

# 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 to secure the standards objectives<sup>1</sup>. Ofcom also has a duty to ensure that On Demand Programme Services ("ODPS") comply with certain standards requirements set out in the Act<sup>2</sup>.

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

- a) [Ofcom's Broadcasting Code](#) ("the Code") for content broadcast on television and radio services licensed by Ofcom, and for content on the BBC's licence fee funded television, radio and on demand services.
- b) the [Code on the Scheduling of Television Advertising](#) ("COSTA"), containing rules on how much advertising and teleshopping may be scheduled on commercial television, how many breaks are allowed and when they may be taken.
- c) certain sections of the [BCAP Code: the UK Code of Broadcast Advertising](#), for which Ofcom retains regulatory responsibility for television and radio services. These include:
  - the prohibition on 'political' advertising;
  - 'participation TV' advertising, e.g. long-form advertising predicated on premium rate telephone services – notably chat (including 'adult' chat), 'psychic' readings and dedicated quiz TV (Call TV quiz services); and
  - gambling, dating and 'message board' material where these are broadcast as advertising<sup>3</sup>.
- d) other conditions with which Ofcom licensed services must comply, such as requirements to pay fees and submit information required for Ofcom to carry out its statutory duties. Further information can be found on Ofcom's website for [television](#) and [radio](#) licences.
- e) Ofcom's [Statutory Rules and Non-Binding Guidance for Providers of On-Demand Programme Services](#) for editorial content on ODPS (apart from BBC ODPS). Ofcom considers sanctions for advertising content on ODPS referred to it by the Advertising Standards Authority ("ASA"), the co-regulator of ODPS for advertising, or may do so as a concurrent regulator.

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

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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.

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

**It is Ofcom's policy to describe fully 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

#### **Kitaab-ut-Tawheed – Part 59**

***Peace TV Urdu, 11 November 2019, 18:28;***

***Peace TV Urdu, 12 November 2019, 01:52;***

***Peace TV Urdu, 12 November 2019, 10:27***

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Ofcom has a duty to suspend a broadcast licence if we are satisfied that the licensee has broadcast a programme likely to encourage or to incite the commission of crime; that it has therefore contravened its licence conditions; and that the contravention justifies the revocation of the licence.

Ofcom issued a draft notice to suspend the broadcasting licence of Club TV Limited, after its channel Peace TV Urdu repeatedly rebroadcast material that we had previously found incited murder.

On 18 November 2019, having received Ofcom's draft suspension notice, Club TV surrendered its licence. Its sister company Lord Production Inc Limited, which held the licence to broadcast the English language Peace TV service, also surrendered its licence at the same time. The Peace TV and Peace TV Urdu services are no longer broadcasting.

On 28 November 2019, we published a [breach finding](#) in relation to the repeated rebroadcasts, which were very serious.

## In Breach

### High Definition

***Sine FM, 18 September 2019, 18:00***

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#### Introduction

Sine FM is a community radio station for listeners in the Doncaster area. The licence for Sine FM is held by Higher Rhythm Limited ("Higher Rhythm" or "the Licensee"). *High Definition* is a weekly Urban music show broadcast between 18:00 and 20:00.

Ofcom received a complaint about multiple instances of offensive language in music tracks broadcast during the final hour of this programme:

- *Trouble* by Kano included the word "bullshit".
- *U Know What's Up* by Donell Jones included the word "niggers".
- *Got Your Money* by Ol' Dirty Bastard included the word "pussy", two instances of the word "bitch/es", two of the word "fucking" and two uses of "nigger/s".
- *I'm a Hustler Baby* by DJ Lenny Ducano contained the lyrics, "don't bullshit me" repeated five times, "ride nice dick" and two uses of the word "fuck".
- *Shake Ya Ass* by Mystikal included the lyrics "I've got my dick in my hand" and "bend over hoe", the word "pussy", two uses of the word "bitch/es", two uses of "shit", the word "motherfucker", five instances of "fuck" (or variations of it) and five uses of the word "nigger/s".
- *Don't Mess With My Man* by Lucy Pearl included one use of "bitched".
- *Drop It Like It's Hot* by Snoop Dogg contained three instances of the word "shit", two of the word "fuck" and three of "niggers".
- *Gold Digger* by Kanye West included two uses of the word "fuck" (and variations of it) and four of the word "niggers".
- *In Da Club* by 50 Cent included two instances of the word "fuck" (and variations of it) and five of the word "niggers".
- *Favorite Drug* by Styles P included three instances of the word "shit", one use of "nigger" and one of the word "fuck".
- *Get Ur Freak On* by Missy Elliott included two instances of the word "nigger" and one use of "bitch".

Ofcom requested the Licensee's comments under the following Code rule:

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, offensive language... Appropriate information should also be broadcast where it would assist in avoiding or minimising offence”.

## Response

Higher Rhythm apologised for this incident and accepted this part of the show was “littered with expletives”. It said that this had happened because an “unedited mix” of music tracks was broadcast by mistake. The Licensee explained the presenter had to “temporarily put his broadcast on hold to attend to an urgent phone call about a family matter, and in his haste, accidentally selected the wrong mix to play out without realising”.

The Licensee said the type of language that was the subject of this complaint was “strictly prohibited” from being broadcast on the station and was “simply down to human error”. It said all Sine FM volunteers are given training about Ofcom broadcasting rules, adding this error had been discussed “at length” with the presenter. The Licensee told Ofcom the presenter had voluntarily stepped down citing his “own lack of preparation for being the cause of the error”.

Higher Rhythm also said that, in the wider context of this radio show, some of the lyrics would use language typical of music within the Urban genre. However, the Licensee accepted the wrong tracks had been broadcast in error during this programme and that there was “no justification” for the context in which this material was played.

## Decision

Reflecting our duties under the Communications Act 2003 (Section 319), Rule 2.3 requires that the broadcast of potentially offensive material is justified by the context. Context includes factors such as the service on which the content is broadcast, the time of broadcast and likely audience expectations.

[Ofcom's research on offensive language](#) indicates the words “bitch”, “bullshit” and “shit” are considered medium strength words, while “dick”, “pussy” and “hoe” are considered by audiences to be strong language. The research makes clear that the words “fuck”, “motherfucker” and “nigger” are considered by audiences to be among the most offensive language. The research also indicates that frequency or repetition of offensive language can exacerbate its impact.

Ofcom's [guidance on offensive language on radio](#) states: “In reaching any decision about compliance with the Code, Ofcom will take into account the likely audience expectations of a particular radio station at the time of broadcast”. Sine FM is a community radio station which typically plays a broad range of music for listeners in Doncaster. In our view, listeners would not expect programmes to contain repeated offensive language, including multiple instances of the most offensive language, during the early evening when these songs were broadcast.

We recognise that the Urban music genre does often feature various adult themes, including sex and drug references. We acknowledged the Licensee's clear acceptance that this selection of music tracks had been played in error. However, we were particularly concerned at the repeated use of the most offensive language, and other offensive language, in the early evening.

### **Breach of Rule 2.3**

## In Breach

### Drivetime

#### **Radio St. Austell Bay, 7 August 2019, 17:00**

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#### Introduction

Radio St. Austell Bay is a community radio station serving the local community in and around St. Austell in Cornwall. The licence for the service is held by the Radio St. Austell Bay Community Interest Company ("RSAB" or "the Licensee").

Ofcom received four complaints that expressed concern that the 15 year-old presenter of *Drivetime* was laughing as he read out a news story naming the victim of a fatal hit and run collision. The news item was repeated at 18:00.

While taking it in turns to read the items on the news bulletin at 17:00, the regular presenter and his friend who was also in the studio began to laugh, culminating in an uncontrollable fit of laughter at the point where the name of a victim of a fatal road collision was read out. Towards the very end of the same news item, the presenter did regain his composure and clearly read out the police's call for witnesses.

We considered that the broadcast raised potential issues under the following Code rule:

Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context... Appropriate information should also be broadcast where it would assist in avoiding or minimising offence".

Ofcom requested comments from the Licensee on how the content complied with this rule.<sup>1</sup>

#### Response

RSAB apologised and expressed its "distress" at the incident, which it said it could not have anticipated. It added that it has had a "good record of training and nurturing young volunteers over the years", and that the 15 year-old presenter of *Drivetime* had been presenting his own show on the station for 12 months, following three months of training. It said that his approach had previously been "exemplary". The Licensee explained the Station Manager had alerted the presenter to the news story about the fatal hit and run in advance, and the presenter had confirmed he was comfortable reading out the item and had broadcast similar news stories before.

The Licensee explained that on the day of the incident, two of the presenter's friends had accompanied him to the studio as they hoped to become volunteers at RSAB. The Station Manager agreed to this and assumed the presenter's mother, who also presented on RSAB,

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<sup>1</sup> Some of the complainants also raised concerns about the age of the presenter because he was broadcasting unsupervised. Ofcom requested comments from the Licensee under Rule 1.28 of the Code which requires licensees to ensure they take due care over the physical and emotional welfare and the dignity of people under eighteen who take part or are otherwise involved in programmes. In this case Ofcom considered that the Licensee had taken sufficient steps to ensure the care of the young person, who was an experienced volunteer presenter at RSAB.

would stay with the group in the studio as she usually did when her son presented his show. The Licensee explained however that on this occasion, the mother left the presenter and his friends alone in the studio. RSAB said it concluded that the presence of the presenter's friends "obviously affected [his] behaviour".

The Licensee said that as a result of this incident, it had "reviewed [its] regulations on allowing under 18s to present", which is "not a decision [it has] taken lightly". It explained that as well as requiring a parent or guardian to remain in the studio with the young person, "an RSAB volunteer will also stay with them to more closely monitor their programmes". It added that it will also "only allow one young person presenting at a time".

RSAB said it had "no excuse or explanation" for why the news bulletin was repeated at 18:00. The Licensee added when it became aware of the broadcast of the news item and its subsequent repeat at 18:00, it immediately removed the whole show from the station's 'listen again' facility on its website. It also issued a full apology both on-air and online the following morning.

The Licensee added that it "had done everything humanly possible" with regard to the presenter's training and understanding of the Code rules, and that it "acted swiftly to try to put things right immediately after the incident". It went on to say that while "Ofcom will make a decision based on the seriousness of the news reading", it hoped we will take into account that RSAB is run by volunteers. It explained that while it "fully understand[s] this was a serious incident," it hoped Ofcom would appreciate the situation was beyond its control.

## Decision

Reflecting our duties under the Communications Act 2003, Section Two of the Code requires that generally accepted standards are applied to provide adequate protection for members of the public from the inclusion of offensive and harmful material in programmes.

Ofcom takes account of the audience's and the broadcaster's right to freedom of expression, as set out in Article 10 of the European Convention on Human Rights, when considering a broadcaster's compliance with Section Two of the Code.

Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive material is justified by the context. Context is assessed by reference to a range of factors including the editorial content of the programme, the service on which the material is broadcast, the time of broadcast and the likely expectation of the audience.

We first considered whether the material had the potential to cause offence.

As detailed above, the presenter laughed uncontrollably as he read out the name of the victim of a fatal road collision. Towards the end of the news item, he regained his composure and clearly read out the police's call for witnesses.

Ofcom's [guidance on radio](#) states: "In reaching any decision about compliance with the Code, Ofcom will take into account the likely audience expectations of a particular radio station at the time of broadcast". As RSAB is a community station aimed at people living and working in the area, we considered that the lack of sensitivity in presenting this story about the death of a local man, during the evening *Drivetime* news bulletin, would have exceeded audience expectations and had the potential to cause significant offence.

We then considered whether the offence was justified by the context.

We took into account that RSAB is a community radio station staffed by volunteers and the specific circumstances of this broadcast. In particular, it was evident from the broadcast content that the presenter was trying to regain his composure and had clearly not deliberately sought to cause offence. We acknowledged that the Licensee removed the programme from its 'listen again' service as soon as it became aware of the broadcast, and issued an apology both on-air and online. We further considered the steps the Licensee has taken to prevent a recurrence, by reviewing its regulations on volunteers under the age of 18 presenting programmes.

However, Ofcom considered that listeners to RSAB would have found the inappropriate and insensitive laughter during a serious news story about a fatal hit and run unacceptable, particularly as RSAB is a community radio service and the named local person may have been known to some listeners. Furthermore, Ofcom was concerned that the news item was not identified as problematic at the time of its original broadcast resulting in the offensive item being repeated during the news at 18:00.

Ofcom's Decision therefore is that the broadcast exceeded audience expectations, and was not justified by the context, in breach of Rule 2.3.

### **Breach of Rule 2.3**

## In Breach

### Geoff Ruderham

***Black Diamond FM 107.8, 2 September 2019, 12:23***

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#### Introduction

Black Diamond FM is a community radio station in East and Central Midlothian. The licence for this service is held by Midlothian Community Media Association ("MCM" or "the Licensee").

Ofcom received two complaints about offensive language in the music track *Melting Pot* by Blue Mink broadcast in a music programme presented by Geoff Ruderham. No introduction to the track was broadcast, or any other content discussing it. The track included the following lyrics:

*"Take a pinch of white man,  
Wrap him up in black skin,  
Add a touch of blue blood,  
And a little bitty bit of Red Indian boy.  
Oh, Curly Latin kinkies,  
Mixed with yellow Chinkies,  
If you lump it all together  
And you got a recipe for a get along scene;  
Oh what a beautiful dream  
If it could only come true, you know, you know.*

*What we need is a great big melting pot,  
Big enough to take the world and all it's got  
And keep it stirring for a hundred years or more  
And turn out coffee-coloured people by the score".*

Ofcom recently published a Resolved Decision for the broadcast of this track by another radio station.<sup>1</sup>

We considered that references in the lyrics (including "yellow Chinkies", "Red Indian boy", "curly Latin kinkies" and "coffee-coloured people") raised potential issues under the following Code rule:

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, offensive language...discriminatory treatment or language (for example on the grounds of...race...) Appropriate information should also be broadcast where it would assist in avoiding or minimising offence".

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

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<sup>1</sup> See [Issue 385 of Ofcom's Broadcast and On Demand Bulletin](#).

## Response

MCM said that it was familiar with Ofcom's recent Decision concerning the broadcast of the track *Blue Mink*. The Licensee said that "up until that point" it considered that the context of the track, including both the time in which it was first released and the other lyrics, mitigated the potential for offence. It also said that the track is about cohesion, and that the language in it was not intended to cause offence at the time of release. The Licensee said that, following Ofcom's previous decision, it removed the track *Melting Pot* by Blue Mink from its music library on 3 September 2019. It appeared that the track had been played on Black Diamond FM one day before the Licensee took this action.

The Licensee said that after receiving notification of the complaint to Ofcom, it conducted an internal investigation into the track's broadcast on 2 September 2019. It said that the presenter "had been aware of Ofcom's Decision" and had decided to play the track on his programme "without any attempt at giving appropriate context to the track". It gave Ofcom details of steps it said it had taken steps to address this, stressed that it takes adherence to the Code very seriously and said it planned to carry out refresher training in the Code with all presenters.

Ofcom prepared a Preliminary View finding the Licensee in breach of Rule 2.3 and provided it to the Licensee for its comments. Ofcom also asked MCM whether it had sought representations from the presenter. The Licensee replied, confirming that neither it nor the presenter had comments on the Preliminary View.

## Decision

Reflecting our duties under the Communications Act 2003, Section Two of the Code requires that generally accepted standards are applied to provide adequate protection for members of the public from the inclusion of offensive and harmful material in programmes.

Ofcom takes account of the audience's and the broadcaster's right to freedom of expression, as set out in Article 10 of the European Convention on Human Rights, when considering a broadcaster's compliance with Section Two of the Code.

Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive material is justified by the context. Context includes factors such as: the editorial content of the programme, the service on which it is broadcast, the time of broadcast and the likely size and composition of the potential audience and the likely expectation of the audience.

It is important to make clear that no individual songs are banned from broadcast on radio under the Code. Potentially offensive language or content can be broadcast, provided there is sufficient context in the way it is presented to the audience, as required under Rule 2.3.

Our investigation of this complaint followed our previous Decision on the broadcast of this track (see above). As in that case, we first considered whether references in the track to "yellow Chinkies", "Red Indian boy", "curly Latin kinkies" and "coffee-coloured people" had the potential to cause offence. [Ofcom's research on offensive language](#) makes clear that the word "chinky" is considered by audiences to be among the most offensive language and highly unacceptable without strong contextualisation. The research also states that "racist terms were the most unacceptable". Ofcom considered that the word "Chinkies" is widely understood as a racial slur to refer to Chinese people and therefore had clear potential to

cause offence. We considered that the use of the term “*yellow*” was a derogatory reference to the skin colour of Chinese people. We therefore considered that the phrase “*yellow Chinkies*” had the potential to be highly offensive.

Ofcom's research does not provide direct evidence for the offensiveness of the terms “*Red Indian boy*”, “*curly Latin kinkies*” and “*coffee-coloured people*”. However, Ofcom considered that “*Red Indian*” is generally understood to be a pejorative term in modern speech and is frequently replaced with ‘Native American’. Although the terms “*curly Latin kinkies*” and “*coffee-coloured people*” are not widely understood to be racial slurs in modern society, unlike the terms “*Chinky*” and “*Red Indian*”, we considered that they had the potential to cause offence because they could also be considered derogatory references to particular ethnic groups.

In our view, the potential offence caused by these lyrics may have been heightened by the cumulative effect of the repeated use of this language during the verse and chorus (as set out in the Introduction, above).

Ofcom then considered whether this potential offence was justified by the context.

[Our guidance on offensive language on radio](#) states that: “In reaching any decision about compliance with the Code, Ofcom will take into account the likely audience expectations of a particular radio station at the time of broadcast”. It also states that words considered offensive on the grounds of race and ethnicity should “normally be broadcast only in limited circumstances and in context, for example in news, drama, or documentary programmes to explore or expose prejudice”.

Ofcom took into account that *Melting Pot* was released in 1969 by Blue Mink, and reached number three in the UK Singles chart and number 11 in Ireland in 1970. We considered that, although this song was popular at the time, the passage of time (nearly 40 years) may have not made it sufficiently well-known today to mitigate the potential for offence.

We considered the demographic of the station's audience as set out in its Licence, which makes clear that it has a particular focus on youth and disadvantaged communities. We considered that young people would be unlikely to have an existing knowledge of *Melting Pot* and the contextual background of the track's release and would therefore be an audience more likely to require contextual justification to mitigate the potential for offence – for example, some on air explanation of the song's purpose at the time of its release, or a warning about the language it included. [Ofcom's offensive language research](#), which was conducted with people of all age groups, shows that the use of derogatory language to describe ethnic groups carries a widespread potential for offence. Therefore, in Ofcom's view, the likely audience expectations did not mitigate the potential for offence in this case.

In Ofcom's published Resolved Decision in Issue 385 of the Broadcast and On Demand Bulletin concerning the track *Blue Mink*, we said:

“Content from previous decades can be broadcast under the Code. However generally accepted standards clearly change significantly over time, and audience expectations of older content may not be sufficient to justify its broadcast. Where older material contains content, such as language, which has the potential to cause offence to today's audiences, broadcasters should consider carefully how to provide sufficient context to comply with Rule 2.3 of the Code.”

In the current case, the Licensee said that it and the presenter were familiar with the Decision in Issue 385 of the Bulletin. We were concerned therefore that no attempt had been made to provide sufficient context when the track was played on Black Diamond FM on 2 September 2019. We expect broadcasters to take Ofcom's published Decisions into account when complying their content.

We took into account the steps that the Licensee took following notification of the complaint from Ofcom. We acknowledged that it said it had removed the track from its playlist and it planned to conduct refresher training with its staff on compliance with the Code.

However, for the reasons given above, our Decision is that the potentially offensive language in this broadcast was not justified by the context, in breach of Rule 2.3.

### **Breach of Rule 2.3**

## Broadcast Licence Conditions cases

### In Breach

#### Broadcast licensees' late and non-payment of licence fees *Various licensees*

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##### Introduction

Ofcom is partly funded by the broadcast licence fees it charges television and radio licensees. Ofcom has a statutory obligation to ensure that the fees paid by licensees meet the cost of Ofcom's regulation of broadcasting. The approach Ofcom takes to determining licensees' fees is set out in the [Statement of Charging Principles](#). Detail on the fees and charges payable by licensees is set out in [Ofcom's Tariff Tables](#).

The payment of a licence fee and payment made on time is a requirement of a broadcasting licence<sup>1</sup>.

- 1) "The Licensee shall pay to Ofcom such fees as Ofcom may determine in accordance with the tariff fixed by it and for the time being in force under Section 87 (3) of the 1990 Act as Ofcom shall from time to time publish in such manner as it considers appropriate.
- 2) Payment of the fees referred to...above shall be made in such manner and at such times as Ofcom shall specify..."

Failure by a licensee to pay its licence fee when required represents a significant and fundamental breach of a broadcast licence, as it means that Ofcom may be unable to properly carry out its regulatory duties.

##### In Breach – late payment

The following licensees failed to pay their annual licence fees by the required payment date. These licensees have therefore breached Condition 3(2) of their licences.

Licensee	Service Name	Licence Number
Belfast FM Limited	Belfast FM	CR100062BA
EMI Media Limited	Rainbow Radio (for small scale DAB trial)	DP101553BA
Frome Community Productions Community Interest Company	Frome FM	CR000230BA
Rinse FM	Rinse FM	DP101096BA
Starpoint Radio Limited	Starpoint Radio (for Small Scale Trial DAB)	DP101121BA
Sunshine FM Limited	Sunshine Radio	DP100000BA

The outstanding payments have now been received by Ofcom. Ofcom will not be taking any further regulatory action in these cases.

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<sup>1</sup> As set out in Licence Condition 3 for radio licensees and Licence Condition 4 for television licensees.

### In Breach – non-payment

The following licensees failed to pay their annual licence fees. These licensees have therefore been found in breach of Conditions 3(1) and 3(2) of their licences.

Licensee	Service Name	Licence Number
Antenna Media Limited	Antenna Radio (for small scale trial DAB)	DP101590BA
Ambur Community Radio Limited	Ambur Radio	CR000175BA
	Ambur Radio	DP101116BA
Moonlight Outdoor Cinemas Ltd	Moonlight Drive in Cinema	LRSL102630BA
Ujima Radio CIC	Ujima Radio	CR000116BA
	Ujima Radio	DP101168BA

As Ofcom considers these to be a serious and continuing licence breaches, **Ofcom is putting these licensees on notice that this contravention of their licences will be considered for the imposition of a statutory sanction, which may include a financial penalty and/or licence revocation.**

## Broadcast Fairness and Privacy cases

### Not Upheld

#### Complaint by Iceland Foods Limited

***Watchdog, BBC 1, 18 April 2018, 25 April 2018 and 23 May 2018***

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#### Summary

Ofcom has not upheld this complaint by Iceland Foods Limited ("Iceland"), made on its behalf by Harbottle & Lewis LLP, of unfair treatment in the programmes as broadcast.

