

# **Ofcom Broadcast and On Demand Bulletin**

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## Introduction

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

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

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

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

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

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

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

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

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

## Broadcast Standards cases

### In Breach

#### **I Spit on Your Grave**

*Horror Channel, 28 March 2016, 22:45*

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#### **Introduction**

Horror Channel is available on cable, satellite and digital terrestrial platforms. In addition to horror films, it broadcasts science fiction television series and teleshopping features. The licence for the service is held by CBS AMC Networks UK Channels Partnership (“AMC” or “the Licensee”).

A complainant alerted Ofcom to a broadcast of the film *I Spit on Your Grave* – a 2010 remake of the 1978 film of the same name. Both films chronicle the sexual torture and subsequent revenge of the principal character Jennifer Hills. The complainant alleged that the version of the film broadcast on Horror Channel contained material that the British Board of Film Classification (“the BBFC”) had required to be cut before the film’s release in the UK.

The BBFC guidelines<sup>1</sup> list “material which makes sexual or sadistic violence look normal, appealing, or arousing” as an example of the type of content that may be cut as a condition of classification. The BBFC confirmed to Ofcom that, prior the film’s release in the UK, the BBFC had required 17 cuts to the version of the film submitted by the distributor before it awarded the film an ‘18’ certificate. The BBFC said that cuts were made “in order to remove potentially harmful material (in this case, shots of nudity that tend to eroticise sexual violence and shots of humiliation that tend to endorse sexual violence by encouraging viewer complicity in sexual humiliation and rape)”.

At Ofcom’s request, the BBFC compared the BBFC’s 18-rated version and the version broadcast on Horror Channel. The BBFC confirmed that the version broadcast on Horror Channel was a combination of the distributor’s and the BBFC ‘18’ rated versions because some of the shots that it required to be cut for the film to have been awarded an ‘18’ certificate were still present either wholly or partially in the version broadcast on Horror Channel.

Ofcom considered that the broadcast of this version of the film raised issues warranting investigation under the following rules of the Code.

Rule 1.22: “No film refused classification by the British Board of Film Classification (BBFC) may be broadcast unless it has subsequently been classified or the BBFC has confirmed that it would not be rejected according to the standards currently operating. Also, no film cut as a condition of the classification by the BBFC may be transmitted in a version which includes the cut material unless:

- the BBFC has confirmed that the material was cut to allow the film to pass at a lower category; or

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<sup>1</sup> BBFC Guidelines can be viewed at:  
[http://www.bbfc.co.uk/sites/default/files/attachments/BBFC%20Classification%20Guidelines%202014\\_0.pdf](http://www.bbfc.co.uk/sites/default/files/attachments/BBFC%20Classification%20Guidelines%202014_0.pdf)

- the BBFC has confirmed that the film would not be subject to compulsory cuts according to the standards currently operating.”

Rule 2.1 “Generally accepted standards must be applied to contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material.”

We therefore sought comments from the Licensee as to how the broadcast of this film complied with these rules. Ofcom also notified the Licensee of the BBFC’s confirmation that the version broadcast contained some of the material that the BBFC had required to be cut for the film to receive an ‘18’ certificate.

## Response

The Licensee said the BBFC confirmed that the ‘18’ classification of the uncut version of the film related to its UK “theatrical release”.

With regard to Rule 1.22, AMC said that it had acquired the “theatrical release” version of the film from its distributor, which the Licensee “believe[d] complied with rule 1.22 prior to scheduling the film”. It said when initially viewing the content for compliance purposes, it had noted the presence of a “slate prior to the content indicating it as the MPAA (Motion Picture Association of America) R rated version of the film, where the MPAA R rating is defined as ‘Restricted’”. The Licensee confirmed that “no further cuts were made to this content as, following compliance viewing, AMC believed the content complied with the requirements of the Ofcom code”.

AMC said its compliance process in this case included referring to the BBFC website to confirm whether the content had previously been awarded a certificate. It said that in the case of *I Spit on Your Grave*, the Licensee “found there to be two versions submitted to the BBFC and subsequently awarded an 18 certificate in 2010, one which had been cut by 43 seconds (duration [107 minutes 45 seconds]) and one passed as 18 uncut (duration [103 minutes 24 seconds])”. AMC said by contrast that the MPAA R rated “theatrical release” version of the film which had been broadcast had a duration of 101 minutes and 23 seconds, which was therefore shorter than the two versions described on the BBFC website.

The Licensee said that having been made aware by Ofcom that it had broadcast a version that had not been certified by the BBFC, it submitted this version to the BBFC for classification. AMC said the BBFC required six cuts to this version in order for it to be given an ‘18’ classification.

With regard to Rule 2.1, the Licensee said that its compliance viewer “did not believe the content would exceed audience expectations of a niche horror genre channel at 22.45” but deemed the content of this film to be “strong and awarded the film AMC’s highest content rating”. It added that the film was preceded by a pre-broadcast warning that the content was “disturbing and featured strong language, violence and sexual scenes” which the Licensee argued would have assisted in “minimising offence”. AMC also pointed out that the complainant merely identified that an uncut version had been shown, and argued that as a result there was no evidence that any viewer was harmed or offended as a result of the broadcast.

The Licensee explained that it did not foresee that the version of the film the Horror Channel had broadcast, which had been supplied in good faith by a distributor, would be “beyond the generally accepted standards of the channel and viewers”. AMC underlined that there was never any intent to potentially harm or offend viewers.

## **Decision**

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

In reaching a Preliminary View in this case, Ofcom acknowledged the importance attached to freedom of expression in broadcasting, as contained in Article 10 of the European Convention on Human Rights.

### Rule 1.22

Rule 1.22 explicitly prohibits the broadcast of films that contain material that was cut as a condition of its classification by the BBFC unless: i) cuts were made to allow the film to be awarded a lower rating; or ii) the BBFC confirms that the film would no longer be subject to compulsory cuts.

Ofcom considered that neither exception was applicable in this case. The Licensee broadcast a version of the film which it said included a “slate prior to the content indicating it as the MPAA (Motion Picture Association of America) R rated version of the film”. We also noted AMC’s argument that the version of the film it broadcast was shorter in duration than the two versions of the film referred to on the BBFC website. However, the BBFC’s technical comparison identified that a substantial portion of the material required to be removed as a condition of its BBFC ‘18’ classification was present in the version broadcast on Horror Channel.

We took into account that the Licensee’s confirmation that “no further cuts were made to this content as, following compliance viewing, AMC believed the content complied with the requirements of the Ofcom code”. We recognised that AMC’s compliance process included viewing the content in full prior to airing. However, we were concerned that the Licensee appeared in part to have based its decision to broadcast this version on the certification rating that had been awarded by an overseas organisation with a different set of standards to the UK’s film classification body. Moreover, particularly given the nature of the film in this case, we were concerned that the Licensee considered overall it had applied a sufficiently robust process to ensure compliance with Rule 1.22.

The broadcast of this material clearly breached Rule 1.22 of the Code.

### Rule 2.1

Rule 2.1 requires generally accepted standards to be applied to programmes so as to provide adequate protection for viewers from the inclusion of harmful and/or offensive material.

Ofcom first considered whether the content as broadcast had the potential to be harmful. We noted that the BBFC’s comparison between the BBFC’s ‘18’-rated

version and the version broadcast on Horror Channel indicated that a number of shots that it required to be cut for the film to have been awarded an '18' certificate were present either wholly or partially in the broadcast version. In our view the film broadcast on Horror Channel therefore included material which the BBFC deemed to have been "potentially harmful material" when originally reviewing the film for certification purposes. We see no reason to question the view of the relevant regulator as to the potential harm of the shots that were absent from the BBFC '18'-rated version of the film yet were present in the version broadcast by AMC. We therefore considered this content clearly had the potential to cause harm, regardless of whether there was evidence to demonstrate that any actual harm had been caused

Ofcom next considered whether adequate protection from the inclusion of this potentially harmful material was provided for members of the public. In this case the film was preceded by the following pre-broadcast warning by a continuity announcer:

*"Now for a programme with a warning that comes in threes: strong language, violence and scenes of a sexual nature".*

This was followed by an on-screen slate which said:

*"The following programme contains scenes which some viewers may find disturbing".*

However, bearing in mind that the version of the film broadcast contained a number of shots which the BBFC had specifically required to be cut as a condition of the award of an '18' certificate, we did not consider that these warnings were sufficient to alert viewers to the potential harmful content within this film. Ofcom therefore considered that the Licensee had failed to provide adequate protection to viewers from potentially harmful material and had consequently not applied generally accepted standards. Accordingly, the material also breached Rule 2.1 of the Code.

Ofcom is concerned about the nature of these breaches and the adequacy of AMC's compliance processes and therefore puts the Licensee on notice that further compliance failures in this area may result in the imposition of a statutory sanction. Furthermore, we are requesting that the Licensee attends a meeting to discuss the issues raised in this case.

### **Breaches of Rules 1.22 and 2.1**



## In Breach

### Zing Jukebox Live

Zing, 21 June 2016, 16:30

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#### Introduction

Zing is a music and entertainment channel that broadcasts primarily in English and Hindi. It is available on satellite and cable platforms and the licence is held by Asia T.V. Ltd (“Asia T.V.” or “the Licensee”).

*Zing Jukebox Live* is a live Bollywood music request programme that features a presenter introducing various music videos and also interacting with viewers.

Ofcom received a complaint that during the episode broadcast on 21 June 2016 the presenter, Asad Shan, gave his views regarding the Referendum on the UK’s membership of the European Union (“the EU Referendum”) to be held on 23 June.

The programme began with the following disclaimer in the form of a caption:

*“The views expressed by the individual hosts, callers etc. are mere opinions and do not necessarily reflect those of Zee TV Network, its affiliates or sponsors. The company and its associates are not liable and will not be responsible for any of the views, reviews, comments, feelings etc. expressed in the programme or otherwise. All shows are independently owned and broadcast for entertainment purposes only. Viewer discretion is advised”.*

After a brief introduction, Mr Shan said:

*“Now guys, you have a big responsibility coming this coming Thursday okay, the Brexit vote is happening. So what are you guys planning to do? For me personally, I’m voting ‘out’. I believe in independence; I believe the country will be more stronger if there was independence – all the money that the tax payers are paying should be spent on the people of this country. Sort the pot-holes out, sort the hospitals out. More schools, less GP waiting time I think, and the economy’s stronger if we stay out of Europe so I am voting out of Europe. That is my Brexit perspective”.*

Approximately 23 minutes later, he commented:

*“Also guys, this is a one in a lifetime opportunity on Thursday...make sure you vote wisely. I’m definitely voting ‘out’ of Europe. I hope you make the right decision and do the right call”.*

Rule 6.1 of the Code requires that programmes dealing with referendums must comply with the due impartiality rules set out in Section Five of the Code. By virtue of this rule, the EU Referendum that took place in the United Kingdom on 23 June 2016 was considered by Ofcom to be a “major matter of political or industrial controversy and major matter relating to current public policy”.

As a consequence, the rules in Section Five of the Code applied to this programme, but in particular Rules 5.11 and 5.12. We therefore considered this material raised issues warranting investigation under Rule 6.1 and the following rules:

Rule 5.11: "...due impartiality must be preserved on matters of major political and industrial controversy and major matters relating to current public policy by the person providing a service (listed above) in each programme or in clearly linked and timely programmes".

Rule 5.12: "In dealing with matters of major political and industrial controversy and major matters relating to current public policy and appropriately wide range of significant views must be included and given in each programme or in clearly linked and timely programmes. Views and facts must not be misrepresented".

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

## Response

The Licensee said that it regretted that the presenter had "naively decided to talk about the referendum as a way of engaging with viewers" and it "apologise[d] for this faux pas".

The Licensee told Ofcom that the presenter "normally speaks about Bollywood and Bollywood-related features". However, the Licensee said that because the programme is made in London, the presenter occasionally "talks about issues affecting London in a conversational, generalised manner e.g. weather changes, festivals like Diwali, Eid Christmas etc, to engage with the local audience". The Licensee said it was "entirely unexpected that he spoke about his views on the Referendum live on air".

Asia T.V. highlighted the disclaimer broadcast before the programme but said it understood that it was responsible for the content that is broadcast on this and its other services.

As a result of this incident, the Licensee said it will "ensure that the production staff is reminded that the requirements of Sections Five and Six of the Broadcasting Code also applies to light entertainment programmes...and that another training session is organised to revisit the Ofcom guidelines". It also said it was removing Mr Shan from his role presenting the programme.

## Decision

Under the Communications Act 2003 ("the Act"), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that the special impartiality requirements set out in Section 320 of the Act are complied with. This objective is reflected in Section Five of the Code. Section Six of the Code sets out the particular rules that apply at the time of referendums.

When applying the requirement to preserve due impartiality, Ofcom recognises the importance of the right to freedom of expression, as contained in Article 10 of the European Court on Human Rights.

Ofcom's Guidance<sup>1</sup> to Section Six (Elections and Referendums) of the Code ("the Section Six guidance") states that there is no obligation on broadcasters to provide

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section6.pdf>

any referendum coverage. However, if broadcasters choose to cover referendums, they must comply with the rules set out in Section Six of the Code.

The broadcaster's right to freedom of expression is not absolute. In carrying out its duties, Ofcom must balance the right to freedom of expression on one hand, with the requirement in the Code to preserve "due impartiality" on matters relating to political or industrial controversy or matters relating to current public policy on the other.

The effect of Rule 6.1 is to ensure broadcasters preserve due impartiality in their coverage of elections and referendums. This is to help ensure that elections and referendums are conducted fairly.

Because the EU Referendum was a matter of major political controversy and a major matter relating to current public policy, Rule 5.11 and 5.12 applied in this case. These require due impartiality to be preserved by broadcasters in their coverage of major matters of political or industrial controversy and major matters relating to current public policy. In addition, when dealing with such matters, "an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes".

In assessing whether due impartiality has been preserved, the term "due" is important. Under the Code, it means adequate or appropriate to the subject and nature of the programme. "Due impartiality" does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented.

In this case, we noted that *Zing Jukebox Live* was a live music request programme and that the presenter's comments were relatively brief. However, on two separate occasions the presenter made clear his intention to vote in favour of leaving the European Union. He highlighted his reasons for intending to vote this way by stating "*the country will be more stronger if there was independence*" and gave examples of different ways in which he thought the money that he considered could be saved from the UK leaving the EU "*should be spent on the people of this country*". We also noted the programme was broadcast just two days before polls opened. At no point either in this programme or in clearly linked and timely programmes did the Licensee reflect an alternative viewpoint (i.e. one that could be considered supportive of the UK remaining in the EU).

Taking account of all these points, we considered that this programme failed to preserve due impartiality and to include "an appropriately wide range of significant views".

Ofcom noted that the disclaimer broadcast before the programme stated that the views expressed on the channel were "*mere opinions and do not necessarily reflect those of Zee TV Network, its affiliates*", the broadcaster was "*not liable and will not be responsible for any of the views...expressed in the programme*", and all "*shows are... broadcast for entertainment purposes only*". As acknowledged by the Licensee, it is fully responsible for the content it broadcasts.

We noted the actions taken by the Licensee as a result of this incident and that it had apologised. However, for the reasons set out above, we considered that this material had clearly breached Rule 6.1 (and Rules 5.11 and 5.12).

### **Breaches of Rule 6.1 (and Rules 5.11 and 5.12)**

## In Breach

### Desi Street

TV99, 5 March 2016, 10:00

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#### Introduction

TV99 is a general entertainment channel aimed at the Asian community in the UK and Europe. The licence for the service is held by 99 Media Org Limited (“the Licensee”).

*Desi Street* is a lifestyle programme about Asian culture and heritage in the UK. A complainant alerted Ofcom to the programme broadcast on 5 March 2016, which featured three local businesses in Southall: the Shahi Nan Kebab; Southall Designer Outlet; and Chini Chor (a food shop). The complainant considered that the programme promoted these businesses.

As the programme was predominantly in Punjabi and some English, Ofcom translated the Punjabi content into English.

We reviewed the programme and noted the following introduction:

Host: *“You can promote your goods via TV99 and we will be happy to provide you the time [on air]. Is there any special message that you want to give the wider viewership about your goods? Particularly as there is a large Asian community in this area. A message to all Muslims, Hindus, Sikhs in the area”.*

The programme consisted of three segments that featured the local businesses. In each case the segment included images of the featured business and visual and audio references to the range and quality of the goods which they offered. Some extracts of the references are noted below:

#### The Shahi Nan Kebab

This part of the programme included images of the shopfront, shop interior, the food on offer and customers dining, while the presenter interviewed the seller and the customers. The dialogue included the following information:

Host: *“We are standing out here in front of Shahi Nan Kebab, here in Southall which is right opposite the station. This is a small Dhaba<sup>1</sup> based here and you can smell the lovely aroma coming from the restaurant. So let’s now take you inside Shahi Nan Kebab, and enquire about the aroma, the taste of their food, in particular their famous kebabs. Let’s talk to the owner who has been here a long period of time, and ask him about the foods, about Southall and this restaurant and the owner Muhammad Hassan will tell us about this”.*

Owner: *“We opened this restaurant in 1969, and we have been here 48 years...We only make kebabs from lamb and in addition our donner kebabs are very famous. We work until 4am every day”.*

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<sup>1</sup> Dhaba: small roadside cafés providing cheap, local food in the Indian sub-continent.

Host: *“He is saying that the Prime Minister and even international cricketers and others are all coming here. Even taxi drivers and others all come here as they are open all night, whenever they finish their shift. Is there any special recipe that you use?”*

Owner: *“Our recipe for kebabs is unique, and cannot be found anywhere else in the UK. In addition, our kebabs are unique”.*

Host: *“The taste of the kebabs made here is unique, and is available only here in Southall. We will show the freshness and the quality of all the products”.*

[Camera zooms on food on display.]

Host: *“Lamb Tikka and Chicken Tikka, I will leave it to Aslam Sahib to explain further because I am not familiar with much of the products on display here”.*

Host: *“These are all excellent items and they are all competitively priced and they do not place a burden on anyone”.*

[Close-up of menu board with prices.]

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Host: *“As you can see the Naan are being placed in the Tandoor. Now we have two brothers who have just ordered some Naan Kebab. Let’s ask them how much they are enjoying the food”.*

Customer: *“The food is really excellent and we enjoy it a great deal”.*

### Southall Designer Outlet

This part of the programme included images of the shopfront, shop interior and products on sale, while the presenter interviewed the seller about the shop and announced to viewers that they could purchase the goods from the TV99 website. The dialogue included the following information:

[Close-up of the shopfront “Southall Designer Outlet” displaying logos for Superdry, Giorgio Armani, Polo, Lacoste and Nike.]

Host: *“Now we are in front of the shop called Southall designer wear. So you can find all sorts of branded clothes here such as Nike, all available particularly to youngsters. We will go inside and see what they have on display”.*

[Pushes open shop door and enters the shop.]

Host: *“Although Southall is known for its Desi clothes, it also caters for its youngsters, both boys and girls. Catering to all these youngsters is this Desi, and very stylish young guy, and his name is Pardek. We have here every type of clothes both branded and unbranded catering for the youth market. They have really nice things such as jackets, uppers, and they have every type of English style of clothes catering*

*for all of [Southall's] community. Could you tell us a little bit about your business and something about Southall as well? How long have you been running this business in Southall?"*

Owner: *"Almost four months".*

Host: *"So he has been here for four months, and carrying on business here. What has been the response to your business from the public?"*

Owner: *"It's alright. The thing is that... the main thing is that people who don't know about designer will think it is too expensive, as they don't know what it is. But people who know about designer clothes realise that it is quite cheap".*

Host: *"Anybody who knows about designer clothes, they know they are doing very cheap in price. Very good price for them, and selling very good products. Very...for every size...kids to family. All things here available. So he will tell all things they are selling separate, separate show you on our TV, and he will introduce us with their stuff. So we go the stuff and ask him what is that thing. So let's go in shop".*

Owner: *"Well we sell lots of brands from big brands to small brands. For instance, like Armani to smaller brands like Fila, Nike and Adidas. These are ladies trousers. These are decent prices only £15. I think outside the prices are about £30, so we are doing good prices on these. Then we have gilets from Kangol to Rapid Sports to Tokyo Laundry, these are decent prices for those brands. Then we have jackets, expensive jackets to cheaper jackets. We have the most expensive jackets. Like Ben Sherman jackets, almost £200, and the cheapest jacket we have Hollister from £50, which is very decent offer.*

*[Presenter pointing to clothes.]*

Owner: *Ok we have hats and a few US Polo for kids, and smaller brands Ellesse on decent prices. Then we go on to Fila t-shirts for people who would like to buy cheaper t-shirts. Up over here we have track suits, t-shirts and jumpers. All brands from Marshalls to all brands. Over here we track suits to t-shirts from Ralph Lauren to Adidas".*

Host: *"You can see its very colourful stuff, and very good stuff here".*

Host: *"There is more stuff here, this side. Is this sale price?"*

Owner: *"Yes this is all sale price. Like for instance this UCLA which is going for about £60-£70 elsewhere, we are doing it here for £50".*

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Host: *"Stuff in this shop there is jeans Armani jeans, and you see old jeans, like a guitar. Although you can't see any guitars but you can see some really good jeans...they also have summer jackets. Really good brands like GS, and also Franklin Marshall's. When people buy shirts, jackets and trousers then they want to buy beautiful shoes. These are Polo shoes [lifting up shoe] and in the same way they have different designer shoes. They also have nice caps [lifting up flat cap]. They*

*have every type of cap and fashion dresses. So whenever you come to Southall and you want some designer stuff, come here and buy some designer clothes. Whenever you come to Southall, come Designer Outlet and whatever you need like Polo you can get it for half price. The price is very good, and their stuff is original and they are trying to increase their popularity via TV99. If you go to TV99's website you can see their original brands and their sale purchase prices, and you can buy them from there too. We will now continue to show you the colourful side of Southall. Let's go ahead..."*

### Chini Chor

This part of the programme included images of the shopfront, shop interior, the food on offer and customers dining, while the presenter interviewed the seller and the customers. The dialogue included the following information:

[Close-up of Chini Chor<sup>2</sup> Shopfront]

Host: *"We are in Southall, standing outside Chin Chor. This is another unique sign of colourful Southall. They sell Desi food like Makki Ki Roti, and Sarson Ka Saag is particularly famous. People from India, Pakistan and Bangladesh if they come to Southall make a point of coming to Chini Chor because their Saag, Makkan are particularly famous, so let's go inside and find out a bit more".*

[Enters shop.]

