

Ofcom Broadcast Bulletin

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Introduction

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

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

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

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

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

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

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

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

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

Note to broadcasters

Broadcast Charity Appeals

In light of recent queries from broadcasters, we wish to remind all broadcast licensees of the rules that apply to charity appeals.

Television

- **If broadcast free of charge, a charity appeal may be broadcast as programming**, provided the broadcast complies with all relevant Broadcasting Code rules – in particular, Rules 9.33 and 9.34.
- **If a charity is charged for the broadcast of an appeal for donations, the broadcast material is a commercial communication and must be either an advertisement or teleshopping.** It therefore needs to comply with all relevant rules in the BCAP Code and the Code on the Scheduling of Television Advertising (COSTA)¹.
- Ofcom therefore wishes to emphasise the following:
 - Teleshopping spots (in commercial breaks) and ‘windows’ (i.e. teleshopping features lasting at least the minimum duration of 15 minutes) must feature ‘direct offers’. In the context of charity appeals as teleshopping, a direct offer is a direct appeal to the public for funds. Viewers must therefore be able to donate directly, without the need to seek information or other material from any other place;
 - The principal purpose of a teleshopping charity appeal must be to enable viewers to donate directly. Appeals for donations should therefore be constant or near-constant. Other material included that does not itself contain a direct appeal must be justifiable, as related to the appeal, and appropriately limited;
 - Most teleshopping uses ‘L’s – i.e. L-shaped permanent on-screen overlays that display the price and characteristics of the goods or services directly offered and, typically, the payment methods accepted. This technique can help to create the necessary emphasis in a charity appeal, although the use of an ‘L’ (or similar) does not automatically make the charity appeal teleshopping if, otherwise, the broadcast is not obviously related to the charity appeal or contains no or very few direct appeals for donations.
 - The inclusion in the ‘L’ of the charity’s details, including its banking and contact details (for viewers to make donations), and its charity registration number, is therefore likely to be important.

¹ <http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/tacode.pdf>

Radio

- **If broadcast free of charge, charity appeals may be broadcast in editorial²**, provided the broadcast complies with all relevant Broadcasting Code rules – in particular, Rule 10.11. Typically, this applies to a broadcaster running an appeal for a charity created or ‘adopted’ by the station.
- **If a charity is charged for the broadcast of an appeal for donations, the appeal may be broadcast as a commercial reference** (i.e. a commercial communication in radio programming), provided the broadcast complies with all relevant requirements – in particular, Rules 10.7 and 10.8 of the Broadcasting Code (and the BCAP Code rules they detail). Ofcom also wishes to remind broadcasters that achieving appropriate on-air transparency to listeners of the commercial arrangement between the station and the charity must be considered carefully, to ensure compliance with Rule 10.1 of the Code, paying particular attention to the wording, positioning and frequency of the relevant signalling.³ (Alternatively, charity appeals broadcast in return for payment may be broadcast as advertisements, which must comply with the BCAP Code.)

² ‘Editorial’, as it appears in the introductory table on page 1 of Section Ten guidance, at: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section10.pdf>

³ See Ofcom’s guidance to Rule 10.1 of the Code, at: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section10.pdf>

In Breach

Air Crash Investigation

National Geographic Channel, 26 November 2014, 10:00

Introduction

Air Crash Investigation is a factual series in which an air disaster is reconstructed and investigated in each episode. This programme was concerned with the 2007 Adam Air Flight 574 disaster in which all 102 passengers died. The licence for National Geographic Channel is held by NGC Europe Limited (“NGC Ltd” or “the Licensee”).

Ofcom received a complaint from a viewer with photosensitive epilepsy that the programme contained “huge amounts” of “unnecessary” flashing images.

Certain types of flashing images can trigger seizures in viewers who are susceptible to photosensitive epilepsy (“PSE”). Ofcom therefore carried out an assessment of the broadcast content against Ofcom’s Technical Guidance to broadcasters on flashing images (the “PSE Guidance”). The PSE Guidance states that a sequence containing flashing at a rate of more than three flashes per second which exceed specific intensity thresholds may be potentially harmful.

Ofcom noted the following onscreen warning broadcast at the start of the programme:

“Warning. Epilepsy. Viewer Discretion Advised”.

This was accompanied by the following warning given by way of a voiceover:

“The following programme contains flashing images which may affect viewers with photosensitive epilepsy”.

Ofcom’s technical assessment of the material detected 45 separate instances during the programme in which the limits on flashing images set out in the PSE Guidance were exceeded. These were clustered during the opening ten minutes and final 15 minutes of the programme which both featured the reconstruction of a lightning storm.

Ofcom therefore considered the programme raised issues warranting investigation under Rule 2.12 of the Code, which states:

“Television broadcasters must take precautions to maintain a low level of risk to viewers who have photosensitive epilepsy. Where it is not reasonably practicable to follow the Ofcom guidance, and where broadcasters can demonstrate that the broadcasting of flashing lights and/or patterns is editorially justified, viewers should be given an adequate verbal and also, if appropriate, text warning at the start of the programme or programme item”.

We therefore requested comments from the Licensee as to how the material complied with this rule.

Response

The Licensee admitted that the programme “breached Ofcom’s PSE Guidance and consequently breached Rule 2.12 of the Broadcasting Code”. It also accepted it had incorrectly interpreted this rule when initially complying the programme.

NGC Ltd told Ofcom that on delivery of the programme (which was acquired from another broadcaster), its compliance team “noted the level of flashing images and, with a view of complying with Rule 2.12, made the broadcast of the programme subject to both a verbal and text warning being broadcast at the onset of the programme”.

The Licensee said “[b]y its very nature, there are contractual restrictions placed on how we edit programming acquired from other distributors or broadcasters”. It added this did not “in any way lessen [its] responsibility to ensure that all [its] programming complies with the relevant rules”. In relation to this specific programme, the Licensee said it had considered “the essence of the program concerned the impact of a violent electrical storm in causing an air disaster and the required edits were intrinsically linked to the editorial line of the program”.

NGC Ltd said that in light of this it “came to the conclusion that in this instance it was editorially justified to include the material complained of provided we complied with Rule 2.12”.

However, the Licensee accepted this this conclusion had been “erroneous” and assured Ofcom “that there will be no repetition”. NGC Ltd also said that “in an effort to prevent this situation from recurring”, it had arranged for further analysis of any material that the Licensee’s compliance or scheduling teams are concerned may breach the PSE Guidance.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for the content of programmes as appear to it best calculated to secure the standards objectives. One of these is that “generally accepted standards” are applied so as to provide adequate protections for members of the public from the inclusion of offensive and harmful material.

Given the significant potential for harm to viewers with PSE who are exposed to flashing images, Rule 2.12 makes clear that Ofcom expects broadcasters to maintain a low level of risk in this regard. Further, the PSE Guidance, which was developed with input from medical experts, sets out technical parameters which are intended to reduce the risk of broadcast content provoking seizures.

In this case, Ofcom’s technical assessment of the material found that 45 separate instances of flashing images, totalling 27 seconds of broadcast material, significantly exceeded the maximum limits set out in the PSE Guidance to broadcasters on flashing images. This therefore posed a significant risk of harm to viewers in the audience with PSE.

As Rule 2.12 makes clear, there may be circumstances where “it is not reasonably practicable to follow the Ofcom [PSE] guidance”, and broadcasters can demonstrate that it is editorially justified to broadcast the problematic material containing the flashing images, provided that an adequate warning is given at the start of the programme and/or programme item. It may for example not be reasonably

practicable to remove or edit the material that exceeds the maximum limits as set out in the PSE Guidance during a live broadcast, and it is editorially justified nonetheless to broadcast material containing problematic flashing images. In these circumstances, it is essential that appropriate warnings are given to assist viewers with PSE to avoid instances of flashing images the broadcaster cannot reasonably control.

Ofcom began by assessing whether it was “reasonably practicable” for the Licensee to have followed the PSE Guidance in this case.

We noted this programme was pre-recorded and not broadcast live. The Licensee therefore had the opportunity to edit or manipulate the material digitally to eliminate or materially reduce the flashing images in the programme which exceeded the limits set out in the PSE Guidance.

In Ofcom’s view, as it was reasonably practicable in this case for the Licensee to have followed the PSE Guidance, it was therefore not necessary to go on to consider whether the inclusion of the flashing images was editorially justified and whether an adequate warning was given.

We noted that when originally complying the programme, NGC Ltd considered that it was “editorially justified” to include the flashing images showing the lightning storm because the Licensee’s view was that this was editorially necessary – the theme of the programme being that it was the storm that caused the air disaster. However, Rule 2.12 makes clear that before considering whether the inclusion of potentially harmful flashing images is “editorially justified”, licensees must first consider whether it is “reasonably practicable” to remove them.

Ofcom’s technical assessment of the material detected 45 separate instances in which the limits on flashing images (as set out in the PSE Guidance) were materially exceeded during a total of 27 seconds of broadcast material. The potential for viewer harm by the broadcast of this material was therefore significant. We noted that a warning was given at the start of this programme, but considered that in view of the severity and duration of the flashing images, the warning was clearly insufficient to maintain a sufficiently low level of risk to viewers with PSE.

The broadcast of this material therefore breached Rule 2.12 of the Code.

Breach of Rule 2.12

In Breach

4 Play: Sex Tips 4 Girls

The Africa Channel, 8 March 2015, 20:30

Introduction

The Africa Channel is a digital satellite channel aimed at the African community. The channel broadcasts a variety of news and entertainment programming. The licence for The Africa Channel is held by The Africa Channel Ltd (“ACL” or “the Licensee”).

The Africa Channel broadcast an episode of *4 Play: Sex Tips 4 Girls* at 20:30. This drama series follows the lives of four women in their thirties in Johannesburg, South Africa.

Ofcom noted the following language used within the first minute of the programme:

“You are high as a fucking kite”.

Ofcom considered the use of the word “fucking” in this material raised issues warranting investigation under Rule 1.14 of the Code, which states:

“The most offensive language must not be broadcast before the watershed...”.

We therefore requested comments from the Licensee as to how this material complied with this rule.

Response

ACL apologised for the offensive language used. It stated that the programme had been edited for pre-watershed broadcast, and that the clip containing the offensive language was part of a recap of previous episodes. Although the clip had been removed from the previous episode, it had been missed in the recap. The Licensee said that it has “very stringent” compliance arrangements and such errors should not arise. ACL said it had now removed the clip from the pre-watershed recap, and as a result of this compliance error has taken further measures to improve its compliance system to ensure that this problem does not happen again.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that “persons under the age of eighteen are protected”. This objective is reflected in Section One of the Code.

Rule 1.14 states that the most offensive language must not be broadcast before the watershed. Ofcom research on offensive language¹ clearly notes that the word “fuck” and other variations of this word are considered by audiences to be among the most offensive language. Such language is unacceptable before the watershed.

¹ Audience attitudes towards offensive language on television and radio, August 2010 (<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>).

Ofcom noted ACL's apology, and that it has taken steps to avoid this problem happening again. Nonetheless, this broadcast of the most offensive language was a clear breach of Rule 1.14.

Breach of Rule 1.14

In Breach

Style and Trends

NTV Europe, 23 October 2014, 17:00

Introduction

NTV is a general entertainment and news service broadcast on the digital satellite platform. The channel is aimed at the Bangladeshi community in the UK and other parts of Europe. The licence for the service is held by International Television Channel Europe Limited (“ITCE” or “the Licensee”).

Style and Trends is a general interest magazine programme. Ofcom received a complaint about branding for a body spray in the programme broadcast on 23 October 2014. As the programme was in Bengali and English, we commissioned an independent translation of the material in Bengali.

When viewing the programme, Ofcom noted the following:

- the programme title graphic incorporated the logo of the body spray. This graphic was shown at each programme juncture (e.g. at the beginning and end of the programme and around advertising breaks) and also appeared during the programme via a screen situated next to the presenter in the studio; and
- during various programme segments product shots of the body spray appeared along the bottom of the screen.

The incorporation of the logo into the programme graphic suggested to Ofcom that the brand was a programme sponsor. We therefore sought ITCE’s formal comments on how it considered the on-screen product shots of the body spray complied with Rule 9.10 of the Code,¹ which states:

“References to placed products, services and trade marks must not be unduly prominent.”

Response

ITCE said that a significant percentage of its programming was sponsored content from Bangladesh and that it was not party to any commercial arrangements relating to this content. It continued that, in order to comply with Ofcom rules, it endeavoured to remove references to the Bangladeshi sponsors’ products in these programmes. However, in some cases, it found the content to be inseparable and its editor struggled to remove the sponsor references.

ITCE said that it had tried to comply with Ofcom’s product placement guidance in relation to this particular programme.