The programme broadcast on 18 April 2018 included an investigation into the storage of chilled foods in Iceland's stores. There were two further episodes broadcast on 25 April and 23 May 2018 which updated the original programme's investigation.

Ofcom found that:

- The broadcaster took reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Iceland.
- Iceland was provided with an appropriate and timely opportunity to respond to the allegations made against it and its response was fairly reflected in the programmes.

#### Programme summary

*Watchdog, BBC 1, 18 April 2018*

This edition of the BBC's consumer affairs programme, *Watchdog*, presented by Mr Matt Allwright, Ms Steph McGovern and Ms Nikki Fox, included a report on the storage of chilled foods in Iceland's stores.

The presenters introduced the story and Ms McGovern said:

*"For years we've been hearing about the deals Iceland can offer mums on frozen and chilled foods... But, from what we have heard, Iceland's food safety may not always be something to make a song and dance about... This is what one store supervisor has to say about how long frozen products can be left out of the freezer".*

Footage filmed by an undercover reporter, "John", working in a branch of Iceland was included. The supervisor was shown as he said: *"Obviously it's only frozen. You've obviously got a minimum of two hours to get it away in the freezer before it defrosts".*

Ms McGovern then said:

*"Fair enough. But, he seems to have a different attitude when it comes to how long chilled food can stay unrefrigerated".*

The supervisor was heard saying: *"Chilled is fine"*, to which Ms McGovern said:

*"Yep, you heard him, chilled food: bacon, cooked chicken and ham, left out of a chiller is fine. In fact, we found evidence of these types of items being left out for 14 hours before being sold to customers. It was practices like this which made a former Iceland store manager get in touch with us last year..."*

The former store manager was anonymised in the programme. Ms McGovern asked him: "What were you worried about that was happening in store?" and the following conversation took place:

Store manager: *"I think it was the safety of the general public. I mean, the milk was being left out for days on end. Meat, chilled products, all left out. I have worked in other supermarkets and as soon as something comes through the back door, the first thing you do is you put it back into a chilled temperature to keep that chill maintained, it's called a cold chain. And in Iceland, unfortunately, it was just straight in off the back of the lorry, into the back and kept there."*

Ms McGovern: *So, what did you do about it?*

Store manager: *Reached out to my area manager and then the regional manager. He actually knew about the issue. I thought to myself, you know, I can't just sit back and watch this happen, you know, I've got a conscience. Let me speak to the CEO. I write him an email and I describe what I'd seen in store, and unfortunately, it was passed back down to my regional manager. It put me back at square one"*

Ms McGovern then said:

*"Our whistleblower's complaints were not upheld by Iceland which left them feeling that the company didn't seem to care and that their warnings had gone unheeded. What we'd heard about was just one store, so we decided to take a look for ourselves, going undercover in a different Iceland branch"*

The programme went on to include footage filmed by the undercover reporter documenting his time working at two different Iceland stores and was narrated by Ms McGovern. During this sequence, the programme cut back to shots of Ms McGovern reviewing the footage with Mr Barrie Trevena, a Chartered Environmental Health Practitioner.

Ms McGovern: *"Part of John's induction was a DVD training video. With exactly 11 words on safe food temperatures, no time limits, no degrees Celsius just..."*

Voice from DVD: *Temperature control: Put stock away quickly, especially chilled and frozen products.*

Ms McGovern: *There is a mention there of chilled and frozen food saying you've got to get it out as quickly as possible but no explanation on how. We've also heard from a second Iceland employee in a different part of the country raising the same issues. So, in February of this year, our undercover worker John started at another store and was given no further training on handling chilled foods. I'm showing our footage to Chartered Environmental Health Practitioner, Mr Barrie Trevena. He's got over 40 years' experience in food safety, and initially things looked pretty good"*

Further footage of John was shown:

Employee: [showing John the store] *"We have a huge space, some of the stores don't have that much space.*

John: *So most of the stores don't have this sort of space?*

Employee: *No".*

The programme then showed secretly filmed footage of John working a delivery shift as Ms McGovern and Mr Trevena watched and commented on what they saw:

Ms McGovern: *"Deliveries to this store arrive at around four in the morning. Now, according to the Food Standards Agency ["FSA"], chilled food should only spend a limited period out of refrigeration, so the clock is ticking...So, that's chilled goods coming out of the lorry there...how quickly should that get into the chillers?"*

Mr Trevena: *Best practice needs to be in the chiller within 15 to 30 minutes. An absolute maximum in the official guidance is two hours".*

More footage of John during his delivery shift was shown along with a timer shown to indicate the amount of time the chilled food from this delivery had been left without being refrigerated.

Ms McGovern: *"But John is working on his own, and seven hours later chilled food from the delivery still hasn't made it into the fridge. So, on only his second shift, John raises his concerns with a supervisor.*

John: *There's three crates left from the delivery this morning, what would you like me to do with them?... I've only managed to obviously do...*

Supervisor: *That's ok, just get them out".*

Mr Trevena then commented: *"I'm astonished at that...seven hours later, still chilled food out, way over the two hour maximum".* Further footage of John was shown asking his supervisor *"Does it matter that they haven't been chilled though and left there or...?"*, to which his supervisor responded:

*"No, it's fine, it's fine. Obviously, it's only frozen. You've obviously got a minimum of two hours to get it away in the freezer before it defrosts...Chilled is fine".*

Ms McGovern then asked Mr Trevena whether this was correct, he said:

*"They seem to think that it's more important to put the frozen food away within two hours than the chilled food, which actually is not the case. But, frozen food itself should be delivered at minus 18, it's going to take a long time for it to warm up, but the chilled food, it is essential that it's kept below eight degrees [Celsius]".*

The undercover reporter was then shown as he said to an employee: *"I just wanted to check whether, is that normal to leave the chilled products in there?"*. The employee responded: *"Because it's cold at the moment... ok, so it meets the temperature".*

Ms McGovern then asked Mr Trevena whether it was a *"fair point then, saying, well it's cold at this time of year therefore, it's staying chilled?"*. Mr Trevena responded:

*"I don't think so, really they must keep the chilled food in a controlled environment. They cannot have it uncontrolled, not monitored. We don't know if it is cold"*.

The undercover reporter was then shown reading from a food box: *"Priority. Keep refrigerated.' Cooked chicken, sliced chicken breast"*.

Ms McGovern said *"there's a lot of food there that should be chilled"* and Mr Trevena responded:

*"Well, it really could be quite dangerous. There is a lot of hours there and bacteria multiply fairly quickly, so if it's risen much above eight or ten degrees, then we could get some significant multiplication"*.

Ms McGovern then explained that 11 hours after the delivery, there was still food which had not been put in the fridge. The undercover reporter was shown asking his supervisor whether the chilled products were still *"ok"*. The following conversation took place:

Supervisor: *"Normally, that delivery gets done before one."*

John: *Does it?*

Supervisor: *Yeah"*.

Ms McGovern said: *"that would still be over eight hours after the food arrived, so while newbie John is clearly not the speediest"* [further, undercover footage was included]:

Supervisor: *"Obviously, you are still new, do you get it?"*

John: *Yeah, Yeah.*

Supervisor: *You need to speed up a bit more though.*

Ms McGovern: *It does sound like the regulars don't always get it away fast enough either.*

John: *Isn't there normally two people on that though, doing the chilled? No? I thought there was.*

Supervisor: *I wish.*

Ms McGovern: *And, it appears the shift supervisor knows that that's a problem.*

Supervisor: *Health and safety wise, it's not meant to be there. If my area manager were to come in, he would have said to me straightaway, 'it's not good mate'. They want everything perfect, but perfect is hard mate, it's not easy...this is retail, do you get it?*

Ms McGovern: *But, if they know management won't be happy about what doesn't sound like a one-off, why not spend more staff hours fixing it?*

Supervisor: *I'm only getting 800 hours to spend a week...but I need at least 1500 hours...".*

Ms McGovern said to Mr Trevena that it was *"quite clear he doesn't have the resources to be able to do what he has been asked to do"*. The following conversation then took place:

Mr Trevena: *"Yeah, he certainly seems to think he hasn't got enough hours in terms of staff hours to do the right thing.*

Ms McGovern: *We're 11 and a half hours in now and still not all the chilled food is out.*

Mr Trevena: *The food is still there sitting in the warehouse. That should not be tolerated.*

Ms McGovern: *Yet, it doesn't feel like this is unusual, does it? This food hasn't been refrigerated for some time now.*

Mr Trevena: *There is every chance that some of that food has risen above eight degrees centigrade".*

Ms McGovern concluded this first part of the report and said:

*"If that's right, never mind food you can trust, this might not be food you would want to eat".*

In the studio, another presenter, Mr Allwright said:

*"Well, don't go anywhere, we are just warming up. Later, Iceland staff teach John a 'trick', their words, to make it look like chilled items are being put away properly".*

Ms McGovern then said:

*"Now, Iceland strongly refute our allegations. We'll hear what they have got to say later".*

Later in the programme, Ms McGovern introduced the second part of the report:

*"Now, back to retailer Iceland. We went undercover to see for ourselves how staff in one store handle deliveries. We have already seen food that's supposed to be refrigerated left out for over 11 hours before being sold to customers. What happened next might make you wonder whether this could be going on in your local branch too".*

The second part of the report began following the same format as the first, including undercover footage narrated by Ms McGovern, which was then commented on by herself and Mr Trevena.

John: *"I was just wondering, why do we not just roll the pallets straight into the chiller?"*

Employee: *[opening chiller] They don't fit... that's why you can't just roll them in there...So we have to break them... plus we've only got these three chillers...".*

Ms McGovern said that the fact that the pallets did not fit in the chiller sounded *"like a basic error"* and she asked whether Mr Trevena was surprised that the chiller was not designed to take pallets. He responded: *"I am surprised by that"*. The report continued.

Ms McGovern: *"So, could what we have seen be a problem just in this one branch? Well, it could, but if other branches have got chillers this size, and delivery pallets this size, well it begs the question how do they get their deliveries away on time? ... Today, John's shift started at three in the afternoon, so someone else has been working on the delivery which John is told arrived around four in the morning, but it seems they've struggled to get it finished too".*

John: *This stuff, I presume this is from this morning's delivery here, yeah?*

Employee: *Yeah, yeah, she had like ten pallets today...She got through quite a lot. That's what she's got left there".*

Ms McGovern asked Mr Trevena whether he was "shocked" that there were still items out from the morning delivery and the following conversation took place:

Mr Trevena: *"I am shocked. I have been doing the job now for 40 years plus, and I can't say that I've ever come across food that's been out of refrigeration for so long in a national company, and it reflects badly on the hierarchy of that business.*

Ms McGovern: *Is that a worry?*

Mr Trevena: *It is risky. I mean, the customers expect that when they go home with their food, feed it to the children, that it's going to be safe, and if you break the chill chain for that length of time then you can't guarantee that".*

Ms McGovern then said:

*"But, from what we have seen, there's just no way staff can get this done within the guidance time of two hours. With only one person assigned to the morning delivery, John's told some staff use what they call 'tricks' to make it look like the food is in the right place.*

*What I want to show you now, Barrie, is John being told by one of the other staff members how to deal with the delivery using flat beds and small trolleys".*

Footage of John and another employee was shown:

Employee: *"They're [employees] acting like they [have] done the delivery fast, so they just put it into flatbeds.*

John: *What they are acting like they have?*

Employee: *Yeah, like obviously like you know, they're acting, delivery's supposed to be put out innit?... So what they did is they used as many flatbeds as they can. So, they took it out of pallet, so now saying delivery's done on time.*

John: *So, is it ok to leave that chilled stuff in here?*

Employee: *[laughs] It's not, but you can get away with it. It's all about the trick, you know. You'll develop, don't worry".*

Ms McGovern responded to what she had just watched by saying: *"that sounds worrying..."* and Mr Trevena said:

*"Bizarrely, they're breaking the pallets down into smaller units, which means the food will warm up quicker, and if there's any bacteria or other micro-organisms present, they are going to multiply faster and more than if they'd been chilled, and so the danger to the consumer is increased".*

Further secretly filmed footage was shown:

Employee: *"You just have to be clever, you know...Look at, all the chilled is still out, it shouldn't be out.*

John: *It's still over here, let's have a look.*

Employee: *What time is it now?*

John: *Well, it's twenty past five [timer indicated that the food has been out for 12 hours 50 minutes].*

Employee: *Exactly, you have to be smart. Be smart.*

John: *And, that's from when?*

Employee: *Four in the morning.*

John: *Four in the morning, yeah? And is this quite normal?*

Employee: *Yeah, just like, you know, as I said, you just got to be smart.*

John: *It just doesn't seem cold enough in here really for that chilled stuff.*

Employee: *Yeah, but you know...[he's] doing it and he's the assistant manager.*

John: *And he's what sorry?*

Employee: *Assistant manager.*

John: *And he's doing it?*

Employee: *Exactly".*

Ms McGovern said:

*"It's now half past six in the evening and if the delivery time John was told is true, these everyday foods have been out of refrigeration for 14 hours and they are about to be put on sale to customers who have every reason to expect that the food has been refrigerated correctly".*

More undercover footage was shown with the timer indicated that food such as burgers, salami, Greek yoghurt and cooked meats, had been unrefrigerated for over 14 hours and that it was

now half past six in the evening. Mr Trevena said: *"If it was half past six in the morning I would be concerned, but half past six in the afternoon is just unbelievable"*.

Ms McGovern asked: *"How dangerous is that?"*, to which Mr Trevena responded:

*"Potentially, that could be quite dangerous for high risk ready to eat foods being stored in what we call the 'danger zone' for that length of time. It's astonishing"*.

Ms McGovern concluded the second part of the report and said that the undercover reporter had worked four shifts at the company *"but, Barrie says what he found raises serious concerns"*.

Mr Trevena then said:

*"This is as bad as I have seen or come across in 40 years of working. If it was a one-off it would be bad enough, but, in fact, it seems to be an ongoing situation. So, it indicates that, really, they don't have enough resources, or they are not putting enough resources into it. Their food is still there sitting in the warehouse, it really is astonishing and that should not be tolerated, absolutely not"*.

In the studio, Ms McGovern and another presenter, Ms Fox, then read out Iceland's statement in response to the claims made in the report:

Ms McGovern: *"Well, Iceland has told us it's thoroughly investigated our allegations and our report is entirely unrepresentative of its usual practice. It says it has no generic issues with temperature control which is simply illustrated by the extremely low level of customer complaints."*

Ms Fox: *It says in the last six months it has sold more than one billion food products in the UK with complaints about chilled food virtually non-existent. It points out that the vast majority of its stores, including, the one we worked at, have a 5 out of 5 food hygiene rating from their local authorities."*

Ms McGovern: *Iceland went on to say there is no risk to public health and temperature control and that at the time of filming, in February, the temperature of the storeroom did not exceed six degrees Celsius, making it colder than the store's chiller. It also challenged the credibility of our initial source and maintained there's no shortage of resources, insisting our reporter was largely responsible for creating delays in putting stock away and that three colleagues reprimanded him for it."*

Ms Fox: *It also said there is no shortage of chiller capacity with this particular store recently having a third chiller installed to increase storage space by fifty percent"*.

Concluding the programme, Ms Fox said:

*"Now, many thanks to everyone who's contacted us while we've been live on-air tonight. We have had a huge reaction to our big story about chilled food at Iceland. Lots of you are telling us you're shocked by what we caught on camera..."*

The programme ended with no further reference to Iceland.

*Watchdog, BBC 1, 25 April 2018*

This edition of *Watchdog* included an update on the report about Iceland that featured in the original programme broadcast on 18 April 2019. The presenters explained that they had received a number of responses to the report and the issues it had raised.

Ms McGovern asked Ms Fox about the response to the undercover reporter's filming of food being "left out for a few hours". Ms Fox said that the undercover reporter had been told:

*"...the stock for that morning's delivery, like you said, has been out for 14 hours, well above the time limit set out in the regulations. Now, the expert we showed our footage to wasn't impressed".*

The programme then included a clip from the 18 April broadcast, in which Ms McGovern reviewed the undercover footage taken in a branch of Iceland with Mr Trevena, who said:

*"This is as bad as I have seen or come across in 40 years of working. If it was a one-off it would be bad enough, but in fact, it seems to be an ongoing situation. So, it indicates that, really, they don't have enough resources, or they are not putting enough resources into it..."*

Ms McGovern then said:

*"Well, our reporter was told the store he was at would like to have more people unpacking the deliveries, but the staff didn't have enough time to do that, so instead members of the team told him they'd come up with ways to make it look as if they'd got the work done on time".*

The programme then included another clip from the 18 April programme, in which the undercover reporter discussed the delivery and storage of food with an Iceland staff member:

John: *"So, is it ok to leave that chilled stuff in here?"*

Staff Member: *[laughs] It's not, but you can get away with it. It's all about the trick, you know. You'll develop, don't worry".*

Ms McGovern and Ms Fox then read out Iceland's statement in response to the claims:

Ms McGovern: *"Well, Iceland was fuming with our report, telling us it wasn't representative of the store's usual practices, but in any case, there was no risk to public health because on the days of our shifts it says the temperature in the store room was actually colder than the chiller, and that the store we were in recently added a third chiller.*

Ms Fox: *Now, the company also took to Twitter to rubbish what we'd caught on camera, and some Iceland employees leapt to its defence, saying none of this happened in the stores they worked in. But, at the same time, a number of individuals claiming to be employees and former employees also went on social media claiming there are, and were, issues with the storage of chilled foods at their stores.*

Ms McGovern: *Well, big changes are now happening, we understand Iceland is investing in thousands of new cages to make it quicker and easier for staff to get the food into chilled storage areas. It's told us that's part of ongoing investment alongside expanding store chiller capacity.*

Ms Fox: *Last week we asked Iceland to come to the studio to respond to our footage. Nobody came. So, we also invited them tonight, but once again we've been given the cold shoulder".*

The programme continued, but with no further reference to Iceland.

*Watchdog, BBC 1, 23 May 2018*

This edition of the programme included a further update on the Iceland report. Ms McGovern said:

*"Now it's fair to say that we are in a right barney with Iceland. The shop, not the country. They don't like what we exposed was happening in one of their stores. We saw food that should have been in fridges left out for up to 14 hours".*

The programme then included footage filmed by the programme's undercover reporter, John, working in a branch of Iceland in which an Iceland employee could be heard commenting on a delivery of chilled food which had been left out:

*"You just have to be clever you know...Look at, all the chilled is still out, it shouldn't be out".*

Another presenter, Mr Allwright, then said *"and we heard how this was partly because of serious logistical problems"*. More footage was shown in which the undercover reporter asked an Iceland employee about the pallets on which food was delivered: *"...why do we not just roll the pallets straight into the chiller?"*. The employee responded:

*"[opening chiller] They don't fit... that's why you can't just put them in there...So we have to break them... plus we've only got these three chillers..."*.

Ms McGovern commented: *"And partly because of a lack of staff hours"*, which was followed by further footage showing the store's supervisor who could be heard explaining to the undercover reporter that he was only being given *"800 hours to spend a week"* when he needed *"at least 1500 hours"*.

In the studio, Mr Allwright said:

*"Now, Iceland told us that our report was 'totally incorrect', but a significant number of people who say they've actually worked there have been in touch to say otherwise, and we can't ignore what they say".*

A map of the United Kingdom was then shown while quotes from people who claimed to be Iceland employees were read out. Some of the quotes also appeared on screen: *"...storage facilities never could cope...; ...happens in other stores...; It's the norm in all the stores that I've worked in...; and, "...understaffed"*.

Ms McGovern then said:

*"Iceland staff from all over the country have contacted us with the same message that what we found in our investigation wasn't an isolated incident. They're also worried about how your chilled food is being handled in their stores".*

A map of the United Kingdom appeared again indicating the number of Iceland staff from across the country who had contacted the programme with their concerns. Ms McGovern explained:

*"More than 60 current or former staff independently contacted us with similar concerns, from right across the UK. We did also hear from some Iceland staff saying it didn't happen in their store, but they were outnumbered by the people suggesting that what we found was just the tip of the iceberg. Some of those employees are managers for the company, who say their stores also struggle to get chilled delivery into fridges quickly enough. Iceland specifically told us there were no issues with chiller space, something this store manager disagrees with..."*

The former store manager was anonymised in the programme. Ms McGovern asked the store manager: *"You've worked at Iceland for quite a long time, why did you decide to contact Watchdog?"* and the following conversation took place:

Store manager: *"I've been very worried about the way we're expected to manage our chilled deliveries when they come into the store. There isn't enough room in many of the chillers.*

Ms McGovern: *How often would you say that you're selling food that you don't think is right, it's not been chilled in the proper way?*

Store manager: *Every day...Every day to a certain extent. Sometimes the deliveries are so big even if they're delivered during the night, sometimes they're actually left out of refrigeration, although the drivers who deliver them have been told that they have to take it back to the depot if they can't get it in refrigeration, and they don't always do that unfortunately.*

Ms McGovern: *Do you feel like you're letting the customers down?*

Store manager: *Yes, definitely. But, it's the best we can do with what we have to work with, and we just try and do the best we can. Myself, and other people have raised it with, people up above, however sometimes it's not acknowledged, or it's just ignored".*

Ms McGovern then said:

*"The best we can do with what we have', is a sentiment we're hearing from a lot of staff, even with all the correct procedures in place, they're telling us they just don't have the means to do the job properly..."*

Ms McGovern introduced a second employee, also anonymised, who said that she had worked for Iceland for over five years. The programme showed reconstructed footage of a female employee carrying out various tasks at an Iceland store. The employee said:

*"I don't believe the store has the resources to always achieve what we need to in terms of temperature control. There is a space issue in our store as well, which is not an issue all of the*

*time, but at particular times of the year such as Christmas when the stock levels can double. I believe we're selling food that's been subject to temperature abuse on a daily basis. It varies depending on who's in, how many staff are in, but I've known the chilled delivery be left out for far longer than it should be, up to four hours".*

Ms McGovern said:

*"Now, do you remember Iceland told us that there was no issue with chiller space or the pallets? Well, we found out they've ordered 12,000 new roll cages to replace those pallets and make it quicker and easier to get the deliveries into the chiller. Iceland said this is part of ongoing investment, but you've got to wonder, haven't you? Would they really be making such big changes if they were getting it right in the stores?"*

Ms McGovern explained that the programme had been told that as well as space, there were a number of other factors affecting Iceland staff's ability to get the job done. Further quotes from Iceland staff were then read out. Some of the quotes were shown, including: *"severe staff cutbacks...; ...budget cutbacks...; Expects people to do free work...; We don't have the staff...; and, ...need more hours..."*.

