expectations.

The programme's reporter introduced the programme:

"...the politicians looking to make money from Brexit...Access and insight for sale at the highest level [secretly filmed footage of Mr Lilley was shown in which he said: "Liam Fox has set up a committee of experts of which I am one"]. We're offered help in approaching key decision makers...And we ask whether giving such Brexit advice should be available to all..."

The reporter spoke about Brexit and the uncertainty surrounding it, and said: *"out of this confusion, one group of people from across the political spectrum has found their experience in public life in demand"*. The reporter then stated that research by *Dispatches* had found

that *“around 20 MPs and former ministers have been paid by private companies for advice on Brexit”*. The reporter also explained that *Dispatches* had previously investigated politicians' second jobs and so, *“when it comes to Brexit we wanted to know what some politicians are prepared to do for those willing to pay them. Even if they're not breaking any rules, are they behaving as the public would expect?”*.

The reporter explained that in conjunction with The Sunday Times newspaper, the programme makers had set up a fake Chinese company, Tianfen Consulting, based in Hong Kong, which was marketed as a company that offered advice and services to a select group of businesses and wealthy individuals. The reporter said that the programme makers had:

“Emailed 14 former ministers asking them if they'd be interested in a job on our advisory board where they could use their government experience to help us with commercial opportunities arising from Brexit. Four came in for an interview, and three stood out”.

The reporter said that the interviews had been secretly filmed.

The first person to be secretly filmed was Lord Lansley, a Conservative politician who had voted “Remain” in the EU Referendum and former Secretary of State for Health between 2010 and 2012. The programme included footage of Lord Lansley as he explained his background and knowledge of the pharmaceutical and health industry. It also showed him explaining that he had to abide by the House of Lords Code of Conduct and that although he was allowed to work for private companies, he could not lobby for them. Sir Alistair Graham, the former Chairman of the Committee on Standards in Public Life, then provided his view on Lord Lansley's behaviour.

Footage of the next interviewee secretly filmed was shown. The reporter introduced Mr Lilley as being a former Conservative cabinet minister, *“committed Brexiteer”* and a person who had *“recently sat on the Exiting the EU Commons Select Committee”*. The reporter also said:

“As an MP, his Parliamentary Register shows Mr Lilley wasn't paid for specific Brexit advice, but he does appear willing to help our fake Chinese company. He stood down as a Tory MP in last year's election, but at the time of our meeting, was expecting to be made a Lord”.

Secretly filmed footage was shown of Mr Lilley and two undercover reporters (“UR 1” and “UR 2”) sitting at a table. The following conversation took place:

UR 1: *“And you are no longer in the government, right?”*

Mr Lilley: *I'm no longer in Parliament.*

UR 1: *You have more, ah okay.*

Mr Lilley: *I stood down this time, I'm assuming I'll go in the House of Lords because former Cabinet ministers normally do go in the House of Lords, but, you know, they could change the rules.*

UR 2: *Sounds like you expect that you will, yes?*

Mr Lilley: *But before I stood down I established that the conventions still applied.*

UR 2: *Oh right, okay.*

Mr Lilley: *Cabinet ministers going [in], and they need some people in there.*

UR 2: *Yeah, so you'd go in as a Conservative Lord presumably?*

Mr Lilley: *Yes.*

UR 2: *Well congratulations in advance".*

The reporter said:

"Although Peter Lilley hasn't yet been made a peer and is no longer an MP, he tells us he's still a regular visitor to Westminster and has the ear of key ministers. He reveals he's on two groups that he tells us advise on Brexit".

Further secretly filmed footage of the interview was shown:

Mr Lilley: *"When I was in Parliament, a group of people, who were most involved in advising the government from the back benches on the negotiations and how to proceed because nobody knew at first, used to meet in my room, and I still, don't meet in my room now because I haven't got a room, but I go, I still go in on a Monday afternoon and join them.*

UR 2: *Who is that, who is it in your room?*

Mr Lilley: *Well, it's an informal group loosely under the aegis of the European Reform Group and it was actually led by Steve Baker, who is now the Brexit minister underneath David Davis.*

UR 2: *Oh, I see.*

Mr Lilley: *So, he occasionally comes as sort of a visitor to us and we tell him what he is doing wrong, and he tells us what is right.*

UR 1: *So, he is someone that is now also in the negotiations?*

Mr Lilley: *He is part of the government, yes. He is leading the whole policy of preparing for all outcomes. That's his role. So, to prepare for the possibility there may be no free trade deal, as well as for what happens if there is a free trade deal. So, he is the Implementation minister and he is very good, extremely good".*

The reporter then said:

"On the second body, an advisory committee, Mr Lilley shares views with Liam Fox, the Secretary of State for International Trade".

Secretly filmed footage of Mr Lilley was shown in which the following conversation took place:

Mr Lilley: *"The other thing I'm involved with, Liam Fox has set up a committee of experts of which I am one. So, it's just half a dozen people, who have some experience in international trade matters, who he will meet for every six weeks or so, again to tell him what he is doing right.*

UR 2: *Is that specifically in relation to Brexit?*

Mr Lilley: *Brexit and post-Brexit, yes. So, trade deals with the whole world".*

The reporter then said: *"Mr Lilley makes it clear he won't provide us with any secret information"* and the following secretly filmed footage of Mr Lilley was included in which he said:

"One shouldn't exaggerate the importance of these things. Ministers like to have advisory groups with whom they can talk in confidence. I wouldn't be able to tell you what he'd told me, unless he made it clear that this was something he wanted to disseminate, but it's partly, they like a sounding board of people they can trust that they can say 'we're thinking of doing this' and if we all erupt and say 'that would be a disaster', [it] wouldn't be a problem, they'd at least look two or three times before they'd do it. Equally, people will come forward and say, 'what are you doing about Y?' and if they haven't thought about it, it gets fed back into the bureaucratic system".

The reporter then said that the undercover reporters had *"asked Peter Lilley if he could talk to ministers on our behalf"* and the following secretly filmed footage was included in the programme:

UR 2: *"I think what he was wondering was whether you might be able to talk to people, like the people that we just mentioned, about what is happening in the Brexit process. If there were particular issues that came up, is that something you would be able to do?"*

Mr Lilley: *Yes, though it would depend on the nature of the issue.*

UR 2: *Right, ok.*

Mr Lilley: *Whether I get a helpful reply... as long as it's not me finding out something secret, because obviously I couldn't do that.*

UR 2: *So, you would be able to meet ministers then?*

Mr Lilley: *Oh yeah, but I have to say clearly if I am working with someone.*

UR 2: *That you're working for?*

Mr Lilley: *I am working for X, Y, Z".*

The reporter then asked the question:

“So, Peter Lilley won't tell us anything confidential. Given that, is there anything wrong with Mr Lilley, who's spent more than 30 years in Parliament and still serves on a committee, offering us his insight and advice?”

Sir Alistair Graham then commented on Mr Lilley's behaviour:

“Well, I think it's wrong because the advice is not generally available, and the government have had a real issue about transparency over their ideas on Brexit issues and they say they can't make that available because it would undermine their negotiating position”.

The programme then included Mr Lilley's response to the claims being made in the programme, he said:

“I have not undertaken any venture which would involve me breaking the codes of conduct referenced, nor the Nolan principles. I repeatedly made it crystal clear I would not use confidential information. I possess no such information. If I did, I wouldn't make it available to anyone. It is widely known that...I have conversations with high-up members of the Conservative party regularly. If I am invited to join the House of Lords I will want to commit to that, and that will restrict outside work I can do. That I am a member of groups with experts who express views on Brexit was relevant only to show that I am engaging in the many ways that Brexit can benefit Britain”.

The final interviewee was Mr Andrew Mitchell, a former cabinet minister and a serving Conservative MP. The programme included secretly filmed footage of Mr Mitchell as he asked the interviewers whether they were undercover reporters. It also included footage of him as he spoke about what he could offer to the fictitious company and as he set out what limitations applied to him as an MP. Mr Mitchell also explained that he could not lobby for them. The programme then included Sir Alistair Graham's views on Mr Mitchell's behaviour.

The reporter said: *“Brexit is bringing the behaviour of our public servants into the spotlight once again”* and Sir Alistair Graham commented:

“At this particular time, there's a lot of unease in the country about what's going to happen post-Brexit, are jobs going to disappear? All of these issues which could affect the standard of life of everybody in this country, they want people in the public service, in Parliament and in the House of Lords, who are totally focused on the public interest”.

The reporter concluded the programme and said:

“As negotiations over Brexit reach a critical stage, the three former senior ministers in this investigation are clear they have broken no Parliamentary rules, but can we be confident these rules are fit for purpose?”

There was no further reference to, or footage of, Mr Lilley in the programme.

Summary of the complaint and broadcaster's response

The complaint

- a) Mr Lilley complained that he was treated unjustly or unfairly in the programme as broadcast because it was not warranted, nor was it in the public interest, to surreptitiously film him and include the surreptitiously filmed footage of him in the programme. Mr Lilley said there was no *prima facie* evidence of wrongdoing and that, to his knowledge, "there have been no suggestions, allegations or rumours of impropriety in respect of my business interests or my interactions with ministers".

Mr Lilley said that the programme did not "elicit any willingness to abuse my residual political connections", nor did it show that he would be willing to divulge confidential or secret information; lobby ministers or officials; and, arrange meetings with them. Further, Mr Lilley said that he had not agreed to join the advisory board of the fictitious company, nor had he agreed any fee for the role. As such, the programme's title, *Cashing in on Brexit*, did not apply to him.

Mr Lilley added that the programme makers did not need to resort to deception in order to find out whether he would be willing to consider additional, legitimate employment now that he was no longer an MP, or whether any conflicts of interest might arise as a result of an MP's discussions with ministers. He said that the programme makers could have simply asked him for a response to these issues, but "by resorting to subterfuge, they imply there is a scandal where none exists". Mr Lilley said that, had there been a genuine public interest, he would have been happy to discuss the matters "on air" and there would have been no requirement for surreptitious filming.

- b) Mr Lilley was not provided with an appropriate and timely opportunity to respond to the allegations being made in the programme.

Mr Lilley said that the programme makers refused to provide him with a copy of the transcript of the programme prior to its broadcast which meant he was not provided with a fair opportunity to respond to the allegations being made about him in the programme. Mr Lilley said that the footage of him had been filmed on 1 November 2017 and that it was unfair for the programme makers to have expected him to remember exactly what he had said, given the length of time which had passed between the filming and proposed broadcast of the programme. Mr Lilley added that it was unfair for the programme makers to have provided Sir Alistair Graham with a copy of the transcript, but not him.

