

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.

Standards cases

In Breach

Yoga for You

Lamhe TV, 17 June 2014, 09:30

Introduction

Yoga for You is a television series containing lifestyle advice based on ancient Indian practices of Yoga. The series is broadcast on Lamhe TV, a general entertainment television channel for the South Asian community, broadcasting in English and Hindi. The licence for the service is held by Asia TV Limited (“Zee TV” or “the Licensee”).

A complaint alerted Ofcom to the broadcast in this programme of claims that serious medical conditions (including cancer) could be treated or cured by herbal remedies and ayurvedic products¹.

We reviewed the programme which was broadcast in Hindi and English with English subtitles of Hindi speech. Ofcom commissioned a transcript of the whole programme, including translations into English of the Hindi by an independent translator². All the extracts below from the programme were translated from Hindi and are from the transcript of the spoken words unless otherwise indicated.

The first segment of the programme, lasting 11 minutes, was presented in a lecture style by Dr Pankaj Naram, an ayurvedic practitioner. The second segment of the programme featured demonstrations of yoga exercises and meditations.

Having carefully reviewed the transcript our concern focused only on the first segment of the programme. We noted that at the start of this part of the programme Dr Naram stated:

“...[W]e have seen more than 75,000 cancer patients...In some cases we have received lots of surprises. People who were told by famous hospitals in Mumbai, America and Europe that they are going to live only for another two or three months, I am seeing them after 15 years leading their normal lives and performing their work³”.

Dr Naram described cancer as a “*growth of out of control cells*” in accordance with “*the belief of German doctors...European and American doctors*”. He briefly

¹ Ayurvedic products are usually made up of minerals and/or plant extracts. Ayurvedic medicine is a Hindu system of traditional medicine native to India and is a form of alternative medicine.

² Where appropriate in this Preliminary View, we have identified where the translation and the English subtitles differed slightly in wording and terminology.

³ The English subtitles stated: “*I have got more than 75,000 cancer patients...In some cases we were really surprised by the results. People who were told by famous hospitals in Mumbai, America and Europe that they won’t live more than three months, I am seeing then after 15 years leading normal lives and performing their day to day duties*”.

explained how cancer cells spread to parts of the body destroying healthy tissues and cells, and: “*ends the person*”⁴.

Dr Naram referred to conventional methods of treatments for cancer:

*“There are many therapies for this [cancer], chemotherapy, radiotherapy, hormone therapy, caesarean, operation and many more. The question is will these therapies really make a patient cancer free? A research done in Europe came to the conclusion that cancer is not cured”*⁵.

He went on to explain that although cancer cells were suppressed and maybe destroyed, these cells would reappear in a more “*violent*” and “*powerful*” form.

Dr Naram then spoke about toxins which he said were associated with accelerated cell growth. He said that when an increase in the amount of gas, bile, and mucus occurs within the body, the cells in our body “*increase in number*”⁶ and “*grow uncontrollably*”. After outlining four common types of cancer, Dr Naram stated that consumption of items such as burgers, cheese, pizza, alcohol, and drugs was problematic and that tobacco was one of the main causes of cancer. He suggested that fermented⁷ foods affected the body’s immune system due to chemicals they contained and added that:

*“When this immunity becomes low, these [cancer] cells start to grow as we consume fermented foods. Following that, there is growth of these uncontrolled [cancer] cells. These start spreading to the whole of the body. What is the best treatment for this? Holy basil leaves⁸, turmeric, garlic are natural herbs that fight against cancer. You will receive lots of benefits from consuming these herbs”*⁹.

Dr Naram stated that: “*Research conducted in Germany also indicates this as the reason why there was a low number of cancer patients in India in the past*”. He added that although people who lived in rural India smoked a lot, they also consumed a lot of natural herbs (holy basil leaves, turmeric and garlic) as part of their diets. Dr Naram said:

⁴ The English subtitles stated: “*finish the person*”.

⁵ The English subtitles stated: “*For this problem there are many therapies in use: Chemotherapy; radiotherapy; hormone therapy; surgeries; operations; and many more. The question is will these really make a cancer patient free? A research in Europe came to the conclusion that Cancer is not cured*”.

⁶ The English subtitles stated: “*cells become cancerous*”.

⁷ Fermented foods are foods that have been through a process of fermentation in which natural bacteria feeds on the sugar and starch in the food. This process preserves the food. Examples of fermented foods are yogurt and sauerkraut.

⁸ A holy basil plant is known as ‘Tulsi’ and is a sacred plant in Hindu beliefs.

⁹ The English subtitles stated: “*When our immunity is low, these [cancer] cells start to grow due to the consumption of fermented foods. After that there is growth of these uncontrolled [cancer] cells. These cells start to spread [to] all parts of the body. What is the sure shot cure for this? Basil leaves, turmeric, garlic are natural herbs that fight cancer. You will benefit a lot if you consume these herbs*”.