Ms McGovern went on to introduce a senior member of staff at Iceland, also anonymised, who reportedly told the programme that their store was only able to get chilled deliveries into the fridge on time by staff working unpaid overtime. The following conversation took place:

Employee: *"Ever since I joined Iceland, there's always been a concern that there isn't enough staff, and especially the more I've progressed up the management chain, the more it opens your eyes to it. It's not right, and something needs to be changed about it because the company aren't listening.*

Ms McGovern: *Ok, and when you say the company aren't listening, how do you know that?*

Employee: *They're very aware that the stores don't have enough hours because it's fed back to area managers who feed it back to their managers. It's always been a problem, but yes, it is, it is getting worse".*

Ms McGovern then said:

*"And, without enough resources to do the job properly, staff have told us the food you may end up buying is being left unchilled for unacceptable periods.*

*Now, Iceland assured us that food that is left out doesn't pose a risk because if there are any concerns then the temperature will be checked with a manual probe. But the staff that we asked about this said this doesn't always happen".*

Ms McGovern was then shown talking with other anonymised Iceland employees:

Employee: *"No, no we just probe anything that's flashing up as too hot or too cold.*

Ms McGovern: *And that's only stuff that would be in the chillers...so any food outside of it...*

Employee 2: *No, doesn't get probed...No, couldn't possibly do that...we wouldn't have the time and we've never been told or asked to do that".*

The conversation ended, and Ms McGovern explained that food should not need to “probed”, because it should be put in a chiller within a short period of time, and that this had been made clear by Iceland itself in a poster it reissued to staff after *Watchdog* broadcast its report in the original programme. The poster was shown, and Ms McGovern said:

*“It [the poster] says food should be put away within one hour in a fridge, not left out in a stock room as we saw while working undercover. So many staff told us they were struggling to handle chilled food properly in their stores, that we asked the authorities what they thought.*

*The Food Standards Agency has told us it's working with a relevant local authority to ensure that these allegations are investigated and, if necessary, action is taken to ensure Iceland has sufficiently robust controls in place.*

*It's not that often that so many staff from a big company will stick their neck out to tell us what's going on behind the scenes. You know when you do your shopping you don't know what's going on out the back, and they do. And, if they're telling us they're cutting corners which is affecting the quality of what you're buying, well, it sounds like Iceland's got a bigger problem than it's prepared to admit”.*

In the studio, Ms McGovern said:

*“Well, you'd think by now Iceland would want to come on the show, wouldn't you? To reassure us on all of this. But, it refused and rejected our allegations, saying what its own staff have told us is false. It says it's been an expert in the temperature control of food for nearly 50 years, and has comprehensive and effective procedures, including staff training, to ensure correct food temperature control throughout its supply chain”.*

The presenters then continued to read Iceland's statement:

Mr Allwright: *“The store went on to say that last year it spent £30 million on refurbishments and improvements, including an increased chiller capacity. It says there are no generic issues with temperature control, and that customer complaints about food spoilage are virtually non-existent. It also says the majority of its stores have a 5 out of 5 food hygiene rating from their local authority.*

Ms McGovern: *Now, Iceland also wanted you to know it said its employees like working there. In its most recent staff survey it had an 85% overall positive score. It claims those levels of job satisfaction clearly show that allegations of staffing shortages are not representative of wider staff opinion.*

Ms Fox: *Well, I reckon we might hear more from Iceland employees tonight. Last time, of course, the ones who got in touch weren't questioning the store's policy, but many felt under too much pressure to always carry them out, and they thought you should know about it...so, we are already hearing from more people who say they are Iceland employees and have concerns...”.*

The programme continued, but with no further reference to Iceland.

## Summary of the complaint and broadcaster's response

### Complaint

18 April 2018 broadcast

- a) Harbottle & Lewis complained that Iceland was treated unjustly or unfairly in the programme as broadcast because:
- i) The programme gave viewers the unfair impression that Iceland unlawfully put public health at risk by improperly storing chilled food on a routine basis across its stores and unlawfully compromised food safety by not observing proper practice in the delivery of chilled foods to its stores. Iceland said that these allegations were based only on "generalised claims" made by a former manager, who they said was not a credible source, and current employee, and footage filmed undercover by a *Watchdog* reporter. In particular, it said that the programme did not make clear that:
- The storeroom filmed by the undercover reporter was close to freezing and the outdoor temperature at the time did not exceed seven degrees Celsius. This meant that the temperature of the food never rose above "unsafe and unlawful" temperatures of above eight degrees Celsius. It was therefore misleading for the programme to allege that food safety was compromised.
  - The undercover reporter's claims related to only one Iceland store where he had worked four shifts; he had observed only one delivery; and, the delay in moving a delivery of food to the refrigerator was caused by *Watchdog's* own undercover reporter working too slowly.
  - The former manager was an unreliable source and his concerns about food temperature control had themselves been investigated and found to be without foundation. Viewers would have therefore understood the former manager to be a credible source and his claims to be with foundation.
- ii) The comments included in the programme by Mr Barrie Trevena were inaccurate and misleading because he had not been provided with full information about the undercover filming. In particular, he had been told that food had been left out at "unspecified ambient temperatures in excess of two hours" and not informed about the temperature of the storeroom and outdoor temperatures at the time of filming.
- b) It was not provided with sufficient time or information about the allegations, or the sources of the allegations, to enable it to respond fully to the claims being made in the programme. In particular, *Watchdog* declined to provide Iceland with any specific details in respect of the allegations made by the former manager and current employee in order to allow it an opportunity to investigate and provide an informed response to the claims.
- c) Its response was not fairly reflected in the programme. In particular, Iceland's "On The Record Statement", was edited which resulted in fundamental parts, such as information relating to the credibility of the former manager, not being reflected.

*25 April 2018 broadcast*

- d) Harbottle & Lewis complained that Iceland was treated unjustly or unfairly in the programme as broadcast because the programme failed to read out Iceland's "On The Record statement" or accurately reflect its position. The programme said: "little more" of Iceland's position than "it had given *Watchdog* 'the cold shoulder'", when the reality was that Iceland had strongly refuted a number of claims and had set out in detail its reasons for doing so, which were omitted from the programme.

*23 May 2018 broadcast*

- e) Harbottle & Lewis complained that Iceland was treated unjustly or unfairly in the programme as broadcast because:
- i) The programme made serious allegations of widespread and systemic problems with its "cold chain" across the network of its stores.
- It said that this was a one-sided and misleading message to convey to viewers and caused "serious reputational harm". It added that the allegations were not supported by any specific examples and evidence and were instead based on vague and unparticularised claims made by a few people. It also ignored the support its client had received from current Iceland employees on social media stating that the *Watchdog* programme was not reflective of their stores practices and Iceland's previous track record (for example, that it had had virtually no complaints relating to "off" chilled food in the previous six months; that inspections carried out by the Environmental Health Officers consistently found the stores were excellent; and, that the officers had found no evidence of there being generic problems with Iceland's cold chain supply or temperature control).
- f) It was not provided with sufficient information about the allegations to enable it to respond fully to the claims being made in the programme. In particular:
- *Watchdog*'s claims were put to it in vague and generalised terms and it was not provided with details of who had made the allegations against Iceland and the specific claims being made about it, for example, dates of alleged incidents and the stores where they had taken place. It was therefore unable to investigate any of the claims of wrongdoing so as to provide an informed response.
  - It was not provided with an opportunity to respond to the allegation that Iceland sells food which has been stored at incorrect temperatures and is therefore unsafe, on a daily basis.
- g) Its response was not fairly reflected in the programme. In particular, despite requesting that Iceland's "On The Record statement" be read out in full so that there could be "no question of [its] position being fairly and accurately reflected", the programme failed to do this.

## Broadcaster's response

18 April 2018 broadcast

- a) The BBC responded to Harbottle & Lewis' complaint that Iceland was treated unjustly or unfairly in the programme as follows:
- i) The BBC said that nowhere in the programme was it alleged explicitly that Iceland had behaved unlawfully. Rather, the programme focused on apparent breaches of "official guidance" and "good practice" relating to the storage of chilled foods and the potential for practices, such as those observed by the programme maker, to create a risk to health. The BBC pointed to comments made by Mr Trevena, the food hygiene expert engaged by the programme to give a view on the practices which were secretly filmed, which included:

*"...really they must keep the chilled food in a controlled environment. They cannot have it out uncontrolled, not monitored. We don't know if it's cold".*

*"Well, it really could be quite dangerous. There is a lot of hours there and bacteria multiplies fairly quickly, so if it's risen much above eight or ten degrees then we could get some significant multiplication".*

*"There is every chance that some of that food has risen above eight degrees centigrade".*

*"It is risky. I mean, the customers expect that when they go home with their food, and feed it to the children, that it's going to be safe, and if you break that chill chain for that length of time then you can't guarantee that".*

*"If it was half past six in the morning I would be quite concerned but half past six in the afternoon is just unbelievable...Potentially that could be quite dangerous for high risk ready to eat foods being stored in what we call the 'danger zone' for that length of time..."*

The BBC said that these comments were confined to the potential risk to public safety arising from what Mr Trevena witnessed in the secret filming, i.e. chilled food being left out of a temperature-controlled environment for significant periods of time. The BBC said that Mr Trevena did not assert that such a risk had been caused and the programme made no claims as to the temperature which the chilled foods observed had in fact reached, nor did it make claims about the ambient temperature in the delivery area.

The BBC said that it did not agree that the programme relied on insufficient evidence to justify the allegations made. It said that as the programme makers made clear in correspondence with Harbottle & Lewis, the original allegations came from a former manager and a current employee who had contacted *Watchdog*. The BBC said that it was the fact that their allegations were similar, but independent of each other, which prompted the programme to investigate further.

The BBC said that as part of its investigation, an undercover reporter secretly filmed his work at a branch of Iceland in London and secretly filmed his induction at another branch. It said that these branches were different to those which were the subject of the

original allegations made by the former and current employee. It added that the programme makers had no control over the selection of branches to which the undercover reporter was assigned. The BBC said that overall, evidence of a pattern emerged which was not wholly dependent on any one of the sources of evidence which the programme relied upon. Given this, it said that there was "ample justification" for the programme makers to conclude that the original allegations tended to corroborate each other and were themselves further corroborated by the secretly filmed evidence gathered by the undercover reporter.

The BBC referred to Iceland's suggestion that because the weather was particularly cold on the day that the undercover reporter unloaded the delivery, the food in question never reached temperatures of above eight degrees Celsius. However, it said that this does not go to the point being addressed in the programme concerning the potential risk created by apparent breaches of food storage regulations. The BBC said that no claims were made in the programme about the temperature of the food which had been left out, but that, in the absence of the required temperature control or a thermometer in the storeroom where the food was left, Iceland could have no way of knowing whether the food had never reached eight degrees Celsius. The BBC said that Iceland referred to the external temperature in the locality but had not demonstrated the reason it should be assumed that the external temperature was close to the indoor temperature, save the anecdotal recollection of a manager. In any case, the BBC said that relevant official guidance makes clear that "the requirement is for the temperature of the food, not the surrounding air"<sup>1</sup>. The BBC said that the fact that the temperature at the time was very low was acknowledged in the programme, which included the exchange between the undercover reporter and a supervisor where the latter was recorded saying that delay was acceptable because "*It's cold at the moment...ok, so it meets the temperature*". The BBC said the supervisor had no way of knowing that this was the case given the absence of a thermometer in the unloading area. In any case, the BBC said that the observations about the peculiarities of the weather on that day ignored the corroborative evidence obtained by the programme in the form of testimony from witnesses and the secretly filmed comments of other store employees which suggested that the practices being observed were not confined to the day in question.

The BBC said that the programme had recognised that some of the delay in getting a delivery of chilled foods unloaded in good time may have resulted from the inexperience of the undercover reporter who was tasked with doing the unloading single-handedly with no prior experience. The BBC said that it believed it was reasonable to say that any delay his inexperience may have caused was predictable and could have been foreseen and managed by the store management, which it said was not the case. The BBC said that the evidence collected by the undercover reporter showed that the delay on this occasion was not an isolated example which could be attributed solely to his lack of experience. The BBC pointed to a comment from the supervisor ("*Normally that delivery gets done before one*") which it said suggested that it was not an unusual occurrence. The BBC also said that completing the unloading of a delivery by 13:00 would still mean that come chilled food had been out of a temperature-controlled environment for several hours. It said this was reinforced by the comments of the store manager saying that he needed more staff hours and the fact that, when the undercover reporter arrived for his second shift, he filmed some of that morning's delivery still waiting to be unloaded at 15:00. He was told it had been delivered at 03:00. The BBC said overall, it did not believe it could reasonably be claimed that the delay in unloading the chilled

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<sup>1</sup> Guidance on Temperature Control Legislation in the United Kingdom, FSA, September 2007, para 27.

foods on the undercover reporter's first shift was to any significant extent attributable to the speed at which he worked.

The BBC said that it was unable to directly address the point of complaint referring to the former manager. It said that the terms in which the complaint was put meant that any direct response may be taken as confirming or denying the identity of a source to whom a promise of confidentiality had been provided by the BBC. The BBC said it could, however, make some general observations in response to the point that only limited credence should be given to allegations being made by a source of allegedly doubtful character. The BBC said it did not agree that even if, which it did not concede, one *Watchdog* source was of "doubtful character", the issue arising would not be whether this necessarily rendered their testimony wholly unreliable but, whether that testimony could be corroborated. It said that the initial allegations came from two separate sources which were mutually corroborative and were further corroborated by the evidence gathered by the undercover reporter. Given this, the BBC said there would be no reason to discount the evidence of the source in question even if, as was suggested by Iceland, they were of "less than good character". The BBC said that the programme did say that Iceland had challenged the credibility of one of its sources, which, it believed, was appropriate and proportionate.

- ii) The BBC said that this head of complaint amounted to a very serious and disreputable allegation of dishonesty and journalistic malpractice against the programme makers, for which no evidence had been offered by Iceland. During the BBC's investigations into Iceland's complaint, Mr Trevena provided "categorical assurances" that he had viewed lengthy sections of the unedited undercover filming prior to expressing his view on camera. In relation to the specific information which Iceland claimed was kept from him, the BBC said Mr Trevena assured the BBC that he was fully aware from viewing the secretly filmed material that it was particularly cold at the time of filming and that the undercover reporter was inexperienced and that this may have contributed to the delay in getting the chilled foods processed.
- b) The BBC said that the fact that Harbottle & Lewis, on Iceland's behalf, were in a position to provide "many voluminous responses" during the right to reply period, addressing all the points which had been put to them for response meant that it was quite unreasonable to argue now that they were prevented from providing a response by shortage of time. The BBC also said that Iceland's right to reply statement addressed all the points made in the programme and it was therefore not reasonable to claim that Iceland was prevented from responding by a lack of information.
- c) The BBC said that although Iceland complained that fundamental parts of its statement were omitted, only that relating to the former manager was specified. The BBC said that Iceland appeared to suggest that damaging information which Iceland believed related to one of the programme's sources, and which was contained within its statement for publication, was excluded from the programme to Iceland's detriment because it went to the credibility of one of *Watchdog's* sources. The BBC said that the statement as broadcast was limited to noting that Iceland had challenged the credibility of one of *Watchdog's* sources. However, as set out above, the BBC said that the programme could not be drawn into any exchanges about the identities of its sources and could not publish information which might lead to them being identified rightly or wrongly as a confidential source. The BBC said that it believed that this position was based upon fundamental journalistic principles. It added that it was arguably an abuse of the right to reply process to include such information in a right

to reply letter with the implicit challenge either to risk compromising a confidential source or face a complaint of unfairness for failing to do so.

*25 April 2018 broadcast*

- d) The BBC said that the programme included an update on the investigation, but did not repeat all of the allegations previously made. The BBC referred to Ms McGovern and Ms Fox reading out Iceland's statement in the programme, as set out in detail in the 'Programme summary' section above, and said that although it was the case that Iceland's statement provided on 25 April 2018 was not broadcast in its entirety, it did not believe that this resulted in unfairness. The BBC said that some of Iceland's statement was not relevant as it addressed allegations which were not included in the updated report. It said that other points in the statement made general claims about food handling standards across the Iceland chain, but did not go to, or refute, the specific allegations. The BBC said that all the points in the statement which did relate to specific allegations revisited in the programme were included, as were statements about the measures Iceland was taking to improve chilled food handling and storage. It said that overall, it believed that the summary provided in the programme fairly and accurately reflected Iceland's position in relation to allegations that were made in this programme as broadcast.

*23 May 2018 broadcast*

- e) The BBC responded to Harbottle & Lewis' complaint that Iceland was treated unjustly or unfairly in the programme as follows:
- i) The BBC said that the programme did not use the terms widespread or systemic and clearly described the limits of the allegations that were being made. It said that the allegations derived from *Watchdog's* earlier undercover investigation into one store and added that since the broadcast of the programmes, more than 60 current or former employees had contacted *Watchdog* to report similar concerns. The BBC referenced Ms McGovern's statement: "*Iceland staff from all over the country have contacted us with the same message, that what we found in our investigation wasn't an isolated incident*". The BBC said that while it was made clear that the allegations were not confined to an isolated incident, it was not claimed that the problem was generalised across the network of Iceland stores. It said that quantifying the responses from current and former employees placed a clear, if approximate, limit on the scale of the allegations being made and that it did not agree that there was anything inaccurate about this.

The BBC said that it was not the case that the programme ignored the support Iceland had received from current employees on social media, and referred to the part of Iceland's statement included in the 25 April 2018 broadcast: "*the company also took to Twitter to rubbish what we'd caught on camera and some Iceland employees leapt to its defence saying none of this happened in the stores they worked in*". It said that such statements by employees, even if taken at face value, provided no grounds for discounting the reports of the employees and former employees who contacted *Watchdog*.

- f) The BBC said that the substance of this complaint is that *Watchdog* did not furnish the complainant with sufficient details, such as locations and dates when breaches of food handling regulations were alleged to have occurred, to allow an informed right of reply. It said that the complainant was, however, aware from the two previous *Watchdog*

programmes that the allegations did not concern wrongdoing by individual members of staff but a more general allegation that the pallets on which chilled food arrived could not be taken straight into the chillers because they were too big. The BBC said that this meant that the pallets had to be "broken down" but that in some stores staff levels were such that this was not possible in the required times. Therefore, it said that although allegations were being made by individual employees from particular stores, there was no need to know their identities or the locations of the stores in question in order to respond to the substantive allegation. It also said that Iceland's right to reply statement, which was summarised at the end of the programme, addressed these points directly. The BBC said that it did not agree that the complainant was prevented from offering an informed response by a lack of information from the programme makers.

The BBC said that the programme did not allege that Iceland sold food which has been stored at incorrect temperatures on a daily basis, which it said amounted to an allegation that the issues described were generalised across the Iceland network. It said that one interviewee in the programme said that they believed that in the store where they worked food was subject to temperature abuse on a daily basis, but that this was different to an allegation that this was happening across the entire Iceland chain. The BBC said that such an allegation of generalised temperature abuse was not made and did not, therefore, require a right of reply.

- g) The BBC referred to Iceland's statement as read out in the programme and as set out in the 'Programme summary' section above. It said that it believed that this was a "comprehensive summary" of Iceland's position as set out in the right to reply statement provided to the programme makers on 21 May. The BBC said that Iceland had failed to specify any respect in which the way the statement was presented which resulted in unfairness.

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

Ofcom prepared a Preliminary View that the complaint made on behalf of Iceland should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View. The BBC did not make any representations. Harbottle & Lewis made representations on behalf of Iceland, which are summarised, insofar as they are relevant to the complaint entertained and considered by Ofcom, below.

#### Complainant's representations

##### *18 and 25 April broadcasts*

##### *Unlawfully put public health at risk and storeroom temperature*

Harbottle & Lewis said that the *Watchdog* programme broadcast on 18 April unfairly gave viewers the impression that Iceland put public health at risk by improperly storing chilled food and failing to follow proper practice in the delivery of chilled foods to its stores. It highlighted the exchanges between Ms McGovern and Mr Trevena (as set out in detail in the Programme summary), and said that references to, for example, "best practice", chilled food being kept outside of a temperature controlled environment and comments about risk of bacteria multiplication and the "danger zone" would be understood to mean that Iceland had put public health at risk as a result of food being left out of the chiller for an extended period of time.

It said that prior to broadcast of the programme, the BBC was aware that Iceland had investigated the claims in relation to food temperature at the Iceland store where the undercover footage was filmed and found that the temperature of the storeroom was close to freezing and therefore colder than the store's chiller. It said that accordingly, *Watchdog* was "on notice" that it would be highly misleading to suggest that food safety was, or could be, compromised based on the footage used in the programme and by describing the food not being in the fridge as "*uncontrolled*", "*risky*" and "*quite dangerous*". It said that the FSA guidance explicitly recognises that if food is left out of a temperature controlled environment for longer than two hours this may be justified based on the core temperature of the food (Hazard Analysis and Critical Control Points principles "HACCP"). Harbottle & Lewis said that it had explained to *Watchdog* that Iceland checks core food temperature if there are any concerns, and that during the delivery (footage of which was included in the programme) there were no such concerns. It said that there was no reference to HACCP, or the fact that Iceland abides by these principles in the programmes broadcast on 18 or 25 April.

#### *Former store manager*

Harbottle & Lewis said it was unfair to broadcast claims made by the former store manager without making it clear that he was an unreliable source and that his concerns about temperature control had been investigated and found to be without foundation. It said that Ms McGovern's statement that "*Our whistleblower's [the former manager] complaints were not upheld by Iceland which left them feeling that the company didn't seem to care and that their warnings had gone unheeded*". was misleading as it could be interpreted as the complaints being unheeded due to a lack of concern on Iceland's part, rather than making it clear that there were no grounds for the complaint, or that the complainant was not credible.

It added that the 18 April programme also failed to read out Iceland's "On the Record statement" in full, as it had requested in advance of the broadcast. Harbottle & Lewis repeated its claims about the credibility of the former manager and said that the BBC's failure to make this clear meant viewers would attach a greater level of reliability to his claims as they would assume he held a position of responsibility and had specific knowledge about the business, and were therefore likely to believe the claims. It also said that as the programme made reference to two sources, the former store manager and a second Iceland employee, although the programme acknowledged that Iceland had "*challenged the credibility*" of *Watchdog's* initial source, it was not clear to viewers whether Iceland had challenged the credibility of the store manager or the second employee. It said that viewers would be more likely to think that Iceland had challenged the credibility of the second Iceland employee because they were not featured in the programme.

#### *23 May 2019 broadcast*

Harbottle & Lewis said that it was not reasonable for Ofcom to conclude that viewers were unlikely to have been left with the impression that the matters being investigated were "widespread" and "systemic". It said that Ms McGovern's comments that *Watchdog* had been contacted by "*so many*" current and former Iceland staff "*...from all over the country...*" and "*...right across the UK*" clearly suggested that the alleged issue with food being left out of chillers was affecting multiple stores across the nation and, as such, would have been understood to be widespread and systemic. Harbottle & Lewis also highlighted comments made by a "store manager" and "Iceland employee" who had worked at the store for "more than five years" (as set out in the Programme summary section) which it said gave the clear impression that there are daily, widespread and systemic issues with food safety and hygiene. It added that this was

especially the case because it was not clear from the programme whether these employees worked at the same store, or whether the problem was at different stores. As such, it said that allegations of “daily” temperature issues at multiple locations would be likely to lead viewers to conclude that the matter being investigated were widespread and systematic.