Further, Mr Lilley said that he was only informed of the broadcast date at 18:00 on 26 January 2018 "making it as difficult as possible to pursue my attempts to understand what it was they were accusing me of". However, the Guardian newspaper was informed at least "three days earlier", and the Mail on Sunday newspaper at least "six hours earlier".

Broadcaster's response

- a) Channel 4 said that the investigation originated from a desire to explore the potential for a boom in lobbying as a result of Britain's decision to leave the EU. Channel 4 said that this raised "serious and entirely legitimate concerns" as to the extent to which the current political climate and associated uncertainties surrounding the Brexit negotiations provided opportunities for former ministers and other politicians to exploit for financial reward their positions (or former positions) and their high-level connections within Westminster, built up from their time in public office, on behalf of private sector clients

seeking private commercial advantage. It said that the broader issue (sometimes referred to as “the revolving door”) was well-documented in official reports and in the media as a source of eroding public confidence in the political establishment of this country.

Channel 4 said that the subject of politicians, their outside commercial interests and their so-called “second jobs” within the private sector was previously explored by *Dispatches* in its “*Politicians for Hire*” investigations programmes broadcast in May 2010 and February 2015. The broadcaster said that the issue was highlighted again last year in a further report on the subject by the House of Commons Public Administration and Constitutional Affairs Committee¹. It said that the Committee’s inquiries found that “parts of the private sector wish to recruit former public servants for their relevant knowledge and experience. But it is clearly unacceptable for public servants to use the contracts or experience they acquire in the public sector with the intention of securing a future private gain in this way”. It added that the report noted that the only justification for ministers seeking appointments in fields that relate to their government role is where they might be returning to, or continuing to work in, an occupation or profession where they already had an established track record and experience. Channel 4 said the report also recorded Lord Bew, who succeeded Sir Alastair Graham as Chair of the Committee on Standards in Public Life, highlighting the reliance currently placed on media scrutiny to ensure compliance with the Government’s Rules and the Committee’s advice. Channel 4 said this showed that little had changed since 1995 when Lord Nolan proposed that transparency of breach of the rules could be exposed by “a free press using fair techniques of investigative journalism”.

Channel 4 said that although the subject matter of the investigation in question was similar to previous programmes in the series, it was focussed slightly differently because of the particular focus on Brexit and the ensuing uncertainty that had been caused by the decision to leave the EU. The broadcaster said that the paucity of publicly available information surrounding the negotiations means that the discussions are largely taking place behind closed doors and, in these uncertain times, the advice of those with an inside knowledge of government thinking is highly valuable and something which companies are prepared to pay for.

Prima facie evidence to justify secret filming

Channel 4 said that before any secret filming of Mr Lilley took place, it established that there was prima facie evidence that he may be someone whom it was in the public interest to film and that it would be justified to do so. The broadcaster said that consideration of this evidence and whether secret filming could be justified as in the public interest formed part of Channel 4’s “stage 1” secret filming application process, in accordance with Practice 8.13 of the Ofcom Broadcasting Code (“the Code”). Channel 4 explained to Ofcom the prima facie evidence it had considered as part of the stage 1 process which included, among other things, that Mr Lilley was apparently willing to take time to meet Tianfen Consulting, which had made it clear in its email of 25 October 2017 that it was looking for someone to join its advisory board, in return for a “highly attractive remuneration package including expenses”, who could provide “expert insight...to help them navigate the shifting political, regulatory and legislative frameworks in the UK and across Europe after Brexit”.

¹ (HC 252, 24 April 2017).

Channel 4 said that the *prima facie* evidence of concern did, at the time, raise questions about Mr Lilley's conduct and the extent to which he conformed to, not only the applicable Codes of Conduct, but also the Nolan Principles². Channel 4 added that this was particularly significant given that Mr Lilley had previously criticised at least one fellow MP³ for not abiding by the Nolan Principles and Mr Lilley stated in correspondence with Channel 4 and the programme makers that he continued to adhere to the Nolan Principles. The broadcaster said that this was explored in the programme. Channel 4 said that it was this conduct, together with Mr Lilley's willingness to attend a meeting with Tianfen Consulting's representatives and the public interest in the programme (as set out above) which in Channel 4's view, provided sufficient *prima facie* evidence to merit the secret filming of Mr Lilley in the first instance. Channel 4 added that it was also a reasonable basis for suspecting that further material evidence could be obtained from filming his meeting with Tianfen Consulting.

Channel 4 also said that the secret filming was warranted in view of the potential considerable public interest in the programme investigating the interactions between politicians and private commercial companies, whether they were in accordance with the relevant codes of conduct (the Nolan Principles) and whether the interactions themselves were in the public interest. Channel 4 added that the lack of information available about the Brexit process meant that information, advice and guidance was, and continued to be, at a high premium. Channel 4 added that it was also fair, proportionate and warranted to consider that there would be a need to secretly film such an interaction, given the *prima facie* evidence, and that it merited further investigation.

Channel 4 referred to the defamation case brought by Mr Tim Yeo MP against The Times newspaper⁴, which also concerned secret filming by journalists posing as representatives of a consultancy firm soliciting consultancy services from the MP in return for remuneration. In that case the judge, Mr Justice Warby, was clear that Article 8 of the European Convention of Human Rights (right to a private and family life) affords politicians in their public functions limited protection against media coverage. The broadcaster said that although Mr Lilley had recently stepped down as an MP, in correspondence with the programme makers he confirmed that he considered himself still to be subject to the Nolan Principles which govern conduct in public life. Further, Channel 4 said that he was anticipating elevation to the House of Lords and was a member of two groups advising ministers and MPs on issues closely connected to the Brexit negotiations.

Inclusion of excerpts of the material in the programme

² The seven principles of public life, known as the Nolan Principles, which are the basis of the ethical standards expected of public office holders: <https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2>

³ Channel 4 said that in 1995 Mr Lilley criticised Ms Harriet Harman MP for "...her refusal to abide by new Nolan code rules that were agreed by the House. Those rules are explicit. Anyone taking part in a debate must declare any interest. It is no longer good enough just to have it in the Register of Members' Interests" – <http://publications.parliament.uk/pa/cm199596/cmhansrd/vo951117/debtext/51117-19.htm>

⁴ *Yeo v Times Newspapers Ltd* [2015] EXHC 3375 at [140] to [147].

Channel 4 said, in relation to the inclusion of a short segment of filming where Mr Lilley mentioned that he expected to become a member of the House of Lords, it was important to consider the context in which Mr Lilley made those statements. Channel 4 said that Mr Lilley was at a meeting with an overseas company which he knew was seeking to appoint him to its advisory board as someone who could provide “*expert insight*” into, amongst other things, the political landscape. Channel 4 said that against this background, Mr Lilley told Tianfen Consulting that he expected to be elevated to the House of Lords. Channel 4 said that this gave the clear impression (whether intentional or otherwise) that he was likely to continue to be influential and be able to provide insight into that political landscape, and that this would be a valuable asset for a company seeking to engage his services. Although Mr Lilley has since explained that the reason he mentioned this was because he would be likely to find himself constrained again by Parliamentary rules, Channel 4 said that he did not make this clear during the undercover filming.

Channel 4 said that the mention of Mr Lilley's participation in two groups advising on Brexit was warranted because:

- It demonstrated to viewers Mr Lilley's current engagement (even though at the time of filming and date of broadcast he was no longer an MP) with those at the heart of Brexit negotiations.
- Mr Lilley told Tianfen Consulting that he was part of an “official advisory committee” of experts set up by Mr Liam Fox MP (the then Secretary of State for International Trade) to “*tell him [Mr Fox] what he is doing right*” in relation to matters including Brexit. Mr Lilley also said “*Ministers like to have advisory groups with whom they can talk in confidence*” and that “*they like a sounding board of people they can trust...*”. Channel 4 said that this clearly gave the impression that Mr Lilley was still a trusted advisor within political circles, and that this would undoubtedly have been considered a valuable asset by a potential client. Channel 4 stated that as far as it had been able to establish, the existence of this group was not something which had been generally known in the public domain previously.
- The European Research Group had been described as follows: “It has no website, no public list of members, and it is accused of misusing taxpayers' money. But despite its shadowy status, Jacob Rees-Mogg's European Research Group is powerful enough to shape Theresa May's Brexit policy”⁵.
- Mr Lilley's decision to inform Tianfen Consulting in the context of this meeting that he belonged to two groups in which he had regular access to ministers and MPs at the heart of the Brexit negotiations (such as Mr Liam Fox and Mr Steven Baker MP, Parliamentary Under Secretary of State in the Department for Exiting the European Union) would have been seen as an important factor, from a potential client's point of view, when considering whether to engage his services.

Channel 4 also said that the programme included excerpts of filming which showed how Mr Lilley might be able to help Tianfen Consulting:

⁵ <https://www.theguardian.com/politics/2018/feb/06/jacob-rees-mogg-and-the-shadowy-group-of-tories-shaping-brexit>

- Channel 4 said that even though, as the programme made clear, Mr Lilley was not prepared to pass confidential or secret information to Tianfen Consulting, his advice would be given in the context of that knowledge which would not be generally available. Channel 4 said that this raised questions in the mind of the programme's expert, Sir Alistair Graham, as to whether that complied with Nolan Principles on transparency, selflessness and acting in accordance with the public interest. Channel 4 referred to the following excerpt from the programme:

UR 2: *"I think what he was wondering was whether you might be able to talk to people, like the people that we just mentioned, about what is happening in the Brexit process. If there were particular issues that came up, is that something you would be able to do?"*

Mr Lilley: *Yes, though it would depend on the nature of the issue.*

UR 2: *Right, ok.*

Mr Lilley: *Whether I get a helpful reply... as long as it's not me finding out something secret, because obviously I couldn't do that.*

UR 2: *So, you would be able to meet ministers then?*

Mr Lilley: *Oh yeah, but I have to say clearly if I am working with someone.*

UR 2: *That you're working for?*

Mr Lilley: *I am working for X, Y, Z".*

- Channel 4 said that while it was clear from Mr Lilley's own words that he would not provide anything which was "secret" and the programme commentary reiterated that Mr Lilley would not provide Tianfen Consulting with any "secret information" or "tell us anything confidential", this footage did show the potential advantage which Tianfen Consulting might glean from Mr Lilley's advice and insight. Channel 4 said that the concerns surrounding this were expressed in the programme as follows:

Reporter: *"So, Peter Lilley won't tell us anything confidential. Given that, is there anything wrong with Mr Lilley, who's spent more than 30 years in Parliament and still serves on a committee, offering us his insight and advice?"*

Sir Alistair Graham: *Well, I think it's wrong because the advice is not generally available and the government have had a real issue about transparency over their ideas on Brexit issues and they say they can't make that available because it would undermine their negotiating position".*

Channel 4 said that this concern was reiterated at the end of the programme:

Sir Alistair Graham: *"At this particular time, there's a lot of unease in the country about what's going to happen post-Brexit, are jobs going to disappear? All*

*of these issues which could affect the standard of life of everybody in this country, they want people in the public service, in Parliament and in the House of Lords, **who are totally focused on the public interest.***

Reporter: *As negotiations over Brexit reach a critical stage, the three former senior ministers in this investigation are clear they have broken no Parliamentary rules, **but can we be confident these rules are fit for purpose?**" [Channel 4's emphasis]"*.