¹ The Code defines a sponsor as “any public or private undertaking or individual (other than a broadcaster or programme producer) who is funding the programming with a view to promoting its products, services, trade marks and/or its activities”. The Code makes clear that “with the exception of the sponsorship credits, any reference to a sponsor that appears in a sponsored programme as a result of a commercial arrangement with the broadcaster, the programme maker or a connected person will be treated as product placement and must comply with Rules 9.6 to 9.14.

Decision

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

The AVMS Directive requires, among other things, that television advertising is kept visually and/or audibly distinct from programming. The purpose of this is to prevent programmes becoming vehicles for advertising and to protect viewers from surreptitious advertising. The requirements of the AVMS Directive and the Act are reflected in Section Nine of the Code, which limits the extent to which commercial references can be included in programmes.

Ofcom recognises the difficulties faced by broadcasters when transmitting content originally produced for broadcast in a territory where the regulatory requirements differ to those enforced by Ofcom. However, these difficulties do not justify an Ofcom licensee broadcasting material on its Ofcom licensed service that does not comply with the Code.

In this case, the programme featured on-screen references to the sponsor’s product with no editorial justification for doing so. We therefore judged that the references were in breach of Rule 9.10.

In issue 276 of Ofcom’s Broadcast Bulletin, published on 30 March 2015,² Ofcom recorded a breach of Licence Condition 17(2) against ITCE having concluded that there continues to be a systemic problem with the Licensee’s compliance procedures. Ofcom has put the Licensee on notice that it will consider NTV’s breach of Condition 17(2) for the imposition of a statutory sanction.

Breach of Rule 9.10

In Breach

Brit Asia TV Music Awards

Brit Asia TV, 4 January 2015, 13:00

Introduction

Brit Asia TV is a general entertainment channel aimed at the British Punjabi community. The licence for Brit Asia TV is held by Britasia TV Limited (“Britasia” or “the Licensee”).

Brit Asia TV Music Awards is Britasia’s annual music award ceremony, which awards artistic talent within the British Asian music scene. A complainant contacted Ofcom about the prominence of references to the sponsors of individual awards during the *Brit Asia TV Music Awards* programme.

We reviewed Britasia’s coverage of the event, which was over three hours in duration. Fourteen of the 15 awards presented at the event were each sponsored by a different brand. The coverage of each award generally followed the same format: the ceremony presenters credited the award’s sponsor and introduced its individual presenter(s); the award title was shown, with the caption “*SPONSORED BY* [sponsor’s name and logo]”; and, the sponsor’s logo was then displayed towards the bottom left hand side of the screen, as each nominee for the award was revealed and briefly featured.

We noted that the following brand references were broadcast (among others) during the event:

Presenter A: *“So the first award tonight, of the evening, is Best Newcomer. Now it’s sponsored by Ahsan’s Bespoke Menswear – and they do provide some fantastic outfits...”*;

Voiceover: *“Best Club DJ, sponsored by CTS – don’t delay, claim today”*;

Voiceover: *“Best Non-Asian Music Producer, sponsored by Punch Records – the UK’s number 1 touring agency”*;

Voiceover: *“Best Urban Asian Single, sponsored by Medical Locum 365 – the nation’s number 1 choice for GP locums”*;

Voiceover: *“Best Female Act, sponsored by AsianSingleSolution.com – the leading British Asian dating service”*;

Voiceover: *“Best Male Act, sponsored by Health Therapy Beds – feel good for the rest of your life”*;

On-screen: *“SPONSORED BY [Health Therapy logo] BEDS – FEEL GOOD FOR THE REST OF YOUR LIFE”*;

Voiceover: *“Best Urban Asian Act, sponsored by MS Motor Services – the leading independent Mercedes specialist”*;

Voiceover: *“Best Asian Music Producer, sponsored by Mahirs Experience – delicious cuisine, amazing events”;*

Voiceover: *“Best Band, sponsored by Hillbrook Dental – your smile makes ours”.*

We also noted that the following references to Grosvenor Casino were broadcast:

Presenter A: *“...the Best Music Video, which has been sponsored very kindly by Grosvenor Casino...”.*

Presenter B: *“Double your money!”*

Presenter A: *“They do double your money. Sometimes not though; I’ve lost a lot, I’ll tell you.”*

Presenter B: *“Yes but we always go back, don’t we.”*

Presenter A: *“[Name (of audience member)] is over here somewhere. [Name] seems to win a lot.”*

Presenter B: *“I can’t even see where he’s sitting.”*

Presenter A: *“[Name] ... I’ll be coming down to Grosvenor Casino.”*

Voiceover: *“Best Video, sponsored by Grosvenor Casino – Casino online and mobile.”*

The Licensee provided Ofcom with a template contract, which detailed the agreement made between Britasia and each award sponsor. As a result, the references met the definition of product placement¹ set out in the Code.

Ofcom considered the case raised issues warranting investigation under the following Code rules:

Rule 9.9: “References to placed products, services and trade marks must not be promotional”.

Rule 9.10: “References to placed products, services and trade marks must not be unduly prominent”.

Rule 9.13: “The product placement of the following is prohibited:
[...]
c) gambling;...”.

We therefore asked the Licensee for its comments as to how the material broadcast complied with these rules.

¹ Product placement is defined as the inclusion in a programme of, or of a reference to, a product, service or trade mark where the inclusion is for a commercial purpose, and is in return for payment or other valuable consideration to the programme maker, the broadcaster or any person connected with either.

Response

Britasia said it did not consider the broadcast was in breach of Rule 9.9 or 9.10, adding that, “in any case [it found] both rules rather ambiguous”. The Licensee added that:

- “category sponsors’ branding appeared on screen for only a number of seconds each”;
- “the branding was accompanied by a voiceover which announced the awards category in question and the sponsor of the awards category, including a very brief tagline”;
- “at no point was there any call to action or any promotional activity”; and
- “editorially, [Britasia had] ensured that prominence was always given to the awards categories & performances throughout the programme”.

In response to Ofcom’s Preliminary View, the Licensee said it accepted our findings and would ensure it took care with any future product placement, which it said was “a new area for [Britasia]”, adding that it had “subsequently consulted experienced Advertising Agencies and gained expert advice” to ensure no recurrence of the compliance errors highlighted by this case.

Decision

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

The AVMS Directive contains a number of provisions designed to help maintain a distinction between advertising and editorial content, including requirements that television advertising is kept visually and/or audibly distinct from programming in order to prevent programmes becoming vehicles for advertising and to protect viewers from surreptitious advertising. Further, Article 23 of the AVMS Directive requires that television advertising is limited to a maximum of 12 minutes in any clock hour.

More specifically, both the AVMS Directive and the Act require that:

- programmes containing product placement shall not directly encourage the purchase or rental of goods or services; and
- programmes containing product placement shall not give undue prominence to the products, services or trade marks concerned.

Rules 9.9 and 9.10 of the Code reflect these requirements.

There are also additional requirements relating to product placement set out in the Act. For example, the prohibition of the product placement of particular products and

services, including (but not limited to) gambling, as reflected in Rule 9.13 of the Code.

Rule 9.9 and 9.10

Ofcom noted Britasia's view that the rules in the Code were "rather ambiguous". However, Section Nine of the Code makes clear that product placement is, "the inclusion in a programme of, or of a reference to, a product, service or trade mark where the inclusion is for a commercial purpose, and is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any person connected with a relevant provider, and is not prop placement". In this case, the template contract provided by the Licensee made clear that each award sponsor had paid Britasia for specific references to its brand to be broadcast during coverage of the event. As such, each reference met the definition of product placement and Rules 9.9 and 9.10 were engaged.

We therefore went on to consider whether Rules 9.9 and 9.10 were breached in this case. Ofcom's Guidance to Section Nine of the Code² makes clear that the level of prominence given to a product, service or trade mark will be judged against the editorial context in which it appears and that "a lack or absence of sufficient editorial justification will be more difficult to justify as duly prominent." In this instance, with the exception of the references to Grosvenor Casino (see below), Ofcom accepted that the general format of award presentations within a ceremony provided the opportunity for the broadcast of appropriate references to the award sponsors as placed products/services.

However, we also noted that in each of the instances cited above, the placed references included brand messages and positive comments by presenters (e.g. "*– and they do provide some fantastic outfits...*"), advertising claims (e.g. "*– the UK's number 1 touring agency*") and calls to action (e.g. "*– don't delay, claim today*"). Ofcom considered these brand messages and comments to promote the brands in question, in breach of Rule 9.9 of the Code. Furthermore, we considered the references to the featured brands served an advertising rather than editorial purpose which could not be justified by the editorial context. As a result, we concluded that the references were also unduly prominent, in breach of 9.10 of the Code.

Rule 9.13(c)

The Act explicitly prohibits the product placement of gambling³, a requirement which is reflected in Rule 9.13(c) of the Code. As the references to Grosvenor Casino in the programme arose from a contractual arrangement between the Licensee and the company mentioned, we considered these constituted product placement in breach of Rule 9.13(c) of the Code.

Conclusion

We were concerned that the material broadcast in this case – in particular, the placement of a prohibited product – and the Licensee's response indicated that it has failed to understand its obligations under Section Nine of the Code. We reminded the Licensee that where a reference to a product, service or trade mark appears in a programme as a result of payment (or other valuable consideration) to the

² <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>.

³ Schedule 11A, paragraph 6(2) of the Act.

programme maker or broadcaster, the product placement rules will be engaged. We therefore welcome the subsequent action Britasia has taken (in response to Ofcom's Preliminary View), to ensure no recurrence of the compliance errors highlighted by this case.

Breaches of Rules 9.9, 9.10 and 9.13(c)

Resolved

Live European Rugby Challenge Cup

BT Sport 1, 17 January 2015, 15:15

Introduction

BT Sport 1 is a sports channel owned and operated by British Telecommunications Plc (“BT” or “the Licensee”). On 17 January 2015 at 15:15, the channel broadcast live coverage of the European Rugby Challenge Cup match between the Newcastle Falcons and the Newport Gwent Dragons.

Ofcom received a complaint about some of the language used by the match commentators to describe the players that the viewer considered offensive.

We noted the following exchange between the commentators at approximately 16:39:

Colin Charvis: *“What’s good about that confidence is you’ve known right from the minute that line-out was thrown in he’s [a Newport Gwent Dragons player] just waiting to get that ball. He’s told all those backs “get it to me you vegetables, let me have a run at these Falcons”.*

Simon Ward: *“[Laughs] Is that the call, is that the technical call?”.*

David Flatman: *“That’s an insult in Wales”.*

Simon Ward: *“Mickey Skinner [former England rugby union player] used to say something about rug-munchers but we’ll stick with vegetables – I’m sure that a lot more polite”.*

David Flatman: *“You know we’re pre-watershed here don’t you”.*

Simon Ward: *“Yeah, we do”.*

Approximately seven minutes later, Simon Ward said:

“Now I must make an apology for that earlier Mick Skinner quote. If anybody took offence, I do apologise for that”.

Ofcom considered that this material raised issues under Rule 2.3 of the Code which states:

“In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context (see meaning of “context” below). Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence.”

Ofcom therefore requested comments from the Licensee about how the programme material complied with this rule.

Response

The Licensee apologised for any offence caused by the language broadcast, and said it is never its intention to offend viewers. With regards the use of the word “vegetables”, BT said that it did not consider that this represented a breach of Rule 2.3 “as this reference was justified by the context”. However, the Licensee accepted that “the phrase “rug munchers” was unacceptable” and “hence the apology aired shortly afterwards”.

The Licensee said that the word “vegetables” was “used by the co-commentator Colin Charvis to describe the rugby backs in the team”. BT said that “Colin Charvis is an ex-professional rugby player who played as a *forward* [BT’s emphasis] and this comment reflects the friendly rivalry between the two constituent parts of a rugby team: the forwards and the backs”. The Licensee said that the discussion that occurred between the commentators reiterated the stereotype that “forwards are the *real* players and the backs merely stand around contributing little to the team”. The Licensee added that there is a further stereotype that the “backs are ‘pretty boys’ due to the fact that their facial features are unblemished as they do not participate in scrummages or rucks”.

BT said that “[c]rucially, with regard to rule 2.3 and audience expectation, the majority of viewers would be aware of this friendly rivalry and would have accepted Charvis’ comment as part of this irreverent sparring between backs and forwards which is part of rugby culture”. While BT accepted that the word “vegetables” had the potential to offend in certain scenarios, its use in this context was editorially justified and was “merely used to reflect the forward’s view of backs being rooted to the ground and nothing else”.

Concerning the use of the word “rug-munchers”, BT explained that that the match analyst, David Flatman, immediately understood the potentially offensive meaning of the term and said on-air:

“You know we’re pre-watershed here don’t you?”.

The Licensee said that “[r]egrettably this reference to the watershed did not prompt Simon Ward to issue an immediate apology.”