Harbottle & Lewis said that it was unfair that these specific allegations regarding temperature abuse taking place on a daily basis were not put to Iceland in advance of the broadcast. As such, Iceland had no opportunity to investigate the claims and to respond. Harbottle & Lewis said that the allegations were very serious and had the potential to severely impact on consumer trust in Iceland. In particular, it said that *Watchdog* should have informed Iceland of the location of the store(s) at which the daily temperature abuse was alleged to have taken place. It said that this would have provided Iceland with an opportunity to investigate the claims and respond with evidence to refute them in advance of the broadcast.

## Decision

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

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

In reaching this decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programmes as broadcast and transcript of them and both parties' written submissions and supporting documentation. We also took careful account of the representations made by Harbottle & Lewis in response to Ofcom's Preliminary View on the complaint. After careful consideration of the representations, however, we considered that the points raised did not materially affect the outcome of Ofcom's Preliminary View to not uphold the complaint.

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

In addition to this Rule, Section Seven (Fairness) 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 7.1 and failure to follow these practices will only constitute a breach where it results in unfairness to an individual or organisation in the programme.

### *18 April broadcast*

- a) Ofcom considered Iceland's complaint, made on its behalf by Harbottle & Lewis, that it was treated unjustly or unfairly in the programmes as broadcast.

In considering this head of complaint, we had particular regard to Practice 7.9 of the Code, which states:

“Before broadcasting a factual programme, including programmes examining past events, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, 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 in which they were presented in the programme.

#### *Unlawfully put public health at risk*

- i) Ofcom considered Iceland's complaint, which was reiterated by Harbottle & Lewis in its representations on the Preliminary View, that the programme gave viewers the unfair impression that Iceland unlawfully put public health at risk by improperly storing chilled food on a routine basis across its stores and unlawfully compromised food safety by not observing proper practice in the delivery of chilled foods to its stores.

In considering this element of the complaint, we recognised that at no point did the programme state that on a routine basis across its stores had Iceland unlawfully put public health at risk, or that it unlawfully compromised food safety by allowing food to reach unsafe temperatures. Rather, in our view, the programme presented *Watchdog's* investigation into the storage of chilled foods at Iceland, including the testimony of one former manager who said that he was worried about “*the safety of the general public*” due to the way chilled food was handled in his store and referred to a second employee who had raised the same issue at a different store. It then included undercover footage filmed at another store where the programme indicated that chilled food had been left out of a temperature-controlled environment. It was therefore made clear in the programme that the investigation was limited to only a few of Iceland's stores.

Further, as part of the investigation the programme explained that in accordance with FSA guidance, food should not be left unrefrigerated for more than two hours. As set out above, we considered that at no point did the programme state that food had reached unlawful temperatures and put public health at risk. Instead it would have been clear to viewers that keeping chilled food outside of a temperature-controlled environment for extended periods of time created a *potential* risk to public health. We also took into account Harbottle & Lewis' representations on the Preliminary View that referred to some of the language used in the programme. However, again, we considered that the comments referred to the *potential* rather than *actual* risk to public health.

We also recognised that the programme included Iceland's response to the claims: “*Iceland has told us its thoroughly investigated our allegations and our report is entirely unrepresentative of its usual practice. It says it has no generic issues with temperature control which is simply illustrated by the extremely low level of customer complaints*” and that “*the vast majority of its stores, including the one we worked at, have 5/5 food hygiene rating from their local authorities*”. We considered that this made Iceland's position clear to viewers that the comments made by the former manager and footage filmed by the undercover reporter were not representative of its stores and that public

health had not been put at risk. Taking into account the above, and the representations made by Harbottle & Lewis on the Preliminary View, we did not consider that the way in which this material was presented in the programme caused any unfairness to Iceland in this regard.

#### *Storeroom temperature*

We considered the complaint that the programme was misleading in alleging that food safety was compromised and did not make clear that the storeroom filmed by the undercover reporter was close to freezing and the outdoor temperature at the time did not exceed seven degrees Celsius, which was reiterated by Harbottle & Lewis' representations on the Preliminary View.

As set out in detail in the "Programme summary" section above, footage was shown of the undercover reporter working on two shifts where the programme indicated that chilled food had been left out of a temperature-controlled environment for 11 and 14 hours respectively. Mr Trevena had referred to the possibility that the delay in the first instance meant there was *"every chance that some of that food has risen above eight degrees centigrade"* and that *"it really could be quite dangerous. There is a lot of hours there and bacteria multiply fairly quickly, so if it's risen much above eight or ten degrees then we could get some significant multiplication"*. We also took into account that an employee referred to the temperature at the time as *"cold"*, which suggested that food had remained chilled despite the delay in unloading the delivery. The programme also referred to Iceland's statement in which it said: *"at the time of filming, in February, the temperature of the storeroom did not exceed six degrees Celsius, making it colder than the store's chiller"*.

We recognised that at no point did the programme claim as fact that Iceland had allowed food to reach unsafe, and unlawful temperatures of above eight degrees Celsius. Rather, the programme referred to it being a possibility that food could reach such temperatures in circumstances where food was left unrefrigerated for extended periods. We also considered that the programme's claims about Iceland's food storage practices were framed very much in terms of the *potential* risk to food safety rather than stating that it had been compromised. In addition, the programme made Iceland's position clear that the temperature of the storeroom *"did not exceed six degrees Celsius"*. In our view, therefore, viewers would have understood that Iceland's view was that food safety had not been compromised in the way suggested in the complaint, but that there existed a potential risk that it could be if chilled food was not refrigerated within the two-hour time limit in accordance with FSA guidance. Taking these factors, and the representations made by Harbottle & Lewis on the Preliminary View into account, we did not consider that the way in which this material was presented in the programme caused any unfairness to Iceland in this regard.

#### *Undercover reporter and unloading delivery delay*

We next considered Iceland's complaint that the programme did not make clear that the undercover reporter's claims related to one store, that he had only observed one delivery and that the delay in moving the chilled food into a refrigerator was caused by the reporter working too slowly.

As set out in detail in the "Programme summary" section above, Ms McGovern referred to claims made by a former manager of Iceland which she said only related to one store, and that to investigate this matter further, the programme would go undercover at a different Iceland branch. The programme then included undercover footage of the reporter's induction at this store. Ms McGovern then said that after hearing from a second employee from Iceland "*...our undercover worker John started at another store*". The programme then included undercover footage of the reporter unloading a delivery at this store. Later in the programme, Ms McGovern also said "*we went undercover to see for ourselves how staff at one store handle deliveries*".

Given this, we considered that the programme only included footage of the undercover reporter as he unloaded one delivery, and as he arrived at another branch in the afternoon and spoke about the morning delivery which had not been fully unloaded. Taking this into account therefore, we considered that the programme made clear to viewers that while the undercover reporter had worked at two stores, the footage of the undercover reporter as he unloaded, and then observed, a delivery was at only one Iceland store.

In relation to the complaint that the undercover reporter was working too slowly, we took into account that footage was shown in the programme of the undercover reporter working on a delivery shift where, as the programme alleged, chilled food had been left out of a temperature-controlled environment for 11 hours. We recognised that the programme included some alternative reasons for the delay in unloading the delivery. However, we took into account that Ms McGovern said: "*...so while newbie John is clearly not the speediest*" before footage was included of a supervisor telling the undercover reporter: "*Obviously you are still new, do you get it?... You need to speed up a bit more though*". We also took into account that the programme included a statement from Iceland in which it said: "*...[Iceland] maintained there's no shortage of resources, insisting our reporter was largely responsible for creating delays in putting stock away and that three colleagues reprimanded him for it*".

While we recognised that the programme did not attribute the delay in unloading primarily to the undercover reporter, we considered that it was made clear to viewers that it could have been a contributory factor. We also took into account that the programme made clear Iceland's position on the matter, i.e. that the undercover reporter was "*largely responsible*" for creating the delay. We therefore considered that viewers were provided with sufficient information to be able to understand that the inexperience of the reporter could have been a factor causing the delay in that particular incident. We therefore did not consider that the way in which the material was presented in the programme in relation to the undercover reporter caused any unfairness to Iceland.

#### *Former store manager*

We next considered the complaint, which was reiterated by Harbottle & Lewis in its response to the Preliminary View, that the programme did not make clear that the former manager to whom the original allegations were attributed was an unreliable source, and his concerns about temperature-control had themselves been investigated and found to be without foundation.

We took into account the nature of the material included in the programme, as set out in detail in the "Programme summary" section. In particular, we recognised that the former manager told the presenter that he had been worried about the safety of the general public and had witnessed chilled products being "left out", and that he had reported his concerns to his "regional manager" and "the CEO". The programme also said that after an investigation, the complaints "were not upheld by Iceland...". We also recognised that the programme included Iceland's statement in response to the claims by the former manager: "...It [Iceland] also challenged the credibility of our initial source...". Further, while we took into account Harbottle & Lewis' representations on the Preliminary View that the programme had stated that the former manager "felt that the warnings had gone unheeded..." we considered it was made clear to viewers that this was the former manager's own personal view of events, rather than indication of a lack of concern on Iceland's part. Taking this into account, we considered that the programme made it clear to viewers that Iceland had previously investigated and not upheld the former manager's complaint and that it did not consider the former manager was a credible source.

It is not for Ofcom to determine the credibility or otherwise of the former manager. Instead, we considered whether the BBC had gathered substantive evidence to corroborate and justify the inclusion of his comments in the programme. We took into account the BBC's submission that allegations about Iceland had come from two separate sources, the former manager and a current employee, and that they were "mutually corroborative". We also took into account the BBC's response that these claims were further corroborated by the evidence gathered by the undercover reporter from different Iceland stores. We therefore considered that the BBC had a reasonable basis for including the former manager's comments in the programme. We also took into account that, as set out above, the BBC made clear that Iceland had challenged the credibility of the former manager and that an investigation by Iceland had found the claims to be without substance. Taking into account all of the above factors, including the representations made by Harbottle & Lewis on the Preliminary View, we therefore did not consider that the way in which the material was presented in the programme in relation to the former manager caused any unfairness to Iceland.

- ii) We next considered Iceland's complaint that the comments included in the programme by Mr Trevena were inaccurate and misleading because he had not been provided with full information about the undercover filming.

As set out in the "Programme Summary" section, the programme included footage secretly filmed by the undercover reporter in which the programme indicated food had been left out of a temperature-controlled environment for 11 and 14 hours respectively. It was within this context that Mr Trevena, who was introduced on the programme as a Chartered Environmental Health Practitioner with "...over 40 years experience in food safety...", provided his view.

We considered that viewers would have understood that Mr Trevena was providing his personal views on the footage in a professional capacity as an expert on food safety. While we are not in a position to know whether or not Mr Trevena was provided with specific information about the temperature of storeroom and outdoor temperature, we took into account the BBC's submissions that Mr Trevena had provided the BBC with "categorical assurances" that, prior to giving his view, he had viewed the unedited footage and was aware of the relevant temperature factors. We also took into account

that during the programme, Mr Trevena was specifically asked about whether the colder outside temperature was relevant and that he said: *"I don't think so, really they must keep the chilled food in a controlled environment, they cannot have it uncontrolled, not monitored, we don't know if it is cold"*. In our view, even if Mr Trevena had not been made aware of the specific temperatures outside and in the storeroom, it was clear that he had been informed to some extent about the temperature. We also considered that the programme made clear that his main concern was with food not being kept in a temperature-controlled environment, rather than that it had left out in "ambient temperatures".

Taking all the above factors into account in relation to this head of complaint, Ofcom considered that, in the circumstances of this case, the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Iceland. Therefore, we considered that no unfairness was caused to Iceland in this respect.

- b) Ofcom next considered Iceland's complaint that it was not provided with sufficient time or information about the allegations, or the sources of the allegations, to enable it to respond fully to the claims being made in the programme, in particular in relation to the allegations made by the former manager and current employee referred to in the programme.

Ofcom had particular regard to Practice 7.11 of the Code which states:

*"if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond"*.

We took account that Iceland's complaint was that it had been provided with insufficient detail about the former manager and current employee's allegations. We therefore limited our consideration of this aspect of the complaint to whether Iceland had been given an appropriate and timely opportunity to respond to the claims made by the former store manager and current employee rather than considering whether it had been given an appropriate opportunity to respond to the claims made in the programme as a whole.

On 10 April 2018, the BBC wrote to Iceland, outlining the allegations that it intended to include in the *Watchdog* programme and then engaged in ongoing correspondence with Iceland's legal representatives prior to the programme's broadcast on 18 April 2018. In Ofcom's view, the key allegations in the programme were explained to Iceland from the outset and it was repeatedly asked to provide its response. In reaching this view, Ofcom took into account the chain of correspondence (which was provided to Ofcom by Harbottle & Lewis) between the programme makers and the complainant, a summary of which follows below:

- Ofcom considered that the initial letter of 10 April informed Iceland that *Watchdog* had been contacted by Iceland employees who had raised: "concerns about food hygiene practices related to chilled deliveries" and that "chilled items were left out of a controlled chilled environment for unacceptable periods of time after delivery". The letter further explained that the programme would include an anonymised interview with a former Iceland store manager and informed Iceland of the claims he had made (as set out above in the 'Programme summary' section above). It also informed Iceland that the BBC did not intend to include an interview with the current employee who had

contacted *Watchdog*, but that the programme may refer to their claims. In particular, that they had said “that there are serious delays in getting chilled and frozen products onto the chilled shelves in store”; “that chilled and frozen stock is left in the stock room, which is not a temperature controlled environment”; and, “that it can take many hours to get into onto the shop floor, because the store does not have enough staff hours”. In both cases, the BBC had informed Iceland that it would not disclose the identity of these people. The letter also explained that the programme had also carried out its own undercover investigation at two Iceland stores (it provided the location of these stores) and gave an account of the filming, with particular reference to the evidence it had obtained relating to chilled items had been left out of a temperature-controlled environment. It had also informed Iceland that of the comments that Mr Trevena had made about the footage. It invited Iceland's response to the allegations by 17 April.

- On 11 April, Harbottle & Lewis responded on behalf of Iceland and claimed that the allegations included in the initial letter were “vague and wholly unparticularised”. Among other information, it requested that the BBC provide further details about the former manager and current employee including their names and information about the stores the complaints related to, length of their employment at the stores and if, and to whom, their concerns had been raised. It also asked for details of any other Iceland employees the programme had been in contact with. Harbottle & Lewis also told the BBC it required at least 14 days' notice to respond. On the same day, the BBC responded that it considered that deadline it had given was a “fair and appropriate period of time to allow your client to respond” and that the allegations had been “outlined in full” in the 10 April letter. It also informed Harbottle & Lewis that it was unable to disclose the identities and details of employment of the former manager and current employee except to say that the former manager had left Iceland in 2017. Further correspondence passed between Harbottle & Lewis and the BBC, and Harbottle & Lewis continued to ask the BBC for further information about the former and current employee; and the BBC said it could not provide this information. Harbottle & Lewis also provided details of a person that Iceland had identified as the former employee and explained the reason this source was unreliable – the BBC did not confirm or deny whether its source had been correctly identified.
- Harbottle & Lewis was provided with a further opportunity to provide a response for broadcast on 17 April. The BBC set out the allegations which had been included in its initial letter of 10 April, specifically in relation to the former and current employee that “Watchdog received unsolicited information from sources in relation to temperature control of chilled deliveries at two different Iceland stores. We were told that chilled deliveries were left out of a temperature-controlled environment for long periods of time, due to lack of staffing resources and chiller space. These sources contacted us independently, and separately from each other, with similar complaints about separate Iceland stores in different parts of the country”. In response, Iceland repeated its claim about the unreliability of the former manager as a source and that no specific details of the current employee's allegations had been provided. Further correspondence took place between Harbottle & Lewis and the BBC which reiterated previous points made about the former and current employee. On 18 April 2019, Harbottle & Lewis, on behalf of Iceland, provided a written statement in which it specifically referred to the unreliability of the former manager, a summary of which was included in the programme. In a separate letter, it requested that the programme “make clear in respect of any other general allegations of wrongdoing by our client's current employee,

that *Watchdog* did not provide to Iceland any specific details at all of such claims to allow Iceland to investigate and respond to the same”.

After carefully examining the correspondence, it was our view that Iceland was provided with an appropriate and timely opportunity to respond to the issues examined in the programme. In particular, while we recognised that the BBC did not reveal the identity of the former and current employee, we considered that the subject matter of the programme and the claims which had been made by the former manager and current employee were set out clearly and in detail in the BBC's initial correspondence with Iceland, which included the extent to which the programme would reflect the claims in the programme. We also considered that the BBC were clear from the outset that Iceland had an opportunity to provide a statement setting out its position and Iceland were repeatedly invited to provide a response. Taking these factors into account, we did not consider that Iceland were disadvantaged in any way by the BBC's decision not to reveal the identity of its sources, particularly as the BBC revealed the claims which had been made by these sources and that these claims had formed part of the basis for its decision to investigate the matter further, rather than being the central focus of the programme. We also took into account that Harbottle & Lewis was given a week in which to respond to the initial letter and responded in detail to each subsequent letter sent by the BBC. It also provided a written statement in response to the allegations on the day of broadcast which specifically referenced the former manager.

Taking all these factors into account, we considered that Iceland had been provided with an appropriate and timely opportunity to respond to the claims made about it in the programme and that there was no unfairness to it in this respect.

- c) We considered that complaint that Iceland's response was not fairly reflected in the programme. In particular, Harbottle & Lewis said that Iceland's "On The Record Statement", was edited which resulted in fundamental parts, such as information relating to the credibility of the former manager, not being reflected.

Ofcom particular regard to Practice 7.13 of the Code which states:

“Where it is appropriate to represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner”.

We took into account the "On the Record Statement" which Iceland provided to the programme makers and requested be "read out in full and unedited" and what was included as part of Iceland's statement in the programme as broadcast (as set out in the "Programme summary" section above). We recognised that Iceland's statement was not read out in full and was instead summarised. In particular, the programme did not include specific information which Iceland considered challenged the credibility of the former manager.

Ofcom takes the view that broadcasters are not required to include a right of reply response in full; it is a matter of editorial discretion as to what material is or is not included in programmes, subject to the requirement on broadcasters to ensure that they comply with the Code. We therefore considered whether the extract from the statement about the former manager that was included in the programme fairly represented Iceland's position.

We took into account how Iceland's statement in relation to the former manager was reflected. The programme said: *"It [Iceland] also challenged the credibility of our initial*

*source...". We took into account Harbottle and Lewis' representations on that the programme failed to make clear whether the programme was referring to the store manager or the second employee. However, we considered that it would have been clear to viewers that the reference to "initial source" made it clear to viewers that the programme was referring to the former manager who appeared, and was referred to first, in the programme. In addition to the inclusion of Iceland's statement, we also recognised that during the programme, viewers were informed that the former manager's complaints had been investigated by Iceland and not upheld.*

Taking these factors into account, we considered that the summarised response was an accurate and fair reflection of Iceland's response to the allegations, i.e. that it had challenged the credibility of the former manager and that viewers would have understood Iceland's position was to refute his claims. Although Iceland may have preferred its statement to have been read out in its entirety, we did not consider it necessary for the programme to have included any further detail in order to avoid unfairness to Iceland. In particular, we considered that viewers were provided with sufficient information to enable them to reach their own view about the former manager and his claims.

Ofcom's Preliminary View is, therefore, that there was no unfairness to Iceland in this regard.

#### *25 April broadcast*

- d) Ofcom considered the complaint that Iceland was treated unjustly or unfairly in the programme as broadcast because the programme failed to read out Iceland's "On The Record statement" or accurately reflect its position. The programme had said: "little more" of Iceland's position than "it had given *Watchdog* 'the cold shoulder'", when the reality was that Iceland had strongly refuted a number of claims and had set out in detail its reasons for doing so, which were omitted from the programme.

Ofcom had regard to Practice 7.13 of the Code, as set out at head c) above.

We took into account that the programme provided an update on *Watchdog's* investigation broadcast in the 18 April programme. As set out in detail in the "Programme summary" section, the programme repeated some of the allegations made about Iceland and included clips from the 18 April episode of footage recorded by *Watchdog's* undercover reporter and the comments of Mr Trevena. The programme also said that on social media some Iceland employees had said the issues explored in the programme did not represent their store, and it also referred to a number of individuals claiming to be Iceland current and former employees who had told the programme that there were issues with the storage of chilled foods in their stores.

In considering whether its response was fairly represented, we had regard to the "On the Record Statement" which Iceland provided to the programme and requested be "read out in full and unedited" and what was included as part of Iceland's statement in the programme as broadcast (as set out in the "Programme summary" section above). We recognised that Iceland's statement was not read out in full and was instead summarised. In summary, the programme did not include the following points from Iceland's statement:

- Information about the credibility of the former manager;
- Information about the delay to unloading the delivery caused by the undercover reporter;

- Reference to the expert's criticism of food storage at Iceland;
- Information about the pallet size in comparison to the chiller at the store filmed; and,
- Information about the low level of customer complaints and food hygiene ratings at Iceland's stores.

There is no requirement on a broadcaster to include a right of reply response in full. We therefore considered whether the summary of the statement represented Iceland's position fairly.

We took into account the BBC's submission that some of Iceland's statement was not material as it addressed allegations that were not included in the programme. We also took into account that the purpose of the programme was to provide an update on the Iceland story rather than to revisit the allegations in their entirety and that viewers would have understood this context. Given this, we did not consider it was necessary for the programme to have reflected the parts of Iceland's statement as set out in the bullet points above in order to avoid unfairness to Iceland.

In Ofcom's view, the programme made clear that Iceland disagreed with the original report included in the 18 April 2018 episode and that it refuted *Watchdog's* allegations about temperature-control and potential risk to public health. It also made clear that Iceland had made investments in "new cages" and chiller capacity. We considered that the programme also reflected the fact that Iceland had received support from its current employees on social media who said that the *Watchdog* investigation was not representative of practices in their stores.

Taking the above into account, we considered that the statement included in the programme was an adequate and fair reflection of Iceland's response. Therefore, while we recognise that Iceland may have preferred the programme to have included its statement in its entirety, we considered that viewers were provided with sufficient information to understand Iceland's position and it was not necessary for the broadcaster to have reflected Iceland's statement in any further detail in order to avoid unfairness to it.

Taking these factors into account, Ofcom considered that there was no unfairness to Iceland in this regard.

#### *23 May 2018 broadcast*

- e) Ofcom considered the complaint that the programme made serious allegations of widespread and systemic problems with the "cold chain" across Iceland's network of stores. Harbottle & Lewis said that this was a misleading message to convey to viewers and caused serious reputational harm. This complaint was repeated by Harbottle & Lewis in its response to Ofcom's Preliminary View.