Channel 4 said that the public interest was further heightened when the uncertainty around Brexit and post-Brexit was taken into account. It said that the public were entitled to know if politicians such as Mr Lilley, who were in a privileged and influential position, and in close proximity to and advising key ministers, were at the same time offering advice and insight to private enterprise in a way that was generally not available across the board, as highlighted by Sir Alistair Graham. Channel 4 said that the general public and viewers of the programme were entitled to question whether they considered it to be in the public interest that a former minister, particularly one who was still active in public life and (as Mr Lilley confirmed to the programme makers) subject therefore to the Nolan Principles, was really acting in accordance with those principles (selflessness and in the public interest) in mind and for the public good in his dealings with Tianfen Consulting.

Channel 4 said the most credible and authentic way to demonstrate this interaction was by showing the secretly filmed footage to the public. Channel 4 said that the inclusion in the programme of the extract of secretly filmed footage of Mr Lilley, Sir Alistair Graham's expert view of it and Mr Lilley's response was warranted and in the public interest because it enabled the audience and general public to come to their own conclusions as to whether they consider politicians to be behaving in a way which conforms with the spirit as well as the letter of the rules and principles by which they are guided, and whether in turn these rules and principles are fit for the purpose of governing the relationships between politicians and private companies. Channel 4 added that these were all matters of the highest public interest.

Channel 4 said that current affairs investigations into the conduct of politics and politicians consistently attracts the strongest protection from the UK Courts, the European Court of Human Rights, and from Ofcom. Channel 4 said that what is considered to be "in the public interest" is wide-ranging and that the Code gives only representative examples. It said that this is consistent with UK case law as stated in the judgment of Mr Justice Warby in *Yeo v Times Newspaper Limited* in which he spoke of a "hierarchy of types of speech, with the highest value attributed to speech on political matters" and stated that "clear and cogent justification" is required to interfere with speech of this kind⁶.

Channel 4 said that politicians are publicly accountable and enjoy a privileged position in public life, exercising significant influence. As such, they are subject to a higher level of scrutiny in relation to activities which may have an impact on their public role. Channel 4 also said that the role of journalists and programme makers holding those in power to

⁶ [2015] EXHC 3375 at paragraph 137: "As is well known, the Strasbourg art.10 case-law exhibits a hierarchy of types of speech, with the highest value attributed to speech on political matters. Interference with speech of this kind requires clear and cogent justification".

account in relation to matters of public interest was the highest form of protected speech and should be protected and preserved.

Channel 4 quoted various passages from Ofcom's decision of 21 December 2015 in relation to the Channel 4 *Dispatches* programme *Politicians for Hire* broadcast on 23 February 2015, which it considered supported its view in the present case.

Channel 4 said that in the case of Mr Lilley, it agreed that the programme did not (as stated by Mr Lilley in his complaint) "elicit any willingness to abuse my residual political connections", nor did it suggest that Mr Lilley would be willing to divulge confidential or secret information, lobby ministers or officials, or arrange meetings with them. However, Channel 4 said that Mr Lilley attended the meeting with Tianfen Consulting in the knowledge that they were seeking to appoint someone who could provide "expert insight" into, among other things, the political landscape. In that context, Mr Lilley must have known, when he volunteered the information, that he belonged to two groups in which he had regular access to ministers and MPs at the heart of Brexit negotiations and that this would have been seen as a valuable asset by a potential client considering whether to engage his services. Channel 4 submitted that this showed Mr Lilley's willingness to use, as opposed to abuse, his political connections, and there was a clear public interest in this. Channel 4 added that Mr Lilley's secretly filmed contribution was fairly edited and in a context which was fair and accurate. It was abundantly clear that Mr Lilley's interaction was not against any rules or in any way illegal. However, it did warrant a legitimate discussion about whether his interaction accorded with the spirit of the Nolan Principles and whether the current rules were sufficient and fit for purpose.

Channel 4 said that the point was put clearly to Mr Lilley in the pre-broadcast correspondence. It said that he was told:

"The simple public interest question is whether one company should be able privately to acquire advice, on issues of relevance to its own strategic commercial operations, of an individual who, by reason of his position (in your case, former position) as the holder of public office continues to have privileged access to policy discussions about Brexit directly involving Ministers or officials. It is entirely legitimate to pose this question and to invite consideration of whether a private arrangement of this nature may give rise to a conflict between the interests of the private client and the public interest".

Channel 4 said that this was a separate and different concern to whether Mr Lilley would divulge secret or confidential information of which the programme expressly exonerated Mr Lilley. Channel 4 added that it was also a concern which was reinforced by the opinion expressed by Sir Alistair Graham.

Channel 4 said that for all these reasons, it considered that the secret filming was a legitimate and proportionate way of highlighting matters of important public interest, carried out in accordance with the requirements of the Code and the tenets of responsible journalism.

Use of the title "Politicians for Hire: Cashing in on Brexit"

Channel 4 said that Mr Lilley confirmed his willingness to meet with Tianfen Consulting in response to an invitation where it was made clear that they were looking to invite Mr

Lilley “to consider becoming a member of the International Advisory Board of Tianfen Consulting” and they would be “offering a highly attractive remuneration package...”.

Channel 4 pointed to passages in the transcript of the untransmitted footage from the undercover filming which touched on remuneration. In particular, when asked by the undercover reporter how Brexit may affect the energy market and fossil fuels and whether he could advise, Mr Lilley responded: “Yeah, mostly. Obviously not free of charge...” Channel 4 said that in subsequent correspondence, Mr Lilley told Tianfen Consulting that he enjoyed the meeting and learning more about the planned advisory board and said: “It sounds very interesting and I hope I would be able to add value to it”.

Channel 4 said that contrary to Mr Lilley's complaint, the programme did not imply that a fee had been agreed, nor was any discussion of fees included in the programme. However, Channel 4 stated that given the clear offer of remuneration at the outset from Tianfen Consulting, Mr Lilley's indication that his services would not be free of charge, and a discussion in the untransmitted footage about remuneration, there could be no doubt that Mr Lilley attended the meeting in the expectation that, if he were appointed to the advisory board, he would be compensated financially by Tianfen Consulting. Channel 4 said that if the approach by Tianfen Consulting had been a genuine one, Mr Lilley must have known that he would have stood to gain financially from a relationship with Tianfen Consulting, and in this context the title of the programme represented a fair and an accurate depiction of both Mr Lilley's dealings and those of the other contributors in the programme.

Broadcast of the secretly filmed footage

Channel 4 said that the justifications for broadcasting the secretly filmed footage of Mr Lilley were reviewed in accordance with Channel 4's internal “stage 2” secret filming application process and the Code. Channel 4 said that as part of that process, great care was taken to ensure that the extracts included in the programme were edited fairly and accurately, and not taken out of context.

Channel 4 said that it reviewed the secretly filmed footage, the correspondence with Mr Lilley and his statement in response in the context of the subject matter of the programme and considered that it was both warranted and in the public interest to broadcast extracts of the footage. Channel 4 added that it was clearly relevant to the issues of the appropriateness of MPs' and former MPs' interactions with commercial companies and those who may stand to benefit from their expertise, particularly against the backdrop of Brexit, even if, as made clear in the programme, such interactions fall within the letter of the rules and codes of conduct. It said that it was very difficult to obtain a genuine and candid picture of such dealings without the use of secret filming and the programme makers could not reasonably have obtained the information in any other way. It added that an openly filmed interview would not have shown the general public a realistic and candid exchange between Mr Lilley and Tianfen Consulting on which to form an opinion. It said that this point was highlighted in Ofcom's decision in relation to the programme *Politicians for Hire* broadcast on 23 February 2015⁷.

⁷ Channel 4 quoted from Ofcom's decision which said: “Ofcom considered that it was unlikely that that the programme makers would have been able to explore or further obtain material as to how the MPs transacted with potential commercial clients in private in any way other than by secretly filming them”.

Channel 4 submitted that the deception deployed was proportionate in order to investigate a story of important public interest. It did not accept that the mere fact of secret filming automatically created the impression that any conduct filmed was scandalous or nefarious. It said that secret filming is, in appropriate circumstances, a highly effective, legitimate and necessary means of obtaining important evidence. It added that the secretly filmed footage of Mr Lilley was not edited or included in the programme in such a way as to suggest a scandal, e.g. by the use of music, commentary or filming. Instead, Channel 4 said it was expressly stated in the programme that Mr Lilley had not broken any rules. In any case, Channel 4 said that it was entirely legitimate for it to question whether, although not breaching any code of conduct, Mr Lilley's conduct complied with the spirit of the principles and public expectations of politicians, and whether the rules governing politicians are in fact fit for purpose. The broadcaster said that in order to assess this, the public had to see the relevant secretly filmed exchanges and how they related to the issues raised in the programme. Channel 4 said that on that basis, the programme was a measured, proportionate and accurate reflection of the secret filming insofar as it related to the overall subject of whether politicians and those in public life are making the right decisions for the right reasons and putting the public interest ahead of private gain.

b) In response to giving Mr Lilley a fair opportunity to respond to the allegations in the programme, Channel 4 said that the programme makers first wrote to Mr Lilley on 12 January 2018. It said that the letter expressly set out:

- that the programme was part of Channel 4's *Dispatches* current affairs strand;
- that it was "currently scheduled" for broadcast on 22 January 2018;
- the subject matter of the programme;
- the fact that Sir Alistair Graham would be contributing; and,
- the specific matters concerning Mr Lilley on which the programme makers were seeking Mr Lilley's response.