BT told Ofcom that the “Executive Producer’s initial view was that the use of the phrase related to a description when players’ heads in rucks or collapsed scrums are pushed into the grass, leaving them ‘munching’ the turf, where ‘rug’ equates to the pitch”. However, BT also said that it fully acknowledged that “most viewers would associate this term as an offensive synonym for lesbians”. BT added that “during the post-match meeting with [Simon] Ward, it became clear that the commentator was unaware of the alternative meaning of the phrase and was repeating a description from an ex-professional player”.

The Licensee said that the broadcast of the word “rug-munchers” was “completely unexpected and is not widely known or used, especially in the context of a rugby match” because “this offensive term is used towards women”. When the Producer heard what was broadcast he therefore wished to clarify exactly what had been said by rewinding the commentary. BT said the Producer “then directed Ward to issue an apology which aired seven minutes after the phrase was spoken”.

The Licensee said “it would have liked this apology to have aired sooner; however, this slight delay was due to the fact that there were three short breaks in play [...]”

before a longer break in play [...] allowed Ward to sincerely apologise without the risk of match-play interruption to ensure the apology's effectiveness". BT said that although it acknowledged "that remedial action should take place as soon as possible after any accidental offensive language is broadcast, it is highly likely that all viewers who took offence at the terminology used would have also heard the apology as it took place during match-play".

The Licensee added that the reference to "rug-munchers" was also removed from subsequent repeats of the programme.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for the content of programmes as appear to it best calculated to secure the standards objectives. One of these is that "generally accepted standards" are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material. These standards are contained in the Code. Broadcasters are required under Rule 2.3 of the Code to ensure that, in applying generally accepted standards, the inclusion of material which may cause offence is justified by the context. The rule specifically refers to "discriminatory treatment or language (for example on the grounds of... sexual orientation)".

Ofcom first considered whether the use of the word "vegetables" was offensive and, if so, whether the offence was justified by the context.

In Ofcom's view, the term "vegetables", may have the potential to offend when used to pejoratively describe those with a mental or physical disability. However, Ofcom noted the word was used to describe the backs playing in a professional rugby match, and the Licensee's comments that the phrase was meant solely as a reference to a stereotypical perception that rugby backs are "lazy" and "rooted to the ground". In Ofcom's view therefore, we considered that in this context the use of the word was unlikely to give rise to a high level of offence and any potential offence it did cause was justified by the context.

Ofcom then went on to assess the use of the word "rug-munchers".

Ofcom's published research on offensive language has not specifically covered public attitudes to the word "rug-muncher". While Ofcom acknowledged that this word may not have been familiar to some in the audience, in Ofcom's view many viewers would have understood the word¹ to be a derogatory reference to lesbians and therefore potentially offensive.

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

Ofcom acknowledged that many of this programme's viewers may well have understood the background context of the friendly rivalry between forwards and backs and the banter associated with this. However, we did not consider that the use of a pejorative and potentially offensive word such as "rug-munchers" in this context,

¹ *Vulgar, slang* A lesbian.

Source: Oxford Dictionaries (Oxford University Press)

(<http://www.oxforddictionaries.com/definition/english/rug-muncher?q=rug+muncher>)

during the commentary of a live sporting event, was within the likely expectations of the audience. Its use therefore was not justified by the context.

However, we noted: the Licensee accepted that the use of the word had been “unacceptable”; an apology was broadcast seven minutes after the incident; the Licensee’s explanation as to why in the circumstances of this live programme it was not broadcast sooner; and that the Licensee edited the word out of all repeats of the programme. For these reasons, we therefore considered the matter resolved.

Resolved

Broadcast Licence Conditions cases

In Breach

Provision of recordings

Programming, BEN TV, 7 and 11 February 2015, 19:55 to 21:05

Introduction

BEN TV is an entertainment and news channel that broadcasts to Western Europe and parts of Asia and Northern Africa. The licence is held by Greener Technology Limited (“Greener Technology” or “the Licensee”).

Ofcom requested a recording of output broadcast on BEN TV on 7 and 11 February 2015 to assess a viewer complaint about material relating to the Nigerian Elections allegedly creating disharmony between local communities.

The Licensee did not provide the requested recordings by the deadline specified and requested an extension so that it could source the material from Nigeria. Subsequently, the Licensee provided recordings ten days after the extended deadline.

However the recording of the programme shown on 11 February 2015 supplied by the Licensee appeared to be incomplete. Ofcom therefore requested the Licensee provide the recording in full. The Licensee provided a further recording by the new deadline, however one segment of that recording appeared to have been captured using a video camera to film BEN TV output being shown on a monitor.

Condition 11 of Greener Technology’s licence states that the Licensee must make and then retain a recording of all its programmes for a period of 60 days from broadcast, and at Ofcom’s request must produce recordings “forthwith”.

In addition, Ofcom guidance to licensees states that recordings “must be of a standard and in a format which allows Ofcom to view the material as broadcast”.¹ Ofcom has previously made clear in a note to broadcasters² that on request, broadcasters must be able to supply Ofcom with recordings as broadcast, and that the quality of recordings should be equal to that seen by the viewer, in terms of both sound and vision.

Ofcom considered the case raised issues warranting investigation under the following Licence Condition:

“11(2) In particular the Licensee shall:

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

¹ See: http://licensing.ofcom.org.uk/binaries/tv/tlcs_guidance.pdf

² See: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb95/>

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

Response

The Licensee did not provide any comments.

Decision

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

Under TLCS Licence Condition 11(2)(a), Ofcom requires licensees to make a recording of every programme included in the service, and to retain these for 60 days after broadcast. Under TLCS Licence Condition 11(2)(b) Ofcom requires licensees to produce such recordings to Ofcom forthwith on request.

In this case, the Licensee did provide the recordings to Ofcom but clearly failed to do so "forthwith" within the deadlines set by Ofcom. Ofcom noted the Licensee's explanation that the delay was due to obtaining the material from Nigeria. All licensees are required to have adequate procedures in place to comply with their licence conditions to retain and produce recordings to Ofcom on request, regardless of country of origin. It was clear that the Licensee did not have adequate procedures in place to ensure access to recordings in a timely manner.

Furthermore, part of the recording of the programme shown on 11 February 2015 was captured using a video camera to film BEN TV output being shown on a monitor. Ofcom did not consider this fulfilled the Licensee's requirement to make and retain a recording in sound and vision of programmes as broadcast on BEN TV.

Greener Technology therefore breached Conditions 11(2)(a) and (b) of its TLCS licence.

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

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

In Breach

Providing a service in accordance with ‘Key Commitments’

Diverse FM, 5 to 7 February 2015

Introduction

Diverse FM is a community radio station licensed to provide a service for “the diverse community of Luton”. The licence is held by Diverse FM (“the Licensee”).

Like other community radio stations, Diverse FM is required to deliver ‘Key Commitments’, which form part of its licence.¹ These set out how the station will serve its target community and include a description of the programme service; social gain (community benefit) objectives such as training provision; arrangements for access for members of the target community; opportunities to participate in the operation and management of the service; and accountability to the community.

Ofcom received a complaint alleging that Diverse FM broadcast “no live shows or content from midnight till the earliest 6 or 7 PM”, with “no speech apart from adverts and production in this time period”.

We asked Diverse FM for a sample of its audio across three days so we could assess the complaint. The audio provided raised issues with regard to Diverse FM’s compliance with the following Key Commitment:

- Output typically comprises of 80% music and 20% speech (‘speech’ excludes advertising, programme/promotional trails and sponsor credits).

Ofcom considered that these issues warranted investigation under Conditions 2(1) and 2(4) in Part 2 of the Schedule to Diverse FM’s licence. These state, respectively:

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

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

We therefore wrote to Diverse FM to request its comments on how it was complying with these conditions, with reference to the specific Key Commitment set out above.

Response

The Licensee noted that its weekday Drivetime presenter had recently left Diverse FM, having obtained work with a commercial radio station. It added that it had “actively recruited new volunteers” and was “currently training them to fill the position”. Diverse FM said it “proactively encourages and supports progression for all its volunteers” and was, despite its loss, proud that one of its volunteer presenters had “successfully gained employment in the industry”.

¹ Diverse FM’s Key Commitments are contained in an annex to its licence and can found at: <http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000089.pdf>.

The Licensee also noted that on Saturday 7 February it believed Diverse FM had “met more than 20% speech output with live shows for 13 hours that day, 3 of those hours being sports output (all speech output)”.

Decision

Ofcom has a number of duties in relation to radio broadcasting, including securing a diverse range of local radio services which are calculated to appeal to a variety of tastes and interests, along with the optimal use of the radio spectrum. These matters are reflected in the licence condition requiring the provision of the specified licensed service. Provision by a licensee of its licensed service on the frequency assigned to it is the fundamental purpose for which a community radio licence is granted.

Ofcom has traditionally regulated speech output on all stations on the basis of an average percentage taken across the day or daypart in question (in this case, the entire day), rather than requiring licensees to meet the percentage speech requirement in every single clock hour. This is because we recognise that licensees may legitimately wish to over-deliver on speech content during some hours, but place a greater emphasis upon music in other hours.

We noted the Licensee’s comments concerning its temporary lack of a weekday Drivetime presenter. However, it was Ofcom’s view that, when calculated on an averaged-out basis across each day, Diverse FM’s delivery of speech content had not met the required 20% level on any of the three days we monitored. Although three hours of live sports coverage on 7 February 2015 contributed to a relatively higher level of speech content, levels of such content on the preceding two days were minimal and would have been highly likely to remain insufficient even if normal Drivetime speech content had been included.

It was clear that, during our monitoring period, the Licensee had not been delivering on its Key Commitment relating to its balance of music and speech output, therefore breaching Licence Conditions 2(1) and 2(4), as set out above. Diverse FM is licensed to provide a local community radio service for the diverse communities of Luton. As such, relevant speech content should reasonably be expected as central to its output. We are putting the Licensee on notice that, should any similar shortcoming arise in future, we may consider taking further regulatory action.

Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by Diverse FM (licence number CR000089BA/1)

Fairness and Privacy cases

Not Upheld

Complaint by Mr James Rich made on his own behalf and on behalf of Mrs Emily Rich (his wife) and their daughter (a minor)

My Brother the Islamist, BBC World News, 28 September 2014

Summary

Ofcom has not upheld this complaint of unwarranted infringement of privacy in the programme as broadcast made by Mr Rich on his own behalf and on behalf of his wife and daughter.

The programme explored the process through which Mr Richard Dart (a white British man from Weymouth in Dorset) had become a radical Islamist. It included a photograph of Mr Dart and his family taken while they were on holiday before Mr Dart was radicalised. Mr and Mrs Rich and their daughter were part of the family group shown in the photograph.

Ofcom found that the complainants had a legitimate expectation of privacy with regard to the inclusion in the programme of the relevant photograph without consent. However, their expectation of privacy in this regard (which was limited, to varying degrees, by a number of factors) was outweighed by the public interest in broadcasting the photograph; the audiences' right to receive information broadcast without unnecessary interference; and both the broadcaster's and Mr Leech's right to freedom of expression. Therefore, there was no unwarranted infringement of their privacy in the programme as broadcast.

Introduction and programme summary

On 28 September 2014, BBC World News broadcast a programme called *My Brother the Islamist*. BBC World News, which is a subsidiary of the BBC, is an English-language international news channel. It acquired this programme (which was originally broadcast on BBC3 on five occasions between 4 and 11 April 2011) from BBC Worldwide (which is itself a subsidiary of the BBC).

My Brother the Islamist was a self-authored programme by Mr Robb Leech. It considered the process through which Mr Leech's step-brother, Mr Richard Dart (a white British man from Weymouth in Dorset) had become a radical Islamist.

At the start of the programme, while talking about growing up with Mr Dart, Mr Leech said: "*Our family holiday in Cyprus in 2008 was the last time I saw Richard*". A photograph of eleven people sitting at a long table and having a meal together was included alongside this comment. The photograph showed Mr Dart and Mr Leech sitting on either side of the near end of the table from the viewer's perspective. It also showed Mr and Mrs Rich along with their daughter (who was on her father's lap) sitting on either side of the far end of the table.

The photograph was shown for approximately four seconds. All three members of the Rich family were seen from a distance and none were referred to by name. Mr Rich's face was almost completely obscured by his daughter and the woman sitting beside

him. However, it was possible to discern the features of the faces of both Mrs Rich and her daughter.

Viewers were also told that this holiday was the last time Mr Leech saw Mr Dart (who had subsequently taken the name “*Salahuddin*”) before he became a “*convert*” of “*radical Islamist Anjem Choudary... who [the programme said] believes in imposing a worldwide Islamic state and [had been] dubbed the most dangerous man in Britain*”. During this section of the programme, Mr Leech said that after his conversion “*Richard [i.e. Mr Dart] talked of his willingness to fight and die for his beliefs; his hatred of the West; and, his desire to impose Shariah law and make Britain an Islamic state*”. He also said that his family was “*still struggling to come to terms with it all*”.