Ofcom had particular regard to the Practice 7.9 of the Code, which is set out in head a) above.

As set out in detail in the "Programme summary" section above, the programme included an update on *Watchdog's* investigation into the storage of chilled food at Iceland which included a reference to the report broadcast on 18 April and included undercover footage which had been filmed at one Iceland store and that Iceland had said the report was "totally incorrect". It was within this context that the programme referred to "a significant number

*of people who say they've actually worked there" who had contacted the programme "from all over the country" with similar experiences to those which had been reported. In particular, Ms McGovern said that "More than 60 current or former staff independently contacted us with similar concerns, from right across the UK" as a graphic of the UK was shown which indicated where the complaints had come from. The programme also included testimonies from several anonymised Iceland employees who explained their experiences. Ms McGovern also commented: "It's not that often that so many staff from a big company will stick their neck out to tell us what's going on behind the scenes". We also recognised that the programme said it had heard from "some Iceland staff saying it didn't happen in their store, but they were outnumbered by the people suggesting what we found was just the tip of the iceberg". In addition, the programme included Iceland's response that there "are no generic issues with temperature control"; that "its employees like working there"; and, "allegations of staffing shortages are not representative of wider staff opinion".*

We recognised that at no point did the programme claim that there were "widespread and systemic" problems with Iceland's "cold chain" across its network of stores as a matter of fact. However, we took into account that Ms McGovern specified the number of people who had made a complaint and that the programme had received messages from former and current employees from across the UK. Given this, it was our view that viewers would have understood from this that, while not being an issue in every Iceland store, the incidents which the BBC had previously reported on were not isolated to just a few stores. We therefore considered whether the broadcaster had a reasonable basis on which to make this claim.

We took into account too that, according to the BBC, following the broadcast of the initial report on 18 April 2019, *Watchdog* had been contacted by over 60 former and current employees who had raised similar concerns to those investigated in the programme. We also recognised that these people had raised concerns about stores from across the UK. In our view, it was therefore not unfair for the programme to have reflected this in the programme, or to have used interviews with multiple current and/or former Iceland employees to illustrate this point.

We also took into account that the inclusion of the number of people who had contacted *Watchdog* would have enabled viewers to have understood the extent to which the issues investigated by the programme may have affected other stores. We also took into account that the programme made clear that Iceland had received support from some employees who said the programme was not reflective of its store's practices. It also made clear Iceland's position in response to the claims, in particular that there were "no generic issues with temperature control". We therefore considered that viewers were unlikely to have been left with the impression that the matters being investigated were "widespread" and "systematic".

Taking into account all of the above factors, including the representations made by Harbottle & Lewis on the Preliminary View, Ofcom considered that, in the circumstances of this case, the broadcaster had taken reasonable care to satisfy itself that material facts has not been presented, disregarded or omitted in a way that was unfair to Iceland.

- f) We next considered the complaint, which was reiterated by Harbottle & Lewis in its representations on the Preliminary View, that Iceland was not provided with sufficient information about the allegations to enable it to respond fully to the claims being made in the programme.

Ofcom again had regard to Practice 7.11 of the Code, as set out at head b) above.

In reaching a view on this head of complaint, Ofcom took into account the chain of correspondence (which was provided to Ofcom by Harbottle & Lewis) between the programme makers and the complainant, a summary of which follows below:

- On 14 May 2018, the BBC wrote to Iceland, inviting them to appear on the programme and outlining the allegations about Iceland that it intended to include in the *Watchdog* programme. In particular, it informed Iceland that the programme had been contacted by “60 current and former Iceland staff telling us that they had experienced similar issues in stores across the UK” and that “some told us that they had experienced issues in their stores with chilled food being left out of the chiller for unacceptably long periods of time”. It explained that the size of the responses was “very large and that it had focussed “on those whom we have identified as having the most recent experience of the issues”. The letter further explained that 19 people from across the UK who contacted *Watchdog* were either current employees or had left Iceland within the last 12 months and that: 14 of these people had told us that “there is an issue in stores with chilled deliveries being left out of a chiller for unacceptably long periods of time”; eight mentioned a “lack of chiller space as causing chilled foods to be left out for too long”; and, 12 mentioned a “lack of staffing hours as contributing to chilled foods not being put away quickly enough”. The letter also explained that it considered that the similarities between the accounts suggested there was a widespread issue at Iceland and that lack of staffing hours and chiller space contributed to the problems. The letter further explained that it intended to feature interviews with five current or former employees but that it would not disclose the identity of these people. The letter revealed that the people had worked in Wales, Scotland and the north and south of England; their job titles; their length of service (in general terms) and whether they were still employed by Iceland; and, the specific claims which each person had made. It invited Iceland’s response to the allegations by 21 May.
- On 15 May, Harbottle & Lewis responded that while the BBC had referred to former and current Iceland employees, it had not provided information about the stores the complaints related to; what was said to have happened; how long it was claimed chilled items were left out of a chilled environment; the date and time the incidents were said to have taken place; and, whether any individual worked on the delivery process or whether they claim to have observed an issue. It also referred to the lack of detail provided in relation to the anonymised sources which it said prevented Iceland from being able to investigate the matter. It requested that, if the BBC intended to proceed with the broadcast, it required the “full particulars of claim”. The following day, the BBC responded and reiterated some of the information it had included in its initial letter and also said that it was “satisfied that we have provided sufficient information to allow your client to respond to the questions which this evidence raises”. It also reiterated that it was unable to reveal the identity of its sources. Further correspondence followed between the BBC and Harbottle & Lewis, and Harbottle & Lewis continued to ask for further information about the specific case studies such as the store locations. It said that revealing this information would not result in the people concerned being identified. The BBC said that it would not provide such information as it could risk identifying the people but confirmed that the “allegations do not relate to specific dates, but to recurring issues at the stores where they work or worked”.
- On 21 May, Harbottle & Lewis, on behalf of Iceland, provided a written statement in which it specifically referred to there being no generic issues with temperature control;

staff satisfaction; and that “over 100 staff recorded their disagreement with the original *Watchdog* report”. In a separate letter, it requested that the programme make clear that the criticisms of Iceland were not reflective of how matters work in its stores and that food safety had not been compromised by Iceland.

After carefully examining the correspondence, it was our view that Iceland was provided with an appropriate and timely opportunity to respond to the issues examined in the programme. In particular, while we recognised that the BBC did not reveal the identity of the former and current employees, we considered that the subject matter of the programme and the claims which had been made by these people were set out clearly and in detail in the BBC's initial correspondence with Iceland, which included the extent to which the programme would reflect the claims in the programme. We also considered that the BBC was clear from the outset that Iceland had an opportunity to provide a statement setting out its position and Iceland was repeatedly invited to provide a response. Taking these factors into account, we did not consider that Iceland was disadvantaged in any way by the BBC's decision not to reveal the identity of its sources, particularly as the BBC revealed the claims which had been made by these sources. We also took into account that Harbottle & Lewis was given a week in which to respond to the initial letter and responded in detail to each subsequent letter sent by the BBC. It also provided a written statement in response to the allegations.

We recognised that in the programme, Ms McGovern asked a store manager in the programme “*How often would you say that you're selling food that you don't think is right, it's not been chilled in the proper way?*” and she responded: “*Every day...Every day to a certain extent*”. Another employee, which Harbottle & Lewis referred to in its representations on the Preliminary View, also said: “*I believe we're selling food that's been subject to temperature abuse on a daily basis*”. We took into account that these specific claims were not referred to in the BBC's letter to Iceland.

In our view, the focus of the report was on the experience of former and current employees who said they had experienced similar issues at Iceland to those investigated by *Watchdog*. In this context, we took the view that the BBC had set out in broad terms the messages it had received from former and current employees about their experience at Iceland. We took into account the BBC's submission that one interviewee in the programme said that they believed that in the store where they worked, food was subject to “*temperature abuse*” on a daily basis and this was different to an allegation that this was happening across the entire Iceland chain. We took into account that another employee also referred to food being the subject of temperature abuse on a “*daily basis*”. While these specific details were not provided to Iceland, we considered that sufficient information about the main subject of the report had been provided in order to afford Iceland with an appropriate opportunity to respond. In particular, while the initial letter did not refer to food not being kept in a temperature-controlled environment as being a daily issue, a subsequent letter from the BBC made clear that the matters as set out in the initial letter referred to recurring, rather than isolated incidents. We also took into account Harbottle & Lewis' representations on the Preliminary View that two anonymous sources had referred to “*daily issues*” at the stores where they worked which indicated that the issue affected multiple locations and was therefore “*widespread*” and “*systematic*”. However, we considered that Iceland had made clear in its response, which was reflected in the programme, that there were no generic issues with temperature control.

Taking all of the above factors into account, including the representations made by Harbottle & Lewis in response to the Preliminary View, Ofcom considered that there was no unfairness to Iceland in this regard.

- g) We considered the head of complaint that Iceland's response was not fairly reflected in the programme. Harbottle & Lewis said that Iceland's "On The Record statement" was not read out in full, despite its requests for the programme makers to do so, so that there could be no question of its position being fairly and accurately reflected. This complaint was also reiterated by Harbottle & Lewis in its representations on the Preliminary View.

Ofcom had regard to Practice 7.13 of the Code, already set out in head c) above.

Again, we took into account that the programme provided an update on *Watchdog's* investigation broadcast in the 18 April 2018 programme. As set out in detail in the "Programme summary" section above, the programme repeated some of the allegations made about Iceland and included clips from the 18 April episode of footage recorded by *Watchdog's* undercover reporter. The programme also referred to Iceland's view that the report was "*totally incorrect*" and the subsequent messages it had received from current and former employees who had said the programme had reflected their experiences. It also included testimonies from several former and current Iceland employees.

In considering whether its response was fairly represented, we had regard to the "On the Record Statement" which Iceland provided to the programme and requested be "read out in full and unedited" and what was included as part of Iceland's statement in the programme as broadcast (as set out in the "Programme summary" section above). We recognised that Iceland's statement was not read out in full and was instead summarised. We took into account the BBC's response that Iceland had failed to specify any respect in which the way the statement was presented which resulted in unfairness. However, in summary, we recognised that the programme did not include the following points from Iceland's statement:

- Specific details about the number of staff who had disagreed with *Watchdog's* investigation; and,
- Information about its online shopping service.

As set out above, there is no requirement on a broadcaster to include a right of reply response in full. We therefore considered whether the summary of the statement represented Iceland's position fairly.

We took into account that the programme made no claims about Iceland's online shopping service, therefore, we did not consider it was necessary for the programme to reflect Iceland's response in this regard.

We recognised that the programme did not include the specific details about Iceland employees who had disagreed with *Watchdog's* investigation as part of Iceland's statement which was read out in the programme. However, it did make clear earlier in the programme that *Watchdog* "*did also hear from some Iceland staff saying it didn't happen in their store*". In addition, we recognised that the programme included a statement from Iceland, which made clear that it "*refused and rejected*" *Watchdog's* allegations and that it had procedures in place to ensure correct food temperature control through its supply chain. Further, we considered the programme made clear that Iceland considered that there were no staffing

shortages or generic issues with temperature control. It also made clear that Iceland had made investments on refurbishments and improvements in stores which included increased chiller capacity.

Taking the above into account, we considered that the statement included in the programme was an accurate and fair reflection of Iceland's response. Therefore, while we recognise that Iceland may have preferred the programme to have included its statement in its entirety, we considered that viewers were provided with sufficient information to understand Iceland's position and it was not necessary for the broadcaster to have reflected Iceland's statement in any further detail in order to avoid unfairness to it.

Taking these factors and the representations made by Harbottle & Lewis on the Preliminary View into account, Ofcom considered that there was no unfairness to Iceland in this regard.

**Ofcom has not upheld Iceland's complaint, made on its behalf by Harbottle & Lewis, of unjust or unfair treatment in the programmes as broadcast.**

## Not Upheld

### Complaint by Iceland Foods Limited *Breakfast, BBC 1, 18 April 2018*

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#### Summary

Ofcom has not upheld this complaint by Iceland Foods Limited ("Iceland"), made on its behalf by Harbottle & Lewis LLP ("Harbottle & Lewis"), of unjust or unfair treatment in the programme as broadcast.

The programme included a discussion about an investigation by the BBC's *Watchdog* programme into the storage of chilled food in Iceland's stores.

Ofcom found that:

- the broadcaster took reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Iceland.
- Iceland's response was fairly reflected in the programme.

#### Programme summary

On 18 April 2018, BBC1 broadcast an edition of its news programme, *Breakfast*, which included a discussion about an investigation by the BBC's *Watchdog* programme (which was to be broadcast later that day) into the storage of chilled food in Iceland's stores.

The programme's presenters, Ms Louise Minchin and Mr Dan Walker, said:

Ms Minchin: *"Watchdog Live returns for a new series on BBC1 tonight, an investigation by the show has discovered refrigerated food had been left out for up to 14 hours without being put into a chiller in an Iceland store."*

Mr Walker: *"Yeah, chilled food shouldn't be left out of the fridge for much more than two hours, that's according to the Food Standards Agency. Our very own Steph has been looking with an undercover reporter at one shop, we'll speak to her in a moment, but let's have a little look".*

The programme included an excerpt from the *Watchdog* programme of footage filmed by an undercover reporter, "John", working a delivery shift at an Iceland store. The presenter Steph McGovern explained:

*"Deliveries to this store arrive at around four in the morning. Now, chilled food should only spend a limited period out of refrigeration, so the clock is ticking".*

John: *"The meat next, yeah?"*

Staff Member: *"Yeah, I think it's the meat next".*

Ms McGovern then discussed the footage with Mr Barrie Trevena, a Chartered Environmental Health Practitioner:

Ms McGovern: *"So, that's chilled goods coming out of the lorry there...how quickly should that get into the chillers?"*

Mr Trevena: *Best practice needs to be in the chiller within 15 to 30 minutes. An absolute maximum in the official guidance is two hours.*

Ms McGovern: *They need to get a shift on, don't they?"*

Mr Trevena: *They do".*

More footage of John during his delivery shift was shown along with a timer shown to indicate the amount of time the chilled food from this delivery had been left without being refrigerated. Ms McGovern and Mr Trevena commented on this footage:

Ms McGovern: *"But John is working on his own, and seven hours later chilled food from the delivery still hasn't made it into the fridge. So, on only his second shift, John raises his concerns with a supervisor.*

John: *There's three crates left from the delivery this morning, what would you like me to do with them?"*

Supervisor: *What, these?"*

John: *I've only managed to obviously do..."*

Supervisor: *That's ok, just crack them out.*

John: *Just get them out, yeah?"*

Supervisor: *Yeah, yeah.*

Mr Trevena: *I'm astonished at that...seven hours later, still chilled food out, way over the two hour maximum".*

Following this, Ms Minchin and Mr Walker were joined in the studio by Ms McGovern and another *Watchdog* presenter, Mr Matt Allwright. Ms Minchin said:

Ms Minchin: *"Well, that's a little bit of a taste of what's going on...Just tell us particularly about this, and about rules about chilled food, what are they?"*

Ms McGovern: *There are strict rules that retailers have when it comes to chilled food. So, it has to be below eight degrees Celsius in temperature, so in other words it has to be in a fridge. Now, it can be kept out of the fridge, but as long as it doesn't go for much longer than two hours because that will [...] damage the food potentially, and also it's unlawful to do that.*

Mr Walker: *And, what about the staff in the shop, what was going on with regards to that?"*

Further undercover footage from the *Watchdog* programme was included as Ms McGovern said:

*“Well, we had an undercover reporter working in Iceland and what we found is it was really difficult for them to actually, physically get all of the chilled food into the shop when it arrived on the delivery.*

*So, there was two reasons for this, one of the reasons was because the pallets which they were delivered on didn't actually fit into the chiller, so it meant the food had to be all separated and broken down to fit, which actually takes a lot of time. Which brings us to the second reason which was a lot of these stores potentially don't have enough hours to be able to get this done.*

*So, our undercover reporter, he found that he was working there for an entire shift and never managed to get all of the products out on to the shelves, so that was the issue for them that he couldn't get it done. Well you might say that, well he was new so maybe he just wasn't very good at it, but when he was talking to the other staff there they said: ‘No that's quite normal, we just can't get it out, we don't have enough hours’”.*

Ms Minchin and Ms McGovern then had the following conversation:

Ms Minchin: *“Right, ok, and so this was in one store, are there others?”*

Ms McGovern: *Well, we have evidence from one store, but we have spoken to two whistleblowers who work at other stores and said that they have seen similar problems.*

Mr Walker: *And what have Iceland said, because obviously, potentially damaging this for them?*

Ms McGovern: *Yeah, so we've been talking to Iceland, as yet there's no official response from them, but we are talking to them about it”.*

The programme continued, but with no further reference to Iceland or the *Watchdog* programme.

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

#### Complaint

- a) Harbottle & Lewis complained that Iceland was treated unjustly or unfairly in the programme as broadcast because:
  - The programme unfairly claimed that Iceland had broken food hygiene laws and gave viewers the unfair impression that it had put food safety and public health at risk by allowing chilled food to reach unsafe temperatures. Harbottle & Lewis said that no offence was committed in respect of the food which was the subject of the undercover filming and *Watchdog* was aware that the core temperature of this food “could not have reached an unlawful level because at no time was it in an environment which reached eight degrees Celsius”. Harbottle & Lewis added that this was a serious allegation to make about a national food retailer.

- The programme included footage filmed undercover which it alleged showed that Iceland had jeopardised food safety by not putting a delivery of chilled food away quickly enough. It said that this allegation was false because the delay was caused by *Watchdog's* undercover reporter who was assigned that task and that this was not made clear in the programme. Iceland said that the reporter had been informed by several members of staff that he had been too slow unloading the food and that the store supervisor "had to assign other members of staff to rectify the delay...".
- b) The programme stated that "there has been no official response yet" from Iceland to the allegations of wrongdoing made by the *Watchdog* investigation. Iceland said that this was "highly misleading" and did not fairly or accurately reflect its position, which was to refute the allegations "in the strongest terms". It said that the broadcaster was fully aware of this position yet deprived Iceland its right of reply.

#### Broadcaster's response

- a) The BBC said that nowhere in the *Breakfast* programme was it alleged that chilled food deliveries had been allowed to reach unsafe temperatures and therefore, posed a risk to health. It said that the programme described how the chilled foods delivered that morning were left out of a temperature-controlled environment for a long period of time, which created the potential for a risk to health.

The BBC said that during the programme, Ms McGovern had explained that there were "strict rules" for retailers in relation to the storage of chilled foods, including that chilled foods must be kept below eight degrees Celsius. Ms McGovern said that if chilled food was left unrefrigerated "over much longer than two hours" that would "damage the food potentially...". The BBC said that given that these temperature controls were intended to avoid risk to health, it was reasonable to conclude that a breach of those regulations would create a potential risk of what they were designed to avoid. It said that this conclusion was neither inaccurate, nor unfair to Iceland.

In relation to the complaint that the delay in refrigerating the chilled food was because the undercover reported had been too slow, the BBC said that the fact that the reporter's inexperience may have contributed to the delay was acknowledged by Ms McGovern in the programme. It said that during a discussion about the reporter being unable to unload a delivery within a specified time, Ms McGovern said: "Now you might say he just wasn't very good at it but when he was talking to the other staff there they said: 'No, that's quite normal we just can't get it out'".

The BBC said that although the inexperience of the undercover reporter may have contributed to the delay in unloading the delivery, it was unreasonable to attribute all of it to him. It said that his inexperience should have been taken into account by the store management when they assigned him to carry out the unloading by himself. Further, it said that the comments of other members of staff secretly filmed by the undercover reporter, and the other corroborative evidence from the two whistleblowers, clearly suggested that this was a regular occurrence rather than an unusual, one-off event.

The broadcaster said that the programme also included a comment from an Iceland supervisor who said that "Normally, that delivery gets done before one". It said that completing the unloading of a delivery by 13:00 would still mean that some chilled food had been out of a temperature-controlled environment for several hours. Referring to

content included in the full report broadcast in the *Watchdog* programme, the BBC said that this was reinforced by the comments of the store manager "saying that he needed more staff hours", and by footage taken by the undercover reporter on his second shift showing a delivery which had arrived at 03:00 still waiting to be unloaded at 15:00. The BBC said that it therefore did not believe that it could reasonably be claimed that the delay in getting chilled foods unloaded on the undercover reporter's first shift was "attributable to any significant degree" to the speed at which he worked.

- b) The BBC said that on 10 April 2018 it had informed Iceland that the deadline for providing a response was "close of play" on the day before the programme was broadcast i.e. 17 April 2018. However, it said that at the time of broadcast, the programme makers had received no "for publication" response from Iceland or Harbottle & Lewis. It said that while Iceland's position was well known to the programme makers, they were "seriously hampered" in explaining it in the programme because the correspondence from Harbottle & Lewis had been marked "Strictly private and confidential. Not for broadcast or publication". The BBC said that it did not receive a "for the record" response until "later in the day...after *Breakfast* had been broadcast." It said that in such circumstances it believed that it was reasonable to say that the programme had received no official comment from Iceland.

### Ofcom's Preliminary View

Ofcom prepared a Preliminary View that the complaint made on behalf of Iceland should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View. The BBC did not make any representations. Harbottle & Lewis made representations on behalf of Iceland, which are summarised, insofar as they are relevant to the complaint entertained and considered by Ofcom, below.

#### Complainant's representations

Harbottle & Lewis said that it was erroneous for Ofcom to conclude that the programme did not unfairly claim that Iceland had broken food hygiene laws as a result of food being out of the chiller for longer than two hours. It highlighted the use of certain words in the programme by Ms McGovern and in the excerpts from the *Watchdog* programme which it said would be understood by viewers to mean that Iceland had broken food hygiene laws as a result of food being left out of the chiller for longer than two hours. Harbottle & Lewis also said that when taken both in isolation and in the context of the programme, Ms McGovern's response to the question from the presenter about what the rules were about chilled food, would lead viewers to understand that it was "unlawful" to leave chilled food unrefrigerated for longer than two hours. It said that it would be wrong to find that the preceding comments in the programme made it clear that the two-hour limit was issued as guidance, rather than a strict legal requirement. In particular, Harbottle & Lewis referred to Mr Trevena's comment "...best practice needs to be in the chiller within 15-30 minutes and an **absolute maximum** in the official guidance is **2 hours**..." made prior to Ms McGovern's statement that "...there are **strict rules** that retailers have when it comes to chilled food...it can be kept out of the fridge but as long as it doesn't go for much longer than 2 hours because...**it's unlawful to do that**..." (emphasis added by Harbottle & Lewis). It said that the use of "absolute maximum", "strict rules" and the statement "it's unlawful to do that" would be understood by viewers to mean that Iceland had acted unlawfully and in breach of the official FSA requirements. Harbottle & Lewis said that it was not fair or accurate to describe

the food not being in the fridge as 'unlawful', and that asserting that something is unlawful equated to asserting that a law has been broken.