Channel 4 added that the specific matters concerning Mr Lilley detailed in the letter of 12 January included:

- the fact that Mr Lilley had told Tianfen Consulting that he was expecting to be appointed to the House of Lords;
- the fact that Mr Lilley had told Tianfen Consulting that he was part of two groups advising on Brexit, the existence of one of which the programme makers had not been able to establish as being in the public domain;
- while Mr Lilley had expressed that he would not provide Tianfen Consulting with any "secret" information, it would be fair to suggest that Tianfen Consulting might stand to benefit from Mr Lilley's insights and privileged access and that it could "confer a particular commercial advantage to Tianfen which may not be available to other companies or indeed the general public". Channel 4 said that this was a concern specifically addressed in the programme and an integral point of public interest;
- Sir Alistair Graham's expert view, which was to raise a concern that Mr Lilley's meeting with Tianfen Consulting suggested that information could be made available regarding Brexit to a private company at a time when the government "has had a real issue about transparency over their ideas on Brexit issues and they say they

can't make that available because it would undermine their negotiating position". Channel 4 said that this excerpt was included in the programme as broadcast; and,

- that the standard to which Mr Lilley was being held was the Nolan Principles and that Channel 4 was questioning whether his interactions with and what he had told Tianfen Consulting would comply with those principles, in particular those of selfishness and acting in the public interest.

Channel 4 said that Mr Lilley was therefore given full notice of the concerns to be raised in the programme about him. Channel 4 added that the letter asked for a response from Mr Lilley for inclusion in the programme by 18 January 2018, which was one week after the initial letter was sent.

Channel 4 said that Mr Lilley's response was to reply immediately by email on 12 January 2018, stating definitively that he believed at the time that the operation was probably a "sting" and that he had said in that meeting that he was not prepared to do anything "improper or contrary to the rules" nor would he "lobby" or "reveal inside information".

Channel 4 said that between 12 January 2018 and the eventual date of broadcast on 28 January 2018, considerable correspondence was exchanged between the programme makers, Mr Lilley, Mr Lilley's legal representatives, and Channel 4. It added that in letters from the programme makers to Mr Lilley on 18 January 2018, further specific sections of the transcripts of the material that were intended at that point to be included in the programme were set out. Channel 4 said that the letter also clarified that the programme would make clear that Mr Lilley would not disclose anything "secret or confidential". However, it added that the letter again reiterated the public interest which was central to the programme (as set out above).

Channel 4 said that as Mr Lilley was first given a detailed account of the matters pertaining to him to be included in the programme on 12 January 2018 and the programme was not broadcast until 28 January 2018, Mr Lilley and his legal representatives had over two weeks' notice of (and opportunity to respond to) the matters to be included in the programme. The broadcaster said that in this case, he did not provide a statement for inclusion in the programme until Saturday 27 January 2018, one day before broadcast, even though the proposed content and allegations to be made in the programme had not significantly changed during the intervening period. Channel 4 therefore said that it considered that Mr Lilley was provided with an appropriate and timely opportunity to respond to allegations in the programme.

Channel 4 said that it was not the case that Mr Lilley was only informed of the date of broadcast at 18:00 on 26 January 2018, and that The Guardian and the Mail on Sunday newspapers were told before him. The broadcaster said that Mr Lilley was informed on 12 January 2018 that broadcast was currently scheduled for 22 January 2018. It added that he was also informed of the decision to postpone the broadcast as soon as it was made on 20 January 2018. It also said that it was unclear how the fact that the broadcast was postponed from 22 January to 28 January 2018 could have created (or in fact did create) any unfairness towards Mr Lilley given that he had been informed of the substance of the allegations to be made on 12 January 2018. Channel 4 said that, on the contrary, the rescheduling allowed Mr Lilley more time to consider and respond to the allegations put to him. It added that Mr Lilley took full advantage of that additional time

as he did not provide his response for publication until 27 January 2018, the day before broadcast.

Channel 4 said that Mr Lilley's statement was fairly reflected in the programme and viewers were able to take that into account when forming their own opinions about the matters raised in the programmes.

Transcripts

Channel 4 said that transcripts of footage constituted journalistic material and were therefore protected as such. It added that there was no requirement in either the Code, or the accompanying guidance, that such material must be handed over to the subject of an investigation in its entirety prior to broadcast in order to comply with the requirement of fairness.

Channel 4 said that this was consistent with important public policy considerations which are reflected in the practice of the courts, where a broadcaster will not be ordered to reveal footage prior to broadcast in order to support an application for an injunction pre-broadcast, and in the data protection regime. It said that section 32 of the Data Protection Act 1998 ("DPA")⁸ provided protections for journalists and journalistic material both before and after publication, as explained in detail in the case of *Stunt v Associate Newspapers Ltd*⁹.

Channel 4 said that the Code states that those who are the subject of any investigation should be given a fair and timely opportunity to respond to allegations. It said that the pre-broadcast correspondence with Mr Lilley clearly set out the nature of the programme and the specific matters in respect of which Channel 4 sought a response, and it said that Mr Lilley could have been in no doubt as to what the programme intended to say about him. Channel 4 said that the fact that some of the extracts of the secretly filmed footage were summarised rather than set out in full in correspondence, and the fact that the entire transcript (including footage which was not going to be included in the programme) was not provided to Mr Lilley, did not, in itself, mean that Mr Lilley did not have enough information and was treated unfairly. It said that the fact remained that Mr Lilley was given sufficient detail to enable him to understand fully the allegations to be included in the programme and to provide an informed response to those allegations. Channel 4 added that many parts of the transcripts contained material which was not part of the programme, and therefore irrelevant for the purposes of obtaining a response from Mr Lilley to matters which were to be featured and highlighted in the programme. Channel 4 said that the transcripts were only sent to Sir Alistair Graham in his capacity as an independent, expert contributor to the programme

⁸ This was the applicable legislation at the time the programme was made and at the time of Channel 4's representations to Ofcom. Following the coming into force of the EU General Data Protection Regulation on 25 May 2018 the 1998 Act has been replaced by the Data Protection Act 2018. Ofcom notes that the new regime continues to provide important protections for journalists and journalistic material.

⁹ [2017] 1 WLR 3985. Channel 4 referenced Mr Justice Popplewell's judgment at paragraphs 50: "...Parliament plainly intended that whilst the degree of article 10 protection afforded by the conditions in section 32(1) was sufficient in terms of any post publication remedies pursued by a data subject, a greater degree of protection was justified prior to publication in order to protect against pre-publication restraint and the chilling effect of its potential availability". Channel 4 also referenced Mr Justice Popplewell's judgment at paragraphs 51 and 56.

i.e. for strictly journalistic purposes and that the provision of the transcripts for this specified purpose was very different and was part of the investigative process. Channel 4 said that it was difficult to see how this could amount to any unfairness to Mr Lilley. Channel 4 said that if a selective and partial transcript had been provided to Sir Alistair Graham on the basis of which Sir Alistair Graham was liable to be misled before giving his opinion, that might have been a ground of complaint by Mr Lilley.

Compliance with Rule 7.1 of the Ofcom Broadcasting Code ("the Code")

Channel 4 said that the rule which Ofcom has to consider is one of fairness in the overall programme. It added that the response demonstrated how Channel 4 and the programme makers complied with the relevant practices set out in Section Seven (Fairness) of the Code to ensure it was justified to film and broadcast the relevant sections of the secretly filmed material of Mr Lilley. It added that that material was edited fairly and set within a fair context by commentary which made clear that Mr Lilley had not broken any rules or codes of conduct and fairly reflected his right to reply in the programme. Further, it said that Mr Lilley was provided with a fair and timely opportunity to respond to the matters which concerned him in the programme.

Channel 4 concluded that the programme as broadcast was fair and accurate highlighting a matter of genuine and important public interest which was an integral part of both Channel 4's right to freedom of expression and its public service remit by contributing to a public debate and also the general public's right to receive the information and footage contained in the programme.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View on this case that the complaint should not be upheld. Both the complainant and the broadcaster were given the opportunity to make representations on the Preliminary View. Both parties submitted representations, which are summarised below, insofar as they are relevant to the complaint as entertained and considered by Ofcom.

Complainant's representations

Mr Lilley said that although the *Dispatches* programme had tried to give the impression that he was doing something nefarious, it had resulted in little reputational damage.

Mr Lilley said that to reach a conclusion as to whether the broadcast was a fair and just treatment of the surreptitiously recorded interview with him required an assessment of both what was included and excluded from the programme. He said that Channel 4 had created an unfair negative impression of him through partial and selective quoting while deliberately omitting extracts which would convey a different and more favourable impression. Mr Lilley said that the only manner in which Ofcom could assess whether the programme was fair to him would be to view the entire interview or to examine the transcript of it. Mr Lilley gave specific examples from his recollection of the interview.

Mr Lilley said that in the interview he said words to the effect that "I am comfortably off and not primarily interested in money so would only consider roles which were interesting, worthwhile and where I could make a useful contribution". He considered that Channel 4

had omitted this reference from the programme because it contradicted its claim that he was motivated primarily by the desire to “boost my income”.

Mr Lilley also said that when the issue of remuneration was raised in the interview, he referred back to the fact that money was not his primary concern; confirmed that he did not work as a consultant or lobbyist; and, was unable to recall how he was paid for his role on an advisory board and instead referred to the fact this information was available from his Parliamentary register of interests. Mr Lilley said that he considered the programme omitted this reference because it would undermine the programme's claim that he was a “Politician for Hire” and have contrasted with the two parliamentarians also featured who, legitimately, do operate on that basis.