Host: *"We are now in Chini Chor and on Desi Street we are going to find out more about Desi foods, and let's ask the owner why he has named his shop Chini Chor, did someone steal sugar from them? Enjoying the colourful atmosphere of Southall, we have our brother here, we will talk to him and at the same time I will show you their food".*

[Host stands behind the counter with owner]

Host: *"Let's talk to Ravi about all their Desi foods, and also how much sugar has been stolen from him [laughing]. Obviously his sleep has been stolen by his life partner but we don't know who stole the sugar, and all the other stuff on display. So brother Rabi what is your contribution to Southall?"*

Owner: *"It's very good, we have every type of person that comes here from Hindu, Muslim Sikh and Christian, every type because we are pure vegetarian. We also make food that has no onions and no garlic".*

Host: *"They say that they are pure vegetarian, and they serve all the communities here equally particularly as there are Hindus, Muslim, Sikh and Christian all living here. Everyone comes here it is pure vegetarian taste. Is there something special as you have already mentioned Roti and Saag, and this clearly reminds you of India?"*

Owner: *"We make Channa Batura and we make fresh Saag. Masala Dosa and every type of food".*

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<sup>2</sup> Sugar Thief.

Host: *"My mouth is watering just listening to that and I feel as if I am transported to the countryside and am in a field somewhere in India, and I can look forward to fresh Makki ki Roti and Saag".*

Owner: *"We make about 50 different parathas".*

Host: *"And because they are pure vegetarian they make only vegetarian food, and is there anything special about the way you make this food? Is there something special in the way that you cook?"*

Chef: *"I have been making it for a very long time".*

Host: *"How long have you been doing this?"*

Chef: *"I think 30 years".*

Host: *"You have been doing this for 30 years, and yet you only look 30 in any case. So you were born just when the sugar was being stolen? [laughter]. So this chef has been working here for 30 years and is from UP, Lucknow, which proves that wherever you are from when you come to work in Southall you work for the whole community. Is there anything that could be called your speciality?"*

Chef: *"I am vegetarian and a master of vegetarian food".*

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Host: *"So, when the chef is not here, then you become the assistant chef, and do all the work in his place. Everything he makes is very tasty and he is part of the family. He is part of the Chini Chor family. Stay happy and enjoy the food".*

[Close-up of dishes in food cabinet, as the owner identifies each dish separately]

Owner: *"These are all 100% vegetarian and anyone can eat them, and when I say that they are vegetarian that means there is no issue of halal or non halal".*

[Continues to identify and point out a range of foodstuffs in the freezer cabinet.]

Host: *"These are the sort of sweets that our grandmothers used to make, and if anyone wants to remember grandmothers cooking then they only need to come to Southall, and come to Chini Chor, and I can see that you have Jalebi's and Ladoo's on offer as well. You also have Gol Gupa's in fancy boxes".*

[Camera panning over a series of sweet boxes.]

Host: *"Have a look you can see they have these boxes on display which can be used at weddings and all of this available here at Chini Chor. Chini Chor has been a success due to the Southall community who are repeat customers and who return here again and again".*



Owner: *“And I am grateful to all of them”.*

Host: *“And he is grateful to them and as long as the people of Southall continue to come here the taste will stay the same and will be of the same high quality. That is the great contribution of all our community that all products are available to everyone, and when they want to feel nostalgic for home, they just come down to Chini Chor”.*

[Customers in view.]

Host: *“They sit here and chat amongst themselves, and in this way we have two brothers here, enjoying a cup of tea and also enjoying the time of day. So tell us what you feel when you come here?”*

Customer: *“Very good”.*

Host: *“Does this feel like a proper Desi Street?”*

Customer: *“It is a very good, I am from Goa, India”.*

[Camera pans to another customer.]

Host: *“Here is another customer and he is also from India, so please tell us how you feel being here in Southall?”*

Customer: *“Being here in Southall feels as if we are back in our own country”.*

Host: *“And so you enjoy the taste of Chini Chor?”*

Customer: *“Yes, I like it a lot I like the taste”.*

Ofcom requested information from the Licensee to decide whether the references constituted product placement as defined in the Code<sup>3</sup>. In response, the Licensee provided memoranda of understanding between itself, the producer and the featured businesses. The Licensee confirmed that the references described above were not in return for payment or other valuable consideration from the businesses in question to TV99, the programme producer, or any connected person.

On the basis of information provided, Ofcom considered that the references raised issues warranting investigation under the following rules of the Code:

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

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

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<sup>3</sup> The Code defines product placement as “The inclusion in a programme of, or reference to, a product, service or trademark where the inclusion is for a commercial purpose, and is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any other person connected with a relevant provider, and is not product placement”.

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

We therefore asked TV99 for comments as to how the material complied with these rules.

## Response

The Licensee disagreed with Ofcom’s Preliminary View (that the content was in breach of Rules 9.4 and 9.5 of the Code). The Licensee repeated that it had not made any commercial gain from the programme.

The Licensee also stated that the translation used for the preparation of Ofcom’s Preliminary View was “not exactly accurate and thus overlooked the point of view of the broadcaster”.

Ofcom provided the Licensee with the translation used and gave the Licensee the opportunity to comment on inaccuracies. The Licensee’s comments were limited to comments on the interpretation of the content (shown in bold below), rather than on the dialogue itself, for example:

Host: *“These are all excellent items and they are all competitively priced and they do not place a burden on anyone”.*

[Close-up of menu board ~~with prices.~~ **to show inter of shop for information.**]

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**[Camera showing lots of cloths in shop not shown any brand while interview]**

Owner: *“Well we sell lots of brands from big brands to small brands. For instance, like Armani to smaller brands like Fila, Nike and Adidas. These are ladies trousers. These are decent prices only £15. I think outside the prices are about £30, so we are doing good prices on these. Then we have gilets from Kangol to Rapid Sports to Tokyo Laundry, these are decent prices for those brands. Then we have jackets, expensive jackets to cheaper jackets. We have the most expensive jackets. Like Ben Sherman jackets, almost £200, and the cheapest jacket we have Hollister from £50, which is very decent offer”.*

[Presenter pointing to clothes **nothing can be seen as brand or price.**]

The Licensee however said that any breach of Rules 9.4 and 9.5 was inadvertent and apologised for this. It confirmed that it had “taken very firm steps to make sure that there is no repetition of this breach of regulations”. In particular, the Licensee confirmed that it had instructed all employees of TV99 (including temporarily engaged freelancers) “to make themselves fully conversant with Ofcom regulations concerning commercial references in documentary or drama programmes” as

published in Section Nine guidance, “and to make sure that all further programming rigidly adheres to the regulations as detailed therein”. The Licensee also said that the on air call to action to businesses to “promote [their] goods via TV99” was “to be deleted from the programme immediately and not to be mentioned verbally or in writing”.

## Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure a number of standards objectives, one of which is “that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”. These obligations include ensuring compliance with the Audiovisual Media Services (“AVMS”) Directive.

The requirements of the AVMS Directive and the Act are reflected in Section Nine of the Code, including Rule 9.4 and Rule 9.5 among others. The rules in this section serve to protect viewers from both excessive commercial references in programming and from surreptitious advertising by:

- limiting the extent to which references to products, services and trade marks can feature in programming; and
- helping to ensure that broadcasters do not exceed the limits placed on the amount of advertising they can transmit.

Importantly, Section Nine does not proscribe all references to products and services in programmes. However, it does require all such references to be justified by the editorial requirements of a programme and not be promotional or unduly prominent.

Rule 9.4 states that products, services and trade marks must not be promoted in programming. Ofcom’s published guidance on Rule 9.4<sup>4</sup> states: “Where a reference to a product or service features in a programme for purely editorial purposes, the extent to which a reference will be considered promotional will be judged by the context in which it appears. In general, products or services should not be referred to using favourable or superlative language and prices and availability should not be discussed”

Rule 9.5 states that no undue prominence may be given in programming to a product, service or trade mark, noting that undue prominence may result from a reference to a product, service or trade mark where there is no editorial justification, or from the manner in which a product, service or trade mark is referred to. Ofcom’s published guidance on Rule 9.5 states: “Whether a product, service or trade mark appears in a programme for solely editorial reasons...or as a result of a commercial arrangement between the broadcaster or producer and a third party...there must be editorial justification for its inclusion. The level of prominence given to a product, service or trade mark will be judged against the editorial context in which the reference appears.”

It is important to emphasise that the rules in Section Nine of the Code are intended to preserve the integrity of editorial content and protect audiences by limiting the number and kind of commercial references contained in programming. In this case, we considered the segments contained promotional references to the three

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<sup>4</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>

businesses (The Shah Nan Kebab, Southall Designer Outlet and Chini Chor) that were more akin to advertising than editorial material. Specifically, *Desi Street* included:

- detailed information on the range and quality of services provided by the businesses (e.g. *“Ok we have hats and a few US Polo for kids, and smaller brands Ellesse on decent prices. Then we go on to Fila t-shirts for people who would like to buy cheaper t-shirts. Up over here we have track suits, t-shirts and jumpers. All brands from Marshalls to all brands. Over here we track suits to t-shirts from Ralph Lauren to Adidas”* and *“We make Channa Batura and we make fresh Saag. Masala Dosa and every type of food”*);
- favourable or superlative language (e.g. *“The taste of the kebabs made here is unique, and is available only here in Southall. We will show the freshness and the quality of all the products”*, *“Everything he makes is very tasty and he is part of the family”* and *“...will be of the same high quality”*);
- precise pricing information and availability (e.g. *“These are all excellent items and they are all competitively priced”* and *“Very good price for them, and selling very good products. These are decent prices only £15. I think outside the prices are about £30, so we are doing good prices on these”*, *“Like for instance this UCLA which is going for about £60-£70 elsewhere, we are doing it here for £50”*);
- calls to action (e.g. *“You can promote your goods via TV99 and we will be happy to provide you the time [on air]. Is there any special message that you want to give the wider viewership about your goods? Particularly as there is a large Asian community in this area. A message to all Muslims, Hindus, Sikhs in the area”* and *“If you go to TV99’s website you can see their original brands and their sale purchase prices, and you can buy them from there too”*).

Ofcom noted the Licensee’s representations on the accuracy of the translation used. We further noted that the revisions to the translation provided by the Licensee were focused on the interpretation of the dialogue as opposed to changes to the dialogue itself. We considered that the points made by the Licensee on the translation did not materially alter how Ofcom should assess the content, and that Ofcom had taken account of the viewpoint of the broadcaster in an appropriate way. In Ofcom’s view, these extensive references to the products offered by the businesses featured, combined with the favourable language used, and the information given about prices and availability, meant that the content was clearly promotional in tone. The programme was therefore a breach of Rule 9.4 of the Code.

Further, we noted that each separate part of the programme focused entirely on the products offered by a specific business. Although there may be editorial justification for certain references to brands in culture and lifestyle programmes, in this case, the programme itself was little more than a vehicle for the promotion of the businesses. Given the presentation of the items was highly promotional in tone, as described above, the extended references to the products provided by the businesses featured were not justified. Because the programme in its entirety was dependent on the inclusion of detailed references to the features business’ products and services, Ofcom concluded that the programme was in breach of Rule 9.5 of the Code.

### **Breaches of Rules 9.4 and 9.5**

## Not in Breach

### Love Island

30 June 2016, ITV2, 21:00

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#### Introduction

*Love Island* is an ITV2 reality programme in which a group of young single people look for romance while staying in a luxury villa.

Ofcom received seven complaints about the episode broadcast on 30 June 2016 at 21:00. Viewers objected to a scene in which housemates Emma and Terry had sex. This was broadcast shortly after the watershed.

Before the programme started the continuity announcer alerted viewers to:

*"...scenes of a sexual nature, adult content and strong language throughout".*

At approximately 21:09, the narrator said:

*"It's bedtime and, having newly coupled up with Terry, Emma's got some top secret plans. But she's definitely not going 'undercover'".*

Emma was shown in the bathroom with fellow housemate Olivia. The following exchange took place:

Emma: *"So, if we have sex on top of the covers, they can't air that, can they? Promise me".*

Olivia: *"No, they can't air it at all. Why? Are you getting shapey<sup>1</sup>?"*

The individual housemates then got into bed with their partners. The lights in the communal bedroom were turned off and the following images were shown in the form of footage taken using night vision cameras:

- Emma and Terry in bed together and kissing, with their upper bodies visible above the duvet (with Emma wearing a slip);
- Emma and Terry looking at each other in medium close up;
- a wide shot from behind of Emma as the duvet slipped from her shoulders down to her lower back, which indicated that under the duvet she was straddling Terry;
- a series of three brief close-ups of Emma's back and shoulders as the couple had sex; and
- a shot from behind of Emma pulling the duvet back up over her shoulders afterwards.

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<sup>1</sup> The word "shapey" was used by the housemates to mean 'making shapes under the duvet' (i.e. having sex).

These shots were interspersed with images of the shocked reactions of the other housemates in the villa's bedroom while Emma and Terry had sex, as well as interview footage of them afterwards recounting their view of what had happened. These recollections included:

*"It was all going off in the bedroom. Everyone got a bit shapey. I turned to my right – whoah!"*

*"Well, how opinions can change. I literally could not believe what I was seeing. Emma just sat there, duvet off, riding him like a buckin' bronco!"*

*"I feel like they blocked us out like they had blinkers on like horses do, and they just carried on".*

*"Who comes in a villa and is literally adamant 'I'm not going to have sex' and does that in front of everyone?"*

During the sequence, the soundtrack featured the Toreador Song from Bizet's *Carmen*.

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

Rule 1.6: "The transmission to more adult material must not be unduly abrupt at the watershed...For television, the strongest material should appear later in the schedule".

Rule 2.3 "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include, but is not limited to...sex...Appropriate information should also be broadcast where it would assist in avoiding or minimising offence".

We therefore asked ITV2 Limited ("ITV" or "the Licensee"), how the content complied with these rules.

## **Response**

### Background

ITV said that *Love Island* is "primarily intended for a young adult audience, and this is reflected in the casting, tone and subject matter of the programme".

The Licensee pointed out that the programme has "regularly featured sexual activity between the contestants in its post-watershed episodes". ITV said that "prior to the incident with Emma...and Terry the series had included more than 30 similar incidents of couples engaging in sexual activity, most of which took place in the communal bedroom". ITV described all these incidents as "relatively inexplicit, due to careful editing, although the viewer is rarely left in doubt that some sexual activity is occurring". In ITV's view therefore, there is a "very well-established audience expectation of sexual activity being featured in this programme, and this is a significant element of the romantic relationships that develop during the series".

### Rule 1.6

ITV highlighted the continuity announcement before the programme that alerted viewers to “*scenes of a sexual nature, adult content and strong language throughout*”. ITV said that “viewers would therefore have been in no doubt that the programme would contain sexual content”. ITV also pointed out that the episode “commenced with nine minutes of entirely non-sexual material (barring one kiss between a couple who had made up and resumed their romance), with various contestants talking around the pool about the various relationships in the house”.

ITV said the sexual activity between Emma and Terry was “also very clearly signposted in the programme itself before it commenced” in the programme’s voiceover which said:

*“It’s bedtime and, having newly coupled up with Terry, Emma has some top secret plans, but she’s definitely not going ‘undercover’”.*

For these reasons, ITV considered “that the transition to more adult material in the programme after the watershed was not unduly abrupt”. In addition, “given the editing of the sexual scene itself”, ITV did not consider that this scene “constituted ‘the strongest material’”.

### Rule 2.3

ITV said that “the depiction of sexual activity in *Love Island* is relatively commonplace...but it is always considered very carefully by the editorial team, and by an experienced compliance advisor who works with the producers on location, and reviews all edited sequences before broadcast”.

In relation to the material described above, ITV argued “the context of its presentation is important in assessing its potential for offence”. In particular, ITV highlighted that “the sequence is edited to music (the Toreador Song from Bizet’s *Carmen*) for deliberate comic effect, and the emphasis is on the reactions of the fellow housemates and their scandalised comments to camera about the incident, rather than footage of the couple themselves”. ITV also pointed out that the “entire action occurs in the dark, recorded with night vision cameras, thereby making the images more indistinct, and each shot of the sexual activity is intercut with “reaction” material”. ITV further noted that “Emma is wearing a slip throughout, so there is no full nudity and only very brief and indistinct shots of the couple throughout the sequence”.

In ITV’s view, the “editing carefully avoided any shot being overly explicit, and there is relatively little sound included of Emma and Terry’s lovemaking”. ITV also said that the comic tone was further emphasised by the “shocked reactions of the other housemates, and their comments after the event”.

In summary, the Licensee said it “was necessary to give viewers a clear idea of what had happened since it gave rise to much of the ensuing discussion and interaction between contestants on the following day”. ITV suggested the “programme did not dwell on the sexual activity itself, and its depiction was stylized and inexplicit”. ITV also highlighted that “the programme was preceded by appropriate viewer information, which would have also assisted in avoiding or minimising viewer offence”.

For these reasons, ITV said it did not consider that the programme was in breach of Rules 1.6 and 2.3 of the Code.

## Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, which include ensuring that persons under the age of eighteen are protected, and providing adequate protection for members of the public from harmful and/or offensive material. These objectives are reflected in Sections One and Two of the Code.

### Rule 1.6

Rule 1.6 states that the transition to more adult material must not be unduly abrupt at the watershed<sup>2</sup>, and that the strongest material should appear later in the schedule. What constitutes an “unduly abrupt” transition to more adult material depends on the context: for example, factors such as the nature of the material, the editorial content of the programme, the channel, the time of broadcast and the expectations of the audience. We therefore took account of all these factors when determining whether there was sufficient justification for broadcasting this content approximately nine minutes after the 21:00 watershed.

We noted that *Love Island* is a relatively well-established reality show format and that this episode formed part of the programme’s second series (which began on 30 May 2016). The series focuses on the romantic entanglements of a group of young single people, and we recognised that sexual activity between housemates had occurred in this and the previous series, and is often a key element of the programme’s ongoing narratives.

We took account of other specific contextual factors that we considered reduced the explicitness and overall sexual tone of the material. In particular, we observed that the images of the sexual activity were recorded using night vision cameras so that they were in monochrome and relatively indistinct, and the shots of Emma straddling Terry while they were having sex were very brief (approximately six seconds in total duration). We also noted that none of this sexual activity was shown in any explicit way: the couple were covered by a duvet below the waist and Emma was wearing a slip throughout, and there were no images of full nudity during these scenes. We considered that the use of music, and the intercutting of the shots of Emma and Terry with the housemates’ reactions, lightened the tone and further reduced the potential impact on viewers of the sequence. We also took account of the clear warning before the programme that alerted viewers to “*scenes of a sexual nature*”.

Ofcom had regard to the fact that the programme was broadcast on ITV2, a channel that is aimed at a young adult audience. In light of this, much of this channel’s post-watershed schedule includes reality programmes as well as films and comedies targeted at adults. We therefore considered it likely the audience would have a greater expectation for content potentially unsuitable for children to be shown shortly after the watershed on this channel, compared to the audience for the main ITV public service channel.

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<sup>2</sup> Section One of the Code states: “Meaning of “the watershed”:...The watershed is at 21:00. Material unsuitable for children should not, in general, be shown before 21:00 or after 05:30”.



We also noted that this episode of *Love Island* was immediately preceded by a double-bill of the sitcom *Two and a Half Men*. This programme typically includes some limited discussion of adult and sexual themes and does not aim to attract child viewers. We considered these factors helped, in this case, to ensure that the transition to stronger material after the watershed was not unduly abrupt. In addition, given the brevity and relative inexplicitness of the content, we did not consider it amounted to “the strongest material”.

For all these reasons, our Decision was that Rule 1.6 was not breached.

### Rule 2.3

Rule 2.3 requires that broadcast material which may cause offence, including sexual material, is justified by the context. Context includes, but is not limited to, the editorial content of the programme, the service on which the material was broadcast, the time of broadcast, programmes scheduled before and after, the degree of harm of offence likely to be caused, likely audience expectations, warnings given to viewers and the effect on viewers who may come across the material unawares.

Ofcom first considered whether the material in this programme had the potential to cause offence. As described above, this reality programme showed two housemates having sex, while other housemates in the same bedroom looked on. We considered that this material was capable of causing offence, potentially more so than if a depiction of sex had been shown in a drama programme, for example.

We went on to consider whether the broadcast of this potentially offensive material was justified by the context.

As noted above, the material was relatively indistinct as it was shown in monochrome night vision footage. It was accompanied by music for comic effect, and the primary focus of the sequence was on the other housemates’ surprised reactions, rather than the sexual act itself. We also took into account that the shots of Emma and Terry having sex were extremely brief (approximately six seconds in duration). We considered that these factors significantly reduced the material’s capacity to offend.

We also had regard to the likely expectations of the audience that *Love Island* may well include some depictions of sexual behaviour, given the nature and concept of the programme. We noted that the material was broadcast after the watershed and that the pre-programme warning made it clear to viewers that the programme contained “*scenes of a sexual nature*”.

We further took account of the fact the programme was broadcast on ITV2, a channel that is targeted at young adults. In Ofcom’s view, the nature of this channel’s post-watershed programming (which often includes a range of reality shows as well as films and comedies aimed at an adult audience) increased the likelihood that this particular content would not have exceeded audience expectations.

For all these reasons, we considered that the Licensee had ensured that this potentially offensive material was justified by the context. Therefore, our Decision was that it did not breach Rule 2.3.

In the particular circumstances of this case, Ofcom has found this material did not breach of the Code. However, as noted above, we consider that content including real sex may carry a greater potential to raise issues under the Code than depictions

of sex in a drama or film. Broadcasters should take particular care and exercise caution when scheduling material of this type soon after the watershed.