Summary of the complaint and the broadcaster’s response

Mr Rich complained that his privacy and that of his wife and daughter was unwarrantably infringed in the programme as broadcast because a photograph of them, taken during a family holiday, was included in the programme without their consent.

Mr Rich said that although they were at the far end of the table in the photograph he, his wife and their daughter were “easily visible”. Mr Rich also said that this photograph was not included in the version of the programme which he had been given to preview before the programme was originally broadcast in April 2011. He said that he had not seen the programme as broadcast at that time and was therefore unaware of the inclusion of this photograph. However, Mr Rich said that after the recent re-broadcast of the programme on BBC World News, a friend had contacted him to tell him that a photograph of him and his family had been shown in the programme.

BBC Global News Limited (“BBC Global News”) which operates BBC World News argued that Mr Rich, Mrs Rich and their daughter (“the complainants”) did not have a legitimate expectation of privacy in relation to the broadcast of this photograph.

The broadcaster said that the photograph was already in the public domain prior to this particular broadcast of the programme, i.e. 28 September 2014. BBC Global News said that prior to this broadcast, the programme in which the photograph was included was:

- broadcast on five occasions in the United Kingdom on BBC 3 in April 2011;
- available to audiences in the UK on the BBC iPlayer video on demand service for 7 days following each broadcast of the programme in April 2011;
- available to audiences around the world on YouTube between 11 October 2011 and April 2014 from where it was viewed more than 30,000 times (The YouTube video was also embedded on the producer’s websites.); and,
- licensed to and broadcast by more than 40 providers in countries around the world between March 2011 and September 2014.

BBC Global News also said that the first broadcast of the programme on BBC3 attracted widespread press coverage in both the national and local newspapers (including *The Dorset Echo* - the complainants’ local newspaper) and therefore it was reasonable to assume that Mr and Mrs Rich were aware that the programme was about to be and/or had been broadcast. (BBC Global News provided Ofcom with

copies of reviews of the original broadcast published in *The Guardian*, *The Independent*; *The Daily Express* and *Metro*.)

The broadcaster argued that given the widespread dissemination of the programme (and with it the photograph) in the three and half years during which Mr and Mrs Rich were aware of its existence (i.e. between April 2011 and 28 September 2014) Mr Rich could not claim that his privacy and that of his wife and daughter was infringed by this recent broadcast. It said that such a complaint should have been made much sooner (i.e. prior to the photograph becoming so widely available in the public domain); no such complaint was received; and, therefore the photograph could not be considered private (to Mr and Mrs Rich and their daughter) in September 2014.

BBC Global News also said that Mr and Mrs Rich did not object to the inclusion of the photograph in the programme after they had received a copy of the programme to preview before the original broadcast. It said that prior to broadcast of the programme, the film maker, Mr Leech, provided Mrs Rich with a preview copy of the programme in fulfilment of a verbal agreement he made with her and that she and Mr Rich would be able to view the programme prior to its broadcast on BBC3. The broadcaster said that Mr Leech's recollection was that the preview copy of the programme was the final – or very close to final – version of the programme that was broadcast a few weeks later. BBC Global News acknowledged that, because of the length of time which has passed, neither Mr Leech nor the producer could supply the exact date on which the preview copy was provided. Nor was it possible for them to identify which version of the programme was provided to Mr and Mrs Rich. However, it said that the producer recently viewed each of the last three sequential versions of the programme which were in existence prior to the first broadcast of the programme (the oldest of which was dated February 2011 – two months prior to broadcast) and confirmed that the photograph was included in each version. BBC Global News said that therefore, Mr Leech and the producer were confident that the photograph was included in the preview copy of the programme provided to the complainants. It also reiterated that neither Mr Leech nor the producer received any feedback from Mr and Mrs Rich after they were given a copy of the programme to preview. It added that given Mr Leech's confidence that the photograph was included in that preview copy, neither he nor the producer had any reason to suspect that Mr and Mrs Rich objected to the inclusion of the photograph in the programme. The broadcaster said that it was more likely than not that the programme previewed by Mr and Mrs Rich did include the photograph complained about given Mr Leech's recollection of the matter and the producer's confirmation that the last three versions of the programme included the photograph.

In addition, BBC Global News argued that, even if Ofcom rejected its arguments (i.e. that at the time of this broadcast the photograph was already in the public domain and there were no complaints about its inclusion in the programme during the three and half years it had been available to the public), the nature of the image and the date and manner in which it was broadcast meant that the complainants' did not have a legitimate expectation of privacy. In particular, BBC Global News said that:

- the complainants were not identified by name in the programme;
- they appeared in the background of the photograph which included seven¹⁷ people in addition to the complainants, each of whom was more prominent than they were;

¹⁷ There were, in fact, eight other people in the photograph.

- Mr Rich was partially obscured by his daughter and the person next to whom he was sitting and, therefore, was unlikely to be identified by anyone other than a person who already knew him and/or his connection to the rest of the family pictured;
- the photograph was taken six years before the most recent broadcast and it was therefore likely that the appearance of Mr and Mrs Rich's daughter had changed to such an extent that she could only have been identified by someone who had known her in 2008 or who knew the members of her family shown in this picture. (BBC Global News added that if Mr and Mrs Rich's daughter was identified by someone in this position there was no infringement of her privacy because the fact of her being a member of this family was already known to this person); and,
- the photograph was shown for only four seconds and viewers' eyes would naturally have been drawn to its main subjects, namely Mr Leech on the right and Mr Dart on the left side of the foreground (from the viewer's perspective).

BBC Global News also said that it had checked with the producer and Mr Leech prior to this broadcast whether any complaints had been received from anyone who appeared in the programme. It said that it was informed by the producer that no complaints had been received from the family.

In addition, BBC Global News said, that, although it did not accept that the complainants' privacy was infringed in the programme as broadcast, it recognised that they did not wish their images to be included. Therefore, it said that, as a gesture of goodwill, it would not broadcast the original version of the programme on a BBC service again and would obscure the faces of the complainants on the master version of the programme to ensure that they were not identifiable from any future transmission of the programme on a BBC channel. It also said that it had already ensured that the faces of the complainants would also be obscured in all versions of the programme which are licensed for broadcast abroad and that the original version of the programme had been removed from the producer's website and YouTube.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View on this case that Mr Rich's complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View. However, neither chose to do so.

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 and transcript of the programme as broadcast and both parties' written submissions.

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

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

Ofcom considered Mr Rich's complaint that his privacy and that of his wife and daughter was unwarrantably infringed in the programme as broadcast because a photograph of them, taken during a family holiday, was included in the programme without their consent.

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

Ofcom began by assessing the extent to which each of the complainants (i.e. Mr Rich, Mrs Rich and their daughter) had a legitimate expectation of privacy in regard to the inclusion of the photograph in this particular programme.

As set out in the "Introduction and programme summary" section above, the programme showed a photograph of eleven people, including the three complainants and both Mr Leech and Mr Dart, having a meal together. Viewers were informed that this was a photograph taken during a family holiday in Cyprus in 2008. In addition, the programme stated that this was the last time Mr Leech saw Mr Dart before he was radicalised. We noted too that the programme had said that Mr Dart wanted to "*make Britain an Islamic state*".

In our opinion, viewers would have understood that all the people in the photograph (including the complainants) were related or closely linked to Mr Leech and Mr Dart, and that Mr Dart was actively engaged in trying to turn Britain into an Islamic state. Further, by the time the programme was broadcast on 28 September 2014, Mr Dart, also known as Salahuddin al-Britani, had been convicted in March 2013 of preparing acts of terrorism and sentenced to six years in prison and that both his conviction and sentence attracted widespread press coverage.

We further observed that, after submitting his complaint (but before his complaint was entertained by Ofcom), Mr Rich told Ofcom in an emails dated 6 and 17 November 2014 that the "use of the picture put his family in jeopardy" and said "our images being part of the documentary has associated us with it and has the potential to put us in danger". Mr Rich complained that their privacy had been infringed because they had not consented to the broadcast of this photograph of them in the programme.

BBC Global News argued that the complainants did not have a legitimate expectation of privacy with regard to the inclusion of the photograph in this broadcast of the programme because the photograph was already in the public domain.

The Code's statement on the meaning of "legitimate expectation of privacy" makes clear that such an expectation:

“...will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye. There may be circumstances where people can reasonably expect privacy even in a public place...People under investigation or in the public eye, and their immediate family and friends, retain a right to a private life, although private behaviour can raise issues of legitimate public interest”.

Ofcom was not persuaded by BBC Global News' argument that the fact that the photograph included in the programme had already been widely disseminated (as a result of previous broadcasts of the programme) would automatically deprive Mr and Mrs Rich and their daughter of any legitimate expectation of privacy that they might have in respect to a subsequent broadcast of the photograph. In our view, individuals are not necessarily deprived of their right to privacy if information in respect of which they claim that right has been put into the public domain in the past. Each case must be considered on its own merits.

In considering this case, we noted that BBC Global News said that despite Mr and Mrs Rich being sent a preview of the programme, which it said was more likely than not to have included the photograph (and, in the view of BBC Global News, being likely to have been aware in April 2011 that the programme was about to be or had been broadcast), the complainants did not complain about the inclusion of this photograph in the programme in the three and half years between its initial broadcast and this most recent broadcast (see 'Summary of the complaint and the broadcaster's response section' above for further details). In contrast, Mr and Mrs Rich said that the version of the programme which they were given to preview prior to the initial broadcast of this programme did not include the photograph. Whether or not the preview of the programme provided to Mr and Mrs Rich included the photograph was a matter of some dispute between the parties. This is a factual matter which Ofcom is not able to resolve. However, we note that even if the photograph had been included in the preview copy this would not necessarily amount to consent.

In assessing whether Mr Rich, Mrs Rich and their daughter had a legitimate expectation of privacy in respect of the broadcast of the photograph in this programme, we also took account of the extent to which they were identifiable and the nature of the information conveyed to viewers as a result of the inclusion of this photograph in the programme.

We observed that the photograph was shown briefly (for approximately four seconds), all three members of the Rich family were seen from a distance, and, none were referred to by name. We noted too BBC Global News' argument that viewers' eyes would be drawn to the subjects at the front of the photograph (i.e. Mr Leech and Mr Dart).

We observed that it was possible to discern the faces of both Mrs Rich and her daughter from the photograph as shown in the programme but not that of Mr Rich because his face was almost completely hidden by his daughter who was sitting on his lap and the woman sitting beside him.

We also observed that Mr and Mrs Rich's daughter was very young when the photograph was taken and was still a minor at the time this most recent broadcast took place. As BBC Global News noted in its response to the complaint, her appearance was likely to have changed dramatically between the time when the

photograph was taken and the time when this programme was broadcast (i.e. six or seven years later).

In addition, we noted that in his complaint Mr Rich said that a friend had watched the documentary and brought the inclusion of the photograph in it to his attention and in one of his aforementioned emails to BBC Global News Mr Rich said that after the broadcast an associate wrote to him and asked if it was him in the documentary with his daughter on his lap.

In light of these observations we concluded that the complainants were identifiable from the inclusion of the photograph in the programme, albeit only to people to whom they and/or their immediate family members were already known.

The photograph itself showed an innocuous scene of a family having dinner together while on holiday. While this was a family photograph and Mr and Mrs Rich may have preferred that it not to be included in the programme or, if it was, for both their faces and that of their daughter to have been obscured by the broadcaster, we considered that there was nothing particularly private or sensitive depicted in the photograph. Further, although viewers were told (by Mr Leech) that the photograph was taken on a family holiday in Cyprus in 2008, no sensitive or particularly private details about the circumstances or the precise location in which the photograph was taken were broadcast.

As set out above, we considered that the programme indicated that everyone in the photograph was related or closely connected to Mr Dart. However, we noted that this information had been in the public domain for three and half years prior to this broadcast and in the absence of any complicating issues (which would themselves need to have been set out within the original complaint), the information that one person has a familial relationship with another person would not necessarily be considered a private matter. We also noted that nothing in the programme suggested that anyone other than Mr Dart himself was in any way associated with or involved in Mr Dart's activities after he became radicalised. Rather, the programme focused on Mr Leech's attempts to understand how his step-brother had gone from taking part in normal family life to becoming fully engaged in a struggle to turn Britain into an Islamic state. We also noted that Mr and Mrs Rich's daughter was very young when the photograph was taken and still a minor when this programme was broadcast.

Taking all the factors detailed above in to account and in particular that the photograph in question was a family photograph and the complaints were identified as the people shown in the photograph after its inclusion in this programme (albeit apparently by people to whom they were already known) we considered that Mr and Mrs Rich and their daughter had a legitimate expectation of privacy in respect of the inclusion of the photograph in this programme.