Mr Lilley said that the original invitation to the interview specifically said: “we note your particular interest in energy issues which is one area of investment focus for our clients”. Mr Lilley said that the majority of the interview was not about the Brexit process but about investing in the energy sector in the UK and Europe post Brexit which was what he had assumed was the main area the company would expect him to contribute to on the advisory board. Mr Lilley said that his profession prior to entering Parliament was advising on investment in energy and he had served on the boards of energy companies. Mr Lilley added that he had an established track record as an Energy Analyst prior to entering Parliament and was being invited to return to advise on the subject. Mr Lilley said that he had never served in the Energy sector in government when he was a minister and none of his expertise on this subject was acquired within government. Mr Lilley said that he considered Channel 4 had omitted any reference to the fact that it had invited him there by reference to his non-political expertise in energy and devoted much of the interview to that subject because it would have weakened Channel 4's case that Mr Lilley was there to “cash in on Brexit” or “use my political connections”.

Mr Lilley said that during the interview he had told the company that he would be unable to attend board meetings in Hong Kong while parliament was sitting which may have made him less eligible for the advisory board position. However, he said that this information was omitted from the programme which he considered was because it contradicted its thesis that it was somehow improper to mention the convention that former Cabinet Ministers normally go into the House of Lords.

Mr Lilley said that during the interview he was asked about obtaining advice on the regulatory environment post Brexit and he explained that he could provide analysis insofar as the company wanted factual information about the rules and that it should not waste its money on consultants. Mr Lilley said that Channel 4 could not refer to this matter in the programme without “destroying” its case that he was a “greedy, unscrupulous person trying to exploit ignorant foreigners for money”. Mr Lilley said that it also demonstrated that he was not discussing confidential information and instead, the best way in which the company could obtain factual information which every company was entitled to obtain.

Mr Lilley said that Channel 4 had attempted to justify retrospectively the use of surreptitious filming and that he disputed Channel 4's basis for doing so. He said that the Ofcom Broadcasting Code requires *prima facie* evidence of a story in the public interest before deception and secret recording could be used. According to Channel 4, the story of public interest was “the potential boom in lobbying as a result of Britain's decision to leave the EU” and that “the paucity of publicly available information surrounding the negotiations means that ... the advice of those with an inside knowledge of government thinking is highly

valuable and something which companies are prepared to pay for". Mr Lilley said that there was no *prima facie* evidence that he fitted into the story to justify the use of deception under the Ofcom Broadcasting Code. Mr Lilley said that he does not engage in lobbying and never has done and that he made this clear in the interview. Similarly, he said he has never shown a willingness to sell "inside information".

Mr Lilley said that his willingness to attend the interview in response to the letter from the company was not *prima facie* evidence of him being part of the story i.e. being willing to lobby or sell inside advice on the Brexit negotiations. Mr Lilley said that the letter did not suggest that the role at the fictitious company would involve lobbying or advice on the Brexit negotiations. Instead, he said that the letter suggested that they wanted an Advisory Board to give expert advice relating "to the UK and across Europe after Brexit" and in Mr Lilley's case, particularly in relation to the energy sector. Mr Lilley said he took the letter to imply that the fictitious company might want analysis of the impact of future regulatory systems in the UK and EU as they emerge after Brexit. Mr Lilley said that that had nothing to do with lobbying or providing inside information about the Brexit negotiations.

Mr Lilley said that Channel 4 did not possess and had not presented any *prima facie* evidence linking him to a willingness to lobby or sell privileged advice about Brexit negotiations that would justify it to resort to deception and surreptitious recording.

Broadcaster's representations

Channel 4 reiterated that before undertaking any secret filming of Mr Lilley, Channel 4 had followed its Stage 1 secret filming process. It said that it had explained the relevance and purpose of the *prima facie* evidence that was considered. It added that this *prima facie* evidence was considered before secret filming was undertaken and not after as Mr Lilley had suggested. It also said that it had explained the relevance of the *prima facie* evidence in this case and how it justified secret filming in its statement.

Channel 4 said that the *prima facie* evidence does not involve the programme having formed a definitive view. It is information that raises questions of public interest judged sufficiently important to warrant secret filming and which provides a reasonable basis for believing that further material evidence might only be obtained through secret filming. It said that the *prima facie* evidence detailed in Channel 4's response provided a reasonable basis for such a belief in this case.

Channel 4 said that its Stage 1 and 2 processes are internal procedures that have been put in place to ensure an objective assessment, at senior levels of the organisation, of the application and *prima facie* evidence set out by the production company for the proposed secret filming and for the broadcast of that footage, respectively. It said that these internal processes are in addition to the requirements of the Ofcom Broadcasting Code. It added that in respect of the Stage 2 process and compliance with Practice 8.14 of the Code, the same level of scrutiny is applied to an application to broadcast footage obtained by secret filming and this programme was no exception. It said that if the secret filming of Mr Lilley had not itself raised any issues of public interest then it would not have satisfied the criteria for broadcast considered as part of Channel 4's Stage 2 process and it would therefore not have been included in the programme. However, it said that the public interest justifications for broadcasting the material was satisfied.

Channel 4 said that the unedited transcript clearly showed that the secret filming of Mr Lilley included in the programme was not presented unfairly or taken out of context.

Channel 4 also reiterated that the programme as broadcast did not suggest that Mr Lilley was "lobbying" or "selling inside information".

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 in programmes in such services.

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

In reaching this decision, we carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and a transcript of it, a transcript of the unedited surreptitiously filmed footage of Mr Lilley, and both parties' written submissions and supporting material. Ofcom also took careful account of the representations made by both parties in response to Ofcom's Preliminary View on this complaint. After careful consideration of the representations, we considered the points raised did not materially affect the outcome of Ofcom's decision not to uphold the complaint.

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"). In assessing the broadcaster's compliance Ofcom also has regard to such of the Practices set out in the Code as may be relevant to its consideration of the complaint. In considering the issues raised by Mr Lilley's Ofcom had regard to the following:

Practice 7.9 states:

"before broadcasting a factual programme..., broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation...".

Practice 7.14 states:

"broadcasters or programme makers should not normally obtain or seek information, audio, pictures, or an agreement to contribute through misrepresentation or deception. (Deception includes surreptitious filming or recording). However, it may be warranted to use material obtained through misrepresentation or deception without consent if it is in the public interest and cannot reasonably be obtained by other means...".

We also had regard to Practices 8.13 and 8.14 which, although under Section Eight (Privacy) of the Code, are applicable in all cases where secretly, or surreptitious recording or filming has been used in obtaining material included in programmes.

Practice 8.13 states:

"Surreptitious filming or recording should only be used where it is warranted. Normally, it will only be warranted if:

- there is *prima facie* evidence of a story in the public interest;
- there are reasonable grounds to suspect that further material evidence could be obtained; and
- it is necessary to the credibility and authenticity of the programme".

Practice 8.13 also providing the meaning of "surreptitious filming or recording":

"Surreptitious filming or recording includes the use of long lenses or recording devices, as well as leaving an unattended camera or recording device on private property without the full and informed consent of the occupiers or their agent. It may also include recording telephone conversations without the knowledge of the other party, or deliberately continuing a recording when the other party thinks that it has come to an end".

Practice 8.14 states:

"Material gained by surreptitious filming and recording should only be broadcast when it is warranted".

- a) Ofcom first considered Mr Lilley's complaint that he was treated unjustly or unfairly in the programme as broadcast because it was not warranted, nor was it in the public interest, to surreptitiously film him and include the surreptitiously filmed footage of him in the programme.

We took into account Mr Lilley's contention that there was no *prima facie* evidence to justify the use of surreptitious filming. We also considered his concern that the programme makers could have simply asked him for a response rather than resort to deception to find out whether he would be willing to consider additional employment or whether any conflicts of interest might arise.

We considered that there was a significant public interest in the programme makers exploring the interactions between politicians, such as Mr Lilley, and private commercial companies and questioning whether it was appropriate for them to exploit their positions and connections for financial reward. We also considered that it was in the public interest for the programme to investigate whether the potential relationship between politicians and private companies was in keeping with the public's expectations and whether politicians are acting in accordance with the relevant codes of conduct.

We took into account the reasons put forward by Channel 4 to explain why the programme makers had decided to film Mr Lilley. We considered there was *prima facie* evidence of a story in the public interest and were satisfied that the programme makers had reasonable grounds to suspect that further evidence could be obtained by surreptitious filming. Given the nature of the matters the programme set out to explore, we considered it unlikely that the programme makers could have captured footage of Mr Lilley speaking openly and candidly without using this technique, which was necessary to

allow the programme makers to obtain material of Mr Lilley in private interacting with potential commercial clients. Accordingly, we considered that the surreptitious filming was necessary to the credibility and authenticity of the programme. Taking all these factors into account, it was Ofcom's view that the programme makers' decision to surreptitiously film Mr Lilley was warranted.

We next considered whether it was warranted to broadcast the footage of Mr Lilley which had been obtained through secret filming.

We took into account the focus of the programme, as described by Channel 4. Namely, the ensuing uncertainty that had been caused by the decision to leave the European Union which had, in turn, provided opportunities to those with connections to Westminster to develop relationships with private commercial companies. We also took into account that the footage of Mr Lilley included in the programme clearly showed that he was not willing to divulge secret or confidential information to the fictitious company.

We recognised that the programme's analysis of Mr Lilley's conduct and the inclusion of extracts from the secretly filmed footage of his meeting with the fictitious company had the potential to impact adversely on Mr Lilley. However, we considered that there was a public interest in the issues raised by the programme and the questions raised about the conduct of Mr Lilley and his interactions with the fictitious company. In particular, we considered that the broadcast of the footage enabled viewers to come to their own conclusions about the adequacy of the current rules and codes of conduct and whether it is appropriate for former politicians, such as Mr Lilley, who are able under the existing framework to use their connections in government and the insight they have, to develop paid relationships with private commercial companies. We considered that this was particularly important when considering the overarching theme of the programme concerning the increasing possibilities for such interactions following the EU Referendum. Given this, we considered that the public interest in broadcasting extracts of the secretly filmed footage outweighed the potential negative impact the broadcast would have had on Mr Lilley. In reaching this view, we had regard to Channel 4's and the programme makers' rights to freedom of expression, as well as the public's right to receive information and ideas.

We next assessed whether the inclusion of the surreptitiously filmed footage of Mr Lilley caused unfairness to him. In doing so, we had careful regard to the transcript of the unedited surreptitiously filmed footage of Mr Lilley which was provided to Ofcom by Channel 4 in this investigation. In particular, we considered whether the programme's title and the inclusion of surreptitiously filmed footage gave an unfair impression of Mr Lilley.