**Not in Breach of Rules 1.6 and 2.3**

## Broadcast Licence Conditions cases

### In Breach

#### Retention and production of recordings

*Top Pop, 13 March 2016*

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#### Introduction

Top Pop is an entertainment and music channel targeting the Turkish population and the Turkish speaking community in Europe. The licence is held by KM TV Limited (“KM TV” or “the Licensee”).

As part of our routine monitoring, Ofcom requested a recording of 24 hours of the channel’s output.

The Licensee provided seven hours of the requested 24 hours of output by the deadline. We considered the failure to provide all of the requested content raised issues warranting investigation under the following Licence Conditions:

“11(2) In particular the Licensee shall:

- (a) Make and retain or arrange for the retention of a recording in sound and vision of every programme included in the Licensed Service for a periods of 60 days from the date of its inclusion therein; and
- (b) At request of Ofcom forthwith produce to Ofcom any...recording for examination or reproduction...”

Ofcom sought the Licensee’s comments as to how it had complied with Conditions 11(2)(a) and (b) of its Licence.

#### Response

KMTV said that its technical services are outsourced to a third party. The Licensee explained that the third party company experienced a failure of its hard disc and therefore could not provide the requested recordings. KMTV said that the third party had taken “necessary steps to prevent future problems”.

#### Decision

Under the Communications Act 2003, Ofcom has a duty to ensure that in each broadcaster’s licence there are conditions requiring that the licensee retain recordings of each programme broadcast, in a specified form and for a specified period after broadcast, and to comply with any request to produce such recordings issued by Ofcom. For TLCS licences, this is reflected in Licence Conditions 11(2)(a) and (b).

The Licensee did not provide all of the output to Ofcom as requested. KM TV Limited therefore breached Conditions 11(2)(a) and (b) of its TLCS licence.

Breaches of these Licence Conditions are significant because they impede Ofcom’s ability to assess in a timely way whether a particular broadcast raises potential issues

under the relevant codes. This can therefore affect Ofcom's ability to carry out its statutory duties in regulating broadcast content.

Ofcom noted the Licensee's explanation that these incidents were the result of technical issues experienced by a third party. We welcome KMTV's confirmation that steps have been put into place to prevent a recurrence. However, it is the sole responsibility of the Licensee to put in place and maintain robust procedures to ensure it can provide recordings that Ofcom requires by the requested deadline.

We will monitor the Licensee's arrangements to retain and provide recordings to Ofcom in due course, and should similar compliance issues arise, we will consider taking further regulatory action.

### **Breaches of TLCS Licence Conditions 11(2)(a) and (b)**

## Broadcast Fairness and Privacy cases

### Not Upheld

#### Complaint by Ms G on behalf of her son (a minor)

*Channel 4 News, Channel 4, 6 January 2016*

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#### Summary

Ofcom has not upheld this complaint made by Ms G on behalf of her son (a minor) of unjust and unfair treatment and unwarranted infringement of privacy.

The programme reported on the rise in gang attacks, stabbings and youth violence in London. In particular, during part of the report which discussed the increasing use of large hunting knives by gangs, CCTV footage was shown of an incident at an ice cream parlour where knives were brandished. Ms G's son was visible in the footage although he was not named or referred to during the report.

Ofcom found that:

- Ms G's son was not treated unjustly or unfairly in the programme as broadcast.
- Ms G's son did not have a legitimate expectation of privacy either in connection with the obtaining of footage of him included in the programme or in the subsequent broadcast of this footage. Therefore, there was no unwarranted infringement of Ms G's son's privacy.

#### Programme summary

On 6 January 2016, Channel 4 broadcast an edition of its evening news programme *Channel 4 News*. In this edition of the programme an extended report was broadcast which focussed on gang violence in London. The presenter introduced the report by stating that a rise in "*gang attacks, stabbings and youth violence*" had led to a "*Home Office review into knife legislation*" following 8,000 arrests in the last seven months by the Metropolitan Police Service "*in response to the rise in knife and gun crime*".

The report was then broadcast and, while images of a map of London and CCTV footage of what appeared to be a knife attack were shown, the reporter said:

*"London's ganglands are growing; serious youth violence, knife and gang crime are at a three year high. Government efforts to control the use of knives is failing. It is by far the biggest threat to the City's young lives".*

The reporter said that for the last six months, Channel 4 News had had "*exclusive access*" to "Operation Trident"<sup>1</sup>.

The reporter then interviewed a Detective Inspector who was in charge of an investigation into the death of a 17-year old. Footage of the covered body of the victim was shown in the street following the fatal attack. CCTV images of a number of other knife attacks were then shown as the reporter said that in London there were "*not a few hundred, but thousands of feuding gang members*" aligned to two hundred

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<sup>1</sup> The Metropolitan Police Service's Trident and Area Crime Command is a police unit dedicated to tackling serious organised street and gang crime.

separate gangs. The reporter then went on to set out the work of Operation Trident and the areas of London in which some of the gangs operated. In particular, he said: *“more and more, Trident is finding links between the [YouTube music] videos and street violence; even murder”*.

Later in the report, CCTV footage was shown of a number of young men entering an ice cream parlour and confronting another group of young men (some of their faces were blurred or otherwise obscured by clothing). The reporter said:

*“Last summer’s two strikes for possession means prison is losing its fear factor. This CCTV of a stand-off in an ice cream parlour in east London shows how survival comes first”*.

The CCTV footage included alongside this commentary showed one of the men running forward towards the other group and another brandishing a large knife. As the knife was drawn, Ms G’s son (whose face was not blurred) could be seen in the background observing the scene, before then moving towards the confrontation. The CCTV footage was paused and the large knife was highlighted with a white circle. In the background of this still frame of the CCTV footage, Ms G’s son could be seen.

The reporter then said:

*“These ‘Rambo’ style knives can easily be picked up online”*.

Further CCTV footage from the ice cream parlour confrontation was broadcast which showed another individual brandishing a large knife; Ms G’s son was not shown in these images.

The report went on to discuss the online availability of large knives (referred to as *“Zombie killing knives”*) and how the gangs now operated their drugs businesses outside London, in coastal towns.

After the report ended, the presenter discussed the issues the report raised with a number of contributors including: a former gang member, the mother of a boy who had been killed by a gang and the then London Mayoral candidate, Mr Zac Goldsmith MP.

No further footage of Ms G’s son was included in the programme. He was not named or specifically referred to and the footage in which he could be seen was broadcast for approximately three seconds.

## **Summary of the complaint**

### Unjust or unfair treatment

- a) Ms G complained that her son was treated unjustly or unfairly in the programme as broadcast because the inclusion in the programme of footage of her son would have led viewers to believe that her son was part of the gang and that he appeared to be “guilty” as his face was not obscured.

Ms G said that her son was identifiable in the background of the footage of the ice cream shop confrontation while some of the “guilty youths faces” were blurred. Ms G said her son was innocent and not prosecuted in relation to the incident. Ms G said that her son’s life had been endangered as a result.

### Unwarranted infringement of privacy

- b) Ms G complained that her son's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because CCTV footage of her son witnessing a gang related confrontation was obtained from the police.

Ms G said that the police had questioned her son so would have been aware of her contact details and that the "police media unit should have been aware that [her son's] privacy was infringed" in providing the material to the broadcaster.

- c) Ms G also complained that her son's privacy was unwarrantably infringed in the programme as broadcast because CCTV footage of her son witnessing a gang related confrontation was broadcast without her consent.

Ms G said that the consequence of this was that his identification singled him out as being a member of a gang, even though he was not, and that he appeared to be guilty by the fact his face was not pixelated while the faces of others were. Ms G said that her son was 14-years old and due to the broadcast, the police were now involved in protecting him.

### **Broadcaster's response**

#### *Background to the report*

Channel 4 said that the *Channel 4 News* team was granted unique access to the work of the Metropolitan Police Service's Trident and Area Crime Command ("the Unit"). The broadcaster said that the Unit recognised the importance of informing the public about its work and the increase in street crimes by gangs, in particular, the use of knives and firearms. Channel 4 said that it was a serious and growing criminal and social problem that was rarely reported on.

Channel 4 said that it was only granted access by the Unit after many meetings between the editorial team and the police. The broadcaster said that it was a carefully researched report, requiring both editorial and legal scrutiny, which relied on key information only available from the police. Channel 4 also explained that the report was prepared over a period of four months and involved 'fly-on-the-wall' access by the editorial team filming the Unit's police officers at work responding to gang-related crime. Further, Channel 4 said that the police liaised closely with the news team to ensure issues were highlighted, such as: on-going court proceedings including the identification of juveniles in connection with proceedings; court orders; on-going police investigations; identifiable witnesses; and, innocent members of the public. The broadcaster said that appropriate measures were then adopted in the report to meet any concerns or issues raised by the police. Given the nature of the subject matter of the report, Channel 4 said that it was particularly important that it was legally safe to broadcast as well as complying with the requirements of Ofcom's Broadcasting Code ("the Code").

#### *Incident in the ice cream parlour*

Channel 4 said that in the making of the report, the Unit provided footage of a number of serious incidents to the programme makers to illustrate issues. The broadcaster said that one of these incidents was CCTV footage of a serious violent incident which took place at an ice cream parlour in east London.

Channel 4 said that the police had informed the programme makers that a group of five males entered the ice cream parlour and sat on a table with two females who they appeared to know. Around 50 seconds later, a vehicle pulled up outside the parlour and at least five other males got out and entered the ice cream parlour. Channel 4 added that as soon as the second group of males entered, there was a short stand-off between the two groups who were standing facing each other near the door. Three knives were pulled out, two by the group on the right of the footage, one by the group on the left. The confrontation lasted for around 20 seconds. The broadcaster said that following the confrontation, the first group all appeared to leave in the same vehicle that they arrived in and the second group appeared to leave on foot (with one on a bicycle) in the same direction.

Channel 4 stated that no arrests were made on the night, but further police action was taken after the CCTV footage was recovered from the premises. The broadcaster said that the police informed the programme makers that a number of arrests were made following their investigation and that charges were later brought which resulted in a number of convictions. Channel 4 said that five individuals from the two gangs pleaded guilty to serious criminal offences. Channel 4 set out the criminal offences each person had pleaded guilty to and the sentences they received. The police informed the news team that this was a confrontation between two notorious rival London gangs involved in a long-standing feud.

#### *CCTV footage and the police*

Channel 4 said the CCTV footage of the incident at the ice cream parlour raised important matters of public interest and that it was a clear example of escalating gang violence and the increasing use of large hunting knives by gangs. Channel 4 said that the footage showed:

- a fight between two notorious rival gangs in an ice cream parlour;
- the ice cream parlour being turned into a battleground;
- gang members brandishing large “Rambo” style hunting knives;
- gang members involved in a violent incident; chairs and punches were thrown;
- gang members fighting using weapons when members of the public were present; and
- a staff member intervening to stop the violence.

Channel 4 said that the CCTV footage evidenced the brutal reality of gang violence regardless of age or place or who you were and that those in the ice cream parlour were “terrified”, but fortunate they were not killed or injured. The broadcaster added that such random gang attacks can and do result in death and serious injury.

Channel 4 said that the Unit asked the news team to obscure the faces of some people in the material provided for the report, including the CCTV footage featuring Ms G’s son. Channel 4 said that this request was made on the following basis:

- the individuals were identifiable and were still facing on-going criminal proceedings and therefore needed to be concealed to avoid any contempt of court;



- to protect the identifiable victims; and,
- to protect the identity of youths who had been convicted.

Channel 4 added that the report was reviewed by ITN to ensure that other individuals, who might be identifiable, such as innocent bystanders, were also obscured. The broadcaster said that the editorial team carried out the requests to obscure those who the police had asked not to be identifiable. Prior to the broadcast, senior police officers in the Unit were shown the footage to be broadcast to ensure that the requests made had been carried out. Channel 4 said that the police confirmed that the correct people had been obscured.

### *The report*

Channel 4 said that the report covered a number of topics surrounding gang related crime and the effects on gang members and the public. The report also showed the extent to which gangs had taken over some parts of London bringing with it escalating violence, drug and knife crime. The report referred to the disturbing rise in gang attacks and youth violence prompting a Home Office review.

Channel 4 then addressed each of the heads of complaint in turn.

### Unjust or unfair treatment

- a) Channel 4 said that Ms G's son was not identifiable in the report. Channel 4 said that:
- Ms G's son was not named.
  - Although he was seen very briefly in the CCTV footage, he was not seen in close up, and details of his face and his facial features were not recognisable due to the poor quality of the footage.
  - The footage itself was of poor quality, it was not in high definition and it was not clear or detailed. There was no audio and it was blurred and grainy CCTV footage.
  - Viewers were not informed who Ms G's son was in the commentary and no details were given about him or the identity of the two gangs. At no time was the ice cream parlour named, nor was its location disclosed.
  - The report did not draw attention to Ms G's son either in the commentary or by close up. He was simply shown standing with one of the gangs.
  - He was part of one of the gangs involved in the altercation, but was an incidental figure in the footage and was shown only briefly.
  - It was the "Rambo" style knives being brandished by gang members and seen in the footage which were highlighted.
  - When the CCTV footage was freeze-framed, the focus was on the knives which were highlighted. Even when freeze framed for a few seconds, Ms G's son's face was not recognisable.

Channel 4 did not accept that the CCTV footage identified Ms G's son or that the report led anyone to identify him. Channel 4 said that those who may have known it was Ms G's son in the footage would have already known he was present at the incident. These people, Channel 4 said, were principally: the Unit investigating the case; Ms G and other family members; Ms G's son; and, the gang members involved in the incident – both those he arrived at the scene with and members of the rival gang and their associates. Channel 4 said it was highly unlikely that anyone outside this group would have identified him from his brief appearance in the CCTV footage where details of his face were not visible.

Channel 4 said that in the unlikely event it was considered that Ms G's son was in some way identifiable, it was not accepted that he was treated unfairly for the following reasons:

- Ms G's son was not named, he was seen very briefly, his face was not seen in close up, his facial features were not visible and attention was not drawn to him in any way. He was a peripheral figure in the background of the image and no references were made to him or the precise location of the incident. The footage was not detailed or in high definition.
- The report did not expressly state that Ms G's son was part of one of the gangs or that he appeared to be "guilty" of any criminal offence. No reference was made in the report to who he was or whether or not he was a gang member.
- Irrespective of whether he was identifiable, there was no automatic obligation on the news team to blur him. It was a matter of editorial judgement and it was reasonable to show the CCTV footage without obscuring him. Channel 4 said the footage showed very serious criminality. The broadcaster added that footage of crime and criminality is often shown on television and that not all those seen in such footage are automatically obscured where it is warranted by the public interest.
- Each case depends on its facts. In the case of Ms G's son, Channel 4 said it was not unfair to leave him unobscured because he did not fall within the categories highlighted by the police nor was he an innocent bystander; he was an associate or member of one of the gangs.
- It was not a private situation where there was a reasonable expectation of privacy. Channel 4 said it was an incident showing criminality of the highest order in a place open to the public and Ms G's son had, according to the Unit, arrived in a car at the scene with one of the gangs.

Channel 4 said that following receipt of Ms G's complaint, the police informed Channel 4 that Ms G's son arrived in the same car with members of one of the gangs and left with members of the same gang. Channel 4 said that the suggestion that Ms G's son was an innocent bystander who had simply walked into the ice cream parlour and was caught on CCTV watching the altercation was disputed by both the police and the footage which showed him standing with other gang members.

### Unwarranted infringement of privacy

- b) Channel 4 said it did not accept that Ms G's son's privacy was unwarrantably infringed in obtaining the footage from the police.

Channel 4 said the police were entitled to disclose the CCTV footage to the programme makers and that they were entitled to receive it. The broadcaster said it was commonplace for footage to be released by the police and Crown Prosecution Service ("CPS") to the media. Channel 4 explained that this practice was set out in the CPS Media Protocol which facilitates the provision of footage from prosecution authorities to the media.

Channel 4 said that these types of disclosures enabled the media to better report matters in the courts and broadcast footage used in evidence in court cases – such as the CCTV footage featuring Ms G's son. Channel 4 said it enables the public to be informed of what was happening in the courts and the work of the police and prosecution authorities in tackling crime. The broadcaster added that the disclosure reflected the legal right to open justice – justice being seen to be done as well as done – and the right to impart information under Article 10 of the European Convention on Human Rights.

Channel 4 said it was clear the programme makers acted appropriately at all times: they received the footage legitimately from the police and careful checks were carried out before broadcast. The broadcaster also said that, although Ms G said that the police were aware of her contact details, whether the police released footage was a decision for them to take.

Channel 4 said that receiving such footage through official channels was not a breach of privacy. It added that if Ofcom ruled this was the case, it would have a serious impact on news gathering, open justice and would amount to an infringement of the news organisation's legal right to impart information under Article 10.

- c) Channel 4 said that Ms G's son could have no reasonable expectation of privacy in all circumstances because he was not shown in a private situation. The broadcaster said that the footage showed criminality of the highest order in a place open to the public.

Channel 4 said it was not accepted that Ms G's son was simply "witnessing" the confrontation. According to the Unit, Ms G's son had arrived in a car at the scene with one of the gangs and had left with them after the altercation.

Channel 4 added that:

- Ms G's son was not named or identifiable from the report;
- he was seen only briefly;
- there was no close up of him;
- his facial features were not recognisable;
- no attention was drawn to him in any way in the commentary;

- the footage was not detailed;
- the footage was not high definition – it was blurred and grainy CCTV footage;
- he was a peripheral figure in the background of the image;
- no reference was made to him; and,
- viewers did not know who he was, nor were they given any information about him.

Channel 4 said that following the broadcast of the programme, solicitors acting on behalf of Ms G's son, through his mother, contacted Channel 4 explaining Ms G's concerns about the broadcast. After subsequent telephone conversations between the programme makers, Ms G and a member of Ms G's family, a written response was sent by the programme makers to Ms G in which they denied any legal liability. The letter also stated that although they did not consider Ms G's son was identifiable from the report, as a matter of courtesy the report was amended, including obscuring the face of Ms G's son in the CCTV footage. Channel 4 reiterated that this was not strictly necessary as Ms G's son was not identifiable from the footage and this action was only undertaken to provide reassurance to Ms G.

### **Ofcom's Preliminary View**

Ofcom issued a Preliminary View to the parties that the complaint of unjust or unfair treatment and unwarranted infringement of privacy should not be upheld and both parties were given the opportunity to make representations. A family member acting on behalf of Ms G ("the respondent") submitted representations on Ofcom's Preliminary View and those representations, which were relevant to the complaint as entertained and considered by Ofcom, are summarised below. Channel 4 decided not to make any representations on the Preliminary View.

#### *Representations made on behalf of Ms G*

In summary, the respondent said that the broadcaster "paint[ed] a bad picture" of Ms G's son by stating that he had arrived in a car with a gang, left with them after the incident took place at the ice cream parlour and that he was himself a member of a gang. The respondent's view was that the broadcaster considered that this information acted as justification for it to include the footage of Ms G's son in the programme. The respondent also said that Channel 4 assumed information provided to it by the police was true but that it had "no proof whatsoever". Further, the respondent said that Ms G's son had no criminal record.

The respondent also said that the programme makers' position appeared to be that because they considered Ms G's son was in a gang, that "somehow he deserves the exposure". The respondent said that the programme makers had no regard for the fact that he was a minor. Further, the respondent said that the report itself had stated "how violent and ruthless these gangs are" and broadcast footage which showed a gang member who had been stabbed. The respondent said that Ms G's son was identifiable from the footage and that if he was a member of a gang, then, taking into account the context of the programme, he should have been afforded greater protection by the broadcaster.

The respondent added that there had been too much emphasis in Ofcom's Preliminary View on the fact that Ms G's son was unidentifiable from the footage and was only visible for three seconds. The respondent said that Channel 4's comments on the quality of the footage were irrelevant. This was because it could be assumed that the footage was "good enough to broadcast nationally". Further, the respondent said that she was "surprised that Ofcom are oblivious to the use of social media". She added that Ofcom had failed to take into account that current technology means that it is possible to pause and rewind live television and potentially photograph and share an image from a programme through social media. The respondent added that the report itself had stated that gang members taunt each other via social media. In addition, the respondent stated that Channel 4 news is available online and thus, even after the broadcast of the programme, it would have only taken one person to recognise Ms G's son from the report and inform other people about this.

In response to Channel 4's claim that it took great care to protect people in the footage and that careful checks were carried out, the respondent noted that the basis for which the police had requested Channel 4 to obscure the identity of certain people in the CCTV footage from the ice cream parlour appeared to be one where they were "looking to not interfere with due process of law". The respondent said that there did not appear to be any "common sense applied to their decision", because if Ms G's son was a member of a gang, his face should have been obscured so that he was not identified as a gang member. However, in contrast, if he was not a gang member, then the broadcaster risked identifying him as one and "placing him in danger". In addition, the respondent said that an innocent bystander's face was obscured in the footage and the "same motivation" for doing this should also have been afforded to the complainant's son, an innocent minor.

The respondent said that as a consequence of the programme, Ms G's son was recognised which led to him being attacked on his way home from school by a gang member, taunted on social media, and labelled as a gang member at his school. The respondent said that a reasonable person would think that a broadcaster should protect a child's anonymity, if, in some way, a programme "may threaten that child's life".

## **Decision**

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

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

In reaching this Decision, we carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript and both parties' written submissions. We also took into account representations made on behalf of the complainant on Ofcom's Preliminary View that were relevant to the complaint considered.

### Unjust or unfair treatment

When considering and deciding complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's action ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of the Code.

- a) We considered Ms G's complaint that her son was treated unjustly or unfairly in the programme as broadcast because the inclusion in the programme of footage of her son would have led viewers to believe that her son was part of the gang and that he appeared to be "guilty" as his face was not obscured.

Ms G said that her son was identifiable in the background of the footage of the ice cream shop confrontation while some of the "guilty youths faces" were blurred. Ms G said her son was innocent and had not been prosecuted in relation to the incident. Ms G said that her son's life had been endangered as a result.