However, in our view, their expectation of privacy in this regard was limited, to varying degrees, by a number of factors. In particular, that:

- prior to this broadcast of the programme the photograph had been in the public domain for three and half years (by virtue of the fact it had been included in previous broadcasts of the programme which shown on BBC 3 and other channels to which the programme had been licensed and which had been available on the BBC iPlayer);
- the broadcast of the photograph did not disclose what Mr Rich looked like in a manner that would render him recognisable to anyone who did not already know both him and his immediate family; and

- the photograph disclosed what Mrs Rich and her daughter looked like at the time the photograph was taken, however, it disclosed no other information about them.

Having concluded that the complainants had a legitimate, albeit limited, expectation of privacy in regard to the broadcast of the photograph in this programme, we went on to consider if their privacy was infringed in this respect.

In accordance with Practice 8.6, we assessed whether, Mr or Mrs Rich had consented to the inclusion of the photograph in the programme. We noted that BBC Global News did not dispute Mr and Mrs Rich's claim that they did not consent to the inclusion of the photograph. Rather, it argued that they did not have a legitimate expectation of privacy with regard to its inclusion in this most recent broadcast of the programme. Therefore, Ofcom took the view that Mr and Mrs Rich did not consent to the inclusion of this photograph in the programme.

Given our conclusion that the complainants had a legitimate expectation of privacy in relation to the broadcast of the photograph in the programme (albeit that this expectation was limited by various factors) and that consent had not been obtained for the use of the photograph in the programme, we considered that its inclusion may have resulted in an unwarranted infringement of their privacy.

Ofcom next assessed whether or not the infringement of their privacy was warranted. The Code states that "warranted" has a particular meaning. It means that, where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy.

To decide this, we carefully balanced the broadcaster's right to freedom of expression, (as well as that of Mr Leech in his role as author of the programme), and the viewers' right to receive information and ideas without unnecessary interference against the complainants' right to privacy. In particular, we considered whether there was sufficient public interest or other reason to justify the infringement into the privacy of the complainants that resulted from the broadcast of the relevant photograph and information.

We observed that BBC Global News did not provide any specific arguments regarding why, in its view, it might be warranted to have infringed the privacy of Mr and Mrs Rich and their daughter in this respect. However, it did say that the programme explored the journey which Mr Dart made "as he became a radical Islamist who associated with jihadist fundamentalists and believed that Britain should be ruled by Sharia law". BBC Global News also said that in response to an initial complaint (made by Mr Rich to the BBC) BBC Audience Services informed Mr Rich that "the photograph was used [in the programme] to illustrate the normality of Rich's [i.e. Mr Dart's] life before he became radicalised".

In our opinion, there was a clear public interest in broadcasting a programme of this nature because it showed how someone from an apparently ordinary background, and with no previous religious or political affiliations, could become radicalised to the extent that he was willing to reject his family and espouse extremist views. We also considered that the public interest was served by the broadcast of the relevant photograph and the information about it because doing so enabled the programme to illustrate to viewers the dramatic change to Mr Dart's life that occurred as he became radicalised (i.e. from taking part in normal family life to becoming fully engaged in a struggle to turn Britain into an Islamic state). We also considered that, Mr Leech had

a right to use the photograph to illustrate his own story in the programme (i.e. that of his relationship and eventual estrangement from his step-brother).

We took into account that the photograph in question was a family photograph, that the faces of both Mrs Rich and her daughter were visible in the photograph and that the latter was a minor (both at the time the photograph was taken and when this most recent broadcast took place). However, we also noted all the factors which limited both their expectation of privacy and that of Mr Rich' in respect of the broadcast of the footage of the photograph in this programme. In particular, we noted that the footage of the photograph had been in the public domain for a long period of time prior to this broadcast and that the photograph itself conveyed no particularly sensitive information about the complainants. We also noted that in its response to the complaint BBC Global News said that prior to this most recent broadcast of the programme there had been no complaints received from the family about the programme since its original broadcast.

In light of all the factors set out above, Ofcom considered that, on balance and in the particular circumstances of this case, the public interest in broadcasting the photograph; the audiences' right to receive information broadcast without unnecessary interference and both the broadcaster's and Mr Leech's right to freedom of expression outweighed the limited expectation of privacy which the complainants had in relation to the broadcast of the photograph in this programme.

Therefore, Ofcom found that there was no unwarranted infringement of Mr and Mrs Rich's privacy or that of their daughter in the programme as broadcast.

Notwithstanding this conclusion, Ofcom welcomed BBC Global News' decision to (as a gesture of goodwill and without accepting Mr and Mrs Rich's position that their privacy was unwarrantably infringed in the programme as broadcast) take steps to ensure that the complainants would not be identifiable from any future broadcasts of the programme.

Ofcom has not upheld Mr Rich's complaint of unwarranted infringement of privacy in the programme as broadcast made on his own behalf and on behalf of his wife and daughter.

Not Upheld

Complaint by Mr Neil Swaby

Today, BBC Radio 4, 28 November 2014

Summary

Ofcom has not upheld this complaint of unjust or unfair treatment in the programme as broadcast made by Mr Neil Swaby.

The programme included two reports about the publication of the judge's comments in a care proceedings case in which two social workers, one of whom was Mr Swaby, were named and severely criticised. The programme also included critical comments about Mr Swaby made by the maternal grandparents of the child concerned in the case.

Ofcom found that:

- The broadcaster took reasonable care to satisfy itself that the programme did not present, disregard or omit material facts, with regard to the claims made about Mr Swaby in a way that resulted in unfairness to him.
- Mr Swaby was given an appropriate and timely opportunity to respond to the claims made about him in the programme and therefore there was no unfairness to him in this respect.

Introduction and programme summary

On 28 November 2014, BBC Radio 4 broadcast an edition of its news and current affairs programme *Today*. The programme included two reports about a judgment in a care proceedings case in June 2014 which had just been published. The case concerned attempts by social workers working for North East Lincolnshire Council ("the Council") to ensure that a three year old boy, whose mother had been unable to look after him due to her drug problems (she subsequently died), was adopted rather than continuing to live with his maternal grandparents who were already caring for the boy's older sibling.

News Report 1

The presenter introduced the first report by saying: "*A judge has described social workers who tried to take a child away from its grandparents and have the boy adopted as 'visibly biased'*". The reporter then said:

"when the case was heard the judge said that two of the social workers in the case were 'visibly biased'...against the grandparents and had 'grossly overstated' their concerns in order to achieve their ends. He said that this was the first time he had seen this in over ten years of hearing cases like this. He said it was very unfortunate. He hoped he'd never see it again. He threw the case out and the little boy has been living with his grandparents ever since".

The reporter went on to discuss the Government's recent call for more children to be adopted and the way in which family courts were dealing with such cases.

The reporter then said: *“campaigners say there has been quite a lot of poor practice by social workers, by local authorities, in this area and what we’re seeing is that more and more it’s being put under scrutiny as it was in this case”*.

The presenter said that it was *“quite tough for the social workers concerned, they’ve now been named in court”*. The reporter responded: *“because there’s been this drive to greater, towards greater, openness in the family courts...part of that drive towards transparency involves naming and shaming individuals be they experts, be they social workers. This is what the President¹⁸ wanted, but as you say, for the individuals concerned it’s quite a tough thing”*.

News Report 2

The second news report, like the first was introduced by the presenter. However on this occasion he named two of the social workers involved in the case. He said: *“the judge said both Neil Swaby and Rachel Olley, social workers from North East Lincolnshire [Council], had ‘grossly overstated’ their concerns to try to ensure that a toddler was adopted rather than brought up by his grandparents”*.

The reporter then said that the boy’s grandparents had told her *“how local authority social workers set out to have their baby grandson adopted ‘though they were ready to care for him’”*.

The following comments by the grandparents (spoken by actors) were then broadcast:

Grandmother: *“When he were about six week’s old we were informed by a social worker that if he had his way he would go up for adoption and he didn’t care how long it took. I asked him ‘why?’ and he said we’ve got our reasons.*

Grandfather: *No way would he go for adoption. No way.*

Grandmother: *We had his older brother. Family’s got to stick together and as far as we were concerned he would come to us”*.

The reporter explained that the couple’s daughter had had drug problems and therefore could not look after her child and that the social worker assigned to the case was *“Neil Swaby of North East Lincolnshire Children’s Services”*. She added: *“According to the couple, he didn’t like being challenged or having his advice ignored”*.

The actor voicing the grandmother’s words was then heard saying:

“He told me I had to fight him and I said ‘who do you think you are, God?’ and he said: ‘in this situation yes, get used to it. Your grandson will go up for adoption’”.

The reporter said that *“in court, the local authority claimed the couple were busy with their other children and they said their house was too small to accommodate another child but the judge was not convinced”*. She then talked about the trend encouraging judges to consider adoption only as a last resort, before the actor voicing the grandfather’s words was heard saying:

¹⁸ The Rt. Hon. Sir James Munby, President of the Family Division of the High Court of England and Wales.

“Only the very last day when the social worker was giving her evidence and the judge asked her to leave the courtroom and he asked her advocate to stand up and he said to her basically your case is a shambles and he threw it out of court. I could have hugged that judge I could. I’ve never known anything like it”.

The reporter added *“The judge said that the local authority’s case was ‘wholly undermined’; that the social workers’ concerns appeared to be ‘grossly overstated’ to try to achieve their ends. He said that one of the social worker’s gave contradictory evidence”.*

The report then included a contribution from the grandparent’s solicitor, who quoted some of the judge’s remarks about the social workers’ actions’ in this case, followed by a response from the Council. The reporter said that a spokesman from the Council told the programme that:

“The authority had carefully considered the judgment and...there had been a rigorous process to support the social workers in preparing their evidence. He said the Council was committed to ensuring the best outcomes for children and young people and, where possible, to allow them to stay with their extended family. And, he said the Council had reminded social workers of the importance giving a balanced point of view whilst recognising their right to give a professional judgement on specific cases as required”.

The reporter added that *“Neil Swaby could not be reached for comment”* before introducing a contribution from Ms Olley’s trade union representative who discussed the union’s concern that the local authority was allowing Ms Olley to be *“scapegoated”*.

The reporter then observed that as more people were being named in court cases some people were questioning *“whether it’s fair to single out individuals”*, but that families involved in these cases welcomed it.

The report ended with the following comments made by the grandparents (again voiced by actors):

Grandfather: *“I think it’s brilliant. Why should they, as so called professionals, not be named in a judgment that is so damning? Even the judge said he’d never known anything like it in all those years of sitting on the bench so why their identity should be protected?”*

Grandmother: *They need naming and shaming because they put my grandson, my family [and] the paternal family, through hell”.*

Follow-up Discussion

Later in the programme, the presenter interviewed Ms Maris Stratulis, who was described as *“England Manager for the British Association of Social Workers (“BASW”)”*. Ms Stratulis said that the BASW was concerned about the naming of individual social workers in cases such as the one previously discussed in the programme. She said that the proceedings were *“incredibly complex”* and that social workers do not work alone, but as part of a managed local authority team. She also spoke about the consequences for the social workers and the profession in general. Ms Stratulis said that BASW strongly supported professional accountability, but considered that there were *“issues with leadership and governance in local authorities”* and, again noted, that *“social workers do not act alone”*.

The presenter then said, *“but this is a case where someone, apparently said, the grandparents complained ‘you’re acting like God’ and the social worker, one of the social workers, said ‘yes, for the purposes of this I am’ in other words they were incredibly high-handed to put it mildly and actually a lot of people might feel it’s perfectly right that they are named – we know who they are”*.

Ms Stratulis said that she could not comment on the individual case, however, she said that there were other roles in the court system, notably children’s guardians, who were subjected to *“different levels of accountability”*. She added that she understood that in this case (i.e. that in which the complainant and his colleague were named) there was *“a children’s guardian [who] also...support[ed] the action that the local authority was pursuing”*. Ms Stratulis also spoke about the pressures on social workers as a result of budget cuts and the 26-week timeline for completing adoption proceedings.

The programme included no further discussion about the court case in which Mr Swaby was named.

Summary of the complaint and the broadcaster’s response

- a) Mr Swaby complained that he was treated unjustly or unfairly in the programme as broadcast because the programme included “unfounded allegations” made by the grandparents of the child on whose case he had worked, about things he was alleged to have said and done during the course of the case. In particular, Mr Swaby said that he did not make the following comments attributed to him by the grandmother:

“... if he [Mr Swaby] had his way, he [the child] would go up for adoption and he didn’t care how long it took. I asked him ‘why?’ and he said: ‘we’ve got our reasons’”; and,

“He told me I had to fight him and I said ‘who do you think you are, God?’ and he said: ‘in this situation yes, get used to it. Your grandson will go up for adoption’”.

Mr Swaby said that these comments go “against the very essence of being a social worker”; that decisions about where children should live are made by the court (and he had “never pre-empted a court’s decision regarding the future of ‘at risk’ children”); and, his role was not to make a decision about whether the child should or should not go up for adoption but, as with all social workers, to make recommendations based on the evidence before him. Mr Swaby said that in light of this, he “would not and certainly did not say [either] of the [comments] above”.