The Code recognises the importance of freedom of expression and the public interest in allowing broadcasters the freedom to broadcast without unnecessary interference. Nevertheless, broadcasters must ensure they take reasonable care not to present material in a way which causes unfairness to individuals or organisations. Whether a broadcaster has taken such care will depend on all the particular facts and circumstances of the case including, for example, the way in which an individual is portrayed, the seriousness of any allegation and the context within which such allegations are made.

We took into account that the programme made clear from the outset that its primary focus was to explore the potential opportunities for those who have connections within

Westminster to exploit, for financial reward, the current uncertainties caused by Brexit. It was within this context that the programme included the secretly filmed footage which sought to examine Mr Lilley's conduct.

Although the programme established that Mr Lilley had been willing to meet with the fictitious company in full knowledge that if he were to be selected to join the advisory board he would be paid for the role, the programme did not state that Mr Lilley had breached any of the codes of conduct or principles. We took into account too that the programme did not state nor imply that Mr Lilley had agreed any fee to join the advisory board of the fictitious company. Indeed, in line with the stated premise of the programme which was introduced at the outset (i.e. whether the behaviour of the former ministers it was investigating was in line with public expectations), the programme questioned whether Mr Lilley had actually done anything wrong. Following the sequence involving the undercover footage of Mr Lilley, viewers were presented with Sir Alistair Graham's commentary in which he gave his view of Mr Lilley's conduct. This was balanced by the inclusion of Mr Lilley's response which set out his position that he had not done anything that would break the codes of conduct or the Nolan Principles. It also set out that he had been crystal clear that he would not use confidential information. We also noted that the overall meaning of the programme was drawn together in the concluding commentary "*the three former ministers in this investigation are clear they have broken no Parliamentary rules, but can we be confident that these rules are fit for purpose?*"

In these circumstances, and having regard to the transcript of the unedited surreptitiously filmed footage of Mr Lilley, we considered that material facts were not presented, disregarded or omitted in a way that was unfair to Mr Lilley and that the inclusion of the surreptitiously filmed footage would have enabled viewers to make up their own minds as to the extent to which Mr Lilley was willing to exploit his experience for financial gain. Taking the above factors into account, we also considered that the way in which the facts were presented fairly reflected the matter the programme intended to explore. Therefore, we did not consider that the programme's title *Cashing in on Brexit*, in itself, would have resulted in unfairness to Mr Lilley.

Ofcom considered that there was no unfairness to Mr Lilley in this respect.

- b) Ofcom next considered the complaint that Mr Lilley was not provided with an appropriate and timely opportunity to respond to the allegations being made in the programme.

Mr Lilley said that the programme makers refused to provide him with a copy of the transcript of the programme prior to its broadcast which meant he was not provided with a fair opportunity to respond to the allegations being made about him in the programme.

Practice 7.11 states:

"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".

We considered that the issue discussed in the programme about Mr Lilley (i.e. that his decision to meet with private clients to potentially offer his services for a fee) may not be

in line with the public's expectations of former Ministers and other politicians. In our view this raised significant potential allegations. Therefore, to ensure fairness to Mr Lilley, it was incumbent on the programme makers to offer an appropriate and timely opportunity for him to respond to the claims, in accordance with Practice 7.11.

Mr Lilley was first approached by the programme makers on 12 January 2018 and they engaged in a series of correspondence with him prior to the programme's eventual broadcast on 28 January 2018. As we set out below, it was clear to Ofcom when reviewing this correspondence that the key allegations in the programme were explained to Mr Lilley from the outset and that he was repeatedly invited to provide a response.

The initial letter of 12 January informed Mr Lilley of the (then) currently scheduled date of broadcast (22 January 2018) and explained that the programme sought to examine whether Britain's decision to leave the European Union, and the uncertainties for business resulting from that decision, had provided a commercial opportunity for former Ministers and other politicians to offer fee-paying clients private access to their own knowledge, experience and insights from their time as holders of public office. The letter explained that this subject raised an important question of public interest about where the balance should be struck between public responsibilities of politicians and former Ministers, including the duties and principles to which they were bound, the requirement for transparency, and their freedom to widen their experience and boost their income. The programme makers gave an account of the undercover filming, with particular reference to the matters that concerned Mr Lilley and the issues identified by the investigation. The letter also referred to Sir Alistair Graham's commentary on Mr Lilley's conduct and invited him to provide a response by 18 January so that the programme makers could fairly and accurately reflect it in the programme. Mr Lilley responded on the same day, explaining that he had done nothing wrong, as he had made clear in the secretly recorded interview when he said he would do nothing improper, and that he did not seek or accept any position. Mr Lilley requested a complete transcript and a copy of the recording of the interview, together with further information relating to Sir Alistair Graham's participation in the programme and the complete exchanges from which his remarks were extracted.

This initial exchange was followed by further correspondence between Mr Lilley, the programme makers and the broadcaster. This included many of the points that the respective parties had already made. Mr Lilley continued to ask the programme makers for the transcripts and other material he had previously asked for; and the programme makers maintained that they could not provide a copy of the transcript and repeated their invitation for Mr Lilley to provide a response for inclusion in the programme.

We took into account that the programme makers' letter of 18 January 2018 set out the relevant exchanges from the transcript that they intended to include in the programme. It also clarified that the view expressed by Sir Alistair Graham was not intended to suggest that he was offering to impart any information that was secret or confidential and that this would be reflected in the programme. Mr Lilley was given a further opportunity to provide a response for broadcast and the deadline was extended to 19 January 2018. Further correspondence took place between Mr Lilley's legal representatives and the programme makers, resulting in a further extension from the programme makers for Mr Lilley to provide his statement for broadcast by 16:00 on 20 January 2018. Following additional correspondence, the programme makers emailed Mr

Lilley at 21:43 on 20 January 2018 to inform him that the programme would not be broadcast on 22 January 2018 as had been originally intended.

The dialogue continued and on 26 January 2018 the programme makers informed Mr Lilley that the programme would be broadcast on 28 January 2018. The programme makers explained that they had taken on board Mr Lilley's letters and those from his legal advisors and repeated their earlier assurances that the programme would make clear that Mr Lilley would not disclose any secret or confidential information and that there was no suggestion of Mr Lilley doing anything that would undermine Brexit negotiations. He was invited again to provide a written statement, with a new deadline of 1pm on 27 January 2018 and told that if he did not do so the programme makers considered they had sufficient information to fairly reflect Mr Lilley's position. Following a final exchange of emails, Mr Lilley's solicitors emailed the programme makers at 16:12 on 27 January 2018 with a written statement from Mr Lilley, a summary of which was included in the programme.

Having carefully assessed all the background material, we considered the issues raised by Mr Lilley.

With regard to his objection to not having been provided with a transcript in advance of broadcast, there is no requirement in the Code that broadcasters must, if they intend to make claims against an individual or organisation, provide them with a transcript of a programme or unedited contribution. Rather, as set out above, Practice 7.11 states that those concerned should normally be given an appropriate and timely opportunity to respond.

From Ofcom's examination of the correspondence, it was our view that Mr Lilley had been provided with an appropriate and timely opportunity to respond to the issues examined in the programme. In particular, we considered that the subject matter of the programme and the claims to be made were set out clearly and in detail in the programme makers' initial correspondence on 12 January 2018, and further elaborated on in the programme makers' letter of 18 January 2018 and in further correspondence. An assurance was also given that the programme would be clear that Mr Lilley did not disclose any secret or confidential information. We considered that the programme makers were clear from the outset that Mr Lilley had an opportunity to provide a statement setting out his position and that the programme would fairly and accurately reflect this. In fact, Mr Lilley was invited repeatedly to provide a response for broadcast and the deadline was extended several times to enable him to do so.

Taking these factors into account we did not consider that Mr Lilley was in any way disadvantaged by the programme makers' decision not to provide him with a transcript of the programme or his unedited contribution in his ability to respond to the claims. For the same reasons, we did not consider it unfair that Sir Alistair Graham was provided with the transcript and not him, particularly as the programme makers set out the relevant exchanges that they intended to include in the programme in their letter of 18 January 2018.

As regards Mr Lilley's assertion that he was only informed of the broadcast date at 18:00 on 26 January 2018, we took into account that Mr Lilley was informed of the original intended date of broadcast (22 January 2018) in the programme makers' initial letter to him on 12 January 2018, over a week in advance of the eventual date of broadcast (28

January 2018). Therefore, it was our view that Mr Lilley was provided with ample opportunity to respond to the claims being made in the programme prior to the date on which it was finally broadcast. Indeed, Mr Lilley's response, which was provided the day before broadcast, responded in detail to the issues that had been put to him and was fairly reflected in the programme.

Taking all the above into account, Ofcom considered therefore that there was no unfairness to Mr Lilley in this respect.

Ofcom has not upheld Mr Lilley's complaint of unjust or unfair treatment in the programme as broadcast.

Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 15 and 28 October 2018 and decided that the broadcaster or service provider did not breach Ofcom's codes, rules, licence conditions or other regulatory requirements.

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

Programme	Service	Transmission date	Categories
Nick Ferrari	LBC 97.3 FM	04/09/2018	Due impartiality/bias

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

https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf

Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 15 and 28 October 2018 because they did not raise issues warranting investigation.