In assessing this head of the complaint, we had regard to Practice 7.9 of the Code which states that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

We first assessed whether Ms G's son was identifiable from the footage and comments made in the report. We noted the considerations Channel 4 said it had taken in deciding whether to obscure the faces of some of those featured in the CCTV footage, and that it had blurred/pixelated certain individuals on the request of the Unit to avoid contempt of court where there were on-going proceedings, to protect identifiable victims and to protect the identity of youths who had been convicted. We also noted that, in response to Ofcom's Preliminary View, the respondent had submitted that Channel 4 appeared to have considered that, because Ms G's son was in a gang, "somehow he deserve[d] the exposure". The respondent said that it did not appear that Channel 4 was privy to information relating to Ms G's son's involvement in the incident prior to the broadcast of the programme and therefore suggested that could not be a justification for not pixelating him (while others featured in the footage were pixelated). The respondent also commented that they did not consider there was any 'common sense' applied in the approach to pixelation, and that, if Channel 4 had considered that he was in a gang, he should have been pixelated so that his life was not threatened, and if he was not in a gang, and was shown un-pixelated, there was a risk that he was identified as a gang member, also placing him in danger. Further, we noted Channel 4's comment that the face of Ms G's son had not been obscured because, in its view, that he was not identifiable from the footage.

Ms G's son was not named in the report nor was anything said to draw attention to him. In particular, we considered that the focus of the report was on the knives being brandished by the gang members rather than Ms G's son who, in our view, appeared as an incidental figure in the background of the footage.

We took into account that Ms G had identified her son from the footage and had said that the police were now involved with protecting her son. We further noted that, in response to Ofcom's Preliminary View, the respondent had stated that Ms G's son had been identified from the footage which had led to him being attacked, taunted on social media, and labelled as a gang member at school.

We also took into account Ms G's representative's comments in response to Ofcom's Preliminary View that the footage was of sufficient quality for it to be included in the news report. We noted too the submission that Ofcom had not taken into consideration that current technology enabled viewers to pause and rewind a television programme and potentially photograph and share an image from a programme with others through social media, and that this ability to share an image from the footage was exacerbated where footage is made available online after the broadcast. However, we considered that the footage of Ms G's son which was included in the programme was very fleeting (being only three seconds in total) and even if viewers had the capability of pausing and capturing an image from the footage, the footage was quite blurred and there was nothing particularly distinctive about Ms G's son's appearance that we considered could reasonably be regarded as rendering him identifiable to an ordinary viewer. Although we noted that the respondent had said that Ms G's son had been identified on social media, and that this had led to him being attacked, it was not clear whether the broadcast of the footage itself had led to his identification by those who were not already aware of his involvement in the incident (as opposed to this being as a result of comments on social media).

Therefore, given the above factors, we considered that while Ms G's son may have been identifiable from the footage as broadcast in the programme, it would have only been to a small and limited number of individuals who knew him and also had knowledge of the incident shown in the report.

In light of the above, it was our view that the inclusion of the footage of Ms G's son in the programme would not have resulted in unfairness to him as those who may have been able to identify him, would have already been aware of the circumstances surrounding his presence at the incident.

Therefore, taking into account all the facts set out above, we considered that Ms G's son was not treated unjustly or unfairly in the programme as broadcast.

#### Unwarranted infringement of privacy

In Ofcom's view, the individual's right to privacy has to be balanced against the competing rights of the broadcaster to freedom of expression. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate. This is reflected in how Ofcom applies Rule 8.1 which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

In addition to this Rule, Section Eight (Privacy) of the Code contains "practices to be followed" by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 8.1 and failure to follow these practices will only constitute a breach where it results in an unwarranted infringement of privacy.

We noted that at the time the footage of Ms G's son was filmed and broadcast, he was under the age of 16. In assessing both heads of complaint, Ofcom therefore had particular regard to Practices 8.20 and 8.21. Practice 8.20 of the Code states that broadcasters should pay particular attention to the privacy of people under sixteen,

and Practice 8.21 states that where a programme features an individual under sixteen or a vulnerable person in a way that infringes privacy, consent must be obtained from: a parent, guardian or other person of eighteen or over in loco parentis; and wherever possible, the individual concerned; unless the subject matter is trivial or uncontroversial and the participation minor or it is warranted to proceed without consent.

- b) Ms G complained that her son's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because CCTV footage of her son witnessing a gang related confrontation was obtained from the police for inclusion in the programme.

In assessing this head of complaint Ofcom had particular regard to Practice 8.5 which states that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted. Ofcom also had regard to Practice 8.9 which states that the means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme. As noted above, we also took into consideration Practices 8.20 and 8.21.

We first considered the extent to which Ms G's son had a legitimate expectation of privacy in the particular circumstances in which the material included in the programme had been obtained.

We noted Channel 4's contention that the CCTV captured criminality of the highest order. However, in our view, a person is not necessarily deprived of a legitimate expectation of privacy because they were involved in, or a witness to, criminal conduct. Ofcom considers that the test as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself. Ofcom therefore approaches each case on its facts. It is worth noting that some activities may be of such a private nature that filming or recording, even in a public place, could involve an infringement of privacy.

We noted that Ms G's son was filmed at an ice cream parlour at a time when a fight between two rival gangs took place. We recognised that the footage of Ms G's son was filmed from a CCTV camera on the premises and that it was provided to the police for the purpose of investigating the incident. We also noted that the incident occurred in a place which was accessible to the public and that the confrontation was likely to have been witnessed by members of the public who were in the ice cream parlour at the time.

It was not made clear from either party's submissions whether, at the time of the incident, Ms G's son was aware that his actions were being recorded by a CCTV camera. We also noted that at the time of the filming, Ms G's son was 14 years old and may, therefore, have been more vulnerable, given his age, than an adult filmed in similar circumstances. In particular, we took into account the fact that the CCTV recorded his presence at a serious incident where knives were brandished and it therefore showed him in what could reasonably be considered to be a sensitive situation.

However, it was our view that the material was obtained by Channel 4 to help illustrate the issue of the increased use of knives by gangs in London rather than to focus in any way on anyone who was present at the incident. We took into account Ms G's representative's comments on Ofcom's Preliminary View



regarding the quality of the CCTV footage and the fact that she said that Ms G's son had been identified even though the footage was only three seconds in duration.

However, for the reasons already given in head a) above, following careful consideration of the CCTV footage, we came to the view that Ms G's son was not readily identifiable to an ordinary viewer from the footage. The CCTV footage of him was fleeting and, while his face had not been obscured, his facial features were not clear and there was nothing else distinctive about his appearance. We therefore considered that he would have been identifiable only to a small and limited number of people who knew him and had knowledge of the incident. We also did not consider that the footage revealed anything else personal or sensitive about him.

In these particular circumstances, Ofcom therefore considered that Ms G's son did not have a legitimate expectation of privacy in relation to the obtaining of the footage of him included in the programme. Having reached this conclusion, it was not necessary for Ofcom to consider whether any infringement into the privacy of Ms G's son was warranted.

Therefore, Ofcom found that Ms G's son's privacy was not unwarrantably infringed in connection with the obtaining of this material for inclusion in the programme.

- c) Ms G also complained that her son's privacy was unwarrantably infringed in the programme as broadcast because CCTV footage of her son witnessing a gang related confrontation was broadcast without her consent.

In assessing this head of complaint, as well as taking into consideration Practices 8.20 and 8.21, we also had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

We first considered the extent to which Ms G's son had a legitimate expectation of privacy in relation to footage of him being included in the programme without his mother's consent.

As under head b) above, the test applied by Ofcom as to whether a legitimate expectation of privacy arises in relation to inclusion of footage in the programme as broadcast is objective: it is fact sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself.

We took into account that Ms G's son was a minor and the footage showed that he was present at a serious incident and therefore showed him in a sensitive situation. We did not consider that the footage revealed anything else personal or sensitive about him.

We also took into account Ms G's representative's comments on Ofcom's Preliminary View that Ms G's son had been identified and taunted on social media, labelled as a gang member at school and attacked following the broadcast. We considered that if this had been the result of Ms G's son being identified as having been involved in this incident from the footage as broadcast in the programme by those who were not previously aware of this fact, these were factors that would point strongly towards Ms G's son having a legitimate

expectation of privacy in connection with the broadcast of this footage. However, it was not clear that the broadcast of the footage itself had led to his identification by those who were not already aware of his involvement in the incident (as opposed to this being as a result of comments on social media).

For the reasons already given in head a) above, following careful consideration of the footage as broadcast, we came to the view that he was only identifiable from the footage to a small and limited number of people who already knew him and had knowledge of the incident. We therefore concluded that, on balance, in the particular circumstances of this case, Ms G's son did not have a legitimate expectation of privacy in relation to the broadcast of the footage of him in the programme. Having reached this conclusion, it was not necessary for Ofcom to consider whether any infringement into the privacy of Ms G's son was warranted.

Ofcom therefore considered that Ms G's son's privacy was not unwarrantably infringed in the programme as broadcast.

**Ofcom has not upheld Ms G's complaint on behalf of her son of unjust or unfair treatment in the programme as broadcast and of unwarranted infringement of privacy in connection with the obtaining of material included in the programme, and in the programme as broadcast.**

## Not Upheld

### Complaint by Miss Lauren Reis

*The House of Hypochondriacs, Channel 4, 24 November 2015*

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#### Summary

Ofcom has not upheld Miss Reis' complaint of unjust or unfair treatment and of unwarranted infringement of privacy.

The programme followed four people who suffered from health anxiety and were trying to "*gain better control*" of their anxiety. Three of the contributors, one of whom was Miss Reis (the complainant), stayed in a 'contributor house' together and took part in what the programme described as "*intensive exposure therapy*". After visiting a GP's surgery, as part of the exposure therapy, Miss Reis decided she did not wish to continue with the therapy. Subsequently, she left the project.

Ofcom found that:

- Miss Reis was not treated unjustly or unfairly in the programme as broadcast, because we considered that:
  - In the particular circumstances of this case, Miss Reis gave informed consent for the programme makers to receive and record information about her and to film her for inclusion in the programme;
  - The fact that the programme makers included footage of and information about Miss Reis in the programme as broadcast, and that the programme was entitled *House of Hypochondriacs*, was not unfair to her; and,
  - The programme makers edited the relevant contribution (i.e. Miss Reis's exit interview) fairly and took reasonable care to satisfy themselves that material facts with regard to Miss Reis' reasons for leaving the project were not presented, disregarded or omitted in a way that was unfair to her.
- Miss Reis had an expectation of privacy in relation to the receipt and recording of information about and footage of her, and in relation to the broadcast of part of this material in the programme. However, she had consented to the obtaining and subsequent broadcast of this material. Therefore, in the particular circumstances of this case, Miss Reis' privacy was not unwarrantably infringed in these respects.

#### Programme summary

On 24 November 2015, Channel 4 broadcast a factual documentary *House of Hypochondriacs*. The presenter, Dr Christian Jessen, introduced the programme by stating that:

*"Thanks to the internet, hypochondria is on the increase and affects a surprisingly large number of people...for those who are abnormally anxious about their health it is a very real and it is a very trying condition...It is estimated that the NHS spends around £2 billion a year on the 'worried well' placing more and more strain on an already overburdened health care system".*

The presenter explained that the programme would follow a number of people who were *“obsessed with their health to see if we can help them gain better control over their anxiety”*. A number of contributors, including the complainant, were then seen entering a house with suitcases. The presenter explained that for a week he was going to be working with these individuals who suffered from health anxiety. Three of the contributors, “Shaun”, “Angela”, and “Stacey”, then listed the health problems they suspected they had suffered from and Shaun said he had diagnosed a number of these *“with the help of doctor Google”*. Miss Reis (referred to in the programme as “Lauren”) spoke briefly and said she had not *“drunk tap water since she was 20”*.

The presenter explained that three of the contributors had agreed to live together for a week and be subject to *“intensive exposure therapy”* which involved *“coming face to face with their worst fears”*. The fourth contributor, Stacey, had decided not to live with the others because of the severity of her condition. The programme explained that for Angela and Shaun this would mean an end to their daily visits to the GP and stated this was *“not a problem for Lauren, who rarely visits her doctor for fear of germs”*.

The programme introduced Shaun, who explained that he had visited A&E about 29 times in the last eight months. Figures on screen showed the estimated cost of this to the NHS was over £10,000. The programme then introduced Angela, who explained the extent of her health anxiety, including sometimes visiting the GP every day in a week.

The programme then showed Miss Reis at her home. The presenter stated:

*“My third house guest is 37-year old Lauren, whose severe anxiety about picking up any germs that could make her be sick has completely ruled her life for twenty years. Lauren lives with her mum in the North of England and suffers from emetophobia<sup>1</sup> and obsessive compulsive contamination disorder – a fear of being sick”*.

Miss Reis was then interviewed about her condition. She stated:

*“There are a number of behaviours that I might do to sort of protect myself from becoming ill...The excessive cleaning - I did wash myself in detergent, I don't wash my dishes in the kitchen sink because I don't want any bacteria on my plates [Miss Reis was shown washing dishes in a bath]. I don't sit directly on a toilet seat, it is always laden with papers, and that is on every toilet – even when I have lived in a flat on my own I have still done it because I know guests come round and put their dirty bottoms on my... [Miss Reis laughed]. I will hear someone cough, initially I will think ‘Oh, have they been sick?’ even when I know they are not sick but they could actually be passing something on to me”*.

The presenter then stated:

*“Unlike the others Lauren doesn't seek medical help even when concerned she is seriously ill”*.

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<sup>1</sup> Emetophobia is an anxiety disorder where individuals have a fear of vomiting or seeing others vomiting.

Miss Reis said:

*"I don't want to go to the doctors at all, I don't want to go into a hospital even with regard to my own health there is things occurring with my body that I know I need to go to the doctors for but I won't".*

Later in the programme, the presenter stated that:

*"As a nation we are now visiting our GP for ailments that are so minor we probably could deal with ourselves or more worrying problems that are non-existent".*

The presenter explained he was:

*"...on my way to meet my patients to start their experimental exposure therapy. As I am throwing them in at the deep end I want to make absolutely sure that they are all on board with this treatment".*

Miss Reis, Shaun and Angela were shown seated in the garden of the contributor house and were joined by the presenter. He asked the contributors what they thought of the idea that they would be spending time at a GP surgery and a local hospital. Miss Reis explained:

*"To go to a doctor's surgery or a hospital for me it brings me into contact with what I am most fearful of which is vomiting. I would rather stay away from places like that. It creates more anxiety for me".*

The presenter asked Miss Reis:

*"But you are still prepared to do it?"*

She replied:

*"I know I am challenging a fear when I am doing it and I know, inevitably that will only make things better for me in the long term if I challenge those fears".*

The presenter explained that the purpose of sending the contributors to spend a day at a busy GP's surgery was to give them a different perspective and see *"what other people use their GPs for"*. The presenter explained that Angela and Shaun visit their GP up to five times a week. Shaun expressed the view:

*"I don't care how much I've cost the NHS, I've paid for it. That's my right to use that service. Abused it? I have. Cost it money? It is money where it needs to go".*

The presenter then explained that Miss Reis was *"so anxious about catching an infection from other people"* that she had *"stayed away"* from GPs. Miss Reis then said she had been to the doctors *"three, four times probably in the last ten years"*.

The three contributors were subsequently shown sitting in front of a monitor in a room at the GP's surgery on which they could see footage of a doctor, who was in another room in the surgery, as he talked to several patients. The footage of the doctor during his patient consultations was intercut with footage of the contributors. During this section of the programme, Angela and Shaun were shown discussing the visits they regularly made to the GP and Miss Reis was shown saying:

*“I keep thinking how long do I need to be in this room for? How long have we been – so these thoughts that I’m having. I just want to escape; it is a really uncomfortable environment to be in. I don’t like sitting on the chair. I noticed that there was a mark on the chair”.*

Later, Angela and Shaun were shown outside a hospital with the presenter. He explained that the next stage of the exposure therapy would be for the contributors to spend time in a hospital with medical professionals, but that Miss Reis had decided *“she can’t face it”*. The presenter subsequently said:

*“Lauren’s condition is so extreme that being in a strange house is an enormous challenge. Having survived the GP visit, today’s trip to St. George’s [the hospital] is just too much”.*

Miss Reis was then shown saying:

*“When I found out that we were going to spend the day in the hospital the instant thought is ‘I went to the GPs for ten hours the other day, do I need to do this again’ but also because I knew it was going to be more hands on, I knew I wasn’t going to be able to get away with that this time round and I knew there would be a lot of contact”.*

Angela and Shaun were shown at the hospital cleaning medical equipment with staff. The programme then showed Miss Reis at the contributor house making a sandwich and carefully folding down the packaging, explaining that she did this so that it did not come into contact with the bread.

The presenter explained:

*“Lauren’s health anxiety is based around a fear of vomiting and her routines are designed to help her avoid picking up any pathogens that may cause her to be sick”.*

Miss Reis was shown explaining that she checked the packaging of food to ensure that there was no potential for the food to have been exposed to air, deteriorated as a result; and, thereby make her unwell. She then said:

*“It [her health anxiety] has managed my full life for the past 20 years so it is not something I can just let go of”.*

The presenter then stated:

*“Lauren may not feel yet ready to tackle her issues but I am hoping that by exposing Angela and Shaun to the inner workings of a hospital, it will get them to think more logically about their bodies and any symptoms before immediately assuming the worst and calling the GP”.*

Angela and Shaun were then shown working at the hospital and talking to the staff about their jobs and reflecting on their condition. The presenter stated:

*“Many people have a tendency not to take health anxiety very seriously but for sufferers it is a very real and it’s a very destructive condition leading to a rapid downward spiral that can be very hard to get out of. Combatting it takes a lot of time and it takes a lot of effort... Angela is definitely making steps in the right direction, but Lauren and Shaun aren’t making quite the same progress. Their*

*health anxieties still very much have the better of them. We've still got quite a lot of work to do to pull them out of this downward spiral they are in".*

Shortly after, the presenter explained that "*Lauren has concluded that this particular immersive therapy is not right for her*" and Miss Reis explained that she was:

*"...feeling a little disappointed that I couldn't see the full week through. But I actually think it is just because the treatment isn't suitable for me at this stage of my own personal therapy and journey, if you will".*

Miss Reis was then shown leaving the contributor house. The programme continued to focus on Angela and Shaun's exposure therapy and the presenter visited a further contributor, Stacey, whose condition meant she was unable to leave her home. The presenter later explained that he was "*sorry to lose Lauren, but I have to say it was the right decision and I will continue to look for the right therapy for her*".

At the end of the programme, a caption was shown which read: "*Lauren is continuing with therapy back home*".

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

### The complaint

#### *Unjust or unfair treatment*

Miss Reis complained that she was treated unjustly or unfairly in the programme as broadcast. In particular:

- a) Miss Reis said that she was misled over the nature of the programme and did not give informed consent.

In particular, Miss Reis said the programme was described to her as "sensitive/informative" but that this was not the case and the programme put vulnerable people, including herself, through "humiliating and unnecessary anxiety-provoking activities". Miss Reis said that she withdrew from filming early in the process due to a "sense of non-disclosure". For instance:

- A programme description did not appear on the release form, but Miss Reis said that she was informed verbally by the programme makers that the programme would be a "sensitive account of health related anxiety/phobias". Miss Reis said that she discovered a press release on the Channel 4 website shortly after filming had begun which contradicted this.
- She was assured that the working title of the programme (House of Hypochondriacs) was for "admin purposes" and subject to change. Miss Reis stated that she was told that if this title was used, the content would be different.

- b) Miss Reis said that unfair claims were made about her in the programme.

In particular, Miss Reis said that the programme stated that she had received the correct treatment, but had left the contributor house as she was unable to cope with the exposure therapy. Miss Reis said that her reasons for leaving the project included: the non-disclosure about the nature of the programme; and, the

techniques used by the programme makers. These reasons were not included in the programme.

#### *Unwarranted infringement of privacy*

Miss Reis complained that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme. In particular:

- c) Miss Reis said that she was misled about the nature of the programme and therefore did not give informed consent when disclosing details about her mental health to the programme makers. Miss Reis stated that the footage had been obtained in ways that were “not fully transparent or informative, especially when dealing with vulnerable categories”.

For instance, Miss Reis said that she was not consulted in advance about the “exposure activities” and was not fully aware of what she was participating in. Ms Reis said that when she was questioned about this, she said that the programme makers stated that she and the other contributors were not allowed to know. Miss Reis said that the programme’s psychotherapist agreed the exposure treatment was not suitable.

Miss Reis also complained that her privacy was unwarrantably infringed in the programme as broadcast. In particular:

- d) Miss Reis said that the programme disclosed details about her health anxiety without her consent and included footage of her in the bathroom.

Miss Reis said that she would not have consented to disclosing details about her mental health to support a programme which focused on the cost of health anxiety to the NHS. Further, Miss Reis said that the programme makers filmed in her bathroom and she requested that this footage was not used, but that it was included.

Miss Reis said that following a second viewing of the programme (one day before it was transmitted), Channel 4 offered to remove her contribution from the programme but she did not accept this offer because she wished to pursue a fairness and privacy complaint about the programme with Ofcom.

#### Broadcaster’s response

##### *Background to the programme*

Channel 4 said that the programme was an “immersive features programme”, the purpose of which was to give greater insight into what it is like to suffer from serious health anxiety and, hopefully, enable the contributors to begin a process of rehabilitation by confronting some of their biggest fears. It said that Miss Reis was included as someone who suffered from a debilitating health anxiety, emetophobia, a disorder which resulted in a fear of vomiting.

The broadcaster said that although medical professionals use the term “illness anxiety” rather than hypochondria, most viewers would only understand the latter term. It said that the term, hypochondria, is commonly used to refer to people who are afraid of becoming ill and this was explained to Miss Reis by one of the two psychologists who worked on the programme (see response to head a) below).



Channel 4 acknowledged that Miss Reis' condition differed from that of the two other contributors (Shaun and Angela) with whom she shared a house during the filming, but said that the experts who worked on the programme considered that Miss Reis' fear of illness and germs came under the same umbrella of what lay people would call hypochondria. It also observed that, just before leaving the project, Miss Reis said that some of her feelings were exactly the same as Shaun and Angela's.