Harbottle & Lewis submitted that the claims made during the programme would be understood to mean that *Watchdog* had observed food being kept out of the fridge for longer than two hours and at a temperature which was higher than eight degrees Celsius. It said that at the time of broadcast, *Watchdog* was "on notice" that the food was not kept at such temperatures but failed to make this clear to viewers. It said that Ms McGovern's statement regarding the rules around the storage of chilled food that "...in other words it has to be in a fridge" would be understood to mean that food outside of a fridge was being stored at a temperature above eight degrees Celsius and in breach of food safety laws. Harbottle & Lewis said that the potential for misleading viewers was apparent from the fact that both the *Watchdog* and *You and Yours* programmes made reference to Iceland's statement that there was no risk to public and temperature control because at the time of filming the temperature of the storeroom did not exceed six degrees Celsius. It said that the failure to provide similar clarifications in the *Breakfast* programme was unfair to Iceland, especially in the context of a report that claimed that Iceland was storing food outside a fridge for more than seven hours. Harbottle & Lewis said that it was particularly unfair in circumstances where Iceland wrote to the BBC in advance of the broadcast and made clear that the temperature in the storeroom did not exceed six degrees Celsius, making it colder than the store's chiller. It acknowledged that the pre-broadcast correspondence was marked 'not for broadcast or publication' but said that the BBC were nonetheless aware of Iceland's position and failed to make it clear that at no point was food being stored in areas where the temperature exceeded eight degrees.

## 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 this decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript of it and both parties' written submissions and supporting documentation. We also took careful account of the representations made by Harbottle & Lewis in response to Ofcom's Preliminary View on the complaint. After careful consideration of the representations, however, we considered that the points raised did not materially affect the outcome of Ofcom's Preliminary View to not uphold the complaint.

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

In addition to this Rule, Section Seven (Fairness) 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 7.1 and failure to follow these practices will only constitute a breach where it results in unfairness to an individual or organisation in the programme.

- a) Ofcom considered Iceland's complaint, made on its behalf by Harbottle & Lewis, that it was treated unjustly or unfairly in the programme as broadcast.

In considering this head of complaint, we had particular regard to Practice 7.9 of the Code, which states:

“Before broadcasting a factual programme, including programmes examining past events, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation...”.

#### *Food hygiene laws*

Ofcom began by first considering the complaint that the programme unfairly claimed that Iceland had broken food hygiene laws and gave viewers the unfair impression that it had put food safety and public health at risk by allowing chilled food to reach unsafe temperatures.

Ofcom's role is to consider whether the broadcaster took reasonable care not to present, disregard or omit material facts in a way that resulted in unfairness to Iceland. 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.

As set out in detail in the “Programme summary” above, the programme included a discussion about an upcoming episode of *Watchdog* which would include an investigation into a claim that Iceland left chilled food unrefrigerated for extended periods of time. The programme included footage of one particular delivery, which was subject to secret filming by an undercover reporter for the *Watchdog* programme, where there was a delay in the chilled foods being refrigerated in store. The footage, and subsequent comments from Mr Trevena, suggested, in our view, that the chilled food had been left unrefrigerated for seven hours.

In considering this head of complaint, which was reiterated in Harbottle & Lewis' representations on the Preliminary View, we took particular account of what was said in the programme about the legal and regulatory requirements relating to the storage of chilled foods. In particular, we took into account that the programme included comments made by Mr Trevena about the secretly filmed delivery that, in terms of “*best practice*”, “*an absolute maximum in the official guidance is two hours*” that food should be left unrefrigerated. We recognised that in direct response to the presenter's question about what the rules were about chilled foods, Ms McGovern said:

*“There are strict rules that retailers have when it comes to chilled food. So, it has to be below eight degrees Celsius in temperature, so in other words it has to be in a fridge. Now, it can be kept out of the fridge, but as long as it doesn't go for much longer than two hours because that will [...] damage the food potentially, and also it's unlawful to do that”.*

We considered that this comment, taken in isolation, had the potential to lead viewers to understand that it was “unlawful” to leave chilled food unrefrigerated for longer than two hours. However, we took into account Ms McGovern's preceding comments. In our view, they made it sufficiently clear to viewers that the rules required that chilled foods be kept below eight degrees Celsius (which we understood would normally require refrigeration), and that to ensure chilled food met this requirement, it should be left unrefrigerated for no longer than two hours. We recognised that Harbottle & Lewis in its representations disagreed that Ms McGovern's preceding comments made this sufficiently clear. However, Ofcom considered that it was important to consider Ms McGovern's comment in the context of the programme as a whole and, in doing so, we considered that Mr Trevena's comment also made it clear that the two-hour limit was issued as guidance, rather than as a strict legal requirement. In particular, while recognised that Harbottle & Lewis considered that the use of the words an “*absolute maximum*” coupled with Ms McGovern's comment about “*strict rules*” and “*unlawful to do that*” suggested that Iceland had acted unlawfully, Mr Trevena made it absolutely clear that it was “*official guidance*” which referred to the maximum two hour limit. In addition, nowhere in the programme was it said or suggested that the chilled food delivery subject to the *Watchdog* investigation had been kept in conditions above the eight degrees limit. Therefore although there was some potential ambiguity created by Ms McGovern's comments, overall we did not consider it likely that viewers would have understood that the programme was claiming that Iceland had “broken food hygiene laws” as stated in the complaint and again in Harbottle & Lewis' representations on the Preliminary View, or that there was evidence that the temperature of the chilled food shown in the programme had risen to over eight degrees Celsius.

We recognised that the material presented in this programme was a summarised version of the investigation that would be explored in more detail in the *Watchdog* programme that would be broadcast later in the day. However, taking into account all of the above factors, including the representations made by Harbottle & Lewis on the Preliminary View, we considered that the programme provided viewers with enough information about the claims the *Watchdog* programme would be making and was presented in a way that reflected the investigation fairly.

#### *Unloading delivery delay*

Ofcom next considered the complaint relating to the delay in refrigerating the delivery of the chilled food being caused by the slowness of the undercover reporter.

As set out in detail above in the “Programme summary” section, footage was included which showed the undercover reporter working on a delivery shift where the programme indicated that chilled food had been left out of a temperature-controlled environment for seven hours. Following this, Ms McGovern had explained the possible reasons for the delay in unloading the delivery, as well as saying: “*Well you might say that, well he was new so maybe he just wasn't very good at it, but when he was talking*

*to the other staff there they said 'no that's quite normal, we just can't get it out, we don't have enough hours'".*

While we recognised that the programme did not attribute the delay in unloading primarily to the undercover reporter, we considered that it was made clear to viewers that the programme makers considered that it could have been a contributory factor. We also took into account the BBC'S response to the complaint, that it was unreasonable to attribute all of the delay to the undercover reporter and that delays were "...not an unusual occurrence", which, it said, was demonstrated by comments made by other members of staff and other corroborative evidence gathered by the programme makers. We considered that viewers were provided with sufficient information to understand that the inexperience of the reporter could have been a factor in causing the delay in that particular incident, though there was other corroborative evidence that tended to show that delays in dealing with deliveries was not "an unusual occurrence" for Iceland staff.

Taking all the above factors into account, Ofcom considered that, in the particular circumstances of this case, the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Iceland.

- c) Ofcom considered the complaint that the programme said, misleadingly, that "there has been no official response yet" from Iceland to the allegations of wrongdoing made by the Watchdog investigation.

In considering this head of complaint, we had particular regard to the following practices of the Code:

Practice 7.12 states:

"Where a person approached to contribute to a programme chooses to make no comment or refuses to appear in a broadcast, the broadcast should make clear that the individual concerned has chosen not to appear and should give their explanation if it would be unfair to do so".

Practice 7.13 states:

"Where it is appropriate to represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner.

We took into account the correspondence (provided to Ofcom by Harbottle & Lewis) which took place between the programme makers and Harbottle & Lewis prior to broadcast. In particular, on 10 April 2018, the programme makers wrote to Iceland, outlining the allegations that they intended to include in the *Watchdog* programme about Iceland, including: "...concerns about food hygiene practices related to chilled deliveries...chilled items were left out of a controlled chilled environment for unacceptable periods of time after delivery". In further correspondence between 11 and 18 April 2018, the BBC provided Harbottle & Lewis with further details about its investigation so that Iceland could "properly investigate the matters" raised. In this further correspondence, Iceland also refuted the allegations and provided its response to the claims. However, Ofcom took into account that Iceland, through its legal

representatives, did not provide an "On The Record response" until after the broadcast of the programme. All correspondence up to this point had been marked "Strictly private and confidential. Not for broadcast or publication". Given this, Ofcom next considered whether, taking these factors into account, the statement included in the programme was a fair reflection of Iceland's response.

We understood from the BBC's submission that while Iceland's position was well known to the programme makers, the programme makers were "seriously hampered" in explaining this in the programme. We therefore took into account that having only received responses from Harbottle & Lewis on behalf of Iceland marked "Not for broadcast or publication", the programme makers had included the following in the programme:

*"... we've been talking to Iceland, as yet there's no official response from them, but we are talking to them about it".*

In our view, this statement was an accurate and fair reflection of Iceland's position, as understood by the programme makers at the time of broadcast, i.e. that no official response for broadcast had yet been received. We also considered that the inclusion of the comment "*we are talking to them about it*" indicated to viewers that an official response had been sought from Iceland. In our view therefore, the comments made in the programme about Iceland's response to the allegations were fair in the particular circumstances of this case and had represented the position regarding Iceland's official response as it was known by the programme makers at the time of broadcast.

Taking these factors into account, Ofcom considered that there was no unfairness to Iceland in this regard.

**Ofcom has not upheld Iceland's complaint, made on its behalf by Harbottle & Lewis, of unjust or unfair treatment in the programme as broadcast.**

## Not Upheld

### Complaint by Iceland Foods Limited *You and Yours, BBC Radio 4, 18 April 2018*

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#### Summary

Ofcom has not upheld this complaint by Iceland Foods Limited ("Iceland"), made on its behalf by Harbottle & Lewis LLP, of unjust or unfair treatment in the programme as broadcast.

The programme included a discussion about an investigation by the BBC's *Watchdog* programme into the storage of chilled food in Iceland's stores.

Ofcom found that:

- the broadcaster took reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Iceland.
- Iceland's response was fairly reflected in the programme.

#### Programme summary

On 18 April 2018, BBC Radio 4 broadcast an edition of its consumer affairs programme, *You and Yours*, which included a discussion about an investigation by the BBC's *Watchdog* programme (to be broadcast later that day) into the storage of chilled food in Iceland's stores.

The presenter said:

*"A BBC investigation has seen evidence of chilled Iceland food being left out of fridges for up to 14 hours. Watchdog Live went undercover after members of staff contacted the programme concerned about how chilled food was handled and stored in the branches where they worked. The team obtained footage of chilled food being left unrefrigerated for periods of time well beyond the two hours guidance from the Food Standards Agency".*

The presenter was then joined in the studio by Ms Steph McGovern, a *Watchdog* programme presenter, and asked her "what did the staff tell you?", Ms McGovern responded:

*"Well the Iceland employees who got in touch with us last year told us they were worried about the amount of time food was being left out of the chiller. They raised concerns about the quality of the food after that period of time and one of those employees, who is a former store manager, told me more about this. They asked not to be named and we've used an actor's voice".*

An audio clip of the former store manager was included:

*"I think it was the safety of the general public. I mean, the milk was being left out for days on end. Meat, chilled products, all left out. I have worked in other supermarkets and*

*as soon as something comes through the back door, the first thing you do is put it back into a chilled temperature to keep that chill maintained, it's called a cold chain. And in Iceland, unfortunately, it was just straight in off the back of the lorry, into the back and kept there".*

The following conversation between Ms McGovern and the presenter then took place:

Ms McGovern: *"Now that employee was so concerned about this they reported it to the area manager then the regional manager and then they wrote directly to the CEO of Iceland, but their complaint wasn't upheld, and they felt that the warnings had gone unheeded.*

*We then heard from a second Iceland employee working in another part of the country who had similar concerns about chilled food, so we decided to find out for ourselves. We sent a member of the Watchdog team undercover in a different Iceland branch.*

Presenter: *And, what did you find?*

Ms McGovern: *Well, our undercover worker, John, did four shifts at an Iceland store this February. On his second shift, he was given the job of unloading the chilled food from the pallets that it arrived on from the delivery. Now, the food came in at around four in the morning, seven hours later there was still food that hadn't made it into the fridge. Here's John asking his supervisor if it's a problem".*

Another audio clip from the *Watchdog* programme was included:

John: *"Does it matter they haven't been chilled though and left there or...?"*

Supervisor: *No, it's fine, it's fine. Obviously, it's only frozen. You've obviously got a minimum of two hours to get it away in the freezer before it defrosts...*

John: *Right.*

Supervisor: *Chilled is fine.*

John: *Yes".*

Ms McGovern then explained that the undercover reporter was wearing a hidden camera and that she had shown the footage to Mr Barrie Trevena, a Chartered Environmental Health Practitioner, and had asked him for his opinion:

Mr Trevena: *"I'm astonished at that...seven hours later, still chilled food out, way over the two hour maximum. They seem to think that it's more important to put the frozen food away within two hours than the chilled food, which is actually not the case. But, frozen food itself should be delivered at minus 18, it's going to take a long time for it to warm up, but the chilled food, it is essential that it's kept below eight degrees [Celsius]".*

Ms McGovern then said:

*"As Barrie says there, the Food Safety and Hygiene Regulations in England say that chilled food should be kept below eight degrees. The Food Standards Agency has additional guidance, they say that chilled foods should not be left out of temperature-controlled environments for much more than two hours".*

The presenter commented that "seven hours is significantly more than two hours" and Ms McGovern said:

*"Yes, it is. And, in fact, some of that delivery stayed out for a total of 11 hours. Now, as a new employee, John might have been a bit slower than the others at unpacking the food, but on another shift, John was told that chilled food he could see from an unfinished delivery had been left out of the fridges for 14 hours. We found examples of cooked chicken, ham, burgers, cheese and yoghurts not being transferred straight to the chilled shelves. Here's Barrie Trevena's reaction to that".*

An audio clip of Mr Trevena from the *Watchdog* programme was included as he said:

*"I am shocked. I have been doing the job now for 40 years plus, and I can't say that I've ever come across food that's been out of refrigeration for so long in a national company, and it reflects badly on the hierarchy of that business".*

The presenter then asked Ms McGovern "why was the food being left out for so long?" and she responded:

*"I think there's a couple of reasons for this... When John was on shift just one person was given the job of unloading the chilled pallets in the morning and in the afternoon. Now, a manager told John he would like to have two people on it, but that he didn't have enough staff hours to put more people on it. So, from what we saw, one person couldn't do the job on their own within two hours. One employee explained to John how they make it look as though the food's been unloaded by separating the delivery out onto smaller trollies or flatbeds".*

A further audio clip from the *Watchdog* programme was then included:

Employee: *"They're [employees] acting like they [have] done the delivery fast, so they just put it into flatbeds.*

John: *What they are acting like they have?*

Employee: *Yeah, like obviously like you know, they're acting, delivery's supposed to be put out, innit?... So, what they did is they used as many flatbeds as they can. So, they took it out of pallet, so now saying delivery's done on time.*

John: *So, is it ok to leave that chilled stuff in here?*

Employee: *[laughs] It's not, but you can get away with it. It's all about the trick, you know. You'll develop don't worry".*

Ms McGovern then said:

*“Well, our environmental health expert Barrie told me that by breaking the pallets down into smaller units, the food actually might warm up quicker. He says the risk to customers would be increased.*

*Now, we asked Iceland to respond to what we found. In a statement, they told us they thoroughly investigated and are confident that there are no generic issues with temperature control at their stores. They say there was no risk to public health at the shop where we filmed because the temperature in the storeroom was always below six degrees. They deny any shortage of staff and say that delays in putting away stock were largely caused by our reporter and the vast majority of their stores, including the one we visited, have a five out of five food hygiene rating. They also say that they get almost no complaints from customers about their chilled food”.*

The presenter then informed listeners that the programme featuring footage of the undercover reporter's shift at Iceland would be broadcast at 20:00 that evening.

The programme continued, but with no further reference to Iceland or the *Watchdog* programme.

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

#### Complaint

Harbottle & Lewis complained that Iceland was treated unjustly or unfairly in the programme as broadcast because:

- a) The programme alleged that Iceland had unlawfully put public health at risk by improperly storing chilled food across its stores. Harbottle & Lewis said that these allegations were based only on “generalised claims” made by a former store manager, who they said was not a credible source, a current employee, and footage filmed by *Watchdog's* undercover reporter which the programme said showed there had been a delay in unloading food to a chilled environment which was likely to have caused food to have reached an unsafe and unlawful temperature. In particular it said that the programme did not make clear that:
  - The storeroom filmed by the undercover reporter was close to freezing and the outdoor temperature at the time did not exceed seven degrees Celsius. This meant that the temperature of the food never rose to “unsafe and unlawful” temperatures of above eight degrees Celsius.
  - The delay in unloading deliveries was caused by the undercover reporter.
  - The former manager was an unreliable source and his concerns about food temperature control had themselves been investigated and found to be without foundation. Listeners would have therefore understood the former manager to be a credible source and his claims to be with foundation.
- b) Iceland's response was not fairly reflected in the programme. In particular, its “On The Record Statement”, which was read out, was edited which resulted in fundamental parts, such as information relating to the credibility of the former

manager and the delay to the unloading of the delivery caused by the undercover reporter, not being reflected.

### Broadcaster's response

- a) The BBC said that nowhere in the programme was it explicitly alleged that Iceland had behaved unlawfully. Rather, the programme focussed on apparent breaches of "official guidance" and "good practice" relating to the storage of chilled foods and the potential for practices, such as those observed by the programme makers, to create a risk to health. The BBC said it did not agree that the programme relied on insufficient evidence to justify the allegations made. It said that the programme makers had told Harbottle & Lewis repeatedly that the original allegations had come from a former manager and a current employee who had contacted *Watchdog*. The BBC said that it was the fact that their allegations were similar but independent of each other that prompted the programme makers to investigate further.

The BBC said that as part of its investigation, an undercover reporter secretly filmed his work at a branch of Iceland in London and secretly filmed his induction at another branch. It said that these branches were different to those which were the subject of the original allegations made by the former manager and current employee. It added that the programme makers had no control over the selection of branches to which the undercover reporter was assigned. The BBC said that overall, evidence of a pattern emerged which was not wholly dependent on any one of the sources of evidence the programme relied upon. As such, it said that there was "ample justification" for the programme makers to conclude that the original allegations tended to corroborate each other and were themselves further corroborated by the secretly filmed evidence gathered by the undercover reporter.

The BBC said that Iceland claimed that because the weather was particularly cold on the day that the undercover reporter unloaded the delivery, the food in question never reached eight degrees Celsius. It said that this did not, however, dispose of the point addressed in the programme concerning the potential risk created by apparent breaches of food storage regulations. The BBC said that no claims were made in the programme about the temperature of the food which had been left out and, in the absence of the required temperature control or a thermometer in the storeroom where food was left, Iceland could have no basis for its assertion the food temperature had not reached eight degrees Celsius. It added that Iceland referred to the external temperature in the locality but had not demonstrated the reason it should be assumed that the external temperature was close to the indoor temperature, save the anecdotal recollection of a manager. The BBC said that, in any case, relevant official guidance makes clear that "the requirement is for the temperature of the food, not the surrounding air"<sup>1</sup>. It added that observations about the peculiarities of the weather on that particular day ignore the corroborative evidence obtained by *Watchdog* in the form of testimony from witnesses and the recorded comments of other store employees which suggested that the practices being observed were not confined to the day in question.

The BBC said that it was not the case that the programme omitted to mention that the inexperience of the undercover reporter may have contributed to the delay in getting

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<sup>1</sup> Guidance on Temperature Control Legislation in the United Kingdom, Food Standards Agency ("FSA"), September 2007, para 27.

the chilled foods unloaded. It referenced Ms McGovern's statement in the programme that "...as a new employee, John might have been a bit slower than the others at unpacking the food but, on another shift, John was told that chilled food he could see from an unfinished delivery had been left out of the fridges for 14 hours". The BBC said that it considered this was a sufficient acknowledgment that the undercover reporter's work rate may have contributed to the delay while avoiding the impression that his inexperience may have been the sole reason for the delay, which it said would have been misleading.

The BBC said that it was unable to directly address the point referring to the former manager. It said that the terms in which Iceland's complaint was put meant that any direct response may be taken as confirming or denying the identity of a source to whom a promise of confidentiality had been provided.

The BBC said it could, however, make some general observations in response to the point that only limited credence should be given to allegations being made by a source of allegedly doubtful character. The BBC said that even if, which it did not concede, one *Watchdog* source was of "doubtful character", the issue arising would not be whether this rendered their testimony wholly unreliable but, whether that testimony could be corroborated. The BBC said that, as set out above, the initial allegations came from two separate sources which were mutually corroborative and were further corroborated by the evidence gathered by the undercover reporter, there would be no reason to discount the evidence of the former manager even if, as suggested by Iceland, they were of "less than good character". It said that the programme did state that Iceland had challenged one of its sources which, it believed, was appropriate and proportionate.

- b) The BBC said that the statement as presented did recognise that Iceland challenged the credibility of *Watchdog's* witnesses. The BBC also said that as previously explained, the programme could not be drawn into exchanges about the identities of its sources and could not publish information about someone which might lead to them being identified, rightly or wrongly, as a confidential source. It said that it believed this position was based upon "fundamental journalistic principles".

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

Ofcom prepared a Preliminary View that the complaint made on behalf of Iceland should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View. The BBC did not make any representations. Harbottle & Lewis made representations on behalf of Iceland, which are summarised, insofar as they are relevant to the complaint entertained and considered by Ofcom, below.

#### Complainant's representations

Harbottle & Lewis said that the response included in the programme from Iceland only concerned the undercover filming and that it did not "excuse" the programme from broadcasting the claims made by the former manager about food safety without making it clear that the former store manager was an unreliable source and that his concerns about temperature control had been investigated and found to be without foundation. It said that Ofcom's Preliminary View that the former manager's comments in the programme were placed in sufficient context to enable listeners to reach their own view about the credibility, or otherwise, of his claims, failed to give sufficient weight to the context in which the claim

that the complaints were not upheld was included in the programme. Harbottle & Lewis highlighted Ms McGovern's comment that *"Our whistleblower's complaints were not upheld by Iceland which left them feeling that the company didn't seem to care and that their warnings had gone unheeded"*, which it said could be interpreted as the complaints being unheeded due to a lack of concern on Iceland's part rather than making it clear that there were no grounds for the complaint, or that the complainant was not credible.