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

Programme	Service	Transmission Date	Categories	Number of complaints
The No Repeat Guarantee	Absolute Radio	23/10/2018	Competitions	1
Babonation	Babonation	16/10/2018	Animal welfare	1
Kick Up the Eighties	Canalside Radio 102.8 FM	26/09/2018	Gender discrimination/offence	1
Meat Loud	Cannock Chase Radio FM	28/08/2018	Offensive language	1
Capital Breakfast with Adam and JoJo	Capital Radio	25/09/2018	Generally accepted standards	1
Z Nation (trailer)	Challenge	22/10/2018	Scheduling	1
Celebrity Hunted	Channel 4	16/10/2018	Due impartiality/bias	2
Celebrity Hunted	Channel 4	16/10/2018	Gender discrimination/offence	1
Celebrity Island with Bear Grylls	Channel 4	30/09/2018	Animal welfare	2
Celebrity Island with Bear Grylls	Channel 4	07/10/2018	Animal welfare	1
Channel 4 News	Channel 4	06/08/2018	Due impartiality/bias	1
Channel 4 News	Channel 4	25/10/2018	Due impartiality/bias	1
Dispatches: Politicians for Hire – Cashing in on Brexit	Channel 4	28/01/2018	Due impartiality/bias	1
Gogglebox	Channel 4	12/10/2018	Religious/Beliefs discrimination/offence	1
Gogglebox	Channel 4	19/10/2018	Disability discrimination/offence	3
Naked Attraction (trailer)	Channel 4	24/10/2018	Nudity	1
Old People's Home for 4 Year Olds	Channel 4	15/10/2018	Age discrimination/offence	1
The Big Narstie Show	Channel 4	03/08/2018	Generally accepted standards	1
The Bisexual (trailer)	Channel 4	01/10/2018	Scheduling	1
The Bisexual (trailer)	Channel 4	15/10/2018	Scheduling	1
The Bisexual (trailer)	Channel 4	17/10/2018	Scheduling	1
The Circle	Channel 4	16/10/2018	Voting	1

Programme	Service	Transmission Date	Categories	Number of complaints
The Great British Bake Off	Channel 4	16/10/2018	Disability discrimination/offence	2
The Great British Bake Off	Channel 4	16/10/2018	Generally accepted standards	10
The Great British Bake Off	Channel 4	16/10/2018	Materially misleading	1
The Great British Bake Off	Channel 4	23/10/2018	Gender discrimination/offence	1
The Great British Bake Off	Channel 4	23/10/2018	Generally accepted standards	4
The Last Leg	Channel 4	12/10/2018	Generally accepted standards	7
Big Brother	Channel 5	04/10/2018	Generally accepted standards	2
Big Brother	Channel 5	09/10/2018	Generally accepted standards	3
Big Brother	Channel 5	21/10/2018	Generally accepted standards	4
Big Brother	Channel 5	21/10/2018	Offensive language	1
Big Brother	Channel 5	22/10/2018	Sexual material	4
Big Brother's Bit On The Side	Channel 5	18/10/2018	Race discrimination/offence	2
Can't Pay? We'll Take It Away!	Channel 5	01/01/2018	Materially misleading	1
Can't Pay? We'll Take It Away!	Channel 5	12/10/2018	Generally accepted standards	1
Can't Pay? We'll Take It Away!	Channel 5	16/10/2018	Generally accepted standards	1
Channel 5 News	Channel 5	15/10/2018	Due impartiality/bias	1
Channel 5 News	Channel 5	24/10/2018	Nudity	1
GPs: Behind Closed Doors	Channel 5	24/10/2018	Generally accepted standards	1
Jeremy Vine	Channel 5	28/09/2018	Generally accepted standards	1
Jeremy Vine	Channel 5	01/10/2018	Race discrimination/offence	1
Jeremy Vine	Channel 5	12/10/2018	Gender discrimination/offence	1
Jeremy Vine	Channel 5	17/10/2018	Materially misleading	1
Jeremy Vine	Channel 5	25/10/2018	Due impartiality/bias	1
Stolen From the Womb	Channel 5	13/08/2018	Scheduling	1
Walking Britain's Lost Railways	Channel 5	05/10/2018	Dangerous behaviour	1
Walking Britain's Lost Railways	Channel 5	12/10/2018	Materially misleading	1

Programme	Service	Transmission Date	Categories	Number of complaints
Scrambled!	CITV	21/10/2018	Due impartiality/bias	1
Daily Telegraph advertisement	Classic FM	29/09/2018	Political advertising	1
H.M.S. Ark Royal	Discovery History	22/10/2018	Other	1
Paddy Power's Sponsorship of The Walking Dead	FOX	22/10/2018	Age discrimination/offence	4
Only Fools and Horses	Gold	12/09/2018	Nudity	1
Sian Welby	Heart FM	21/10/2018	Sexual material	1
Bad Move	ITV	10/10/2018	Generally accepted standards	1
Butterfly	ITV	14/10/2018	Disability discrimination/offence	1
Butterfly	ITV	14/10/2018	Generally accepted standards	1
Butterfly (trailer)	ITV	11/10/2018	Generally accepted standards	1
Butterfly (trailer)	ITV	14/10/2018	Scheduling	1
Coronation Street	ITV	08/10/2018	Materially misleading	1
Coronation Street	ITV	08/10/2018	Violence	1
Coronation Street	ITV	09/10/2018	Generally accepted standards	1
Coronation Street	ITV	10/10/2018	Generally accepted standards	1
Coronation Street	ITV	10/10/2018	Religious/Beliefs discrimination/offence	1
Coronation Street	ITV	10/10/2018	Violence	8
Coronation Street	ITV	12/10/2018	Drugs, smoking, solvents or alcohol	1
Coronation Street	ITV	12/10/2018	Generally accepted standards	1
Coronation Street	ITV	12/10/2018	Violence	7
Coronation Street	ITV	17/10/2018	Generally accepted standards	1
Coronation Street	ITV	19/10/2018	Generally accepted standards	1
Coronation Street	ITV	19/10/2018	Materially misleading	3
Emmerdale	ITV	03/10/2018	Generally accepted standards	3
Emmerdale	ITV	10/10/2018	Violence	3
Emmerdale	ITV	11/10/2018	Violence	6
Emmerdale	ITV	12/10/2018	Generally accepted standards	1
Emmerdale	ITV	15/10/2018	Generally accepted standards	1

Programme	Service	Transmission Date	Categories	Number of complaints
Emmerdale	ITV	17/10/2018	Race discrimination/offence	1
Emmerdale	ITV	17/10/2018	Scheduling	1
Good Morning Britain	ITV	01/10/2018	Offensive language	2
Good Morning Britain	ITV	02/10/2018	Disability discrimination/offence	7
Good Morning Britain	ITV	02/10/2018	Generally accepted standards	1
Good Morning Britain	ITV	04/10/2018	Generally accepted standards	1
Good Morning Britain	ITV	05/10/2018	Generally accepted standards	1
Good Morning Britain	ITV	08/10/2018	Due impartiality/bias	1
Good Morning Britain	ITV	10/10/2018	Disability discrimination/offence	1
Good Morning Britain	ITV	15/10/2018	Generally accepted standards	9
Good Morning Britain	ITV	16/10/2018	Race discrimination/offence	4
Good Morning Britain	ITV	19/10/2018	Offensive language	1
Good Morning Britain	ITV	26/10/2018	Generally accepted standards	1
Gordon, Gino and Fred: Road Trip	ITV	11/10/2018	Offensive language	8
Gordon, Gino and Fred: Road Trip	ITV	18/10/2018	Dangerous behaviour	2
Gordon, Gino and Fred: Road Trip	ITV	18/10/2018	Offensive language	1
Gordon, Gino and Fred: Road Trip (trailer)	ITV	11/10/2018	Animal welfare	4
Gordon, Gino and Fred: Road Trip (trailer)	ITV	22/10/2018	Sexual material	1
ITV News	ITV	28/09/2018	Due impartiality/bias	3
ITV News	ITV	16/10/2018	Generally accepted standards	1
ITV News	ITV	18/10/2018	Generally accepted standards	1
ITV News	ITV	23/10/2018	Generally accepted standards	1
James Martin's Saturday Morning	ITV	20/10/2018	Generally accepted standards	1
London Tonight	ITV	15/10/2018	Due impartiality/bias	1
Loose Women	ITV	28/09/2018	Generally accepted standards	2

Programme	Service	Transmission Date	Categories	Number of complaints
Loose Women	ITV	16/10/2018	Generally accepted standards	1
Martin Lewis: 10 Things Your Kids Need to Know	ITV	23/10/2018	Materially misleading	1
Strangers	ITV	15/10/2018	Violence	1
Tenable	ITV	16/10/2018	Materially misleading	1
The Chase	ITV	10/02/2011	Generally accepted standards	1
The Chase	ITV	15/10/2018	Generally accepted standards	3
The X Factor	ITV	13/10/2018	Sexual orientation discrimination/offence	1
The X Factor	ITV	20/10/2018	Generally accepted standards	1
The X Factor	ITV	21/10/2018	Drugs, smoking, solvents or alcohol	1
The X Factor	ITV	21/10/2018	Race discrimination/offence	1
This Morning	ITV	03/10/2018	Gender discrimination/offence	1
This Morning	ITV	15/10/2018	Generally accepted standards	1
This Morning	ITV	18/10/2018	Animal welfare	1
This Morning at the Royal Wedding	ITV	12/09/2018	Generally accepted standards	1
This Morning at the Royal Wedding	ITV	12/10/2018	Disability discrimination/offence	2
This Morning at the Royal Wedding	ITV	12/10/2018	Generally accepted standards	1
ITV News Granada Reports	ITV Granada	17/10/2018	Crime and disorder	1
ITV Meridian News	ITV Meridian	11/09/2018	Due impartiality/bias	1
ITV News	ITV News	24/10/2018	Due accuracy	1
ITV News Calendar	ITV Yorkshire	24/10/2018	Generally accepted standards	1
Celebrity Juice	ITV2	11/10/2018	Generally accepted standards	1
Weekender: Boat Party	ITV2	09/10/2018	Generally accepted standards	1
You've Been Framed	ITV2	17/10/2018	Animal welfare	1
Carry on Up the Jungle	ITV3	06/10/2018	Race discrimination/offence	1
The Only Way Is Essex	ITVBe	21/10/2018	Generally accepted standards	1
The Only Way Is Essex	ITVBe	21/10/2018	Materially misleading	1