Channel 4 said that the production company engaged two independent, appropriately qualified and experienced mental health practitioners to work on the programme: a psychotherapist, whose role, working off-camera, was to assess the contributors' suitability to take part in the programme and to provide support before, during and after filming; and a psychologist, whose role, working on-camera, was to provide support and Cognitive Behavioural Therapy ("CBT") sessions (in which Miss Reis took part) during filming. The broadcaster added that these practitioners also "provided input into the exposure therapy the contributors would undertake" and that the presenter, who is a GP, was able to support the contributors throughout.

Channel 4 said that the agreed protocol for the making of this programme included: finding out about the contributors' particular conditions and needs; preparing a detailed risk assessment on the immersive therapies in the GP surgery and at the hospital; ensuring all contributors had a psychological assessment prior to filming – to ensure they were suitable to take part and had appropriate support; having the psychologists on hand for the contributors throughout filming; and, putting support for them in place both during and after filming. It also said that if a contributor felt uncomfortable and wanted to stop the treatment they were able to do so, noting that Miss Reis did this after the morning session at the GP's surgery and that all her requests were adhered to on every occasion she said she was uncomfortable with filming.

#### *Miss Reis' consent*

Channel 4 said Ms Reis had responded to a casting advert posted on 15 July 2015 by the production company on Twitter which was entitled: "Are you a Hypochondriac?" and asked for people who suffered from health anxiety to get in touch. A copy of the advert was provided to Ofcom. It read as follows:

#### "ARE YOU A HYPOCHONDRIAC?"

Do you visit the doctor on a regular basis?

Are you constantly worrying about your health to the point that it is affecting your day to day life?

Are you always looking up symptoms on the internet, trying to self-diagnose?

We're looking to speak to people who suffer from HEALTH ANXIETY for a new immersive TV series.

Most of us worry about our health from time to time, but for some this worry NEVER goes away and becomes a problem in itself.

If this sounds like you, get in touch with us today...".

The broadcaster said that a press release announcing the programme under the title "House of Hypochondriacs" was issued the same day (15 July 2015) and the working

title of the programme was always “House of Hypochondriacs”. It said that Miss Reis: was told this before filming began; signed a release form which included this title and a description of the programme; and, was told on several occasions, before and during filming, that it was very unlikely to change (see response to head a)).

Channel 4 said all the contributors were to go through a process of “exposure therapy”, which is a common treatment for health anxiety and Obsessive Compulsive Disorder (“OCD”), combined with CBT. The therapy was tailored to each contributor’s particular vulnerabilities and progress during the course of the filming. The contributors were given general information about the exposure therapy, notably that it was immersive and would involve them visiting various medical organisations to help them better understand their fear of germs and disease. They were not given exact details in advance because the plans would change daily, informed by the progress of the individual and the clinical experts’ opinions at the time. In addition, the programme makers and clinical experts considered that giving the contributors specific details about the treatments in advance might be counterproductive, given they were subject to change, because doing so could increase their anxiety.

The broadcaster said that on 17 July 2015, Miss Reis emailed the production company saying she suffered from emetophobia and, in her view, the thought process was “very similar” to health anxiety. Having spoken to Miss Reis, one of the programme makers sent her an application form and subsequently met with Miss Reis and her mother on 29 July 2015. Their discussion during this meeting included the following matters: if Miss Reis took part she would live in a house with other people who “share health anxieties”, but her condition was specific while the others had a “different more generalised health anxiety”; the contributors would be in an “immersive situation”; the programme was being advised by a qualified CBT practitioner to whom the contributors would have access throughout the week of filming; and, the programme would involve engagement with various medical organisations (specifically, Miss Reis was told she would visit these organisations and speak to medical specialists to help her understand her fear of contamination). Channel 4 said that during this meeting Miss Reis was also told that the contributors would gain a basic knowledge of first aid and a much better understanding of how their bodies work with the aim of enabling them to have a more rational response when confronted by their fears.

Channel 4 said that Miss Reis was keen to contribute and understood the programme makers would need to assess her further with regard to her suitability to, and whether she would benefit from, taking part in the programme. As part of this process, on 12 August 2015, Miss Reis sent the production company an email detailing medical and psychological information about her conditions and about the treatment she had undertaken for them. Due to the sensitive nature of this email, the broadcaster did not provide a copy to Ofcom. However, it noted that, in this email, Miss Reis said that having been able to conquer many of her issues, the programme would “add a push of treatment” and she concluded that, notwithstanding some outstanding matters, “I’m fully capable of getting on a train and being in London for the week and being filmed. I know in the past if I was not able to do this, I wouldn’t do it”. The broadcaster added that Miss Reis told the psychotherapist who conducted an assessment of her prior to filming that her main motivation for taking part was to raise awareness of her condition. It also said that the psychotherapist made it clear to Miss Reis and the production company that, on the basis of her assessment of Miss Reis and the information which the complainant had provided in her original application to take part in the programme, she considered the emetophobia from which Miss Reis suffered to be part of a broader health anxiety. Channel 4 also said that, in light of the nature of the conditions from which Miss Reis’ suffered, the psychotherapist was very

careful to explain to Miss Reis that she would not know “*exactly* (broadcaster’s emphasis) what was planned” with regard to the content of the programme (and notably the therapy in which she would take part) and suggested Miss Reis speak to the production company to identify any particular situations that “could become overwhelming” so she could be supported appropriately.

The broadcaster said that the psychotherapist considered that Miss Reis was giving informed consent to being filmed and participating in the programme despite not knowing the precise detail of what it would involve. She also considered that there was nothing to suggest that Miss Reis’ involvement in the programme would be detrimental to her, as long as proper support and care was put in place should it be needed (which, the broadcaster said, was the case throughout and after the filming).

### *Miss Reis’ participation*

The broadcaster said that, before moving into the contributor house on 27 August 2015, Miss Reis allowed the camera crew to film her in her home (while accompanied by her mother) as she explained some of the activities that she found difficult due to her condition, for example, washing plates and preparing food. Several days later, Miss Reis moved into the contributor house with Shaun and Angela. Channel 4 said that she seemed to be successful in confronting her anxieties and appeared to bond with the other contributors. She also undertook the first part of the exposure therapy, i.e. attending a GP’s surgery, and managed to take a bus and go to a restaurant. The broadcaster said that Miss Reis seemed to be progressing well, doing new things every day and finding a sense of achievement and success from this. It said that neither the clinical experts nor the production company doubted Miss Reis’ ability to speak out if she had any concerns or worries about the filming process and/or her involvement and observed that she frequently asked the camera crew to stop filming which they always did. It also said that Miss Reis often talked with the presenter and the psychologist to discuss the therapy and any issues she had.

Channel 4 said that on 4 September 2015, the fourth day of filming, Miss Reis said that she did not want to go to the hospital with the other contributors because she considered the challenge too great, and what she had achieved so far was enough for her. After a period of reflection, and a conversation with the presenter, she decided to leave the project. The presenter came to the house and spoke to Miss Reis at length about her concerns and they came to a mutual decision that she would leave the project which she duly did. The broadcaster said that before she left, Miss Reis appeared to be in a happy mood, and allowed cameras to film some of her rituals such as making tea and a sandwich, prior to giving a calm, and at times humorous, interview about why she did not want to go to the hospital and her feeling that this particular treatment was not appropriate for her stage of therapy (see the response to head b) below for further information about this interview).

### *Considerations taken prior to broadcast*

The broadcaster said that, given the sensitive nature of the programme, all contributors were given the opportunity to view it prior to broadcast. It added that Miss Reis viewed the programme twice and that both Channel 4 and the production company considered all her comments about the content in good faith. Miss Reis first viewed the programme at her home on 17 November 2015, alongside her mother and brother, and the series editor. Channel 4 said that Miss Reis seemed to enjoy the programme, was happy and engaged as she watched it, and laughed at times. It said that she made a number of constructive comments to the series editor, notably, that: she would like three references to her being a “hypochondriac” to be removed;

not enough was made of the fact that, for her, just living in a house together with other people and going to the GP's surgery was a significant immersive challenge; and, she felt that a piece to camera, by the presenter, suggesting she was reluctant to push herself was unfair because she felt she had pushed herself immensely given the fear that was all around her in the house.

The broadcaster said that following this viewing, the series editor "reported Miss Reis' concerns immediately and they were all taken on board". The programme was edited to ensure Miss Reis was never referred to as a "hypochondriac" and more was made of what a challenge it was for Miss Reis to come into the house in the first place. Miss Reis was informed of these changes in an email dated 18 November 2015. In addition, the presenter's comments regarding Miss Reis' decision to leave the project were softened and more of her interview about this decision was included. Channel 4 said that Miss Reis raised no other concerns during or after this first viewing and seemed happy for her contribution to be included in the programme with the title "The House of Hypochondriacs".

However, on 18 November 2015, one day after the viewing, Channel 4 said that Miss Reis emailed the production company twice to say that she did not want to be featured in the programme because, she said, that the programme was about hypochondria. She also said that she had left the project during the filming because she was not told the truth about the programme content and the treatment was not correct for her condition. Miss Reis also said that, what she referred to as, "lavatory footage" of her (that is footage of Miss Reis putting toilet paper on a toilet seat – which, Channel 4 said, was a habit of hers to ensure she was fully protected from germs) was included in the programme despite her having asked the camera operator to stop filming at this personal and sensitive moment. The broadcaster said that it had checked this footage and that Miss Reis had not objected to the filming of this footage at the time. The broadcaster also said that during the 17 November 2015 viewing, Miss Reis saw this footage and did not object to its inclusion but rather laughed when it was shown. It added that, notwithstanding the above, the footage was removed from the programme, before the second viewing, as a gesture of goodwill.

Channel 4 said that on 19 November 2015, the series editor and one of the executive producers of the programme called Miss Reis to discuss her concerns and to try to give her some comfort and reassurance. Miss Reis said that her main concern was that she was not a hypochondriac and did not want to be referred to as one. The programme makers said this had been addressed already in the commentary, but that they could go further. They also reiterated that they did not feel it was unfair to Miss Reis to say in the programme that "on a general level [it] is about hypochondria". Channel 4 said that, following this telephone conversation, Miss Reis emailed the production company with an ultimatum: it could remove her from the programme, because she was not a hypochondriac, or it could change the title, listings and other general statements to refer not to hypochondria, but to "anxieties/phobias related to health". Miss Reis also emailed Channel 4 with her complaint to which Channel 4 replied reminding Miss Reis of the amendments that had been made to the programme following her 17 November 2015 viewing of it and that she had always known the working title was "The House of Hypochondriacs". Channel 4 said that it had also spoken on several occasions to the then Shadow Minister for Mental Health (Ms Luciana Berger MP), whom Miss Reis had also contacted. Subsequently, on 23 November 2015, Channel 4 hosted a second viewing of the programme, which had been edited as set out above. This viewing was attended by Miss Reis, her partner and Ms Berger, as well as the series editor.

The broadcaster said that after this viewing, Miss Reis made a number of further points. She said that the voiceover suggested that she did not *believe* she had hypochondria, rather than saying she *has not got* hypochondria (broadcaster's emphasis); and, that she felt that the manner of her exit made her look as if she had failed. She also wanted to check the information about her in the 'end card' (the on-screen information about what had happened to each contributor after the programme was filmed). Channel 4 said that after Miss Reis made these points and Channel 4 agreed to address her concerns in the edit, both Channel 4 and the series editor asked Miss Reis several times if she was happy with the programme. Miss Reis said that she was happy, subject to these new changes being made. The broadcaster also said that, at the end of this meeting, it explained to Miss Reis that if she wanted she could be edited out of the programme entirely (the broadcaster noted that this offer was also set out in a follow-up email Channel 4 sent to the then Shadow Minister for Mental Health on the same day). However, Miss Reis said that as long as two things were made clear – that she was emetophobic, and that she had left the project because she felt that the treatment was not right for her – she was happy to remain in the programme.

In addition, Channel 4 said that, on the same day (23 November 2015), the series editor emailed Miss Reis to confirm the changes she had agreed with Miss Reis earlier that evening. In this email, the series editor said: "In response to the points Lauren raised, we have agreed the following factual amendments with her. I have done so in text messages with Lauren this eve, as her email signal has been patchy". The email then set out the specific commentary changes that had been agreed. Channel 4 added that it sent a separate email to Miss Reis in which these same suggested commentary changes were set out. The broadcaster said that Miss Reis had accepted the above changes in the commentary via a text message and an email dated 24 November 2015 in which she wrote:

"Everything below [referring to the changes suggested by the series editor] is absolutely fine. Hopefully my text last night was enough to action the changes this morning".

Channel 4 also said that it was agreed that the 'end card' would read: "Lauren is continuing with therapy back home".

#### *Unjust or unfair treatment*

- a) Channel 4 refuted any suggestion that Miss Reis was unclear about the nature of the programme or misled about her involvement in it. Its general position regarding the information given to Miss Reis about the programme and the consent she gave for her contribution to it, is set out above. However, the broadcaster also addressed some of the specific points Miss Reis made in her complaint at this head in more detail.

In particular, it rejected her claim that the therapies she and her fellow contributors underwent involved "humiliating and unnecessary anxiety-provoking activities". It said that the exposure therapy seen in the programme was standard therapy for people suffering from anxieties and had previously been included in other programmes. The broadcaster also said that relevant NHS guidance states that CBT is a type of counselling that can help people manage their problems by changing the way they think and behave; and, can be used to develop practical ways of dealing with phobias. In particular, Channel 4 noted that, the NHS guidance states that:

"One part of the CBT treatment process that's often used to treat simple phobias involves gradual exposure to your fear, so you feel less anxious about it. This is known as desensitisation or exposure therapy"<sup>2</sup>.

Channel 4 said that the aim of the treatment was to improve the contributors' understanding about germs, disease and diagnosis and to try to address and rationalise their fears. It again said that the contributors were given a general outline about the therapy, but not the exact plan of treatment. This was because the clinical experts considered that knowing specific details about the treatments in advance, particularly as they could change, might make the contributors more anxious. It also said that the treatment plans were tailored to take account of each contributor's specific health anxieties and day-to-day progress. For example, Channel 4 said that although Miss Reis was due to visit the hospital alongside Angela and Shaun, the plan had been for Miss Reis to visit the microbiology department which had a state-of-the-art system for analysing infections. This was because it was considered that, if Miss Reis was able to talk to the doctors and scientists there, in a very controlled environment (unlike the general hospital ward areas that Angela and Shaun had visited), she would be able to learn more about the transfer of infections and germs and, hopefully, would realise that we are all surrounded by many things in life that would not harm us if we take suitable precautions.

The broadcaster also said that the contributors were given every opportunity to withdraw from the treatments at any time. It said that, in accordance with the programme's risk assessment, when the contributors were undergoing the immersive therapies in the GP's surgery and at the hospital, their welfare was paramount.

With regard to Miss Reis' claim that she withdrew from filming early in the process due to a "sense of non-disclosure", Channel 4 said that the reason she gave for leaving in her exit interview (a transcript and recording of which was provided to Ofcom) was that the trip to the hospital was simply too much for her at her stage of progress. (Further details are set out under head b) of Channel 4's response to this complaint below.)

With regard to Miss Reis' claim that the programme description was not included in the release form, Channel 4 said that the following programme description was given to Miss Reis in the release forms she had signed on 29 July 2015 and 27 August 2015<sup>3</sup>, and formed part of her agreement with the production company:

"In this immersive new features series for Channel 4, we are attempting to rehabilitate some of the UK's biggest sufferers of health anxiety but introducing them to what it's like to work on the front line of the NHS, in departments that will force them to confront some of their biggest fears as they come face to face with their worst health nightmares".

Channel 4 also said that the working title of the programme was always "The House of Hypochondriacs" and this was announced in the press release dated 15 July 2015. It said the working title was also included in the release forms Miss

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<sup>2</sup> <http://www.nhs.uk/Conditions/Phobias/Pages/treatment.aspx>

<sup>3</sup> Channel 4 said that the second release form was signed but undated. However, it understood that Miss Reis signed it on the 27<sup>th</sup> August 2015.

Reis signed before filming began and that Miss Reis was aware of the title on 28 August 2015 when she emailed the production company to say she was concerned about it. Channel 4 said the title was chosen because the programme needed to attract an audience who would understand the term hypochondria, but might not be aware of the meaning of health anxiety. It added that although Miss Reis may have been told the title was a working title and therefore **could** be subject to change (as with any working title), she was told on several occasions both before and during filming that it was **very unlikely** (broadcaster's emphasis) to change. It said this happened during several telephone conversations between the programme makers and Miss Reis and particularly during a telephone conversation that took place on 30 August 2015 – when one of the programme makers discussed the title and the reason for it with Miss Reis at length. The broadcaster said that, as a result of this conversation, Miss Reis not only knew the title was very unlikely to change but also “had the chance to back out before filming began”.

Channel 4 said that it understood that Miss Reis objected to the 15 July 2015 press release about the programme (which it said she did not appear to have seen until sometime after its release<sup>4</sup>) firstly, because of the title (of the programme), but also because it referred to “health care drains”. The broadcaster said that this reference was included because the programme wanted to examine and challenge the negative stereotypes surrounding hypochondria and health anxiety. However, this was not the focus of the programme. Rather, it aimed to give viewers a better understanding of the causes of hypochondria and health anxieties, the debilitating impact on the lives of the contributors and to follow them on their respective journeys through the exposure therapy. Channel 4 added that it did not agree with Miss Reis’ assertion that the programme was not a “sensitive account of health related anxiety/phobias”.

It said that on 2 September 2015, during the group’s first CBT session, Miss Reis expressed her concern at the title and the press release. The broadcaster said that the programme’s psychotherapist explained that hypochondria was a common term and one used by the general public to encompass health anxiety and fearful feelings towards one’s health which she considered did relate to Miss Reis’ situation. Miss Reis disagreed and at that point, both the psychotherapist and the series editor explained to Miss Reis that “if she felt so strongly about it that she wanted to leave then it would be entirely up to her [and] they would support her decision either way”. Channel 4 said that Miss Reis did walk out of the room at this point and the programme makers agreed to do an exit interview with her. However, Miss Reis then changed her mind and said that she wanted to fight the stereotypes about the term “hypochondria”. Channel 4 said Miss Reis seemed much happier at this point, smiling and making humorous comments, and said that she wanted to continue filming. The broadcaster said that Miss Reis was filmed making the following statement, none of which was included in the programme:

“There – there is actually no – there’s no stronger feeling that I feel than supporting other people with mental health. That’s just who I am now, so um, so actually I’m probably gonna go downstairs and participate in it once again because I think actually thousands of people will benefit from a programme like this. So I need to pull myself together and just crack on”.

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<sup>4</sup> Ofcom observed that in the second of the two emails Miss Reis sent to the production company on 18 November 2015 to inform them that she no longer wanted to be in the programme, she said that she had found the press release two days after filming began.

The broadcaster said that Miss Reis emailed the production company on 6 September 2015 after she had left the contributor house, saying that the confusion she felt in the house about the title was a misunderstanding because she had forgotten that the large title of the twitter advert said: “Are You A Hypochondriac?”, and therefore found the fact that the title would include the word hypochondriac confusing. Channel 4 argued that this suggested that at no time was Miss Reis under any illusion that the title would be anything other than “The House of Hypochondriacs”. It said that, as it had previously set out, Miss Reis had ample opportunity before and during filming to cease her participation in the programme once she knew the title, but did not do so. It also reiterated that following Miss Reis’ pre-broadcast viewings of the programme, she agreed for her contribution to be included (subject to some changes agreed with Channel 4 and production company as set out earlier) under the title “The House of Hypochondriacs”.

- b) Channel 4 refuted any suggestion that the programme unfairly reflected the reasons why Miss Reis left the project. It said that Miss Reis felt unable to attend the hospital because, in her view, it was too soon to confront such a big fear of germs. Channel 4 said that when Miss Reis decided to leave the project, the presenter spoke with her about her reasons for doing so because he wanted to ensure she had thought about it carefully and would not end up regretting her decision. She also gave an exit interview to explain, in her own words, why she was leaving. Channel 4 also said that the unedited footage of the exit interview showed that Miss Reis did not mention at any time that non-disclosure about the nature of the programme or the techniques used by the programme makers were the reasons she was leaving the project. It added that Miss Reis stated clearly, several times, that she was leaving because the hospital therapy was a step further than she felt able to go at that stage of her treatment. For example, she said:

“It’s just that I am not ready to approach level 10 when I’m still dealing with maybe level 5. You know, I was in a doctor, a GP’s surgery the other day and I feel that that was enough for me this week, in terms of exposing myself to bacteria and viruses”.

Channel 4 said that in the programme the presenter described Miss Reis’ reason for leaving the project as follows: “*But I’m missing one of my patients. Lauren has decided she can’t face it*”. One minute later, the presenter also said: “*Lauren’s condition is so extreme that being in a strange house is an enormous challenge. Having survived the GP visit, today’s trip to St George’s is just too much*”. The broadcaster said that, afterwards, Miss Reis herself was shown saying:

“*When I found out that we were going to spend the day in the hospital, I – the instant thought is, ‘I went to the GPs for 10 hours the other day. Do I need to do this again?’ But also because I knew it was gonna be more hands on. I knew I wasn’t gonna be able to get away with that this time round and I knew there’d be a lot of contact*”;

and later said:

“*Feeling a little disappointed that I couldn’t see the full week through. Um, but I actually think it’s just because the treatment isn’t suitable for me at this stage of my own personal therapy and my journey, if you will*”.



Channel 4 also said that, when reflecting on Miss Reis' journey in the programme, the presenter acknowledged that the treatments were too much for her and said that he would have a look to see what other treatments might help her. The broadcaster observed that the presenter said:

*"Lauren has concluded this particular immersive therapy [the hospital visit] is not right for her",*

and later, he said:

*"I was sorry to lose Lauren but I have to say, I think it was the right decision and I will continue to look for the right therapy for her".*

In conclusion, Channel 4 said that the statements made about Miss Reis leaving the project in the programme were "entirely fair and accurate" and were echoed by Miss Reis.

#### *Unwarranted infringement of privacy*

- c) Channel 4 denied that Miss Reis' privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because she was misled about the nature of the programme and therefore did not give informed consent when disclosing details about her mental health to the programme makers.