Harbottle & Lewis said that at the time the programme was broadcast, Iceland had provided the BBC with its "On the Record statement" which claimed, and provided reasons, that the former store manager was not a credible source. It said that the programme did not read out Iceland's statement and at no point in the broadcast did it make clear to listeners that Iceland had challenged the credibility of the source. Harbottle & Lewis repeated Iceland's claims about the former manager and the reasons why he was not credible and said that omitting these from the programme was unfair and misleading because listeners would attach a greater level of reliability to claims made by a former manager who they would assume held a position of responsibility and had specific knowledge about the business. It said that the fact that no mention was made of Iceland's challenge to his credibility meant that no doubts were cast on his claims in the course of the broadcast, and listeners were more likely to believe them to be true, which was unfair to Iceland.

## Decision

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

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

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

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

In addition to this Rule, Section Seven (Fairness) 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 7.1 and failure to follow these practices will only constitute a breach where it results in unfairness to an individual or organisation in the programme.

- a) Ofcom considered Iceland's complaint, made on its behalf by Harbottle & Lewis, that it was treated unjustly or unfairly in the programme as broadcast.

In considering this head of complaint, we had particular regard to Practice 7.9 of the Code, which states:

"Before broadcasting a factual programme, including programmes examining past events, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, 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.

#### *Unlawfully put public health at risk*

Ofcom began by considering the complaint that the programme unfairly alleged that Iceland had unlawfully put public health at risk by improperly storing chilled food across its stores.

As set out in the "Programme summary" above, the programme included a discussion about an upcoming episode of the programme *Watchdog*. It was within this context that the programme referred to *Watchdog's* investigation into Iceland and in particular, a claim that Iceland had left chilled food unrefrigerated for extended periods of time. Audio clips from the *Watchdog* programme were broadcast, which included claims from a former store manager, a secretly filmed recording of the undercover reporter as he unloaded a delivery and, comments made by Mr Trevena about the secretly recorded delivery. When introducing the discussion, the presenter said that "...the team obtained footage of chilled food being left unrefrigerated for periods of time well beyond the two hours guidance from the Food Standards Agency". This was later elaborated on by Ms McGovern who said:

*"As Barrie says there, the Food Safety and Hygiene Regulations in England say that chilled food should be kept below eight degrees. The Food Standards Agency has additional guidance, they say that chilled foods should not be left out of temperature-controlled environments for much more than two hours".*

We recognised that the programme did claim that it had found evidence that Iceland had improperly stored chilled food at some stores. However, at no point did the programme claim as fact that Iceland had allowed food to reach unsafe, and unlawful, temperatures. Rather, the programme explained that in accordance with FSA guidance, food should not be left unrefrigerated for more than two hours and in accordance with Food Safety and Hygiene Regulations in England, chilled food should be kept below eight degrees Celsius. In our view, the programme did not claim that Iceland had broken any food hygiene laws, and it was made clear that the two-hour window related to guidance issued by the FSA, rather than a legal requirement. We also recognised that the programme made clear that Iceland did not agree that there was an issue with temperature control in the store featured in the *Watchdog* programme, Ms McGovern said: "...They [Iceland] say there was no risk to public health at the shop where we filmed because the temperature

*in the storeroom was always below six degrees...".* In our view, the inclusion of this statement provided sufficient information for listeners to understand Iceland's position.

#### *Unloading delivery delay*

Ofcom next considered Iceland's complaint that the programme did not make clear that the delay in unloading deliveries was caused by the undercover reporter.

As set out in detail above in the "Programme summary" section, Ms McGovern explained that the undercover reporter was working on a delivery shift where chilled food had been left out of a temperature-controlled environment for seven hours. When asked about the length of time food had been left out for, Ms McGovern said: *"...Now, as a new employee, John might have been a bit slower than the others at unpacking the food, but on another shift, John was told that chilled food he could see from an unfinished delivery had been left out of the fridges for 14 hours"*. We also recognised that Ms McGovern provided further reasons for delay, which included that a manager had told the undercover reporter that two employees, rather than one, would have been assigned to unload the delivery, but that *"he didn't have enough staff hours to put more people on it"*. We also took into account that the programme included a statement from Iceland which said that: *"They deny any shortage of staff and say that delays in putting away stock were largely caused by our reporter"*.

While we recognised that the programme did not attribute the delay in unloading primarily to the undercover reporter, we considered that it was made clear to listeners that it could have been a contributing factor. Further, we considered that sufficient information was included in the programme to make clear to listeners Iceland's view that the delay was mainly caused by the undercover reporter. We therefore did not consider that there was any unfairness to Iceland in this respect.

#### *Former store manager*

Iceland also complained that the programme failed to make clear that the former manager was an "unreliable source" and that his concerns about food temperature had been investigated and found to be without foundation. It said that because of this, viewers would have understood the former manager to be a credible source and his claims to have foundation, all of which it reiterated in Harbottle & Lewis' representations on the Preliminary View.

As set out in the "Programme summary" section, an audio clip was included in which the former store manager indicated that chilled products were *"left out"*. Following this, Ms McGovern said that: *"Now that employee was so concerned about this they reported it to the area manager then the regional manager and then they wrote directly to the CEO of Iceland, but their complaint wasn't upheld, and they felt that the warnings had gone unheeded..."*. We also took into account that later in the programme, Ms McGovern explained: *"Now, we asked Iceland to respond to what we found. In a statement, they told us they thoroughly investigated and are confident that there are no generic issues with temperature control at their stores..."*.

Ofcom recognised that the programme did not specifically refer to the fact that Iceland had challenged the credibility of *Watchdog's* source. However, we took into account the BBC's submissions that allegations about Iceland had come from two separate sources,

the former manager and a current employee, and that they were “mutually corroborative”. We also took into account that the BBC said that these claims were further corroborated by the evidence gathered by the undercover reporter from different Iceland stores. Given this, we considered that the BBC had a reasonable basis for including the former manager’s comments in the programme. In any event, it was made clear to listeners that Iceland had investigated the former manager’s complaint about temperature control and that it had not been upheld. While we took into account Harbottle & Lewis’ representations on the Preliminary View that the programme had stated that he “*felt that the warnings had gone unheeded...*” we considered it would have been clear to listeners that this was the former manager’s own personal opinion and interpretation of events, rather than indication of a lack of concern on Iceland’s part. Further, the programme reflected Iceland’s position that it had investigated *Watchdog’s* allegations to find “*no generic issues*” with temperature control. We therefore considered that listeners were provided with sufficient information to understand that an investigation by Iceland had found the former manager’s claims to be without foundation, and that it had challenged the subsequent allegations being made by *Watchdog*. We therefore did not consider that the way in which material was presented in relation to the former manager caused any unfairness to Iceland in the programme as broadcast.

In relation to each aspect of the complaint, we also recognised that the material presented in this programme was a summarised version of the investigation that would be explored in more detail in the *Watchdog* programme that would be broadcast later in the day. However, we considered that the programme provided viewers with enough information about the claims the *Watchdog* programme would be making and was presented in a way that reflected the investigation fairly.

Taking into account all of the above factors, including the representations made by Harbottle & Lewis on the Preliminary View, Ofcom considered that, in the circumstances of this case, the broadcaster had taken reasonable care to satisfy itself that material facts had not be presented, disregarded or omitted in a way that was unfair to Iceland. Therefore, Ofcom’s considered that Iceland was not treated unfairly in the programme in this respect.

- b) Ofcom next considered the complaint that Iceland’s response was not fairly reflected in the programme. In particular, its “On The Record Statement”, which was read out, was edited which resulted in fundamental parts, such as information relating to the credibility of the former manager, which it reiterated in Harbottle & Lewis’ representations on the Preliminary View, and the delay to the unloading of the delivery caused by the undercover reporter not being reflected.

Practice 7.13 states:

“where it is appropriate to represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner”.

In considering this aspect of the complaint, we took into account the correspondence (provided to Ofcom by Harbottle & Lewis) and considered whether the extracts from the statement that was included in the programme fairly represented Iceland’s position. In particular, we had regard to the “On the Record Statement” which Iceland provided to

the programme and requested be “read out in full and unedited” and what was included in the programme as

Iceland's statement (as set out in the “Programme summary” section above). We recognised that Iceland's statement was not read out in full and was summarised. Having compared what was included in the programme and Iceland's full statement, we considered that the programme did not include the following points from Iceland's statement:

- the former Iceland manager was not a credible source (Iceland provided specific information about the credibility of this source); and,
- there was no shortage of chiller capacity in the store featured in the *Watchdog* programme.

Ofcom recognises that editorial decisions as to what is included, or not included, in a broadcast programme are a matter for the broadcaster, provided the programme complies with the Code.

As set out above, we recognised that the programme did not refer to the fact that Iceland had challenged the credibility of the former store manager. However, in this case, we took into account that the focus of the programme was to provide a general overview of the allegations and evidence against Iceland which was to be included fully in the *Watchdog* programme broadcast later that day. While the programme did not refer specifically to the fact Iceland had challenged the credibility of the former store manager, listeners were informed that his complaints to Iceland about this had not been upheld. We considered that this placed his comments in sufficient context to enable listeners to reach their own view about the credibility, or otherwise, of his claims.

In relation to there being no reference in Iceland's summarised response to there being no shortage of chiller capacity, Ofcom considered that the programme did not include any claim relating to the chiller capacity. Therefore, it was not necessary for Iceland's response in this regard to have been reflected in the programme to avoid unfairness to it.

While Iceland may have preferred its statement to have been read out in full, we did not consider it was incumbent on the broadcaster to have included any further detail in order to avoid unfairness to Iceland. In particular, we considered that Iceland's position, which was to refute the allegations being made about it, and to explain that there was no risk to public health at the store featured in the programme, was sufficiently reflected in the summary of its statement included in the programme.

Taking these factors and the representations made by Harbottle & Lewis on the Preliminary View, into account, Ofcom's view is that there was no unfairness to Iceland in this regard.

**Ofcom has not upheld Iceland's complaint, made on its behalf by Harbottle & Lewis, of unjust or unfair treatment in the programme as broadcast.**

## Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 11 and 24 November 2019 because they did not raise issues warranting investigation.

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

Programme	Service	Transmission Date	Categories	Number of complaints
The British Tribe Next Door	4Seven	07/11/2019	Generally accepted standards	1
Nightmare Tenants, Slum Landlords	5Star	03/11/2019	Offensive language	1
Two and a Half Men	5Star	15/10/2019	Sexual material	1
Scottish League Cup Semi Final: Rangers v Hearts	BT Sport 1	03/11/2019	Generally accepted standards	1
Fireman Sam	Cartoonito	07/11/2019	Dangerous behaviour	1
The Key of David	CBS Reality	14/07/2019	Hatred and abuse	1
8 Out of 10 Cats Does Countdown	Channel 4	31/10/2019	Generally accepted standards	2
A Place in the Sun: Winter Sun	Channel 4	02/11/2019	Promotion of products/services	1
Celebrity Hunted	Channel 4	03/11/2019	Generally accepted standards	1
Celebrity Hunted	Channel 4	10/11/2019	Generally accepted standards	1
Channel 4 News	Channel 4	29/10/2019	Generally accepted standards	1
Channel 4 News	Channel 4	31/10/2019	Due accuracy	1
Channel 4 News	Channel 4	03/11/2019	Due impartiality/bias	1
Channel 4 News	Channel 4	07/11/2019	Elections/Referendums	6
Channel 4 News	Channel 4	09/11/2019	Elections/Referendums	1
Channel 4 News	Channel 4	11/11/2019	Elections/Referendums	2
Channel 4 News	Channel 4	12/11/2019	Due accuracy	1
Channel 4 News	Channel 4	13/11/2019	Elections/Referendums	4
Channel 4 News	Channel 4	14/11/2019	Elections/Referendums	2
Channel 4 News	Channel 4	20/11/2019	Elections/Referendums	2
Countdown (trailer)	Channel 4	12/11/2019	Offensive language	1
Dispatches: The Secrets of Amazon	Channel 4	11/11/2019	Materially misleading	1
First Dates	Channel 4	12/11/2019	Gender discrimination/offence	1
Formula One: Brazilian Grand Prix	Channel 4	17/11/2019	Sponsorship credits	1

<b>Programme</b>	<b>Service</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
George Clarke's Old House New Home	Channel 4	13/11/2019	Gender discrimination/offence	1
Gogglebox	Channel 4	25/10/2019	Generally accepted standards	2
Gogglebox	Channel 4	01/11/2019	Generally accepted standards	1
Gogglebox	Channel 4	01/11/2019	Transgender discrimination/offence	1
Gogglebox	Channel 4	08/11/2019	Race discrimination/offence	1
Gogglebox	Channel 4	15/11/2019	Elections/Referendums	13
Gogglebox	Channel 4	15/11/2019	Gender discrimination/offence	3
Gogglebox	Channel 4	15/11/2019	Generally accepted standards	1
Gogglebox	Channel 4	15/11/2019	Race discrimination/offence	23
Harry Hill's Clubnite	Channel 4	01/11/2019	Age discrimination/offence	1
Harry Hill's Clubnite	Channel 4	08/11/2019	Generally accepted standards	1
How To Halve Your Supermarket Bill	Channel 4	05/11/2019	Materially misleading	1
It's Grime up North	Channel 4	27/10/2019	Generally accepted standards	1
Junior Bake Off	Channel 4	04/11/2019	Offensive language	1
Junior Bake Off	Channel 4	06/11/2019	Generally accepted standards	1
Junior Bake Off	Channel 4	08/11/2019	Generally accepted standards	1
Junior Bake Off	Channel 4	19/11/2019	Generally accepted standards	1
Party Election Broadcast by the Labour Party	Channel 4	19/11/2019	Elections/Referendums	1
Smuggled	Channel 4	04/11/2019	Crime and disorder	2
Smuggled	Channel 4	04/11/2019	Generally accepted standards	9
The Accident	Channel 4	31/10/2019	Sexual material	1
The Accident	Channel 4	07/11/2019	Generally accepted standards	1
The Accident	Channel 4	07/11/2019	Offensive language	7
The British Tribe Next Door	Channel 4	22/10/2019	Race discrimination/offence	58
The British Tribe Next Door	Channel 4	29/10/2019	Race discrimination/offence	4

Programme	Service	Transmission Date	Categories	Number of complaints
The British Tribe Next Door	Channel 4	05/11/2019	Generally accepted standards	1
The British Tribe Next Door	Channel 4	05/11/2019	Race discrimination/offence	2
The Great British Bake Off	Channel 4	29/10/2019	Offensive language	1
The Last Leg	Channel 4	08/11/2019	Elections/Referendums	18
The Last Leg	Channel 4	17/11/2019	Elections/Referendums	1
Bouncers	Channel 5	04/11/2019	Generally accepted standards	1
Bouncers	Channel 5	18/11/2019	Generally accepted standards	1
Conspiracy: Faking the Moon Landings	Channel 5	03/11/2019	Generally accepted standards	1
Fare Dodgers: At War With The Law	Channel 5	11/11/2019	Race discrimination/offence	1
Jeremy Vine	Channel 5	01/11/2019	Due impartiality/bias	5
Jeremy Vine	Channel 5	01/11/2019	Offensive language	2
Jeremy Vine	Channel 5	01/11/2019	Race discrimination/offence	1
Jeremy Vine	Channel 5	04/11/2019	Due impartiality/bias	1
Jeremy Vine	Channel 5	08/11/2019	Gender discrimination/offence	3
Jeremy Vine	Channel 5	11/11/2019	Gender discrimination/offence	1
Jeremy Vine	Channel 5	11/11/2019	Generally accepted standards	2
Jeremy Vine	Channel 5	12/11/2019	Gender discrimination/offence	1
Jeremy Vine	Channel 5	18/11/2019	Gender discrimination/offence	2
Jeremy Vine	Channel 5	19/11/2019	Elections/Referendums	1
Our Yorkshire Farm	Channel 5	12/11/2019	Animal welfare	1
Party Election Broadcast by the Labour Party	Channel 5	19/11/2019	Elections/Referendums	1
Police Raids: Caught by Surprise	Channel 5	13/11/2019	Materially misleading	1
Posh Hotels with Sally and Nigel	Channel 5	07/11/2019	Animal welfare	3
Ready Meals: Are They a Con?	Channel 5	31/10/2019	Materially misleading	1
The Good Girl's Guide to Kinky Sex	Channel 5	14/11/2019	Generally accepted standards	3
The Lesbian Guide to Straight Sex	Channel 5	14/10/2019	Sexual material	1

Programme	Service	Transmission Date	Categories	Number of complaints
Traffic Cops	Channel 5	11/11/2019	Crime and disorder	1
More Music Breakfast	Classic FM	31/10/2019	Due impartiality/bias	1
Dave Macgregor	Coast and County Radio	26/10/2019	Offensive language	1
Impractical Jokers	Comedy Central	06/11/2019	Race discrimination/offence	1
Your Face or Mine	Comedy Central	30/10/2019	Generally accepted standards	21
Cool Drive with John Kearns	Cool FM	13/11/2019	Elections/Referendums	1
Cool Drive with John Kearns	Cool FM	15/11/2019	Elections/Referendums	2
Comedians Giving Lectures	Dave	06/11/2019	Race discrimination/offence	1
Bear Grylls Escape From Hell (trailer)	DMAX	16/11/2019	Scheduling	1
Gogglebox	E4	13/11/2019	Generally accepted standards	1
Made in Chelsea	E4	11/11/2019	Race discrimination/offence	1
Register to Vote infomercial	E4	14/11/2019	Elections/Referendums	1
The End of the F***ing World (trailer)	E4	15/11/2019	Offensive language	1
The End of the F***ing World (trailer)	E4	17/11/2019	Offensive language	1
The Inbetweeners	E4	14/11/2019	Disability discrimination/offence	9
Encore Radio	Encore Radio	05/11/2019	Sexual material	1
Gem At Breakfast with Jo & Sparky	GEM 106	04/11/2019	Generally accepted standards	1
Heart Breakfast with Jamie and Amanda	Heart Extra	31/10/2019	Due impartiality/bias	1
Competitions	Heart FM	Various	Competitions	1
Heart Breakfast News	Heart FM	28/10/2019	Due accuracy	1
Heart Breakfast with Jamie and Amanda	Heart FM	31/10/2019	Generally accepted standards	1
Coronation Street	ITV	28/10/2019	Disability discrimination/offence	1
Coronation Street	ITV	28/10/2019	Generally accepted standards	2
Coronation Street	ITV	31/10/2019	Generally accepted standards	2
Coronation Street	ITV	06/11/2019	Materially misleading	1
Coronation Street	ITV	07/11/2019	Violence	1
Coronation Street	ITV	08/11/2019	Product placement	1

Programme	Service	Transmission Date	Categories	Number of complaints
Coronation Street	ITV	11/11/2019	Product placement	1
Coronation Street	ITV	13/11/2019	Materially misleading	3
Coronation Street	ITV	15/11/2019	Product placement	1
Coronation Street	ITV	19/11/2019	Generally accepted standards	1
Dickinson's Real Deal	ITV	19/11/2019	Competitions	1
Dickinson's Real Deal	ITV	20/11/2019	Competitions	1
Doc Martin	ITV	16/10/2019	Materially misleading	1
Emmerdale	ITV	31/10/2019	Drugs, smoking, solvents or alcohol	2
Emmerdale	ITV	15/11/2019	Gender discrimination/offence	1
Exposure: When Boris Met Jennifer	ITV	17/11/2019	Elections/Referendums	4
Good Morning Britain	ITV	11/09/2019	Transgender discrimination/offence	1
Good Morning Britain	ITV	05/11/2019	Due impartiality/bias	1
Good Morning Britain	ITV	05/11/2019	Materially misleading	1
Good Morning Britain	ITV	06/11/2019	Generally accepted standards	2
Good Morning Britain	ITV	06/11/2019	Transgender discrimination/offence	1
Good Morning Britain	ITV	07/11/2019	Elections/Referendums	1
Good Morning Britain	ITV	11/11/2019	Elections/Referendums	3
Good Morning Britain	ITV	12/11/2019	Elections/Referendums	4
Good Morning Britain	ITV	12/11/2019	Generally accepted standards	2
Good Morning Britain	ITV	18/11/2019	Elections/Referendums	3
Good Morning Britain	ITV	18/11/2019	Generally accepted standards	3
Good Morning Britain	ITV	19/11/2019	Generally accepted standards	7
I'm a Celebrity...Get Me Out of Here!	ITV	16/11/2019	Materially misleading	1
I'm a Celebrity...Get Me Out of Here!	ITV	17/11/2019	Animal welfare	3
I'm a Celebrity...Get Me Out of Here!	ITV	17/11/2019	Crime and disorder	1
I'm a Celebrity...Get Me Out of Here!	ITV	17/11/2019	Disability discrimination/offence	2
I'm a Celebrity...Get Me Out of Here!	ITV	17/11/2019	Materially misleading	1
I'm a Celebrity...Get Me Out of Here!	ITV	17/11/2019	Religious/Beliefs discrimination/offence	3

Programme	Service	Transmission Date	Categories	Number of complaints
I'm a Celebrity...Get Me Out of Here!	ITV	17/11/2019	Transgender discrimination/offence	1
I'm a Celebrity...Get Me Out of Here!	ITV	18/11/2019	Animal welfare	4
I'm a Celebrity...Get Me Out of Here!	ITV	18/11/2019	Generally accepted standards	2
I'm a Celebrity...Get Me Out of Here!	ITV	18/11/2019	Nudity	2
I'm a Celebrity...Get Me Out of Here!	ITV	18/11/2019	Transgender discrimination/offence	2
I'm a Celebrity...Get Me Out of Here!	ITV	19/11/2019	Animal welfare	4
I'm a Celebrity...Get Me Out of Here!	ITV	19/11/2019	Elections/Referendums	2
I'm a Celebrity...Get Me Out of Here!	ITV	19/11/2019	Generally accepted standards	5
I'm a Celebrity...Get Me Out of Here!	ITV	20/11/2019	Generally accepted standards	3
I'm a Celebrity...Get Me Out of Here!	ITV	Various	Animal welfare	1
Inside Prison: Britain Behind Bars	ITV	17/10/2019	Generally accepted standards	1
ITV Election Interview (trailer)	ITV	17/11/2019	Elections/Referendums	1
ITV News	ITV	30/10/2019	Due impartiality/bias	2
ITV News	ITV	31/10/2019	Due accuracy	2
ITV News	ITV	01/11/2019	Race discrimination/offence	1
ITV News	ITV	05/11/2019	Due accuracy	2
ITV News	ITV	05/11/2019	Due impartiality/bias	1
ITV News	ITV	06/11/2019	Elections/Referendums	1
ITV News	ITV	06/11/2019	Exorcism, the occult and the paranormal	1
ITV News	ITV	08/11/2019	Race discrimination/offence	1
ITV News	ITV	11/11/2019	Elections/Referendums	6
ITV News	ITV	12/11/2019	Elections/Referendums	1
ITV News	ITV	15/11/2019	Elections/Referendums	1
ITV News	ITV	19/11/2019	Elections/Referendums	1
ITV News	ITV	21/11/2019	Elections/Referendums	1
James Martin's Saturday Morning	ITV	09/11/2019	Generally accepted standards	1
Live International Football: Bulgaria v England	ITV	14/10/2019	Race discrimination/offence	4