With regard to the grandparents’ view that *“he didn’t like being challenged or having his advice ignored”*, Mr Swaby said, given his role was to protect vulnerable and ‘at risk’ children, he was used to being challenged and ignored. He added that, in his view, this comment appeared to have been broadcast “purely to continue painting me in a negative manner”. Mr Swaby also said that he had written to the BBC after the broadcast to inform it that his “reputation had been ruined personally and professionally”.

In response to the complaint, the BBC said that in finding that the child concerned should live with his maternal grandparents, His Honour Judge Jack (the judge in the care proceedings) took the unusual step of naming Mr Swaby and another social worker and subjecting them to serious criticism. The BBC quoted several

sections of the judgment by way of illustration. For example, the judge's comments that "Neil Swaby seemed very reluctant to accept that anything positive could be said about either set of grandparents" and that he had "the very strong impression that the local authority witnesses were intent on playing up any factors which were unfavourable to the grandparents and playing down any factors which might be favourable". The judge added that "In those circumstances, I found it very difficult to give any weight at all to their evidence". The BBC also quoted the full passage (parts of which were included in the programme) in which the judge said that, in his view, the social workers in this case "were visibly biased in their attempts to support the local authority's case" and "their concerns appeared to be grossly overstated in order to achieve their ends".

The BBC said that the judge's remarks indicated that in approaching the evidence with bias in favour of the local authority's case, Mr Swaby had not weighed it on its merits as his professional duty towards the child's best interests would have required. Rather, his primary concern seemed to have been to avoid undermining the Council's case. This, it said, involved overlooking or seeking to undervalue evidence which should properly have been taken into account.

The broadcaster said that Mr Swaby's complaint that the inclusion of the grandparents' remarks in the report was unfair to him because they were untrue rested entirely on his own denial and it argued that the judge's observations cast doubt on Mr Swaby's credibility. The BBC said that the remarks were the honest recollection of the maternal grandparents and that they had attested to their own veracity in making these remarks by confirming that they would be willing to make sworn statements to this effect. Given this, the programme decided to reflect their account of conversations with Mr Swaby in the report. The BBC said that there was no reason to doubt the grandparents' credibility. It said that the judge offered no reason to do so and had said that "there are many positive things to be said" about the grandparents.

The BBC accepted that it would have been preferable if the grandparents' remarks had been accompanied by a comment from Mr Swaby, but it said that this was not possible, despite the best endeavours of the programme's reporter for reasons it set out in response to head b) of the complaint (see response to head b) below).

The broadcaster also contested Mr Swaby's argument that it was unfair to broadcast the grandparents' remarks, because they adversely reflected on his professional conduct as a social worker. It said that the judge's comments showed that Mr Swaby's conduct as a social worker was far from exemplary and that he appeared, in giving evidence, to subordinate the interests of the child to the interests of the Council.

The BBC also said that it was disingenuous of Mr Swaby to suggest that a decision regarding the future of the child in question would have had little to do with him and was entirely a matter for the courts because, in making such decisions, the courts place considerable weight on the considered judgement of professionals, such as Mr Swaby, involved in the case.

- b) Mr Swaby also complained that he was treated unjustly or unfairly in the programme as broadcast because he was not given an appropriate and timely opportunity to respond to the allegations made about him in the programme by the grandparents.

In particular, Mr Swaby said that he had received a letter from the programme makers on 26 November 2014 informing him about the plan to broadcast a report about the court judgment in which he and his colleague were named and criticised and inviting him to comment only on the evening before the programme was due to be broadcast. He also said that the letter did not explain that the programme would include the critical comments about him made by the grandparents.

By way of background, Mr Swaby said that the letter included two copies of the judgment and asked that he contact the programme. However, he was unable to respond, because he did not receive the letter until 19:30 on the evening of 26 November 2014, the day before the programme was due to be broadcast, and because of the confidential nature of his work. Mr Swaby also said that if he had been told that the programme would include comments made by the family involved that amounted to “a personal attack” on his professional name, he would have handled the matter entirely differently. Specifically, he would have taken advice and responded accordingly. He added that in the event, he had neither an appropriate nor timely opportunity to defend himself against the interview that was broadcast.

In response, the BBC set out the details of the programme makers’ attempts to give Mr Swaby an opportunity to comment on the report it intended to broadcast. It said the judgment was published on 25 November 2014 and that the reporter, having concluded that the ruling raised significant issues relating to the openness of the Family Court and the naming of social workers concerned in such cases, immediately contacted the Council and the BASW for help in contacting Mr Swaby. The reporter also wrote to Mr Swaby directly at his home address. The BBC said that although Mr Swaby said that he did not receive this letter until the evening of 26 November 2014, it was delivered, and signed for, by Mrs Amanda Lewin, his wife, at 10.49 that morning (a copy of the proof of delivery form was provided to Ofcom). The broadcaster said that as well being Mr Swaby’s wife, Mrs Lewin was the company secretary of Swaby Lewin Consultants Limited (which listed Mr Swaby as its only director). It argued that, because the letter was addressed to Mr Swaby at Swaby Lewin Consultants, there was no reason why Mrs Lewin, as company secretary, should not have opened it and conveyed its contents to Mr Swaby.

The letter said:

“I’m a reporter on the *Today Programme* BBC Radio 4. I’m working on a piece for Thursday morning’s programme about the judgment in a case you were involved in back in June. The judge was very critical of you and your colleague Rachel Olley.

The judgment has now been published on the legal website Bailii.

I would like to talk to you: I’d be grateful if you would contact me”.

The BBC said that the letter clearly set out that that the focus of the report was to be the judge’s finding, but did not suggest that the report would be confined specifically to the judge’s remarks and could not reasonably be construed as a request for a specific response to the judge’s remarks. Rather, it was notification that a report was being prepared and an invitation to contact the reporter to discuss it. It said that if Mr Swaby had responded to the invitation he would have

been told in full about what the report might contain and been in a position to decide whether to respond or not. That he chose not to was a matter for him.

The BBC said that, having not received a response from Mr Swaby on 26 November 2014, the programme makers decided to hold the report over for 24 hours to give him additional time to respond. However, when no response was received from him directly or via the Council or the BASW (who had also been asked to contact him), they decided to broadcast the report on 28 November 2014.

The broadcaster also said that later the same day (28 November 2014) Mrs Lewin told a reporter from *Look North* (who had gone to Mr Swaby's home to inform him that the material from *Today* would feature in that evening's edition of the news programme on BBC1 and invite him to respond specifically to the comments made by the grandparents) that Mr Swaby had no comment to make. The BBC said that this response suggested that Mrs Lewin and Mr Swaby had previously discussed the matter and, given the timing (i.e. after the grandparents' remarks had already been broadcast in the *Today* programme) contrasted with Mr Swaby's assertion in his complaint that, had he known about the comments the grandparents would make in the *Today* programme, he would have made a response to the programme.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View on this case that Mr Swaby's complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View. However, neither chose to do so.

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 both parties' written submissions.

When considering complaints of unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("the Code"). Ofcom had regard to this Rule when reaching its Decision on the individual heads of complaint detailed below.

- a) Ofcom first considered Mr Swaby's complaint that he was treated unjustly or unfairly in the programme as broadcast because it included "unfounded allegations" made by the grandparents about things he was alleged to have said

and done during the course of the case (as set out in head a) of “The Complaint” section above).

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

Mr Swaby complained that he did not make the comments attributed to him by the grandparents. It is important to clarify at the outset that it is not for Ofcom to investigate and adjudicate on whether information broadcast or omitted is factually correct or not. Rather, our role is to decide whether the inclusion or omission of the information amounted to unjust or unfair treatment of an individual or organisation.

As set out in the “Introduction and Programme Summary” section above, the second report in the programme included a number of comments made by the maternal grandparents of the child who was the subject of the care proceedings about the conduct of the social workers during the case and the judge’s finding. Both Mr Swaby and his colleague, Ms Rachel Olley, were named during this second report. However, when making the relevant comments, the grandmother referred to the social worker in question as “*he*”. Therefore, we considered that listeners would have understood that the grandmother was referring to Mr Swaby alone when she made her comments and that this was also the case for whichever grandparent told the reporter that: “*he didn’t like being challenged or having his advice ignored*”.

We observed that the relevant comments were the recollections and opinions of the grandparents. We considered that in light of the publication of the judge’s ruling on this hearing and, in particular, the critical nature of his comments about the actions of the named social workers in this case, it was reasonable for the programme to have included the grandparents’ response to the judgment and their recollection of the events surrounding the case generally.

We noted that the grandparents were, of course, first-hand witnesses to their own interactions with Mr Swaby regarding the future care of their grandchild and that the BBC’s statement noted that the judge had given no reason to doubt their credibility. In addition, we considered that listeners to the programme would have understood that these comments were the grandparents’ own recollections of these events and reflected their opinion of their interactions with Mr Swaby.

We also considered that, from the programme, listeners would have had a clear understanding of the background against which the grandparents’ comments about Mr Swaby were made – namely, the fact that the judge had felt that in this particular case, it was warranted to take the unusual step of naming and publically criticising two social workers, one of whom was Mr Swaby for the way they conducted themselves in the case.

In its response to this complaint, the BBC accepted that it would have been preferable to have included a comment from Mr Swaby about the matters considered in the programme, but that it had not been possible (see Decision at head b)). However, Ofcom noted that the programme made it clear to listeners that it had been unable to secure such a comment from Mr Swaby when the reporter said: “*Neil Swaby could not be reached for comment*”.

We also noted that the programme included an alternative viewpoint – i.e. one in which the judge’s decision to name and criticise individual social workers – was challenged. In particular, towards the end of the second report the programme included a contribution from a trade union representative (working on behalf of Ms Olley, Mr Swaby’s colleague) who discussed the union’s concern that the local authority was allowing Ms Olley to be “*scapegoated*” and the reporter subsequently presented this side of the debate by saying that some people were questioning “*whether it’s fair to single out individuals*” for criticism. Also in the programme, Ms Statulis (representing BASW) raised a number of concerns about the naming of individual social workers in this type of case. We noted that the presenter challenged her position by saying that in this recent case (in which Mr Swaby was involved) “*someone, apparently said, the grandparents complained ‘you’re acting like God’ and the social worker, one of the social workers, said ‘yes, for the purposes of this I am’ in other words they were incredibly high-handed to put it mildly and actually a lot of people might feel it’s perfectly right that they are named*”. Initially, Ms Statulis said that she could not comment on the individual case. However, as well as making the broad point that other roles in the court system (i.e. people involved in decisions about the care of children who were not social workers) were subjected to “*different levels of accountability*”, Ms Statulis also said that she understood that the person acting as the children’s guardian in the recent case *also...support[ed] the action that the local authority was pursuing*”.

Taking into account all the factors set out above, and, in particular, the context in which the grandparents’ comments about Mr Swaby were broadcast and that it was made it clear that the programme had been unable to secure a comment from Mr Swaby, we considered that the broadcaster took reasonable care to satisfy itself that the programme did not present, disregard or omit material facts with regard to Mr Swaby in a way that resulted in unfairness to him.

Ofcom therefore found that there was no unfairness to Mr Swaby in this respect.

- b) Ofcom next considered Mr Swaby’s complaint that he was treated unjustly or unfairly in the programme as broadcast because he was not given an appropriate and timely opportunity to respond to the allegations made about him in the programme by the grandparents (i.e. the three comments referred to in head a) above).

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

As noted above, the programme included three specific comments, made by the grandparents, about Mr Swaby’s conduct or attitude towards them during the local authority’s consideration of whether their grandson should continue to live with them or be placed for adoption. Given the nature of these comments, we considered that they amounted to an allegation of wrongdoing on Mr Swaby’s part and that, in accordance with Practice 7.11, it was necessary for the broadcaster to have given Mr Swaby an appropriate and timely opportunity to respond to them, and to the more general, critical comments made in the judgment about his conduct in order to avoid unfairness to him.

We observed that on 25 November 2014, the day on which the judgment was published, the reporter contacted the Council and the BASW for help in

contacting Mr Swaby and also sent a letter to him at his home address. The letter informed Mr Swaby of the plan to broadcast a piece “about the judgment in a case you were involved in back in June” on Thursday morning [i.e. 27 November 2014]. It also said that “the judge was very critical” of him and his colleague and invited Mr Swaby to contact the reporter so that could “talk”.

In his complaint, Mr Swaby said that if he had been told that the programme would include the relevant comments made about him by the grandparents he would “have taken advice and responded accordingly” (Ofcom understood this to mean that Mr Swaby would have contacted the programme makers to respond to these comments). However, as noted above, we considered that in order to avoid unfairness to Mr Swaby it was necessary for the broadcaster to offer him an opportunity to respond to the criticisms it planned to broadcast about him as a whole, i.e. including the judge’s remarks, rather than solely and specifically the grandparents’ comments about him. We also noted that, in its response to this complaint, the BBC said that if Mr Swaby had contacted the programme makers after receiving the reporter’s letter he would have been told in full about what the report might contain and been in a position to decide whether to respond.