The broadcaster said that both it and the production company took the privacy of contributors extremely seriously, particularly with regard to "vulnerable categories and sensitive mental health and medical information". It said that it was important that the production company and both programme psychologists were fully aware of Miss Reis' medical and psychological history and the details of her conditions, so they could ensure that: the treatments were appropriate for her, the proper support was put in place and she was robust enough both to undertake the treatments and to take part in the programme. It added that this process was fully open and transparent and noted that, as set out above, Miss Reis herself emailed detailed information about her medical history with regard to the conditions from which she suffered to the production company on 12 August 2015.

Channel 4 also referred back to the conversations which took place between Miss Reis and the production company before, during and after filming, as set out above, and specifically to the information given to Miss Reis about the immersive therapies – including the reasons why the precise detail of the treatments was decided upon on a fluid and bespoke basis.

The broadcaster disputed Miss Reis' claim that the contributors were never told that they "*were not allowed to know*" about the exposure activities, but said that, as set out above, the treatments were "fluid, bespoke and incrementally challenging", and the contributors were not to be overloaded at the outset, but to build up to a gradual treatment plan, with the appropriate support in place at every stage. The broadcaster said that, notwithstanding not being told the precise details of the treatments, Miss Reis continued to engage with the process, moved into the contributor house, and undertook the treatment of attending the GP's surgery. It said that neither the production company nor the presenter and the psychologists were in any doubt regarding Miss Reis' ability to eloquently and intelligently verbalise her thoughts, feelings, concerns and opinions. It again said that Miss Reis did this on a regular basis, both on and off camera, and that on

each occasion her concerns were listened to, and sometimes discussed at length.

Channel 4 also said that Miss Reis was incorrect to state that the off-camera psychotherapist agreed the exposure therapy was not suitable for her. It said that, in an email to Miss Reis, the psychotherapist did propose she help Miss Reis find psychological support in her local area, but this was not a suggestion that the treatments were not suitable for her. It added that, as already set out above, the psychotherapist's considered opinion was that Miss Reis would benefit from the exposure therapy.

- d) Channel 4 also denied that Miss Reis' privacy was unwarrantably infringed in the programme as broadcast because the programme disclosed details about her health anxiety without her consent and included footage of her in the bathroom.

Channel 4 said that while in the contributor house, and on the day that Miss Reis moved out, the toilet seat that Miss Reis was using in her en-suite bathroom was filmed with toilet paper on top of it because she did not want to sit on the seat directly due to her fear of germs. The broadcaster said that Miss Reis was in the bathroom at the time this footage was filmed, it was filmed openly and Miss Reis did not ask for the filming to stop. It also said that, as shown in the first part of the programme, Miss Reis had previously been filmed laughing and joking about her habit of covering her toilet seat in toilet paper. Channel 4 also said that, as set out above, during her first viewing of the programme (on 17 November 2015), Miss Reis saw this footage of the toilet seat covered in toilet paper and laughed, particularly when her brother said she has always done that. However, this footage was removed from the programme before the second viewing as a gesture of goodwill to Miss Reis.

Channel 4 said that Miss Reis also allowed filming of her carrying out daily rituals like making a cup of tea and a sandwich, both of which involved her washing her hands frequently in the bathroom, and was comfortable describing her rituals. It said that this footage was recorded, and some of it was included in the programme, to capture how time-consuming and exhausting these rituals were in order to help viewers understand the scale of the impact Miss Reis' health anxiety had on her life. Channel 4 also said that it was relevant to note that Miss Reis was confident with the crew; she was frequently "self-censoring" and asked for filming to stop on a number of occasions; and, that, on each such occasion, filming did stop until she was comfortable to begin filming again.

In response to Miss Reis' claim that she would not have consented to disclosing details about her mental health to support a programme which focused on the cost of health anxiety to the NHS, Channel 4 said that, as set out in its response to head a) above, the issue of the cost of health anxiety to the NHS was part of the negative stigma that is attached to hypochondria which the programme was trying to challenge. It also said that Miss Reis wanted to take part in the programme to challenge such negative stereotypes and added that, in any case, the actual focus of the programme was not this issue but what it was like to live with health anxiety on a daily basis, and the journey the contributors went through to try to confront their fears.

In conclusion, Channel 4 said that it rejected the suggestion that either it or the production company were unfair in their dealings with Miss Reis, or that they had breached her privacy. It also said that they had both acted responsibly and sensitively throughout the development, production, filming and the broadcast of this

programme. Channel 4 added that the duty of care extended to Miss Reis was paramount at all times; every care was given to her support and assistance; and, this continued long after filming ceased.

### **Ofcom's Preliminary View**

Ofcom prepared a Preliminary View that Miss Reis' complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View and their comments are summarised below.

#### *Miss Reis' representations*

Miss Reis said that she was recorded taking part in two "exit interviews", the first of which was not provided to Ofcom by the broadcaster with its original response, and which Miss Reis said Ofcom should view because it "explains all my points for leaving in its raw honesty with the presenter Dr [Christian] Jessen". Miss Reis also said that, during this interview, Dr Jessen indicated to her that she was "defeatist" and told her that she "hadn't tried and hadn't got any better". Miss Reis said that she did not understand why she was asked to do a second interview and that she "wasn't able to leave the house until they had done it". She also said that it might have been because she "came over as being relieved and happier" at the time it was recorded.

Miss Reis also listed a number of points, made by Channel 4 in its original response to the complaint, which she said were erroneous. In summary, Miss Reis said that:

- she did not, as Channel 4 claimed, laugh at the footage of herself putting toilet paper on a toilet seat when she first previewed the programme;
- Channel 4 was wrong to claim that the psychologist (referred to as a psychotherapist by Channel 4 in its response) had not said that "it [the treatment she was undergoing during the making of the programme] wasn't appropriate treatment [for her]" and had not "asked the crew to get the contributors a contract which truly explained our rights" because she was "shocked that we didn't have one";
- Channel 4 was wrong to say that it offered to remove her from the programme several times because this "only happened the once, [on] the day before the broadcast"; and,
- in contrast to Channel 4's claims, "there was an occasion when I had to ask a camera operator several times before he put the camera down and when asked why he didn't do it the first time, he said it was to create a reaction". Miss Reis added that the same camera operator had filmed the "toilet footage" despite her asking him to not do so.

In addition, Miss Reis reiterated her complaint that she was told the title of the programme was "a working title and for admin purposes" and said that "there was nothing ever written down apart from travel arrangements and the release forms" and that if Ofcom was able to hear the "verbal conversations" that took place between her and the programme makers it "would understand why I continued with the filming each time I was in doubt, as every time something would happen I would be talked round again".

Miss Reis also said that contributors to programmes from “vulnerable categories” should “be provided [with] the upmost transparency so they are absolutely clear on what their rights are, especially when they are put in positions which create anxiety” and “have an objective person prior to filming on set, whose prime concern is the duty of care of those involved”. Miss Reis said that this function was not fulfilled by either the production team or the psychologists all of whom, she said, were concerned with “reputation, ratings and [the] schedule”.

#### *Channel 4's representations*

Channel 4 supplied Ofcom with a copy of the unedited footage to which Miss Reis referred and said that her discussion with the presenter, Dr Jessen, was not, as she had described it, an “exit” interview. Rather, the conversation was used to give Miss Reis “an opportunity to talk with Dr Jessen about her decision to leave in order to help ensure that she had thought carefully about it, was entirely happy with it and would not end up regretting it” – an outcome which the programme makers and experts were concerned might ultimately prove to be more harmful to Miss Reis than remaining in the house and completing the treatment and the programme. Channel 4 added that the programme makers also considered that, because Dr Jessen had been present at the beginning of the process for each of the contributors, he should also be present for each of them at the end.

The broadcaster refuted Miss Reis’ claims that Dr Jessen called her “defeatist” during their discussion – the broadcaster said “this word is not used at all” – and that he told her she “hadn’t tried and hadn’t got any better”. Channel 4 said that, while exploring why Miss Reis wanted to leave the project, Dr Jessen “did suggest, initially, that Miss Reis had met the treatments with some resistance and that, although the treatments that were chosen for her were specific to her problems, if she did not give them a chance, she would not know that”. However, it also said that he did so “to explore and challenge Miss Reis’ reasons for leaving [and] to ensure she had thought through them and had an opportunity to discuss them with him”. The broadcaster acknowledged that, during this discussion, Dr Jessen said that Miss Reis was not “better”, if compared to the general population, because she was still controlled by her phobias and anxiety. However, it also said that Miss Reis mistakenly thought that Dr Jessen was saying that she had not improved within herself and added that “this was clearly noted by Dr Jessen, at the time, to be a misinterpretation of what he was saying”, particularly when he said to Miss Reis “It’s not about failure” and told her that he simply wanted to challenge why she felt the treatments were not right for her and to explore what different treatment options were available. Channel 4 quoted a comment made to Miss Reis by Dr Jessen during this discussion in support of its argument.

Channel 4 denied that Miss Reis “wasn’t able to leave the house” until the programme makers had recorded an exit interview with her. It said that “the exit interview was carried out so that Miss Reis – when calm, under no pressure and having had time to reflect on her experiences and her reasons for leaving the project – could better explain why she wanted to leave”.

The broadcaster contested the other claims which Miss Reis made about the actions of and/or comments made by the programme makers and mental health experts during the production. In particular, having rejected Miss Reis’ claim that the psychotherapist had described her treatment as inappropriate and called for all the contributors to be given “a contract”, Channel 4 noted, that, as it had previously set out, “before the start of filming Miss Reis signed two release forms...that described in some detail the nature of Miss Reis’ anticipated participation”. The broadcaster also

referred back to its earlier response with regard to the occasions on which Miss Reis was offered an opportunity to be removed from the project and the information which Miss Reis was given (and the discussions which took place between her and the programme makers) about the title of the programme.

In addition, in response to Miss Reis' comments about the duty of care which programme makers have towards contributors who come from "vulnerable categories", Channel 4 said that, as it had previously explained, the production company had "engaged two appropriately qualified, experienced and independent psychologists...whose sole responsibility was to ensure the welfare of all the contributors". It also said that it "strongly refuted" Miss Reis' claim that the psychologists "were there for 'reputation, ratings and [the] schedule'" or that their actions were undertaken at the behest of the production company.

## **Decision**

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

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

In reaching its Decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript, a recording of Miss Reis' exit interview and transcript, both parties' written submissions and supporting material, including: email correspondence between Miss Reis and the programme makers, and a copy of the contributor release forms Miss Reis was asked to sign. Ofcom also took careful account of the representations made by Miss Reis and Channel 4 in response to Ofcom's Preliminary View on this complaint. However, Ofcom concluded that none of the further points raised by either party materially affected the outcome not to uphold the complaint.

### *Unjust or unfair treatment*

- a) Ofcom first considered Miss Reis' complaint that she was treated unjustly or unfairly in the programme as broadcast because she was misled over the nature of the programme and did not give informed consent.

When considering complaints of unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("the Code"). Ofcom had regard to this Rule when reaching its Decision on heads a) and b) of this complaint. It is important to note that where there appears to have been unfairness in the making of the programme, this will only result in a finding of unfairness, if Ofcom concludes that it has resulted in unjust or unfair treatment to the complainant in the programme as broadcast.

In this case, Ofcom considered whether the programme makers were fair in their dealings with Miss Reis as a potential contributor to the programme, as outlined in Practice 7.2 of the Code which states that: “Broadcasters and programme makers should normally be fair in their dealings with potential contributors to programmes, unless, exceptionally, it is justified to do otherwise”. In particular, we considered whether Miss Reis gave her informed consent to participate in the programme, as outlined in Practice 7.3. Practice 7.3 sets out that in order for those invited to contribute to a programme to be able to make an informed decision about whether to take part, they should be given sufficient information about: the programme’s nature and purpose; their likely contribution; the areas of questioning and wherever possible, the nature of other likely contributions; and, any changes to the programme that might affect their decision to contribute. They should also be told the nature of any contractual rights they may hold with regard to their contribution and, if offered an opportunity to preview the programme, be given clear information about whether they will be able to effect any changes to it. The Code states that taking these measures “is likely to result in the consent that is given as being informed consent”.

In addressing the complaint, we considered whether Miss Reis had given her informed consent to being filmed for inclusion in the programme.

*Information provided to Miss Reis regarding the nature of the programme*

We began by assessing whether Miss Reis was provided with sufficient information about the nature and purpose of the programme and her likely contribution to it.

We observed from the parties’ initial submissions that both appeared to agree that Miss Reis was given at least one contributor release form to sign and that she subsequently took part in the programme by being filmed at her home, in the contributor house and in the GP’s surgery. However, we also observed that, as part of her representations on the Preliminary View on this complaint, Miss Reis indicated that neither she, nor the other contributors, had been given “a contract which truly explained our rights”; and, that, in response, Channel 4 reiterated that “before the start of filming Miss Reis signed two release forms...that described in some detail the nature of Miss Reis’ anticipated participation”. As set out in more detail below, Ofcom had been provided with copies of both release forms signed by Miss Reis, and, on the basis of the information available, we understood that Miss Reis was given and signed the release forms before filming began.

We also noted the disparity in understanding between the complainant and the programme makers on what information Miss Reis was given about the nature of the programme and its title, both prior to and during the relevant filming, and the agreements reached by the parties about the final content of the programme when it was being edited prior to broadcast. In particular, we noted that Miss Reis claimed that “a programme description did not appear on the release form”; that she was told by the programme makers that the programme would be a “sensitive account of health related anxiety/phobias” but that a press release (dated 15 July 2015) she found after filming had begun, in her view, contradicted this. Miss Reis also said that she was assured that the working title of the programme, “The House of Hypochondriacs”, was for “admin purposes” and subject to change and that if this title was used the content of the programme would be different. In its response to the complaint, Channel 4 denied these claims and set out, in detail, the contact which it said the programme makers and psychologists working on the programme had had with Miss Reis on the nature of the programme and its

title. Both parties reiterated their respective positions in this regard in their representations on the Preliminary View.

In light of this apparent difference in understanding, Ofcom carefully considered the documents relating to the content of the programme which we understood Miss Reis had read prior to being filmed – notably, the casting advert to which Miss Reis responded and the two contributor release forms which she signed – as well as the communications between the parties about the content of the programme which were provided to Ofcom by the broadcaster.

We observed that, as set out above, the casting advert to which Miss Reis responded was entitled: “Are you a hypochondriac?”. We also noted that after asking several questions about the behaviours exhibited by potential contributors, including whether they “visit the doctor on a regular basis”, the advert read:

“We’re looking to speak to people who suffer from HEALTH ANXIETY for a new immersive TV series.

Most of us worry about our health from time to time, but for some this worry NEVER goes away and becomes a problem in itself.

If this sounds like you, get in touch with us today...”.

In addition, we observed that, in the email Miss Reis sent to the production company, in response to this advert, indicating that she would like to contribute to the programme, Miss Reis said: “I do not suffer from health anxiety but Emetophobia. The thought process is very similar”.

We also observed that Miss Reis signed two contributor release forms. The first was dated 29 July 2015 and we understood that it was signed by Miss Reis either during or soon after one of the programme makers visited her to discuss the nature of the programme and Miss Reis’ contribution. We noted that, in its response, Channel 4 said that during this meeting Miss Reis was told that: if she took part, she would live in a house with other people who “share health anxieties” but her condition was specific while the others had a “different more generalised health anxiety”; the contributors would be in an “immersive situation”, the programme was being advised by a qualified CBT practitioner to whom the contributors would have access throughout the week of filming; and the programme would involve engagement with various medical organisations (specifically, Miss Reis was told that she would visit these organisations and speak to medical specialists to help her understand her fear of contamination). We also noted that the broadcaster said that, during her subsequent assessment of Miss Reis, the psychotherapist working on the programme was very careful to explain to Miss Reis that she would not know “*exactly* (broadcaster’s emphasis) what was planned” with regard to the content of the programme (and notably the therapy in which she would take part). The second contributor release form was undated, however, Channel 4 said that it understood Miss Reis signed it on 27 August 2015 – the day before filming began.

Ofcom observed that, as set out in the broadcaster’s response above, both of the release forms which Miss Reis signed included the following programme description:

“In this immersive new features series for Channel 4, we are attempting to rehabilitate some of the UK’s biggest sufferers of health anxiety, but

introducing them to what it's like to work on the front line of the NHS, in departments that will force them to confront some of their biggest fears as they come face to face with their worst health nightmares”.

We also observed that the second release form included the following wording:

“I understand I will spend time over the course of a week living with other people affected by health anxiety. During this time we will engage in various immersive experiences based at a number of different medical institutes enabling us to see a cross section of the NHS in particular departments pertinent to our own health based fears such as cardio and neurology”.

In addition, the list of specific filming locations set out in this release form included not only Miss Reis' home, and the “contributor house”, but also St George's University Hospital, a St John Ambulance training room, homes visited by the West Midlands Ambulance Service and the West Midlands Ambulance Service's call and dispatch centres.

Ofcom also noted that Channel 4 said that the psychotherapist, who assessed Miss Reis prior to her taking part in the programme, considered that: the emetophobia from which Miss Reis suffered was part of a broader health anxiety; Miss Reis was giving informed consent to being filmed and participating in the programme despite not knowing the precise detail of what it would involve each day; and, there was nothing to suggest that Miss Reis' involvement in the programme would be detrimental to her, as long as proper support and care was put in place should it be needed (which, the broadcaster said, was the case throughout and after the filming).

In light of all the factors set out above, Ofcom considered that Miss Reis was provided with sufficient information about the nature and purpose of the programme, and her likely contribution to it, to be able to provide informed consent for her contribution.

#### *The programme's title*

With regard to this element of the complaint, we observed from the parties' submissions that:

- Miss Reis acknowledged that she “found out about the title of the programme from the release forms;
- Channel 4 said that Miss Reis was aware of the title during filming as she raised this topic with programme makers a number of times;
- Channel 4 also said that while Miss Reis may have been told the title was a working title and therefore **could** be subject to change, she was also told on several occasions, both before and during filming, that the title was **very unlikely** (broadcaster's emphasis) to change; and,
- Channel 4 said that the psychotherapist explained to Miss Reis that hypochondria was a common term and one used by the general public to encompass health anxiety and fearful feelings towards one's health which she considered related to Miss Reis' situation. Channel 4 said that Miss Reis disagreed and, while she was told by the psychotherapist and the series



editor that they would support her decision if she wanted to leave the project, she decided to stay despite the use of the term hypochondria in the title.

In addition, we observed that the correspondence between the parties following Miss Reis' pre-broadcast viewings of the programme indicated that, subject to the changes she agreed with the programme makers being made (see below), and after being given and rejecting an opportunity to have her contribution edited out from the programme (Ofcom understood that this offer was made several times on the day before the programme was broadcast), Miss Reis was content to be included in the programme which she understood would be entitled "The House of Hypochondriacs".

Based on the information set out above, Ofcom considered that the use of the title "The House of Hypochondriacs" for the programme as broadcast would not have invalidated the consent given by Miss Reis for her contribution to the programme.

#### *Miss Reis' contribution*

In Ofcom's view, consent and whether it remains valid is an issue that continues to be relevant from the start of a contributor's participation through to its conclusion. Therefore, in assessing whether a contributor has given informed consent for their participation, Ofcom will not only look at the information that was provided to the contributor prior to the recording of the contribution, but Ofcom will also consider the contribution itself.

We watched the programme carefully, in order to take into account Miss Reis' contribution to it and assess whether it matched the description Miss Reis was given and a reasonable understanding of the programme's aims and purposes based on the information provided to Miss Reis by the programme makers.

Ofcom considered that it did. In particular, the programme, which followed the progress of all four contributors as they undertook the therapy arranged for them to try to tackle their conditions, repeatedly made it clear to viewers that Miss Reis suffered from a distinct form of health anxiety, namely emetophobia and OCD-contamination disorder, compared to the other contributors (who suffered from a more generalised form of health anxiety). The programme also made it clear that rather than consulting doctors very frequently (as the other contributors did), because of her condition, Miss Reis avoided going to the doctor. For example, it included footage of Miss Reis saying that there were times when "*I know I need to go to the doctor's...but I won't*" and that she had "*only been to the doctor's maybe three, four times in probably the last 10 years*".

We noted Miss Reis' claim that, contrary to her expectation, the programme was not a "sensitive account of health related anxiety/phobias". However, we observed that on several occasions the programme emphasised the negative impact that health anxiety had on all of the contributors and the challenge it was for each of them, including Miss Reis, to tackle it. For example, after showing footage of Shaun and Angela's visit to the hospital, the presenter was shown saying: "*Many people have a tendency not to take health anxiety very seriously but for sufferers it's a very real and very destructive condition, leading to a rapid downward spiral that can be very hard to get out of. Combating it takes a lot of time, and it takes a lot of hard work*".

We also observed that each of the contributors was given the opportunity to describe their conditions and behaviours in their own words. This included Miss Reis, who was shown talking about and illustrating the methods she used to cope with her condition (for example, frequently washing her hands, washing dishes in the bath and wearing gloves to carry out daily household tasks) and also saying: *"It's [her condition] managed my life for the past 20 years so it's not something I can just let go of"*. In addition, the presenter said: *"Lauren's condition is so extreme that being in a strange house is an enormous challenge. Having survived the GP visit, today's trip to St. George's is just too much"*. This was followed by footage of Miss Reis talking about the proposed visit in manner that clearly expressed the extent of her anxiety about it. In particular, she said that her immediate thoughts on being told about the planned visit were: *"Do I have to do this again?"* and *"...because I knew it was gonna be more hands on, I knew I wasn't gonna be able to get away with it"*.

#### *Treatment of Miss Reis prior to broadcast*

Having assessed Miss Reis' contribution, and concluded that it matched the description she was given, we also took into account the manner in which Miss Reis was treated during the making, and prior to the broadcast, of the programme. In particular, we noted the following points made by the broadcaster in its response to the complaint:

- The programme makers and psychologists regularly assessed Miss Reis' needs and responded to her concerns throughout the filming process and beyond, notably her requests that filming be stopped;
- Miss Reis was made aware that she could leave the project at any time prior to the end of the week's filming and she duly did so with the full support of the programme makers;
- Miss Reis was given two opportunities to view the programme prior to broadcast and on both occasions edits were made to address the concerns she raised.