Programme	Service	Transmission Date	Categories	Number of complaints
Breaking News med Filip och Fredrik	Kanal 5 (Sweden)	24/09/2018	Gender discrimination/offence	1
Sofias Änglar	Kanal 5 (Sweden)	03/10/2018	Under 18s in programmes	1
Beverley Turner	LBC 97.3 FM	13/10/2018	Race discrimination/offence	1
James O'Brien	LBC 97.3 FM	10/10/2018	Race discrimination/offence	1
James O'Brien	LBC 97.3 FM	11/10/2018	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	12/10/2018	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	12/10/2018	Race discrimination/offence	1
Nigel Farage	LBC 97.3 FM	30/10/2017	Race discrimination/offence	2
Drivetime with Paul Hayes	Magic Radio	12/10/2018	Sexual material	1
Family Guy	n/a	22/10/2018	Animal welfare	1
Programming	Panjab Radio	24/10/2018	Appeals for funds	1
Sonic Boom	POP	13/10/2018	Sexual material	1
Psychic Today	Psychic Today	21/09/2018	Participation TV - Misleadingness	1
News	Q Radio 96.7 FM	05/10/2018	Due accuracy	1
HSBC advertisement	Quest	20/10/2018	Political advertising	1
All Out Politics	Sky News	17/10/2018	Generally accepted standards	2
Kay Burley	Sky News	17/10/2018	Offensive language	1
Press Preview	Sky News	14/10/2018	Due accuracy	1
Sky News	Sky News	27/09/2018	Due impartiality/bias	3,463
Sky News	Sky News	08/10/2018	Due impartiality/bias	1
Sky News	Sky News	11/10/2018	Due impartiality/bias	1
Sky News	Sky News	19/10/2018	Due impartiality/bias	1
Sky News	Sky News	20/10/2018	Due impartiality/bias	1
Sky News	Sky News	23/10/2018	Offensive language	1
The Heist (trailer)	Sky News	22/10/2018	Crime and disorder	1
The Pledge	Sky News	21/10/2018	Due impartiality/bias	1
International Football: Wales v Spain	Sky Sports Football	11/10/2018	Offensive language	1
An Idiot Abroad	Sky1	17/10/2018	Generally accepted standards	1
Sally4Ever (trailer)	Sky1	22/10/2018	Sexual material	1
The Simpsons	Sky1	01/10/2018	Generally accepted standards	1

Programme	Service	Transmission Date	Categories	Number of complaints
Sunday National advertisement	STV	13/09/2018	Political advertising	1
Hawksbee and Jacobs	Talksport	19/10/2018	Generally accepted standards	1
Aftonbladet Morgon	TV3 (Sweden)	18/10/2018	Other	1
Frank Mitchell	U105	04/10/2018	Religious/Beliefs discrimination/offence	1
Most Haunted Live	UKTV	31/10/2015	Materially misleading	1

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

https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf

Complaints assessed under the Procedures for investigating breaches of content standards on BBC broadcasting services and BBC ODPS.

Programme	Service	Transmission Date	Categories	Number of complaints
BBC News	BBC channels	29/07/2018	Due impartiality/bias	1
BBC News	BBC 1	12/04/2018	Due accuracy	1
Breakfast	BBC 1	24/08/2018	Generally accepted standards	1
Politics Live	BBC 2	12/09/2018	Due impartiality/bias	1
BBC Newsroom Live	BBC News	16/04/2018	Due impartiality/bias	1
BBC News	BBC News Channel	Various	Due impartiality/bias	1
The Archers	BBC Radio 4	12/09/2018	Generally accepted standards	1
The World at One	BBC Radio 4	31/07/2018	Due impartiality/bias	1
5 Live Breakfast	BBC Radio 5 Live	15/05/2018	Due impartiality/bias	1

For more information about how Ofcom assesses complaints about content standards on BBC broadcasting services and BBC ODPS, go to:

https://www.ofcom.org.uk/_data/assets/pdf_file/0002/100100/Procedures-for-investigating-breaches-of-content-standards-on-BBC-broadcasting-services-and-BBC-on-demand-programme-services.pdf

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

Here is an alphabetical list of complaints that, after careful assessment, Ofcom has decided not to pursue between 15 and 28 October 2018 because they did not raise issues warranting investigation.

Licensee	Licensed service	Categories
Koast Radio Limited	Koast FM	Key Commitments

For more information about how Ofcom assesses complaints about broadcast licences, go to: https://www.ofcom.org.uk/data/assets/pdf_file/0019/31942/general-procedures.pdf

Complaints outside of remit

Here are alphabetical lists of complaints received by Ofcom that fell outside of our remit. This is because Ofcom is not responsible for regulating the issue complained about. For example, the complaints were about the content of television, radio or on demand adverts or an on demand service that does not fall within the scope of regulation.

Programme	Service	Transmission Date	Categories	Number of complaints
Advertisement	All 4	Various	Advertising content	1
Strictly Come Dancing	BBC 1	21/10/2018	Outside of remit	1
BBC Scotland Sportsound	BBC Radio Scotland	23/09/2018	Outside of remit	1
Advertisement	Blaze	16/10/2018	Advertising content	1
Programming	Capital FM	21/10/2018	Outside of remit	1
Advertisement	E4	n/a	Advertising content	1
Online TV auction Canadian diamonds sale	Gems TV	12/10/2018	Teleshopping	1
Advertisement	ITV	12/10/2018	Advertising content	1
Advertisement	ITV	13/10/2018	Advertising content	1
Advertisement	ITV	19/10/2018	Advertising content	2
Advertisement	ITV	23/10/2018	Advertising content	1
Advertisements	ITV	17/10/2018	Advertising content	1
Emmerdale (pre-tx)	ITV	08/03/2019	Generally accepted standards	1
The X Factor	ITV	20/10/2018	Outside of remit	1
The X Factor	ITV	21/10/2018	Outside of remit	1
Subtitling	ITV Hub	05/10/2018	Access services	1
Advertisement	ITV2	20/10/2018	Advertising content	1
Advertisement	Kiss (Greater London)	12/10/2018	Advertising content	1
Non-editorial (subscription)	Netflix	01/01/2018	Other	1
Non-editorial (technical issues)	NOW TV	01/10/2018	Other	1
Price Crash	Price Crash	06/10/2018	Teleshopping	1
Advertisement	STV	20/10/2018	Advertising content	1
Advertisement	The Jeremy Kyle Show	03/10/2018	Advertising content	1
n/a	Twitter	15/10/2018	Outside of remit	1
Advertisement	Various	12/10/2018	Advertising content	1
Advertisement	Various	Various	Advertising content	2
Advertisement	W	10/10/2018	Advertising content	1
Jason Farrell interview with Tommy Robinson	YouTube	n/a	Due impartiality/bias	1

For more information about what Ofcom's rules cover, go to: <https://www.ofcom.org.uk/tv-radio-and-on-demand/how-to-report-a-complaint/what-does-ofcom-cover>

BBC First

The BBC Royal Charter and Agreement was published in December 2016, which made Ofcom the independent regulator of the BBC.

Under the BBC Agreement, Ofcom can normally only consider complaints about BBC programmes where the complainant has already complained to the BBC and the BBC has reached its final decision (the 'BBC First' approach).

The complaints in this table had been made to Ofcom before completing the BBC's complaints process.

Complaints about BBC television, radio or on demand programmes

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
BBC News	BBC 1	01/07/2018	Due impartiality/bias	1
BBC News	BBC 1	10/10/2018	Privacy	1
BBC News	BBC 1	23/10/2018	Due accuracy	1
Doctor Who	BBC 1	14/10/2018	Drugs, smoking, solvents or alcohol	1
EastEnders	BBC 1	12/10/2018	Gender discrimination/offence	1
For Facts Sake	BBC 1	13/10/2018	Generally accepted standards	1
Question Time	BBC 1	25/10/2018	Due impartiality/bias	1
Strictly Come Dancing	BBC 1	07/10/2018	Outside of remit	1
Strictly Come Dancing	BBC 1	13/10/2018	Generally accepted standards	1
Strictly Come Dancing	BBC 1	20/10/2018	Sexual material	1
Strictly Come Dancing	BBC 1	20/10/2018	Voting	1
The Andrew Marr Show	BBC 1	23/09/2018	Due impartiality/bias	1
Politics Live	BBC 2	12/10/2018	Due impartiality/bias	12
Politics Live	BBC 2	22/10/2018	Due impartiality/bias	1
Tom Robinson	BBC 6 Music	21/10/2018	Due impartiality/bias	1
Programming	BBC Asian Network	01/09/2018	Generally accepted standards	1
Programming	BBC channels	n/a	Due impartiality/bias	1
Programming	BBC channels	20/10/2018	Offensive language	1
Politics Live	BBC iPlayer	n/a	Due impartiality/bias	1
BBC News	BBC News Channel	06/08/2018	Due impartiality/bias	1
BBC News	BBC News Channel	23/10/2018	Due accuracy	1
UKIP Conference Coverage	BBC Parliament	21/09/2018	Due impartiality/bias	1
Breakfast with Greg James	BBC Radio 1	23/10/2018	Offensive language	1
Jeremy Vine	BBC Radio 2	23/10/2018	Offensive language	1
BBC News	BBC Radio 4	19/10/2018	Offensive language	1

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
In Business	BBC Radio 4	06/09/2018	Sexual material	1

Investigations List

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

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

Here are alphabetical lists of new investigations launched between 15 and 28 October 2018.

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

Programme	Service	Transmission date
Mariah's World	4Music	28/09/2018
The Bill	Drama	15/10/2018
Trainspotting	TNT Romania	07/09/2018
Lokkhkho Praner Shur	TV ONE	11/07/2018
High et Fines Herbes	Viceland (France)	01/06/2018
A Mouthworth of Southworth with Denise Southworth	Wythenshawe FM	08/08/2018

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

https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf

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

Programme	Service	Transmission date
Celebrity Sextortion	Channel 4	12/07/2018
Dave Gorman's Modern Life is Goodish	Dave	18/12/2017
On The Front	Dunya TV	04/06/2018
On The Front	Dunya TV	05/06/2018

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

https://www.ofcom.org.uk/_data/assets/pdf_file/0031/57388/fairness-privacy-complaints.pdf

Investigations launched under the Procedures for the consideration and adjudication of Fairness and Privacy complaints on BBC Broadcasting Services and BBC ODPS

Programme	Service	Transmission date
BBC Look North	BBC1	27/03/2018

For information about how Ofcom considers and adjudicates upon Fairness and Privacy complaints on BBC Broadcasting Services and BBC ODPS, go to:

https://www.ofcom.org.uk/_data/assets/pdf_file/0003/100101/Procedures-for-the-consideration-and-adjudication-of-Fairness-and-Privacy-complaints.pdf

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

Licensee	Licensed Service
Tudno FM	Llandudno Community Radio Limited
Secklow Sounds	Secklow Sounds CIC

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

https://www.ofcom.org.uk/_data/assets/pdf_file/0019/31942/general-procedures.pdf

Discontinued investigation

In issue 359 of the Broadcast Bulletin and On Demand Bulletin¹, Ofcom announced it would be launching an investigation under the Procedures for the consideration and adjudication of Fairness and Privacy complaints into *On the Front* broadcast on 11 January 2018.

This investigation has been discontinued because the complainant withdrew their complaint.

¹ https://www.ofcom.org.uk/_data/assets/pdf_file/0027/117468/broadcast-on-demand-bulletin-issue-359.pdf