Mr Swaby also complained that he received the reporter’s letter “only on the evening before the programme was due to be broadcast” and that, as a result, he was unable to respond. He also said that he was unable to respond because of the confidential nature of his work. Mr Swaby also said that the story was not broadcast until 28 November 2014, but that he was not informed of this change.

Ofcom noted that the BBC said that the letter in question was addressed to Mr Swaby at his consultancy business (which was located at his home address) and had been signed for by Mr Swaby’s wife, Mrs Lewin, at 10:49 on the 26 November 2014. We also noted the BBC’s argument that, given that Mrs Lewin was the business’ company secretary and Mr Swaby its sole director, there was no reason why Ms Lewin should not have opened it and conveyed its contents to Mr Swaby. In addition, we observed that when the programme makers did not receive a response from Mr Swaby on 26 November 2014 they delayed the broadcast of the reports by 24 hours in order to give Mr Swaby further time in which to respond, although, on the information available, it appeared that they did not inform Mr Swaby of this decision.

In our opinion, this delay gave Mr Swaby time in which to contact the reporter and formulate a response and, if he felt it necessary to do so, to speak to his employers about any concerns he had regarding confidentially. It was only after the programme makers had received no response either from Mr Swaby directly or via the Council or the BASW on his behalf on 27 November 2014 that they decided to broadcast the reports in the absence of a comment from Mr Swaby.

Ofcom also noted that the reports concerned a current news story (namely the publication of the judge’s finding and specifically his decision to name the social workers whom he had criticised), and, although this news story was not one which was rapidly unfolding, the expectation amongst the programme’s audience would be that reports of this nature would be broadcast on or soon after the event in question, namely the publication of the judgment.

Taking account of all the factors set out above, and notably the actions taken by the programme makers to try to secure a response from Mr Swaby to the reports it planned to broadcast (including its decision to delay the broadcast of the reports), we took the view that Mr Swaby was given an appropriate and timely

opportunity to respond to the criticisms made about him in the programme, including the remarks made by the grandparents. Therefore, Ofcom found that there was no unfairness to Mr Swaby in this respect.

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

Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 5 and 18 May 2015 and decided that the broadcaster did not breach Ofcom's codes, licence conditions or other regulatory requirements.

Investigations conducted under the Procedures for investigating breaches of content standards for television and radio¹

Programme	Broadcaster	Transmission date	Categories
Doctors	BBC 1	27/02/2015	Offensive language
Don't Tell The Bride	BBC 3	17/02/2015	Race discrimination/offence
Iain Lee	BBC Three Counties Radio	20/02/2015	Race discrimination/offence
NCIS: Los Angeles	Channel 5	20/03/2015	Violence and dangerous behaviour
Super Scoreboard	Clyde 1	14/03/2015	Race discrimination/offence
Off Their Rockers	ITV	22/03/2015	Transgender discrimination/offence
The Jeremy Kyle Show	ITV	03/02/2015	Generally accepted standards
Drivetime	Panjab Radio	06/03/2015	Due impartiality/bias

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

¹ This table was amended after publication to correct a factual inaccuracy.

Complaints Assessed, Not Investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 5 and 18 May 2015 because they did not raise issues warranting investigation.

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

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

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Sunny Beach	4Music	10/05/2015	Gender discrimination/offence	1
UKIP: The First 100 Days	4OD	n/a	Outside of remit / other	1
Advertisement	4Seven	02/05/2015	Advertising content	1
Big Brother	5*	14/05/2015	Nudity	1
GPs: Behind Closed Doors	5*	05/05/2015	Generally accepted standards	1
NCIS	5USA	17/04/2015	Scheduling	1
Panth Ki Awaaz	Akaal Channel	05/12/2014	Crime	1
Discussion Show	Ambur Radio	20/03/2015	Elections/Referendums	1
Solid Hits	B4U Music	26/04/2015	Scheduling	1
Competitions	BBC / ITV / Channel 4 / Channel 5	n/a	Competitions	1
Atlantis	BBC 1	16/05/2015	Scheduling	1
BBC News	BBC 1	04/05/2015	Elections/Referendums	1
BBC News at One	BBC 1	05/05/2015	Elections/Referendums	1
BBC News at Ten	BBC 1	04/05/2015	Elections/Referendums	1
BBC News at Ten	BBC 1	05/05/2015	Elections/Referendums	1
BBC News Special	BBC 1	02/05/2015	Outside of remit / other	1
Breakfast	BBC 1	13/05/2015	Gender discrimination/offence	1
Casualty	BBC 1	25/04/2015	Generally accepted standards	1
Channel ident	BBC 1	28/04/2015	Promotion of products/services	1
Countryfile	BBC 1	17/05/2015	Generally accepted standards	1
EastEnders	BBC 1	21/04/2015	Scheduling	1
EastEnders	BBC 1	28/04/2015	Drugs, smoking, solvents or alcohol	1
EastEnders	BBC 1	n/a	Generally accepted standards	1
EastEnders (trailer)	BBC 1	11/05/2015	Scheduling	1
Election 2015	BBC 1	30/04/2015	Elections/Referendums	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Election 2015	BBC 1	07/05/2015	Elections/Referendums	5
Election 2015	BBC 1	08/05/2015	Elections/Referendums	1
Have I Got a Bit More Election News for You	BBC 1	11/05/2015	Due impartiality/bias	1
Have I Got a Bit More News for You	BBC 1	20/04/2015	Transgender discrimination/offence	1
Have I Got News for You / The Graham Norton Show	BBC 1	15/05/2015	Due impartiality/bias	1
Inspector George Gently	BBC 1	06/05/2015	Disability discrimination/offence	1
Inspector George Gently	BBC 1	06/05/2015	Elections/Referendums	1
Ordinary Lies	BBC 1	07/04/2015	Generally accepted standards	1
Question Time	BBC 1	08/05/2015	Elections/Referendums	1
Question Time	BBC 1	14/05/2015	Due impartiality/bias	2
Question Time Election Leaders Special	BBC 1	30/04/2015	Elections/Referendums	15
Regional News and Weather	BBC 1	06/05/2015	Elections/Referendums	2
Sunday Politics	BBC 1	03/05/2015	Elections/Referendums	1
The British Academy Television Awards	BBC 1	10/05/2015	Due impartiality/bias	1
The Leader Interviews	BBC 1	13/04/2015	Race discrimination/offence	1
The Leader Interviews	BBC 1	22/04/2015	Elections/Referendums	1
The One Show	BBC 1	15/05/2015	Generally accepted standards	1
The Voice UK	BBC 1	28/03/2015	Offensive language	1
Who Will Win the Election?	BBC 1	27/04/2015	Crime	8
Election 2015	BBC 1 Scotland	07/05/2015	Race discrimination/offence	1
Reporting Scotland	BBC 1 Scotland	04/05/2015	Due accuracy	1
Ashya: The Untold Story	BBC 2	12/05/2015	Due impartiality/bias	1
Charlie Brooker's Election Wipe	BBC 2	06/05/2015	Offensive language	2
Eat to Live Forever with Giles Coren	BBC 2	18/03/2015	Animal welfare	2
Inside No 9	BBC 2	16/04/2015	Generally accepted standards	1
Just Good Friends	BBC 2	13/04/2015	Offensive language	1
Newsnight: A Family Affair	BBC 2	20/11/2000	Outside of remit / other	1
The Daily Politics	BBC 2	04/05/2015	Elections/Referendums	1
The Daily Politics	BBC 2	05/05/2015	Elections/Referendums	1
Top Gear	BBC 2	n/a	Outside of remit / other	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Victoria Derbyshire	BBC 2	30/04/2015	Advertising/editorial distinction	1
Don't Tell the Bride	BBC 3	29/04/2015	Scheduling	1
Indiana Jones and the Kingdom of the Crystal Skull	BBC 3	27/04/2015	Offensive language	1
Programming	BBC Channels	n/a	Elections/Referendums	2
Programming	BBC Channels / LBC 97.3 FM	01/05/2015	Elections/Referendums	1
BBC News	BBC News Channel	17/04/2015	Race discrimination/offence	1
BBC News	BBC News Channel	03/05/2015	Elections/Referendums	1
BBC News	BBC News Channel	05/05/2015	Elections/Referendums	1
BBC News	BBC News Channel	06/05/2015	Elections/Referendums	1
BBC News	BBC News Channel	10/05/2015	Sexual orientation discrimination/offence	1
The Papers	BBC News Channel	08/05/2012	Race discrimination/offence	1
Victoria Derbyshire	BBC News Channel	12/05/2015	Due impartiality/bias	1
Dev	BBC Radio 1	10/05/2015	Offensive language	1
Trevor Nelson	BBC Radio 1Xtra	03/03/2015	Race discrimination/offence	1
BBC News	BBC Radio 2	04/05/2015	Elections/Referendums	1
Jeremy Vine	BBC Radio 2	05/05/2015	Elections/Referendums	1
Crossing Continents	BBC Radio 4	23/04/2015	Race discrimination/offence	2
Dead Ringers	BBC Radio 4	25/04/2015	Offensive language	1
PM	BBC Radio 4	06/05/2015	Elections/Referendums	1
The News Quiz	BBC Radio 4	15/05/2015	Due impartiality/bias	1
The Today Programme	BBC Radio 4	07/04/2015	Elections/Referendums	1
The Today Programme	BBC Radio 4	06/05/2015	Elections/Referendums	1
Ashfield Constituency Hustings	BBC Radio Nottingham	23/04/2015	Elections/Referendums	1
Alex Lester	BBC Radio Oxford	24/04/2015	Scheduling	1
Iain Lee	BBC Three Counties Radio	28/04/2015	Outside of remit / other	1
The Big Bite Show	Brit Asia TV	02/05/2015	Offensive language	1
Programming	BT TV	n/a	Outside of remit / other	1
Ant Payne	Capital FM (London)	25/04/2015	Scheduling	1
A League of Their Own (trailer)	Challenge	n/a	Disability discrimination/offence	1
TNA Wrestling	Challenge	15/03/2015	Violence and dangerous behaviour	1
8 Out of 10 Cats Does Countdown	Channel 4	17/05/2015	Animal welfare	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Advertisement	Channel 4	29/04/2015	Advertising content	1
Advertisement	Channel 4	02/05/2015	Advertising content	1
Advertisement	Channel 4	06/05/2015	Advertising content	1
Advertisement	Channel 4	07/05/2015	Advertising content	1
Advertisement	Channel 4	17/05/2015	Advertising content	2
Advertisement	Channel 4	18/05/2015	Advertising content	1
Ballot Monkeys	Channel 4	05/05/2015	Age discrimination/offence	1
Ballot Monkeys	Channel 4	06/05/2015	Generally accepted standards	1
Ballot Monkeys	Channel 4	06/05/2015	Offensive language	2
Benefits Street (trailer)	Channel 4	07/05/2015	Elections/Referendums	1
Bugsplat!	Channel 4	06/05/2015	Generally accepted standards	1
Channel 4 'X' promotion	Channel 4	01/05/2015	Hypnotic and other techniques	1
Channel 4 'X' promotion	Channel 4	03/05/2015	Hypnotic and other techniques	1
Channel 4 'X' promotion	Channel 4	03/05/2015	Hypnotic and other techniques	1
Channel 4 'X' promotion	Channel 4	03/05/2015	Hypnotic and other techniques	1
Channel 4 'X' promotion	Channel 4	05/05/2015	Hypnotic and other techniques	1
Channel 4's Alternative Election Night	Channel 4	07/05/2015	Generally accepted standards	1
Channel 4's Alternative Election Night	Channel 4	07/05/2015	Offensive language	1
Countdown	Channel 4	09/05/2015	Offensive language	1
Gogglebox	Channel 4	08/05/2015	Outside of remit / other	1
Hollyoaks	Channel 4	01/05/2015	Offensive language	1
No Offence	Channel 4	05/05/2015	Disability discrimination/offence	3
Party Election Broadcast by the Labour Party	Channel 4	05/05/2015	Elections/Referendums	1
Skint	Channel 4	13/04/2015	Generally accepted standards	1
Skint	Channel 4	13/04/2015	Outside of remit / other	1
Skint	Channel 4	16/04/2015	Race discrimination/offence	1
The Island with Bear Grylls	Channel 4	22/04/2015	Animal welfare	2
The Island with Bear Grylls	Channel 4	23/04/2015	Animal welfare	1
The Last Leg Alternative Election Special	Channel 4	07/05/2015	Animal welfare	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
20 Moments That Rocked Britain (trailer)	Channel 5	05/05/2015	Generally accepted standards	1
5 News Lunchtime	Channel 5	05/05/2015	Elections/Referendums	1
Advertisement	Channel 5	01/05/2015	Advertising content	1
Big Brother	Channel 5	12/05/2015	Outside of remit / other	1
Big Brother	Channel 5	12/05/2015	Race discrimination/offence	1
Big Brother	Channel 5	12/05/2015	Transgender discrimination/offence	2
Big Brother	Channel 5	13/05/2015	Gender discrimination/offence	1
Big Brother	Channel 5	13/05/2015	Generally accepted standards	1
Big Brother	Channel 5	16/05/2015	Sexual orientation discrimination/offence	2
Can't Pay? We'll Take it Away!	Channel 5	21/04/2015	Offensive language	1
The Gadget Show	Channel 5	04/05/2015	Violence and dangerous behaviour	1
Bits n Bytes	CHSTV	19/04/2015	Product placement	1
Pat and Stan	CITV	19/03/2015	Advertising scheduling	1
Classic FM Drive	Classic FM	27/04/2015	Elections/Referendums	1
Storage Hunters	Dave	15/05/2015	Offensive language	1
Joel Osteen	Daystar	Various	Outside of remit / other	1
Joseph Prince	Daystar	Various	Outside of remit / other	1
Wheeler Dealers	Discovery	26/03/2015	Advertising/editorial distinction	1
The Royals	E!	25/03/2015	Generally accepted standards	1
E4 – Closed for Voting	E4	07/05/2015	Age discrimination/offence	1
E4 – Closed for Voting	E4	07/05/2015	Outside of remit / other	1
Advertisement	Film4	12/05/2015	Advertising content	1
Airplane!	Film4	02/05/2015	Scheduling	2
Airplane!	Film4	07/05/2015	Scheduling	1
News	Gem 106	29/04/2015	Elections/Referendums	1
News	Global Radio stations	09/02/2015	Outside of remit / other	1
Fawlty Towers	Gold	21/04/2015	Race discrimination/offence	2
Alien Files: Unsealed	H2	10/03/2015	Advertising minutage	1
Breaking Point	ID	29/04/2015	Generally accepted standards	1
Advertisement	Ideal World	07/05/2015	Advertising content	1
Advertisement	ITV	29/04/2015	Advertising content	1
Advertisement	ITV	30/04/2015	Advertising content	2
Advertisement	ITV	01/05/2015	Advertising content	1
Advertisement	ITV	02/05/2015	Advertising content	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Advertisement	ITV	06/05/2015	Advertising content	1
Advertisement	ITV	09/05/2015	Advertising content	1
Advertisement	ITV	12/05/2015	Advertising content	1
Advertisement	ITV	n/a	Advertising content	2
Ant and Dec's Saturday Night Takeaway	ITV	21/03/2015	Scheduling	2
Ant and Dec's Saturday Night Takeaway	ITV	28/03/2015	Race discrimination/offence	1
Britain's Got Talent	ITV	02/05/2015	Gender discrimination/offence	1
Britain's Got Talent	ITV	02/05/2015	Generally accepted standards	1
Britain's Got Talent	ITV	n/a	Religious/Beliefs discrimination/offence	1
Coronation Street	ITV	15/12/2014	Offensive language	1
Coronation Street	ITV	20/04/2015	Scheduling	3
Coronation Street	ITV	20/04/2015	Violence and dangerous behaviour	1
Coronation Street	ITV	22/04/2015	Scheduling	1
Coronation Street	ITV	04/05/2015	Violence and dangerous behaviour	1
Coronation Street	ITV	08/05/2015	Generally accepted standards	5
Coronation Street	ITV	08/05/2015	Transgender discrimination/offence	2
Coronation Street	ITV	12/05/2015	Generally accepted standards	1
Coronation Street	ITV	13/05/2015	Outside of remit / other	1
Emmerdale	ITV	16/04/2015	Sexual orientation discrimination/offence	1
Emmerdale	ITV	27/04/2015	Transgender discrimination/offence	1
Emmerdale	ITV	30/04/2015	Generally accepted standards	1
Emmerdale	ITV	30/04/2015	Scheduling	3
Emmerdale	ITV	07/05/2015	Religious/Beliefs discrimination/offence	1
Give a Pet a Home	ITV	06/05/2015	Outside of remit / other	1
Good Morning Britain	ITV	21/04/2015	Materially misleading	1
Home Fires (trailer)	ITV	n/a	Generally accepted standards	1
ITV News – Election 2015	ITV	08/05/2015	Outside of remit / other	1
ITV News and Weather	ITV	08/05/2015	Due accuracy	1
ITV News at Ten and Weather	ITV	27/04/2015	Generally accepted standards	1
ITV News at Ten and Weather	ITV	05/05/2015	Elections/Referendums	1
Loose Women	ITV	21/04/2015	Generally accepted standards	12