"I am only trying to tell you about it from a scientific point of view. So by eating basil leaves and black pepper, that is, if you have 11 holy basil leaves and three black peppers, you can prevent cancer. This is what ancient secrets suggest and today's modern theory is also accepting it... Along with that, 'Life Yog Formula'¹⁰...What does 'Life Yog Formula' do? It gives life to our healthy cells. It gives them strength to kill these affected cells in a natural way. This formula works amazingly. It is very beneficial for any type of cancer. 'Life Yog Formula', two tablets each in the morning and evening. Use holy basil leaves, use turmeric, use garlic juice and use 'Life Yog Formula'¹¹".

In the next part of Dr Naram's lecture he responded to a question asked by a viewer who had written in to the show. The viewer requested a powerful remedy for an umbilical hernia¹². Dr Naram responded by stating that he had "a very powerful remedy [for hernias] of which I have helped thousands of people with"¹³ and gave the following the advice:

"First of all you should have 'Kichadi'¹⁴ in your diet...And every day in the evening take Vibrant Detox Formula¹⁵. Vibrant Detox Formula every night. You may take around three to eight or nine tablets. Along with it, take 'Aam Mukti Formula'¹⁶. Aam Mukti Formula, one tablet each in the morning and evening. 'Anti-acidity Formula'¹⁷, one tablet each in the morning and evening and 'Vayu Mukti Formula'¹⁸, one tablet each in the morning and evening. Take these definitely. Along with that, take half [a] table spoon [of] cumin powder, half [a] spoon [of] cumin powder. Take half [a] table spoon [of] coriander powder and 11 black raisins. Soak all these in the morning and consume them in the evening¹⁹".

¹⁰ Life Yog Formula is a herbal product sold and promoted by Dr Naram.

¹¹ The relevant English subtitles stated: "What does 'Life Yog Formula' do? It energises our healthy cells. It makes them stronger to kill cancerous cells in a natural way. That's the amazing thing about this formula. It is very beneficial for any type of cancer. 'Life Yog Formula', two tablets each in the morning and evening. You may consume holy basil leaves, turmeric, garlic juice and 'Life Yog Formula'".

¹² An umbilical hernia occurs when an internal part of the body pushes through a weakness in the muscle or surrounding tissue wall. It appears as a painless lump in or near the navel. Surgery is recommended for most adults with this condition.
<http://www.nhs.uk/conditions/Umbilicalhernia/Pages/Whatisitpage.aspx>

¹³ The relevant English subtitles stated: "I have a very powerful remedy with which I have helped cure thousands of people with".

¹⁴ Kichadi is an Indian dish consisting of a mixture of lentils and rice.

¹⁵ A product sold and promoted by Dr Naram.

¹⁶ A product sold and promoted by Dr Naram.

¹⁷ A product sold and promoted by Dr Naram.

¹⁸ A product sold and promoted by Dr Naram.

¹⁹ The subtitles stated: "Firstly you should have Kichadi in your diet...At night take Vibrant Detox Formula. Take Vibrant Detox Formula every night. You may start with three and go up to nine tablets. Also take Aam Mukti Formula, Aam Mukti Formula, one tablet each in the morning and evening. Anti-Acidity Formula, one tablet each in the morning and evening and Vayu Mukti Formula, one tablet in the morning and evening. And here's a herbal remedy, take

Dr Naram suggested that, by following this advice, the amount of gas and bile the viewers produced would be reduced, making their stomach feel more comfortable and giving them more energy. He added:

“It will also benefit in Hiatus Hernia. This is the best remedy for all forms of hernia. It will be particularly effective in umbilical hernia cases²⁰”.

This segment of the programme concluded with Dr Naram inviting viewers to write in with details of the results achieved through the use of the herbal remedies and ayurvedic products detailed in the programme. In addition, Dr Naram’s email address was displayed on screen for viewers to request advice on different forms of cancer.

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

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

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

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

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

We therefore sought comments from the Licensee as to how the material complied with these rules.

Response

Zee TV said “this breach [of the Code] was a serious failure by some of our Mumbai staff and we will ensure it does not happen again”. It added that: “there was no intention to mislead viewers or promote specific products” and apologised for this compliance mistake.

The Licensee explained that this episode was broadcast as a result of “serious errors” at its operations and compliance facility in Mumbai, India, where the re-versioning, captioning and editing for all Zee International channels is conducted. Zee TV added that programmes for its UK licensed channels were reviewed by a

half [a] tablespoon [of] cumin powder, take half [a] tablespoon [of] cumin powder, half [a] tablespoon [of] coriander powder and 11 black raisins. Soak these in the morning and consume in the evening”.

²⁰ The English subtitles stated: “It will also benefit Hiatus Hernia. This is a sure shot remedy for all forms of hernias. It will prove very effective for Umbilical Hernia”.

compliance editor who “recommends edits in accordance with ... [the] Code”. However, a version of the programme intended for Zee’s Indian channel, was added to the library system for UK services due to a “human error”. The Licensee said it realised its “grave mistake” on 1 July 2014 and consequently suspended further repeats of the programme.