Programme	Service	Transmission Date	Categories	Number of complaints
Live International Football: Bulgaria v England	ITV	19/10/2019	Race discrimination/offence	1
Loose Women	ITV	21/10/2019	Generally accepted standards	1
Lorraine	ITV	22/10/2019	Generally accepted standards	1
Lorraine	ITV	18/11/2019	Religious/Beliefs discrimination/offence	2
Lorraine	ITV	22/11/2019	Gender discrimination/offence	1
Mr Bean: The Animated Series	ITV	03/11/2019	Sexual material	1
Paul O' Grady: For the Love of Dogs	ITV	13/11/2019	Offensive language	1
Take Me Out	ITV	09/11/2019	Gender discrimination/offence	1
Tesco advertisement	ITV	19/11/2019	Political advertising	1
The Chase	ITV	29/10/2019	Religious/Beliefs discrimination/offence	1
The X Factor: Celebrity	ITV	02/11/2019	Generally accepted standards	1
The X Factor: Celebrity	ITV	09/11/2019	Generally accepted standards	4
The X Factor: Celebrity	ITV	16/11/2019	Generally accepted standards	3
The X Factor: Celebrity	ITV	16/11/2019	Offensive language	1
The X Factor: Celebrity	ITV	16/11/2019	Race discrimination/offence	1
The X Factor: Celebrity	ITV	16/11/2019	Sexual material	22
This Morning	ITV	29/10/2019	Generally accepted standards	1
This Morning	ITV	18/11/2019	Materially misleading	1
Tipping Point	ITV	20/11/2019	Competitions	1
Border News	ITV Border	14/11/2019	Elections/Referendums	1
Celebrity Juice	ITV2	14/11/2019	Generally accepted standards	1
Coronation Street	ITV2	16/11/2019	Dangerous behaviour	1
Supermarket Sweep	ITV2	21/11/2019	Generally accepted standards	1
You've Been Framed XXL	ITV2	25/10/2019	Dangerous behaviour	1
HSBC advertisement	ITV3	04/11/2019	Political advertising	1
All Elite Wrestling	ITV4	10/11/2019	Generally accepted standards	1
Fishing Allstars	ITV4	19/11/2019	Animal welfare	1

Programme	Service	Transmission Date	Categories	Number of complaints
The Sweeney	ITV4	29/10/2019	Generally accepted standards	2
The Way West	ITV4	09/11/2019	Animal welfare	1
Fearne McCann: First Time Mum	ITVBe	30/10/2019	Generally accepted standards	1
Love Island Australia	ITVBe	04/11/2019	Generally accepted standards	1
Sooty	ITVBe	02/11/2019	Generally accepted standards	1
The Only Way is Essex	ITVBe	27/10/2019	Generally accepted standards	5
The Only Way Is Essex	ITVBe	03/11/2019	Generally accepted standards	1
The Only Way Is Essex	ITVBe	10/11/2019	Generally accepted standards	1
Kisstory	Kiss FM	12/11/2019	Generally accepted standards	1
Darren Adam	LBC 97.3 FM	13/11/2019	Elections/Referendums	1
James O'Brien	LBC 97.3 FM	28/10/2019	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	29/10/2019	Due impartiality/bias	1
James O'Brien	LBC 97.3 FM	01/11/2019	Due impartiality/bias	1
James O'Brien	LBC 97.3 FM	01/11/2019	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	11/11/2019	Elections/Referendums	1
Maajid Nawaz	LBC 97.3 FM	03/11/2019	Generally accepted standards	2
Maajid Nawaz	LBC 97.3 FM	10/11/2019	Elections/Referendums	4
Maajid Nawaz	LBC 97.3 FM	17/11/2019	Generally accepted standards	1
Nick Abbot	LBC 97.3 FM	09/11/2019	Race discrimination/offence	1
Nick Ferrari	LBC 97.3 FM	23/10/2019	Sexual orientation discrimination/offence	2
Nick Ferrari	LBC 97.3 FM	30/10/2019	Race discrimination/offence	1
Nick Ferrari	LBC 97.3 FM	06/11/2019	Elections/Referendums	1
Nick Ferrari	LBC 97.3 FM	11/11/2019	Elections/Referendums	1
Nick Ferrari	LBC 97.3 FM	12/11/2019	Elections/Referendums	1
Nick Ferrari	LBC 97.3 FM	14/11/2019	Elections/Referendums	1
Nick Ferrari	LBC 97.3 FM	20/11/2019	Elections/Referendums	1
Nick Ferrari	LBC 97.3 FM	22/11/2019	Elections/Referendums	1
Nigel Farage	LBC 97.3 FM	03/10/2019	Materially misleading	1
Nigel Farage	LBC 97.3 FM	31/10/2019	Due impartiality/bias	61
Shelagh Fogarty	LBC 97.3 FM	31/10/2019	Due impartiality/bias	4

Programme	Service	Transmission Date	Categories	Number of complaints
Shelagh Fogarty	LBC 97.3 FM	04/11/2019	Due impartiality/bias	1
Shelagh Fogarty	LBC 97.3 FM	15/11/2019	Elections/Referendums	1
Tom Swarbrick	LBC 97.3 FM	27/10/2019	Religious/Beliefs discrimination/offence	1
Tom Swarbrick	LBC 97.3 FM	31/10/2019	Due impartiality/bias	1
Haqaiq	Link FM	25/07/2019	Due impartiality/bias	1
Some Like it Sexy	London Live	17/11/2019	Nudity	1
Geordie Shore	MTV	28/10/2019	Generally accepted standards	1
Teen Mom: Young and Pregnant UK	MTV	02/10/2019	Generally accepted standards	1
Teen Mom: Young and Pregnant UK	MTV	16/10/2019	Dangerous behaviour	1
Teen Mom: Young and Pregnant UK	MTV	16/10/2019	Generally accepted standards	5
Teen Mom: Young and Pregnant UK	MTV	23/10/2019	Generally accepted standards	9
Teen Mom: Young and Pregnant UK	MTV	24/10/2019	Generally accepted standards	1
Teen Mom: Young and Pregnant UK	MTV	30/10/2019	Generally accepted standards	3
True Love or True Lies?	MTV	21/10/2019	Generally accepted standards	1
Programming	n/a	01/11/2019	Generally accepted standards	1
Caught on Dashcam	Pick	01/11/2019	Race discrimination/offence	1
Debate with Arnab Goswami	Republic Bharat	23/08/2019	Crime and disorder	1
Lalkar	Republic Bharat	10/09/2019	Generally accepted standards	1
Republic Bharat	Republic Bharat	19/08/2019	Generally accepted standards	1
Republic Bharat	Republic Bharat	22/08/2019	Crime and disorder	1
Republic Bharat	Republic Bharat	28/08/2019	Generally accepted standards	1
Republic Bharat	Republic Bharat	02/09/2019	Generally accepted standards	1
Republic Bharat	Republic Bharat	14/09/2019	Generally accepted standards	1
Republic Bharat	Republic Bharat	24/09/2019	Generally accepted standards	1
The Debate with Arnab	Republic Bharat	22/10/2019	Hatred and abuse	1
All Out Politics	Sky News	16/10/2019	Generally accepted standards	8

Programme	Service	Transmission Date	Categories	Number of complaints
All Out Politics	Sky News	01/11/2019	Due impartiality/bias	1
All Out Politics	Sky News	07/11/2019	Elections/Referendums	3
All Out Politics	Sky News	08/11/2019	Elections/Referendums	1
All Out Politics	Sky News	12/11/2019	Elections/Referendums	2
All Out Politics	Sky News	14/11/2019	Elections/Referendums	1
Kay Burley at Breakfast	Sky News	05/11/2019	Generally accepted standards	1
Kay Burley at Breakfast	Sky News	07/11/2019	Elections/Referendums	10
Kay Burley at Breakfast	Sky News	07/11/2019	Generally accepted standards	1
Kay Burley at Breakfast	Sky News	13/11/2019	Elections/Referendums	2
Kay Burley at Breakfast	Sky News	15/11/2019	Elections/Referendums	1
Kay Burley at Breakfast	Sky News	19/11/2019	Due impartiality/bias	2
Kay Burley at Breakfast	Sky News	20/11/2019	Elections/Referendums	1
Press Review	Sky News	13/11/2019	Elections/Referendums	1
Remembrance Day Service	Sky News	10/11/2019	Elections/Referendums	1
Sarah-Jane Mee Show	Sky News	12/11/2019	Elections/Referendums	1
Sky News	Sky News	25/10/2019	Due impartiality/bias	1
Sky News	Sky News	31/10/2019	Due accuracy	1
Sky News	Sky News	31/10/2019	Due impartiality/bias	6
Sky News	Sky News	01/11/2019	Elections/Referendums	3
Sky News	Sky News	02/11/2019	Elections/Referendums	1
Sky News	Sky News	03/11/2019	Elections/Referendums	1
Sky News	Sky News	04/11/2019	Elections/Referendums	11
Sky News	Sky News	05/11/2019	Elections/Referendums	7
Sky News	Sky News	06/11/2019	Elections/Referendums	16
Sky News	Sky News	07/11/2019	Elections/Referendums	25
Sky News	Sky News	08/11/2019	Elections/Referendums	3
Sky News	Sky News	09/11/2019	Elections/Referendums	2
Sky News	Sky News	10/11/2019	Elections/Referendums	3
Sky News	Sky News	11/11/2019	Elections/Referendums	11
Sky News	Sky News	12/11/2019	Elections/Referendums	9
Sky News	Sky News	12/11/2019	Generally accepted standards	1
Sky News	Sky News	13/11/2019	Elections/Referendums	17
Sky News	Sky News	14/11/2019	Elections/Referendums	6
Sky News	Sky News	15/11/2019	Elections/Referendums	9
Sky News	Sky News	16/11/2019	Elections/Referendums	7

Programme	Service	Transmission Date	Categories	Number of complaints
Sky News	Sky News	17/11/2019	Elections/Referendums	7
Sky News	Sky News	18/11/2019	Elections/Referendums	3
Sky News	Sky News	19/11/2019	Elections/Referendums	4
Sky News	Sky News	20/11/2019	Elections/Referendums	77
Sky News	Sky News	21/11/2019	Advertising placement	1
Sky News with Sarah Hewson	Sky News	08/11/2019	Elections/Referendums	1
Sky News: Path to Power	Sky News	13/11/2019	Elections/Referendums	1
The Campaign	Sky News	07/11/2019	Elections/Referendums	1
The Campaign	Sky News	14/11/2019	Elections/Referendums	1
The Path to Power	Sky News	06/11/2019	Elections/Referendums	1
The Pledge	Sky News	02/11/2019	Race discrimination/offence	3
Anthony Crolla v Frank Urquiaga	Sky Sports Boxing	02/11/2019	Gender discrimination/offence	1
Sky Sports Super Sunday: Everton v Tottenham	Sky Sports Main Event	03/11/2019	Generally accepted standards	2
Sky News (trailer)	Sky Sports Premier League	14/11/2019	Elections/Referendums	1
Sky Sports Super Sunday: Everton v Tottenham	Sky Sports Premier League	03/11/2019	Generally accepted standards	1
A League of Their Own	Sky1	03/10/2019	Generally accepted standards	1
The Chronicles of Karbala	Takbeer TV	08/09/2019	Hatred and abuse	1
The Late Night Alternative with Iain Lee	Talk Radio	01/09/2019	Generally accepted standards	1
The Matthew Wright Show	Talk Radio	08/11/2019	Drugs, smoking, solvents or alcohol	1
News	Various	08/11/2019	Elections/Referendums	1
Programming	Various	Various	Elections/Referendums	1
The Chris Evans Breakfast Show	Virgin Radio	04/11/2019	Due impartiality/bias	1

[How Ofcom assesses complaints about content standards on television and radio programmes](#)

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

Programme	Service	Transmission Date	Categories	Number of complaints
Breakfast	BBC 1	18/04/2018	Other	1
Songs of Praise	BBC 1	18/08/2019	Religious/Beliefs discrimination/offence	1
The Andrew Marr Show	BBC 1	12/05/2019	Due impartiality/bias	1
The One Show	BBC 1	26/06/2019	Materially misleading	1
Watchdog	BBC 1	18/04/2018	Due impartiality/bias	1
The Nazi Pug: Joke or Hate?	BBC iPlayer	29/07/2019	Due impartiality/bias	1
Today	BBC Radio 4	08/02/2019	Generally accepted standards	1
You and Yours	BBC Radio 4	18/04/2018	Due impartiality/bias	1
Robbie Savage's Premier League Breakfast	BBC Radio 5 Live	20/09/2019	Generally accepted standards	1

### [How Ofcom assesses complaints about content standards on BBC broadcasting services and BBC ODPS](#)

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

Here is an alphabetical list of complaints that, after careful assessment, Ofcom has decided not to pursue between 11 and 24 November 2019 because they did not raise issues warranting investigation.

Licensee	Licensed service	Categories	Number of complaints
Harbour Radio CIC	Harbour Radio	Key Commitments	1
Radio Ashford Limited	Radio Ashford	Key Commitments	8

### [How Ofcom assesses complaints about broadcast licences](#)

## Complaints outside of remit

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

Programme	Service	Transmission Date	Categories	Number of complaints
Advertisement	4Music	08/11/2019	Advertising content	1
Babestation	Babestation	20/11/2019	Outside of remit	1
EastEnders	BBC 1	26/07/2019	Promotion of products/services	1
Programme trailers	BBC 1	05/11/2019	Outside of remit	1
The Great Ka-RY-oke Challenge	BBC Radio 2	12/11/2019	Outside of remit	1
Programming	CelticTV	08/09/2019	Non-editorial	1
Facts tell: Netizens question authenticity of attack on HK protest organizer	CGTN Youtube Channel	20/10/2019	Due impartiality/bias	1
Advertisement	Channel 4	19/11/2019	Advertising content	1
Junior Bake Off	Channel 4	28/10/2019	Outside of remit	1
Advertisement	Channel 5	10/11/2019	Advertising content	1
Advertisement	Channel 5	11/11/2019	Advertising content	1
Advertisement	Channel 5	14/11/2019	Advertising content	1
Advertisement	Channel 5	21/11/2019	Advertising content	1
Advertisement	E4	18/11/2019	Advertising content	1
Hollyoaks	E4	15/11/2019	Outside of remit	1
90 Minutes EHR	East Herts Radio	23/08/2019	Outside of remit	1
Snooker	Eurosport 1	13/11/2019	Outside of remit	1
Non-editorial	Freeview Play	04/11/2019	Non-editorial	1
Heart Breakfast with Jamie and Amanda	Heart FM	15/11/2019	Outside of remit	1
Advertisement	History	10/11/2019	Advertising content	1
Advertisement	ITV	17/07/2019	Advertising content	1
Advertisement	ITV	06/11/2019	Advertising content	1
Advertisement	ITV	16/11/2019	Advertising content	1
Advertisement	ITV	17/11/2019	Advertising content	2
Advertisement	ITV	18/11/2019	Advertising content	1
Advertisement	ITV	19/11/2019	Advertising content	1
Advertisement	ITV	20/11/2019	Advertising content	1
Advertisement	ITV	21/11/2019	Advertising content	3
Cash Trapped	ITV	15/11/2019	Outside of remit	1
I'm a Celebrity...Get Me Out of Here!	ITV	17/11/2019	Outside of remit	2
The X Factor: Celebrity	ITV	16/11/2019	Outside of remit	2
Minder	ITV4	11/11/2019	Outside of remit	1

Programme	Service	Transmission Date	Categories	Number of complaints
Advertisement	ITVBe	11/11/2019	Advertising content	1
Leeds United vs Preston North End	Lutv	n/a	Non-editorial	1
Advertisement	National Geographic HD	12/11/2019	Advertising content	1
Glenn Greenwald – Pânico – 07/11/19	Pânico Jovem Pan YouTube Channel	07/11/2019	Hatred and abuse	1
The Poppy Collection	QVC	02/11/2019	Teleshopping	1
R Mornings	Revelation TV	05/11/2019	Outside of remit	1
ICYMI: Dominic Cummings & The Russian Stoooge Accusation Game	RT on YouTube	06/11/2019	Outside of remit	1
ICYMI: Whatever goes wrong, you can always blame a Russian!	RT on YouTube	16/03/2018	Outside of remit	1
Advertisement	Sky Sports Main Event	10/11/2019	Advertising content	1
Programming	Slam UK 93.0 FM	19/11/2019	Outside of remit	1
Newspaper content	The Sun Newspaper	18/11/2019	Outside of remit	1
n/a	Twitter	06/11/2019	Materially misleading	1
n/a	Twitter	18/11/2019	Outside of remit	1
n/a	Twitter	19/11/2019	Outside of remit	2
n/a	Twitter	21/11/2019	Outside of remit	2
n/a	Twitter	22/11/2019	Outside of remit	1
Programming	Various	Various	Outside of remit	1

[More information about what Ofcom's rules cover](#)

## BBC First

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

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

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

### Complaints about BBC television, radio or on demand programmes

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
n/a	BBC	03/11/2019	Other	1
BBC News	BBC 1	07/08/2018	Due accuracy	1
BBC News	BBC 1	01/09/2019	Elections/Referendums	1
BBC News	BBC 1	30/09/2019	Other	1
BBC News	BBC 1	25/10/2019	Due impartiality/bias	1
BBC News	BBC 1	10/11/2019	Elections/Referendums	1
BBC News	BBC 1	12/11/2019	Elections/Referendums	1
BBC News	BBC 1	13/11/2019	Elections/Referendums	3
BBC News	BBC 1	18/11/2019	Generally accepted standards	1
BBC News	BBC 1	Various	Due impartiality/bias	1
Breakfast	BBC 1	06/11/2019	Elections/Referendums	1
Breakfast	BBC 1	11/11/2019	Due impartiality/bias	3
Breakfast	BBC 1	15/11/2019	Elections/Referendums	6
Breaking Fashion	BBC 1	18/09/2019	Materially misleading	1
Countryfile Autumn Diaries	BBC 1	01/11/2019	Materially misleading	1
Defenders UK	BBC 1	20/09/2019	Materially misleading	1
Dom Does America	BBC 1	11/11/2019	Animal welfare	1
EastEnders	BBC 1	11/06/2019	Disability discrimination/offence	1
EastEnders	BBC 1	31/10/2019	Disability discrimination/offence	1
Festival of Remembrance	BBC 1	09/11/2019	Generally accepted standards	1
Have I Got News for You	BBC 1	08/11/2019	Elections/Referendums	3
Look East	BBC 1	20/11/2019	Elections/Referendums	1
Party Election Broadcast by the Labour Party	BBC 1	13/11/2019	Elections/Referendums	1
Programming	BBC 1	Various	Due impartiality/bias	1

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
Question Time	BBC 1	17/01/2019	Due impartiality/bias	1
Question Time	BBC 1	30/10/2019	Due impartiality/bias	1
Question Time	BBC 1	31/10/2019	Due impartiality/bias	1
Question Time	BBC 1	Various	Due impartiality/bias	1
Strictly Come Dancing	BBC 1	12/10/2019	Generally accepted standards	1
The Graham Norton Show	BBC 1	08/11/2019	Elections/Referendums	1
World Athletics Championships (trailer)	BBC 1	25/09/2019	Flashing images/risk to viewers who have PSE	1
Question Time	BBC 1	19/11/2019	Elections/Referendums	1
BBC News	BBC 1 / BBC Radio 4	07/09/2019	Due impartiality/bias	1
Giri/Haji	BBC 2	31/10/2019	Generally accepted standards	1
Giri/Haji	BBC 2	31/10/2019	Sexual material	1
Newsnight	BBC 2	19/11/2019	Elections/Referendums	1
Pose	BBC 2	01/11/2019	Race discrimination/offence	1
QI	BBC 2	09/11/2019	Other	1
QI XL	BBC 2	20/09/2019	Generally accepted standards	1
Victoria Derbyshire	BBC 2	17/06/2019	Due accuracy	1
World Athletics Championships	BBC 2	01/10/2019	Due impartiality/bias	1
Programming	BBC Asia	18/11/2019	Due impartiality/bias	1
BBC News	BBC channels	28/09/2019	Other	1
BBC News	BBC channels	Various	Elections/Referendums	2
BBC News	BBC channels	14/11/2019	Elections/Referendums	1
BBC Look North	BBC Look North	01/08/2019	Generally accepted standards	1
BBC News	BBC News Channel	16/10/2019	Due impartiality/bias	1
BBC News	BBC News Channel	06/11/2019	Elections/Referendums	1
BBC News	BBC News Channel	16/11/2019	Elections/Referendums	1
BBC News	BBC News Channel	18/11/2019	Elections/Referendums	1
Your Questions Answered – Boris Johnson	BBC News Channel	15/11/2019	Elections/Referendums	1
The Radio 1 Breakfast Show with Greg James	BBC Radio 1	06/11/2019	Generally accepted standards	1
BBC News	BBC Radio 4	26/09/2019	Due accuracy	1
BBC News	BBC Radio 4	08/11/2019	Elections/Referendums	1
PM	BBC Radio 4	18/10/2019	Due impartiality/bias	1
Rape Trials: Is the Jury Out?	BBC Radio 4	29/09/2019	Due accuracy	1

<b>Programme</b>	<b>Service</b>	<b>Transmission or Accessed Date</b>	<b>Categories</b>	<b>Number of Complaints</b>
Today	BBC Radio 4	07/10/2019	Materially misleading	1
Today	BBC Radio 4	10/10/2019	Due accuracy	1
Today	BBC Radio 4	07/11/2019	Elections/Referendums	1
You and Yours	BBC Radio 4	18/11/2019	Materially misleading	1
You and Yours	BBC Radio 4	19/11/2019	Generally accepted standards	1
BBC News	BBC Radio 5 Live	15/11/2019	Elections/Referendums	1
Emma Barnett Show	BBC Radio 5 Live	13/11/2019	Elections/Referendums	1
Programming	Various	10/11/2019	Elections/Referendums	1

## Investigations List

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

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

Here are alphabetical lists of new investigations launched between 11 and 24 November 2019.

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

Programme	Service	Transmission date
EWTN Pro-life weekly	EWTN	30/09/2019
Secklow Hits	Secklow Sounds	24/10/2019
All Out Politics	Sky News	31/10/2019
Sky Cinema Halloween (trailer)	Sky Sports Cricket	20/10/2019
Aankhen	Sony Max	20/10/2019
Word Special	The Word Network	15/09/2019

[How Ofcom assesses complaints and conducts investigations about content standards on television and radio programmes](#)

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

Programme	Service	Transmission date
Call the Cops	Channel 4	19/08/2019

[How Ofcom considers and adjudicates upon Fairness and Privacy complaints about television and radio programmes](#)

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

<b>Programme</b>	<b>Service</b>	<b>Transmission date</b>
Our Cops in the North	BBC 1	17/07/2019