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Loose Women	ITV	23/04/2015	Generally accepted standards	1
Loose Women	ITV	11/05/2015	Offensive language	1
Loose Women	ITV	12/05/2015	Race discrimination/offence	4
Lorraine	ITV	24/04/2015	Gender discrimination/offence	1
Lorraine	ITV	06/05/2015	Generally accepted standards	1
Newzoids	ITV	22/04/2015	Generally accepted standards	1
Newzoids	ITV	22/04/2015	Religious/Beliefs discrimination/offence	4
Newzoids	ITV	22/04/2015	Under 18s in programmes	2
Newzoids	ITV	29/04/2015	Elections/Referendums	1
Newzoids	ITV	29/04/2015	Race discrimination/offence	1
Newzoids	ITV	06/05/2015	Elections/Referendums	2
Ninja Warrior UK	ITV	25/04/2015	Gender discrimination/offence	1
Ninja Warrior UK	ITV	02/05/2015	Materially misleading	2
Play to the Whistle	ITV	16/05/2015	Generally accepted standards	1
Sunday Night at the Palladium	ITV	03/05/2015	Animal welfare	2
The Agenda	ITV	04/05/2015	Elections/Referendums	4
The Jeremy Kyle Show	ITV	11/03/2015	Fairness & Privacy	1
This Morning	ITV	18/05/2015	Offensive language	1
UEFA Champions League Live	ITV	05/05/2015	Crime	1
Vicious (trailer)	ITV	17/05/2015	Scheduling	1
You've Been Framed!	ITV	11/04/2015	Generally accepted standards	1
You've Been Framed!	ITV	25/04/2015	Scheduling	1
You've Been Framed!	ITV	02/05/2015	Animal welfare	1
Border Life (trailer)	ITV Border Scotland	11/05/2015	Materially misleading	1
ITV News London	ITV London	07/05/2015	Elections/Referendums	1
ITV News Meridian	ITV Thames Valley (North)	22/04/2015	Generally accepted standards	1
Celebrity Juice	ITV2	30/04/2015	Generally accepted standards	3
Foyle's War	ITV3	02/05/2015	Animal welfare	1
Advertisement	ITV4	07/05/2015	Advertising scheduling	1
Michael and Andrea: The Weekend "Earned It" music track	Kiss FM	20/04/2015	Offensive language	1
Beverley Turner	LBC 97.3 FM	03/05/2015	Elections/Referendums	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Iain Dale	LBC 97.3 FM	21/04/2015	Elections/Referendums	1
Katie Hopkins	LBC 97.3 FM	19/04/2015	Generally accepted standards	1
Nick Ferrari	LBC 97.3 FM	13/04/2015	Race discrimination/offence	1
Nick Ferrari	LBC 97.3 FM	27/04/2015	Elections/Referendums	1
Nick Ferrari	LBC 97.3 FM	05/05/2015	Elections/Referendums	3
Nick Ferrari	LBC 97.3 FM	13/05/2015	Generally accepted standards	1
Steve Allen	LBC 97.3 FM	n/a	Generally accepted standards	1
Tom Swarbrick	LBC 97.3 FM	19/04/2015	Elections/Referendums	1
700 Club News	Loveworld TV	31/03/2015	Due impartiality/bias	1
Decision Made – Cardiff	Made in Cardiff	28/04/2015	Elections/Referendums	1
Magic in the Morning	Magic FM	18/03/2015	Competitions	1
Big Saturday Show	Moray Firth Radio	11/04/2015	Offensive language	1
Station ident	Moray Firth Radio	n/a	Materially misleading	1
Advertisement	More4	17/05/2015	Advertising content	1
Geordie Shore	MTV	12/05/2015	Generally accepted standards	1
What's Your Choice	NDTV 24x7	21/03/2015	Violence and dangerous behaviour	1
Advertisement	Pick TV	01/05/2015	Advertising content	1
Crosstalk	RT	13/02/2015	Due impartiality/bias	1
A League of Their Own (trailer)	Sky Living	12/05/2015	Disability discrimination/offence	1
A League of Their Own (trailer)	Sky Living	14/05/2015	Disability discrimination/offence	1
Snakes on a Plane	Sky Movies Action	09/05/2015	Offensive language	1
Advertisement	Sky News	14/05/2015	Advertising content	1
Decision Time	Sky News	07/05/2015	Elections/Referendums	1
Decision Time (trailer)	Sky News	05/05/2015	Elections/Referendums	1
Press Preview	Sky News	04/05/2015	Generally accepted standards	1
Press Preview	Sky News	05/05/2015	Elections/Referendums	1
Sky News	Sky News	04/05/2015	Elections/Referendums	1
Sky News	Sky News	05/05/2015	Elections/Referendums	1
Sky News at 6 with Jeremy Thompson	Sky News	04/05/2015	Elections/Referendums	1
Sky News Tonight with Adam Boulton	Sky News	16/04/2015	Elections/Referendums	1
Sky News Tonight with Adam Boulton	Sky News	03/05/2015	Elections/Referendums	1
Sky News with Colin Brazier	Sky News	21/04/2015	Due accuracy	1
Sky News with Dermot Murnaghan	Sky News	04/05/2015	Elections/Referendums	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Sky News with Dermot Murnaghan	Sky News	13/05/2015	Generally accepted standards	1
Sunrise	Sky News	14/05/2015	Due accuracy	1
The Enfield Haunting (trailer)	Sky News	02/05/2015	Scheduling	1
Programming	Sky News / Sky Sports News HQ	16/05/2015	Offensive language	1
My Kitchen Rules Australia	Sky on demand	n/a	Offensive language	1
Programming	Sky Sports	n/a	Outside of remit / other	1
Premier League Football	Sky Sports 1	03/05/2015	Due impartiality/bias	1
Premier League Football: QPR vs Chelsea	Sky Sports 1	12/04/2015	Offensive language	2
A League of Their Own (trailer)	Sky Sports 4	16/05/2015	Disability discrimination/offence	1
Wrestling	Sky Sports 4	15/03/2015	Violence and dangerous behaviour	1
Spanish Football	Sky Sports 5	09/05/2015	Outside of remit / other	1
Malaysian Grand Prix	Sky Sports F1	29/03/2015	Advertising/editorial distinction	1
A League of Their Own (trailer)	Sky Sports News HQ	11/05/2015	Disability discrimination/offence	1
Modern Family	Sky1	20/04/2015	Promotion of products/services	1
Road Wars	Sky1	26/04/2015	Generally accepted standards	1
Programming	Smooth Radio	n/a	Outside of remit / other	1
Advertisement	Spike	11/05/2015	Advertising content	1
New: Police Interceptors Unleashed	Spike	15/04/2015	Transgender discrimination/offence	1
Police Interceptors Unleashed	Spike	19/04/2015	Transgender discrimination/offence	1
Alex Cann	Stray FM 97.2	28/04/2015	Gender discrimination/offence	1
Paradise Hotel	TV3 Norway	18/03/2015	Race discrimination/offence	1
Advertisement	Various	n/a	Outside of remit / other	1
M&M's Character Election advertisement	Various	n/a	Political advertising	3

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

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

Licensee	Licensed service	Categories	Number of complaints
Afro Caribbean Millennium Centre	New Style Radio 98.7 FM	Key Commitments	1
St Peters Studio and Community Radio Limited	Saint FM	Technical	1
Smooth Radio London Ltd	Smooth Radio	Format	1
Northsound Radio Limited / Radio Tay Limited	Northsound 1 / Tay FM	Format	1

Investigations List

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

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

Here are alphabetical lists of new investigations launched between 7 and 20 May 2015.

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

Programme	Broadcaster	Transmission date
East Midlands Today	BBC 1 (East Midlands)	15 April 2015
Trailers	Comedy Central	Various
Norkin's List	NTV Mir Lithuania	15 February 2015
The Happy Garden on The Purrfect Afternoon	The Cat	1 May 2015
Advertising minutage	TLC	31 March 2015

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

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

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

Programme	Broadcaster	Transmission date
Britain's Benefit Tenants	Channel 4	26 March 2015
News	CHSTV	10 and 11 March 2015
Exposure: Charities Behaving Badly	ITV	18 February 2015
ITV News	ITV Meridian	13 March 2015

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

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