In particular, the programme makers: made several changes to the commentary to ensure that Miss Reis was not referred to as a hypochondriac and that it was clear she suffered from emetophobia and OCD contamination disorder; included additional commentary to make clear the extent of the challenge Miss Reis had faced in staying in the contributor house; and included more of her exit interview to give viewers a clearer understanding of the reasons she had given for leaving the project; and changed the on screen information about her at the end of the programme.

Following Miss Reis' first viewing of the programme, Miss Reis emailed the programme makers giving them the option of either removing her from the programme or changing the title, the programme listings and all general statements about hypochondria. The programme makers reminded her of the changes to the content which had already been made and declined to take either course. However, they also subsequently held a second viewing of the programme and made several further edits to address Miss Reis's concerns.

As noted above, on several occasions Miss Reis was given an opportunity to leave the project and, on the day before broadcast she was asked if she wanted to have her contribution to the programme withdrawn entirely. This offer was repeated several times. However, she confirmed that she wished her contribution to be included. In particular, we noted that the last communication from Miss Reis to the programme makers, which was sent on the morning of 24 November 2015 – the day the programme was broadcast, confirmed her willingness for her contribution to be included. We observed that, within her representations on the Preliminary View, Miss Reis denied that Channel 4 had offered to remove her from the programme several times and instead said that this “only happened the once [on] the day before the broadcast”. We also observed that, within its representations on the Preliminary View, Channel 4 referred back to its earlier response on this matter. Ofcom took particular account of the correspondence that the programme makers and Channel 4 had with Miss Reis and those acting on her behalf, notably the then Shadow Minister for Mental Health, about Miss Reis’ willingness to be included in the programme. We also took into account the specific content of the final version of the programme as it related to Miss Reis. Given these factors, Ofcom concluded that Miss Reis had been offered the opportunity to have her contribution to the programme removed on several occasions on the day prior to the broadcast and that she decided against accepting this offer.

In our view, the programme makers treated Miss Reis fairly during the making of the programme. In particular, on the information available, we understood that any concerns which Miss Reis raised during and after the filming were taken seriously; her requests for filming to be stopped where adhered to; she was given and availed herself of the opportunity to leave the project; and, the programme makers took account of Miss Reis’ comments about the versions of the programme which she had pre-viewed when editing the programme prior to broadcast.

Taking account of all the factors noted above, Ofcom considered that, in the particular circumstances of this case, Miss Reis gave informed consent for the programme makers to receive and record information about her and to film her for inclusion in the programme and also that the fact that the programme makers included footage of and information about her in the programme as broadcast, and that the programme was entitled *House of Hypochondriacs*, was not unfair to her for the purposes of Rule 7.1.

Therefore, Ofcom found that Miss Reis was not treated unjustly or unfairly in the programme as broadcast through the inclusion of footage of her in it.

- b) Ofcom next considered Miss Reis complaint that unfair claims were made about her in the programme. In particular, she said that the programme stated that she had received the correct treatment but had left the contributor house because she was unable to cope with the exposure therapy.

In considering this head of complaint, Ofcom had regard to Practice 7.6 of the Code which states that that when a programme is edited, contributions should be represented fairly. We also took account of Practice 7.9 of the Code which states that, before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation. Whether a broadcaster has taken reasonable care to present material facts in a way that is not unfair to an individual or organisation will

depend on all the particular facts and circumstances of the case including, for example, the seriousness of any allegations and the context within which they were presented in the programme.

It is important to note that the editing of a programme is an editorial matter for the broadcaster. However, broadcasters must ensure that the programme as broadcast does not result in unfairness to the individual or organisation concerned. We therefore considered both the information which Miss Reis gave to the programme makers about her decision to leave the project prior to her departure and how Miss Reis' decision to leave was represented in the programme.

In her complaint, Miss Reis said that her reasons for leaving included: the non-disclosure about the nature of the programme; and, the techniques used by the programme makers but the programme omitted these reasons. Channel 4 said that Miss Reis' exit interview showed that this was not the case.

Having assessed the transcript and recording of Miss Reis' exit interview, Ofcom observed that, on several occasions, Miss Reis indicated that she had decided to leave the project because the continuation of the exposure therapy (i.e. through the planned visit to the hospital) was a step further than she felt able to go at that stage of her treatment. For example, in addition to the comments about her decision to leave which Miss Reis was shown making in the programme (see below for details), Miss Reis said her involvement in the programme had "come to an end now because...there was probably too many activities that I'm just not ready to face yet because I've just a few more things to do first". She also described the activities she had been asked to take part in as "a number 10 sort of target or goal" and said that they "feel a little bit daunting, right now". She said she thought that, because her involvement in the programme "was, kind of, quite in at the deep end, I've not been able to participate in some of these things". During this interview, Miss Reis also said that the targets were "so high that I can already start to feel myself feeling like I haven't achieved very much", and added that this was "another reason why... I need to go at this point because I think me focusing on smaller things first is a bit more of a benefit to me right now than doing something that I don't feel capable of doing just yet".

We noted that, after being asked to talk about the highs and lows of the week from her perspective, Miss Reis discussed the pressure of having cameras and people watching around her as well as the stress she felt from the sense she had of having to "keep up with the schedule" – which she indicated was difficult for her because of the routines she used to manage her condition. However, Miss Reis did not state that these factors were why she had decided to leave the project. Nor did she say that she had decided to leave because she was not given sufficient information about the nature of the programme or cite the techniques used by the programme makers as a reason.

In light of Miss Reis' representations on the Preliminary View, Ofcom asked Channel 4 to provide it with a recording of what Miss Reis' described as her "first exit interview" with the presenter, Dr Jessen. Having carefully assessed a recording of this unedited footage, we observed that, as Channel 4 acknowledged in its own representations, during this discussion, Dr Jessen questioned Miss Reis about why she was choosing not to continue with the treatment plan. In particular, he asked her to consider whether she was actually "better" (i.e. no longer suffering from her health related anxiety and specific

phobias) and whether her “resistance” to visiting the hospital (i.e. the next stage of the planned treatment) was actually a manifestation of her condition.

We also considered that during the interview, Miss Reis appeared to infer that Dr Jessen was suggesting that she had either “failed” and/or had “not tried”. However, having viewed the footage, we noted that at no stage did Dr Jessen say to Miss Reis that she had “failed”. Rather, on several occasions during this interview, Dr Jessen explained that he recognised the “massive” or “huge” difficulties Miss Reis had faced and the successes she had already had that week but that, in his view, she was not “better” (by which he said he meant “no longer ruled by your anxieties and phobias”). In addition, Dr Jessen told Miss Reis that his “agenda” in having this interview with her was: “to show how, actually, this week has been enormously challenging for you [and] that you have succeeded in pretty much everything we have set for you” but also that, in his view, “this is too much for you and I don’t think we should carry on because, I agree with you, I don’t think, I don’t think it is right for you”. He also explained that he wanted to ensure Miss Reis had fully considered her decision. For example, having noted the “massive progress” he said Miss Reis had made Dr Jessen said: “what I really want to be absolutely sure of is that you are in agreement with me that, possibly, some of the things that we planned, are maybe pushing it a bit too far”. Miss Reis agreed with this statement.

From assessing this footage, we also observed that, as in the later “exit” interview, throughout her initial discussion with Dr Jessen, Miss Reis continually explained that the visit to the hospital was a step too far for her that it was several “levels” higher or too difficult for her.

As set out in the “Programme summary” section above, after showing Angela and Shaun’s visit to St George’s hospital, and having previously explained that Miss Reis had decided not to take part in this visit, the presenter said:

*“But Lauren has concluded this particular immersive therapy [the hospital visit] is not right for her”.*

This was followed by footage of Miss Reis packing her bags and footage of Miss Reis’ exit interview with the programme makers during which she said:

*“Feeling a little disappointed that I couldn’t see the full week through. Um, but I actually think it’s just because the treatment isn’t suitable for me at this stage of my own personal therapy and journey, if you will”.*

Miss Reis was shown with her suitcase, walking away from the contributor house.

Later the presenter said:

*“I was sorry to lose Lauren but I have to say, I think it was the right decision and I will continue to look for the right therapy for her”.*

In our opinion, this material was a fair reflection of the reasons Miss Reis gave to the programme makers for her decision to leave the project in both her initial discussion with Dr Jessen and the exit interview, notably her repeated indications that she did not consider that the treatment she was being asked to undertake was right for her at this stage.

We concluded that the programme did not, as Miss Reis claimed, say that the treatment was correct for her but she had left the contributor house because she was unable to cope with it. Rather, we noted that the presenter said that, although he was sorry Miss Reis had decided to leave, he thought it was the “*right decision*” and he would “*look for the right therapy for her*”.

We therefore considered that the programme makers edited the relevant contribution (i.e. Miss Reis’s exit interview) fairly and took reasonable care to satisfy themselves that material facts with regard to Miss Reis’ reasons for leaving the project were not presented, disregarded or omitted in a way that was unfair to Miss Reis.

For these reasons, Ofcom found that Miss Reis was not treated unfairly in the programme as broadcast in this respect.

### *Unwarranted infringement of privacy*

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

This is reflected in how Ofcom applies Rule 8.1 of the Code which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted<sup>5</sup>.

- c) Ofcom considered Miss Reis’ complaint that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because she was misled about the nature of the programme and therefore did not give informed consent when disclosing details about her mental health to the programme makers.

Ofcom took into consideration Practice 8.5 of the Code, which states that any infringement of privacy in the making of a programme should be with the person’s and/or organisations consent or be otherwise warranted.

### *Legitimate expectation of privacy*

In assessing whether or not Miss Reis’ privacy was unwarrantably infringed in connection with the obtaining of material included in the programme, Ofcom considered the extent to which she had a legitimate expectation of privacy. The Code’s statement on the meaning of “legitimate expectation of privacy” makes clear that such an expectation:

“...will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye. There may

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<sup>5</sup> The explanation of the meaning of “warranted” under Rule 8.1 of the Code identifies revealing or detecting crime, protecting public health or safety, exposing misleading claims made by individuals or organisations, disclosing incompetence that affects the public, as examples of public interest.

be circumstances where people can reasonably expect privacy even in a public place...”.

In considering whether Miss Reis had a legitimate expectation of privacy, we first considered the nature of the material obtained. We recognised the sensitive nature of the material relating to Miss Reis’ mental health that was either received, noted or recorded by the programme makers and psychologists working on the programme. We also noted that locations in which at least some of the relevant footage was recorded (notably inside Miss Reis’ home and the house in which she lived during the filming) were private and that at least part of this material was recorded while Miss Reis was undertaking immersive exposure therapy. Given the above, we considered that Miss Reis had a legitimate expectation of privacy with regard to the obtaining of this material.

### *Consent*

Miss Reis acknowledged, in the complaint, that she volunteered the information about her mental health and we observed that, in its response, Channel 4 said that it was obtained openly and transparently (and that the complainant had not claimed otherwise). However, Miss Reis complained that she disclosed this material to the programme makers because she had been misled about the nature of the programme. In particular, Miss Reis said that she was not consulted in advance about the “exposure activities” and was not fully aware of what she was participating in.

We recognised the disparity between the parties regarding whether or not Miss Reis had given informed consent to her contribution to the programme. However, given all the circumstances and information we have seen, outlined in head a) of the Decision above, we considered that that Miss Reis had given informed consent for her contribution to the programme. Moreover, in our view, the contribution for which Miss Reis had given informed consent encompassed both the filming of her for inclusion in the programme (including footage that was related to or illustrated her mental health issues) and the receipt and recording of information about her mental health by the programme makers and psychologists during the making of the programme.

Having reached the view that Miss Reis had consented to the receipt and recording of the relevant footage and information, Ofcom considered that it was not necessary to assess whether or not any infringement of Miss Reis’ privacy in this respect was warranted.

Therefore, Ofcom found that Miss Reis’ privacy was not unwarrantably infringed in connection with the obtaining of material included in the programme.

- d) Ofcom then considered Miss Reis’ complaint that her privacy was unwarrantably infringed in the programme as broadcast because the programme disclosed details about her health anxiety without her consent and included footage of her in the bathroom.

In assessing whether or not Miss Reis’ privacy was unwarrantably infringed in the programme as broadcast, Ofcom first considered the extent to which she had a legitimate expectation of privacy in relation to the material broadcast. In doing so, Ofcom had regard to Practice 8.6 of the Code which states that, if the broadcast of a programme would infringe the privacy of a person, consent should be

obtained before the relevant material is broadcast unless the infringement of privacy is warranted.

#### *Legitimate expectation of privacy*

As explained above, the Code makes clear the meaning of “legitimate expectation of privacy”.

In considering whether Miss Reis had a legitimate expectation of privacy with regard to the inclusion of details about her health anxiety and any footage of her in the bathroom in the programme, we considered the nature of the material in question. As above, we noted the sensitive and private nature of the information relating to Miss Reis’ mental health which was included in the programme. We also noted that locations in which at least some of the relevant footage was recorded (notably inside Miss Reis’ home and the house in which she lived during the filming) were private and that at least part of this material was recorded while Miss Reis was undertaking immersive exposure therapy. Given the above, we considered that Miss Reis had a legitimate expectation of privacy with regard to the inclusion of the relevant material in the programme as broadcast.

#### *Consent*

We again recognised that the parties disagreed with regard to whether or not Miss Reis had given informed consent to her contribution to the programme. However, given all the circumstances and information we have seen, as outlined in head a) of the Decision above, we considered that Miss Reis had given informed consent for her contribution to the programme and that this consent extended to the inclusion of all the footage of, and information relating to, Miss Reis in the programme as broadcast.

It appeared that all of the footage of Miss Reis in a bathroom shown in the programme as broadcast, including the brief section of footage of the toilet seat (see below for details) was also included in the version of the programme which Miss Reis viewed on 23 November 2015. The same is true of the material relating to Miss Reis’ health anxiety, albeit that the precise nature of her condition was clarified in the broadcast version of the programme at Miss Reis’ request (see below for details). We noted that, as set out above, on 24 November 2015 (i.e. after this viewing) Miss Reis declined Channel 4’s offer to remove her from the programme and confirmed that she was content for her contribution to be included in the programme subject to the final set of agreed changes being made. These changes were duly made before the programme was broadcast.

In this head of the complaint, Miss Reis said that she would not have consented to disclosing details about her mental health to support a programme which focused on the cost of health anxiety to the NHS; and, specifically, complained that footage of her in her bathroom was included without her consent.

We noted that the programme included references to the cost of health anxiety to the NHS. For example, at the beginning of the programme the presenter said: *“it’s estimated that the NHS spends around £2 billion a year on the worried well, placing more of a strain on an already overburdened healthcare system”*. Later, the programme also included the cost of various medical assessments which Shaun had undergone in the months prior to his involvement in the programme. However, in our opinion, the cost of health anxiety to the NHS was not the focus of the programme. We noted that, in its response, Channel 4 indicated that



references to this issue were included because it was part of the negative stigma attached to hypochondria which the programme was trying to challenge.

In our view, the issue of the cost to the NHS was a legitimate aspect of the impact of health anxiety for the programme to explore and, taking account of the way it was presented, we did not consider that it invalidated the informed consent which Miss Reis had given for her contribution to the programme. In any event, all of this material was included in the version of the programme which Miss Reis viewed on 23 November 2015 (i.e. the version of the programme she saw immediately before confirming that she consented to the inclusion of her contribution, subject to certain changes).

We noted that Miss Reis did not identify the particular footage to which she referred as being filmed in her bathroom without her consent. However, during the programme as broadcast, Miss Reis was shown: washing her hands in a bathroom on several occasions; washing a plate in a bath; and, at the beginning of the third part of the programme, a montage of clips was shown which included footage of a toilet seat with toilet paper placed on top it and Miss Reis using her foot to push the toilet paper into the toilet bowl. This footage was approximately two seconds in duration and only Miss Reis' shoe and the lower part of her legs were visible in it.

We also noted that, in its initial response to the complaint, Channel 4 said that Miss Reis allowed herself to be filmed carrying out daily rituals, some of which involved her washing her hands, frequently in the bathroom. It also said that on each occasion Miss Reis asked for filming to stop, it stopped until she was comfortable to begin filming again.

Channel 4 said that the toilet seat that Miss Reis used in her en-suite bathroom was filmed with toilet paper on top of it because she did not want to sit on the seat directly due to her fear of germs. It said that, as shown in the first part of the programme, Miss Reis had previously been filmed discussing her habit of covering her toilet seat in toilet paper, and that this footage was filmed openly, while Miss Reis was in the bathroom and Miss Reis did not ask for the filming to stop. In her response to the Preliminary View, Miss Reis disagreed with Channel 4's recollection of these events. Given the apparent disagreement between the parties on this matter, Ofcom requested the broadcaster to provide an unedited recording of the relevant footage.

Having assessed this, we observed that Miss Reis appeared to actively co-operate with the camera operator so that he could capture footage of her regular activities aimed at coping with her health anxiety. We noted that, some minutes into the filming, Miss Reis turned to the camera operator (who was filming her as she prepared to make a sandwich in her bedroom), and said "At this point in time, I'm sorry, I have to say I would normally wash my hands, you see". The camera operator responded "OK, let me just get you coming in and washing your hands then" to which Miss Reis replied "OK". While the camera operator responded to Miss Reis he walked past her into her en-suite bathroom. He continued filming as he did so. Once in the bathroom, the camera operator called out "Action" to Miss Reis. Miss Reis then said to the camera operator "By the way, is the toilet seat paper off the toilet?". The camera operator, who was already filming at this point, replied "No it's not, do you want to take it off?" Miss Reis then came into the bathroom and said "Yeah, I just want to" as she used her foot to push the toilet paper into the toilet bowl and then shut the toilet seat lid. She then left the bathroom before re-entering it to wash her hands. At no point did Miss Reis

indicate to the camera operator that he should stop filming her. It appeared that all of the relevant material (including the footage of the toilet seat with toilet paper placed on top it and Miss Reis using her foot to push the toilet paper into the toilet bowl) was included in the version of the programme which Miss Reis watched before she confirmed her consent to being included in the programme.

In light of all of the observations above (and our conclusions, as set out in Decision at head c), we concluded that, irrespective of the references in the programme to the cost of health anxiety to the NHS, Miss Reis had consented to the broadcast of the material relating to her in the programme, and that this consent encompassed the broadcast of information and footage related to her mental health issues and the footage of her in a bathroom – including that showing a toilet seat covered in toilet paper.

Having reached the view that Miss Reis had consented to the inclusion of the relevant footage and information in the programme as broadcast, and that neither the specific content nor (as set out under the Decision at head a) the title of the programme as broadcast invalidated that consent, Ofcom considered that it was not necessary to assess whether or not any infringement of Miss Reis' privacy in this respect was warranted.

Therefore, Ofcom found that Miss Reis' privacy was not unwarrantably infringed in the programme as broadcast by the inclusion of details about her health anxiety and footage of her in the bathroom.

**Ofcom has not upheld Miss Reis' complaint of unjust or unfair treatment in the programme as broadcast and of unwarranted infringement of privacy in connection with the obtaining of material included in the programme, and in the programme as broadcast.**

## Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 15 August and 4 September 2016 and decided that the broadcaster or service provider did not breach Ofcom's codes, rules, licence conditions or other regulatory requirements.

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

Programme	Broadcaster	Transmission date	Categories
The Road to Martyrdom	London Live	07/07/2016	Crime and disorder
Harvey Beaks	Nicktoons	26/06/2016	Offensive language

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

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

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

Licensee	Licensed service	Categories
Gravity FM Community Interest Company	Gravity FM	Key Commitments

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

## Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 15 August and 4 September 2016 because they did not raise issues warranting investigation.

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

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

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Programming	107 Jack FM (Berkshire)	25/05/2016	Competitions	1
Couples Come Dine With Me	4Seven	14/08/2016	Transgender discrimination/offence	1
Naked Attraction	4Seven	06/08/2015	Nudity	2
Naked Attraction	4Seven	10/08/2016	Nudity	1
Programme trailer	5Star	16/08/2016	Sexual material	1
Programming	5Star	12/08/2016	Sexual material	1
Sex Pod (trailer)	5Star	12/08/2016	Scheduling	2
Sex Pod (trailer)	5Star	17/08/2016	Sexual material	1
Sex Pod (trailer)	5Star	18/08/2016	Sexual material	1
Are You Being Served?	BBC 1	28/08/2016	Other	1
Bargain Hunt	BBC 1	23/08/2016	Other	1
BBC Breakfast	BBC 1	04/08/2016	Gender discrimination/offence	1
BBC Breakfast	BBC 1	17/08/2016	Race discrimination/offence	1
BBC Breakfast	BBC 1	18/08/2016	Due impartiality/bias	1
BBC Look North	BBC 1	03/08/2016	Violence	1
BBC News	BBC 1	28/07/2016	Generally accepted standards	1
BBC News	BBC 1	10/08/2016	Race discrimination/offence	1
BBC News	BBC 1	15/08/2016	Race discrimination/offence	1
BBC News	BBC 1	24/08/2016	Other	1
BBC News	BBC 1	29/08/2016	Other	1
BBC News at Ten	BBC 1	19/08/2016	Generally accepted standards	2
BBC News North West	BBC 1	17/08/2016	Other	1
EastEnders	BBC 1	01/08/2016	Generally accepted standards	1
EastEnders	BBC 1	12/08/2016	Offensive language	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
EastEnders	BBC 1	18/08/2016	Generally accepted standards	1
EastEnders	BBC 1	19/08/2016	Generally accepted standards	15
EastEnders	BBC 1	19/08/2016	Other	1
EastEnders	BBC 1	19/08/2016	Scheduling	1
Eat Well For Less	BBC 1	03/08/2016	Gender discrimination/offence	1
Have I Got Old News for You	BBC 1	25/07/2016	Race discrimination/offence	1
Match Of The Day	BBC 1	13/08/2016	Nudity	4
Olympics 2016	BBC 1	09/08/2016	Generally accepted standards	1
Olympics 2016	BBC 1	10/08/2016	Other	1
Olympics 2016	BBC 1	12/08/2016	Generally accepted standards	1
Olympics 2016	BBC 1	12/08/2016	Race discrimination/offence	1
Olympics 2016	BBC 1	13/08/2016	Other	1
Olympics 2016	BBC 1	14/08/2016	Other	1
Olympics 2016	BBC 1	15/08/2016	Other	1
Olympics 2016	BBC 1	15/08/2016	Race discrimination/offence	1
Olympics 2016	BBC 1	16/08/2016	Gender discrimination/offence	1
Olympics 2016	BBC 1	16/08/2016	Other	1
Olympics 2016	BBC 1	18/08/2016	Other	1
Olympics 2016	BBC 1	19/08/2016	Other	1
Olympics 2016	BBC 1	Various	Other	1
Olympics 2016: Opening Ceremony	BBC 1	05/08/2016	Race discrimination/offence	8
Porridge	BBC 1	28/08/2016	Other	1
Programming	BBC 1	01/07/2016	Other	1
The Great British Bake Off	BBC 1	24/08/2016	Generally accepted standards	1
Trump's Angry America – Panorama	BBC 1	18/07/2016	Offensive language	1
Midlands Today	BBC 1 Midlands	19/07/2016	Generally accepted standards	1
Britain's Hardest Workers	BBC 2	22/08/2016	Offensive language	1
Eggheads	BBC 2	25/07/2016	Religious/Beliefs discrimination/offence	1
Kate Humble: My Sheepdog and Me	BBC 2	15/08/2016	Animal welfare	2
Olympics 2016: Opening Ceremony	BBC 2	06/08/2016	Generally accepted standards	1
Only Connect	BBC 2	01/08/2016	Drugs, smoking, solvents or alcohol	2
Olympics 2016	BBC 4	13/08/2016	Other	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Olympics 2016	BBC 4	15/08/2016	Race discrimination/offence	1
Olympics 2016	BBC 4	17/08/2016	Other	1
BBC Breakfast News	BBC News	04/08/2016	Disability discrimination/offence	1
BBC News Channel	BBC News	21/08/2016	Race discrimination/offence	1
Victoria Derbyshire	BBC News	18/08/2016	Race discrimination/offence	1
BBC News	BBC News Channel	15/07/2016	Crime and disorder	1
BBC News	BBC News Channel	08/08/2016	Other	1
Newsbeat	BBC Radio 1	03/08/2016	Sexual material	1
Newsbeat	BBC Radio 1	15/08/2016	Sexual material	4
BBC News	BBC Radio 4	18/08/2016	Due impartiality/bias	1
For Better or Worse	BBC Radio 4	04/05/2016	Sexual orientation discrimination/offence	1
I'm Sorry I Haven't a Clue	BBC Radio 4	25/07/2016	Offensive language	1
The Archers	BBC Radio 4	Various	Generally accepted standards	1
5 Live Sport	BBC Radio 5 Live	16/08/2016	Offensive language	1
Olympics 2016	BBC Radio 5 Live	12/08/2016	Sexual orientation discrimination/offence	1
Toby Foster at Breakfast	BBC Radio Sheffield	04/08/2016	Race discrimination/offence	1
Good Morning Ulster	BBC Radio Ulster	04/08/2016	Race discrimination/offence	1
Olympics 2016	BBC Red Button	09/08/2016	Sexual orientation discrimination/offence	3
Olympics 2016	BBC Red Button	12/08/2016	Race discrimination/offence	1
The Amazing World of Gumball	Cartoon Network	24/07/2016	Race discrimination/offence	1
Yokai Warriors (trailer)	Cartoon Network	05/08/2016	Disability discrimination/offence	1
The Dumping Ground	CBBC	10/08/2016	Exorcism, the occult and the paranormal	1
8 Out of 10 Cats Does Countdown	Channel 4	05/08/2016	Generally accepted standards	3
999: What's Your emergency?	Channel 4	18/08/2016	Generally accepted standards	1
999: What's Your Emergency?	Channel 4	11/08/2016	Race discrimination/offence	1
Channel 4 News	Channel 4	26/06/2016	Offensive language	1
Channel 4 News	Channel 4	15/07/2016	Due accuracy	1
Channel 4 News	Channel 4	15/07/2016	Due impartiality/bias	1
Channel 4 News	Channel 4	15/07/2016	Generally accepted standards	2
Channel 4 News	Channel 4	26/07/2016	Generally accepted standards	2
Channel 4 News	Channel 4	01/08/2016	Generally accepted standards	2

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Channel 4 News	Channel 4	11/08/2016	Due impartiality/bias	4
Eden	Channel 4	18/07/2016	Animal welfare	1
Eden	Channel 4	25/07/2016	Offensive language	1
Flying to the Ends of the Earth	Channel 4	31/07/2016	Religious/Beliefs discrimination/offence	1
Friday Night Dinner	Channel 4	19/08/2016	Religious/Beliefs discrimination/offence	1
Make My Body Better with Davina McCall	Channel 4	22/08/2016	Offensive language	1
Men in Black	Channel 4	06/08/2016	Offensive language	5
Naked Attraction	Channel 4	25/07/2016	Nudity	128
Naked Attraction	Channel 4	01/08/2016	Nudity	63
Naked Attraction	Channel 4	05/08/2016	Nudity	1
Naked Attraction	Channel 4	05/08/2016	Nudity	3
Naked Attraction	Channel 4	05/08/2016	Nudity	1
Naked Attraction	Channel 4	08/08/2016	Nudity	44
Naked Attraction	Channel 4	11/08/2016	Nudity	2
Naked Attraction	Channel 4	12/08/2016	Nudity	1
Naked Attraction	Channel 4	15/08/2016	Nudity	22
Naked Attraction	Channel 4	19/08/2016	Nudity	1
Naked Attraction	Channel 4	22/08/2016	Nudity	12
Naked Attraction	Channel 4	25/08/2016	Nudity	1
Rio 2016 Paralympics (trailer)	Channel 4	05/08/2016	Generally accepted standards	1
Rio 2016 Paralympics (trailer)	Channel 4	11/08/2016	Generally accepted standards	1
Rio 2016 Paralympics (trailer)	Channel 4	15/08/2016	Generally accepted standards	2
Rio 2016 Paralympics (trailer)	Channel 4	Various	Generally accepted standards	2
Secrets of A Police Marksman	Channel 4	18/08/2016	Generally accepted standards	1
Sunday Brunch	Channel 4	07/08/2016	Generally accepted standards	1
Tasty Box Sets (trailer)	Channel 4	13/08/2016	Sexual material	1
The Last Leg	Channel 4	15/07/2016	Religious/Beliefs discrimination/offence	1
The Three Day Nanny	Channel 4	10/08/2016	Offensive language	1
Can't Pay? We'll Take it Away: Busted	Channel 5	25/07/2016	Offensive language	1
Celeb Trolls: We're Coming to Get You	Channel 5	18/08/2016	Sexual material	3
Celebrity Big Brother	Channel 5	22/07/2016	Generally accepted standards	1
Celebrity Big Brother	Channel 5	28/07/2016	Generally accepted standards	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Celebrity Big Brother	Channel 5	28/07/2016	Race discrimination/offence	1
Celebrity Big Brother	Channel 5	29/07/2016	Race discrimination/offence	1
Celebrity Big Brother	Channel 5	29/07/2016	Sexual orientation discrimination/offence	1
Celebrity Big Brother	Channel 5	31/07/2016	Offensive language	1
Celebrity Big Brother	Channel 5	01/08/2016	Generally accepted standards	1
Celebrity Big Brother	Channel 5	01/08/2016	Offensive language	1
Celebrity Big Brother	Channel 5	02/08/2016	Generally accepted standards	1
Celebrity Big Brother	Channel 5	02/08/2016	Offensive language	1
Celebrity Big Brother	Channel 5	03/08/2016	Generally accepted standards	1
Celebrity Big Brother	Channel 5	04/08/2016	Crime and disorder	1
Celebrity Big Brother	Channel 5	04/08/2016	Generally accepted standards	6
Celebrity Big Brother	Channel 5	05/08/2016	Sexual material	1
Celebrity Big Brother	Channel 5	06/08/2016	Other	90
Celebrity Big Brother	Channel 5	07/08/2016	Generally accepted standards	51
Celebrity Big Brother	Channel 5	08/08/2016	Disability discrimination/offence	1
Celebrity Big Brother	Channel 5	08/08/2016	Sexual material	95
Celebrity Big Brother	Channel 5	08/08/2016	Offensive language	1
Celebrity Big Brother	Channel 5	09/08/2016	Sexual material	25
Celebrity Big Brother	Channel 5	10/08/2016	Generally accepted standards	1
Celebrity Big Brother	Channel 5	10/08/2016	Other	2
Celebrity Big Brother	Channel 5	10/08/2016	Sexual material	84
Celebrity Big Brother	Channel 5	11/08/2016	Generally accepted standards	56
Celebrity Big Brother	Channel 5	14/08/2016	Materially misleading	1
Celebrity Big Brother	Channel 5	17/08/2016	Offensive language	1
Celebrity Big Brother	Channel 5	19/08/2016	Generally accepted standards	2
Celebrity Big Brother	Channel 5	19/08/2016	Generally accepted standards	1
Celebrity Big Brother	Channel 5	19/08/2016	Generally accepted standards	1
Celebrity Big Brother	Channel 5	19/08/2016	Scheduling	1
Celebrity Big Brother	Channel 5	20/08/2016	Race discrimination/offence	2
Celebrity Big Brother	Channel 5	21/08/2016	Offensive language	1
Celebrity Big Brother	Channel 5	22/08/2016	Other	1
Celebrity Big Brother	Channel 5	Various	Generally accepted standards	1
Celebrity Big Brother's Bit on the Side	Channel 5	01/08/2016	Generally accepted standards	1



Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Celebrity Big Brother's Bit on the Side	Channel 5	19/08/2016	Nudity	1
Christmas Song	Channel 5	21/08/2016	Other	1
Conspiracy: The Nazi King	Channel 5	09/08/2016	Due impartiality/bias	1
Defending Santa	Channel 5	19/08/2016	Other	1
Fireman Sam <sup>1</sup>	Channel 5	28/06/2016	Religious/Beliefs discrimination/offence	170
It's Not Me, It's You	Channel 5	19/08/2016	Religious/Beliefs discrimination/offence	1
It's Not Me, It's You	Channel 5	19/08/2016	Sexual material	1
Nightmare Tenants, Slum Landlords	Channel 5	19/08/2016	Offensive language	1
Police Interceptors	Channel 5	02/08/2016	Offensive language	1
Programming	Channel 5	21/08/2016	Other	2
Programming (trailer)	Channel 5	21/08/2016	Other	1
Supercasino Live Roulette	Channel 5	01/08/2016	Participation TV - Gambling	1
The Dog Rescuers with Alan Davies	Channel 5	26/07/2016	Materially misleading	1
The Wright Stuff	Channel 5	03/08/2016	Sexual orientation discrimination/offence	28
The Wright Stuff	Channel 5	15/08/2016	Due impartiality/bias	1
The Wright Stuff (trailer)	Channel 5	02/08/2016	Sexual orientation discrimination/offence	1
Deadtime Stories	CITV	31/07/2016	Offensive language	1
Ex On the Beach (trailer)	Comedy Central	08/08/2016	Sexual material	1
Makes you LOL (trailer)	Comedy Central	25/07/2016	Generally accepted standards	1
Betsafe's sponsorship of primetime on Dave	Dave	05/08/2016	Sponsorship credits	1
Betsafe's sponsorship of primetime on Dave	Dave	16/08/2016	Sponsorship credits	1
Breakfast	Dearne FM	11/08/2016	Commercial communications on radio	1
Mythbusters	Discovery	15/07/2016	Animal welfare	1
Sharpe	Drama	03/08/2016	Violence	1
EJNYC	E! Entertainment	05/08/2016	Other	1
Programming	E4	15/08/2016	Animal welfare	1
Hannity	Fox News	11/08/2016	Due impartiality/bias	1

<sup>1</sup> These complaints were about a character in this animated children's programme tripping on a piece of paper that appeared to resemble text from the Qur'an. Ofcom assessed a recording of the programme in the highest possible resolution and found that the page did appear to contain Arabic text, but its contents could not have been deciphered, nor recognised as being from the Qur'an.

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Masterchef USA	Good Food	15/08/2016	Generally accepted standards	1
Granada News and National News	Granada ITV	03/08/2016	Due accuracy	1
Undressed (trailer)	Home and Health	04/08/2016	Scheduling	1
500 Questions	ITV	22/08/2016	Age discrimination/offence	1
500 Questions	ITV	22/08/2016	Fairness	1
500 Questions	ITV	22/08/2016	Generally accepted standards	1
500 Questions	ITV	23/08/2016	Generally accepted standards	1
Advertisements	ITV	12/07/2016	Advertising minutage	1
Alphabetical	ITV	23/08/2016	Materially misleading	1
Alphabetical	ITV	24/08/2016	Other	1
Barging Around (trailer)	ITV	22/08/2016	Materially misleading	1
Benidorm	ITV	15/08/2016	Disability discrimination/offence	1
Coronation Street	ITV	15/07/2016	Violence	45
Coronation Street	ITV	05/09/2016	Generally accepted standards	269
Emmerdale	ITV	18/08/1971	Other	1
Emmerdale	ITV	26/07/2016	Violence	2
Emmerdale	ITV	02/08/2016	Disability discrimination/offence	1
Emmerdale	ITV	02/08/2016	Sexual material	1
Emmerdale	ITV	15/08/2016	Violence	1
Emmerdale	ITV	18/08/2016	Generally accepted standards	1
Good Morning Britain	ITV	27/07/2016	Generally accepted standards	1
ITV News and Weather	ITV	06/05/1981	Disability discrimination/offence	1
ITV News and Weather	ITV	15/07/2016	Generally accepted standards	1
ITV News and Weather	ITV	25/07/2016	Generally accepted standards	1
ITV News and Weather	ITV	02/08/2016	Sexual orientation discrimination/offence	1
ITV News and Weather	ITV	06/08/2016	Generally accepted standards	1
ITV News and Weather	ITV	11/08/2016	Other	1
ITV News and Weather	ITV	15/08/2016	Due accuracy	1
ITV News and Weather	ITV	16/08/2016	Due accuracy	1
Loose Women	ITV	02/08/2016	Nudity	1
Loose Women	ITV	10/08/2016	Competitions	1
Loose Women	ITV	12/08/2016	Sexual material	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Loose Women	ITV	18/08/2016	Generally accepted standards	9
Love Your Garden	ITV	02/08/2016	Harm	1
The Incredible Hulk	ITV	21/08/2016	Scheduling	1
The Jeremy Kyle Show	ITV	10/08/2016	Scheduling	1
The Mummy	ITV	13/08/2016	Scheduling	1
The X Factor	ITV	07/06/2016	Gender discrimination/offence	1
The X Factor	ITV	07/09/2016	Other	1
This Morning	ITV	04/07/2016	Materially misleading	21
This Morning	ITV	02/08/2016	Generally accepted standards	1
This Morning	ITV	04/08/2016	Sexual material	1
This Morning	ITV	11/08/2016	Materially misleading	1
This Morning	ITV	11/08/2016	Under 18s in programmes	2
This Morning	ITV	17/08/2016	Generally accepted standards	1
This Morning	ITV	17/08/2016	Race discrimination/offence	11
This Morning	ITV	18/08/2016	Fairness	1
ITV West News	ITV WestCountry (Bristol)	25/07/2016	Undue prominence	1
Love Island	ITV2	30/06/2016	Generally accepted standards	2
Love Island	ITV2	01/07/2016	Sexual material	4
Mr Bean's Holiday	ITV2	14/08/2016	Suicide and self harm	1
The X Factor: Top 10 Worst Auditions	ITV2	20/08/2016	Generally accepted standards	1
The Only Way is Essex	ITVBe	24/07/2016	Generally accepted standards	1
Adam Catterall	Key 103	08/08/2016	Materially misleading	1
Katie Hopkins	LBC 97.3 FM	13/08/2016	Generally accepted standards	1
Steve Allen	LBC 97.3 FM	08/03/2016	Disability discrimination/offence	1
Steve Allen	LBC 97.3 FM	07/03/2016	Generally accepted standards	1
London Live News	London Live	14/08/2016	Generally accepted standards	1
8 Out of 10 Cats Does Countdown	More4	17/08/2016	Race discrimination/offence	1
Baisaki Mela Live	NTV	31/07/2016	Promotion of products/services	1
6th Sense With Colin Fry	Pick	05/08/2016	Exorcism, the occult and the paranormal	1
5 Live Breakfast	Radio 5 Live	20/07/2016	Religious/Beliefs discrimination/offence	1
EU Referendum	Sikh Channel	24/05/2016	Elections/Referendums	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Eamonn Holmes Sky News Sunrise	Sky News	18/08/2016	Generally accepted standards	1
Murnaghan	Sky News	07/08/2016	Crime and disorder	1
News	Sky News	16/08/2016	Due impartiality/bias	1
Press Preview	Sky News	09/08/2016	Due impartiality/bias	2
Sky News	Sky News	04/08/2016	Religious/Beliefs discrimination/offence	1
Sky News	Sky News	05/08/2016	Offensive language	1
Sky News	Sky News	10/08/2016	Due accuracy	1
Sky News	Sky News	12/08/2016	Due accuracy	1
Friday Night Football	Sky Sports 1	19/08/2016	Other	1
Live PGA Tour Golf	Sky Sports 4	05/08/2016	Undue prominence	1
Sky Sports News	Sky Sports News	15/08/2016	Due impartiality/bias	1
Battle of The Brides	Sky1	14/08/2016	Race discrimination/offence	1
Soccer AM	Sky1	13/08/2016	Harm	1
Programming	Talkradio	25/07/2016	Religious/Beliefs discrimination/offence	1
Alan Brazil	Talksport	18/08/2016	Offensive language	1
Matt Forde's Sports Party	Talksport	14/08/2016	Religious/Beliefs discrimination/offence	1
The Alan Brazil Sports Breakfast	Talksport	26/07/2016	Gender discrimination/offence	1

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

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

<b>Licensee</b>	<b>Licensed service</b>	<b>Categories</b>
Tone FM Limited	107.8 Tone FM	Key Commitments
North Manchester FM Community Interest Company	North Manchester FM	Key Commitments
ALL Arts and Media Limited	ALL FM	Key Commitments

## Complaints outside of remit

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

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

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

### Complaints about television or radio programmes

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

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Inside the Factory	BBC 2	30/08/2016	Promotion of products/services	1
Newsnight	BBC 2	24/08/2016	Due impartiality/bias	1
BBC News	BBC News Channel	20/08/1997	Due accuracy	1
BBC Newsroom Live	BBC News Channel	24/08/2016	Due impartiality/bias	1
Victoria Derbyshire	BBC News Channel	17/08/2016	Due impartiality/bias	1
Today	BBC Radio 4	24/08/2016	Due impartiality/bias	1
Advertisements	Channel 4	05/08/2016	Advertising content	1
Advertisements	Channel 4	14/08/2016	Advertising content	1
Advertisements	Channel 5	05/08/2016	Advertising content	1
Advertisements	Channel 5	21/08/2016	Advertising content	1
Advertisements	Comedy Central	03/08/2016	Advertising content	1
Advertisements	Comedy Central	12/08/2016	Advertising content	1
Advertisements	E4	03/08/2016	Advertising content	1
Advertisements	Film4	12/08/2016	Advertising content	1
Advertisements	ITV	03/08/2016	Advertising content	1
Advertisements	ITV	14/08/2016	Advertising content	1
Advertisements	ITV	20/08/2016	Advertising content	1
Advertisements	ITV	21/08/2016	Advertising content	1
Advertisements	Nat Geo Wild	16/08/2016	Advertising content	1
Advertisements	Sky Sports 1	14/08/2016	Advertising content	1
Advertisements	Sky2	15/08/2016	Advertising content	1
Advertisements	Spike	06/08/2016	Advertising content	1
Advertisements	STV	20/08/2016	Advertising content	1
Advertisements	True Movies	17/08/2016	Advertising content	1
Golmaal Returns	UMP Movies	11/08/2016	Advertising content	1
Advertisements	Various	22/08/2016	Advertising content	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Advertisements	Various	23/08/2016	Advertising content	1
Advertisements	Various	Various	Advertising content	1

### **Complaints about on demand services**

<b>Programme</b>	<b>Service name</b>	<b>Accessed date</b>	<b>Categories</b>	<b>Number of complaints</b>
I have the pussy so I make the rules	<a href="http://princessbratty.com/">http://princessbratty.com/</a>	01/08/2016	Sexual material	1

For more information about how Ofcom assesses complaints about on demand services, go to: [http://stakeholders.ofcom.org.uk/binaries/broadcast/on-demand/rules-guidance/rules\\_and\\_guidance.pdf](http://stakeholders.ofcom.org.uk/binaries/broadcast/on-demand/rules-guidance/rules_and_guidance.pdf)

## 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 August and 4 September 2016

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

Programme	Broadcaster	Transmission date
Crimewatch Roadshow	BBC 1	30 June 2016
Dance Anthems	BBC Radio 1	6 August 2016
Geo World News	Geo TV	28 July 2016
Madhubala - Ek Ishq Ek Junoon	Rishtey Europe	6 August 2016
Keiser Report	RT	21 July 2016
It Takes Two	Safeer TV	7 August 2016
D-Live 1984 Shaheedi Smagam	Sikh Channel	7 June 2016

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

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

Programme	Broadcaster	Transmission date
Dispatches Undercover: Inside Britain's Children's Services	Channel 4	26 May 2016

For more information about how Ofcom considers and adjudicates upon Fairness and Privacy complaints about television and radio programmes, go to: <http://stakeholders.ofcom.org.uk/broadcasting/procedures/fairness/>

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

<b>Licensee</b>	<b>Licensed Service</b>
Oak FM (Loughborough)	Oak FM Limited
Oak FM (Hinckley and Nuneaton)	Oak FM (Hinckley and Nuneaton) Limited

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

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