The Licensee said that, although Dr Naram is “reputable” and “respected” in the field of Ayurveda and has helped thousands of patients worldwide, it understood that “the portion of the programme where he talks about his treatment and medicines for cancer should have been edited” out of the programme before any broadcast of this episode in the UK.

Zee TV explained that it had “taken serious steps in ensuring that such instances are not repeated”. These included the suspension of all future broadcasts of Dr Naram’s programmes, amending its tape numbering system for its UK channels to a “UK prefix which is immediately recognisable”, and “institut[ing] a final check” to be conducted by its quality team.

The Licensee said it “took its compliance responsibilities extremely seriously” and has “always tried its utmost to comply with Ofcom regulations...and over many years there has been very few regulatory interventions”. In addition, Zee TV said that “the senior editorial staff routinely reviews and apply the precedents established by the Ofcom Broadcast Bulletin”. It added that as a result of the incident the team responsible were given a warning about their future conduct. The Licensee said it would arrange compliance training for its staff in Mumbai “to ensure best practice in following the Ofcom rules and guidance” across all its channels and “to keep updated with all regulatory matters”.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appears to it best calculated to secure the standards objectives, including that “generally accepted standards are applied to the contents of television...services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material”. This objective is reflected in Section Two of the Code. Rule 2.1 is specifically concerned with providing adequate protection from harmful (or offensive) broadcast material.

Ofcom also has a statutory duty under the Act to ensure 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. The requirements of the Act and the AVMS Directive are reflected in Section Nine of the Code, including, among other rules, Rules 9.4 and 9.5 which prohibit both the promotion and the undue prominence of products, services or trade marks in programming.

In reaching a decision in this case, Ofcom has taken into account that broadcasters have a right to freedom of expression which gives the broadcaster a right to impart information and ideas and the right of the audience to receive them without

unnecessary interference by public authority, but subject to restriction prescribed by law and necessary in a democratic society. This is set out in Article 10 of the European Convention on Human Rights.

Rule 2.1

Rule 2.1 states that generally accepted standards must be applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material. This rule is specifically concerned with the protection of viewers from harm.

Programmes that provide lifestyle and health advice, about potentially serious medical conditions, may be of significant interest to audiences. However, in circumstances where a programme presents health advice and/or alternative treatments about potentially serious medical conditions, such as cancer, great care must be taken. Rule 2.1 serves to mitigate the risk that viewers who suffer from such conditions might forego or delay conventional medical treatments in favour of the advice given during a programme, and attempt to treat themselves with alternative untested treatments, with the potential to cause serious harm to their health.

We first considered whether material in the programme as broadcast was potentially harmful.

We identified a number of claims by Dr Naram in the programme that certain alternative remedies (herbal and ayurvedic) could cure, successfully treat or prevent serious medical conditions such as cancer and hernias. In summary these recommended remedies were:

- 11 holy basil leaves and three black peppers to prevent cancer;
- tablets of 'Life Yog Formula' to kill cancerous cells;
- tablets of 'Vibrant Detox Formula', 'Aam Mukti Formula', 'Anti-Acidity Formula' and 'Vayu-Mukti Formula' to treat hernias; and
- half a tablespoon of cumin powder, half a tablespoon of coriander powder and 11 black raisins to treat hernias.

In Ofcom's view the alternative treatment identified above clearly went further than simply providing lifestyle and dietary advice, and amounted to medical advice. The advice provided by Dr Naram, as set out in the Introduction, related to two serious medical conditions, cancer and hernias. Dr Naram referred to the alternative remedies as the "*best treatment*" and a "*powerful remedy*" in the context of providing advice to "*prevent cancer*", "*kill these affected [cancer] cells*" and "*fight against cancer*" (when Dr Naram's words were translated into English from the original Hindi). In addition we noted that the simultaneous English subtitles referred to the alternative treatments as a "*sure shot cure*" and a "*sure shot remedy*" which would "*kill cancerous cells*".

Ofcom considered these claims could have led viewers to understand that specific serious medical conditions could be treated successfully by using or following the recommended treatments. We were mindful that some viewers may have suffered, or were suffering, from the conditions mentioned, and as result may have been more vulnerable to suggestions that certain alternative treatments alone might treat these conditions successfully without the need for conventional medical advice or treatment. We considered the likely impact of Dr Naram's advice was increased by his claim, made at the beginning of the programme, of having had over "75,000

cancer patients”, some of whom had been told by hospitals: *“that they won’t live for three months...[but] after 15 years [are] leading their normal lives”*. There was therefore in Ofcom’s opinion a clear risk that as a result of the claims made in the programme some viewers with serious medical conditions might have either not sought conventional medical advice or treatment, or ceased following it. This clearly had the potential to cause serious harm, as was acknowledged by the Licensee.

Ofcom considered the potential harm was especially significant as regards the claim to treat or cure cancer. This is because Section 4 of the Cancer Act 1939 makes it a criminal offence for anyone to publish an “advertisement” offering to treat anyone with cancer or give any advice in connection with the treatment of cancer. Although the programme *Yoga for You* may not be interpreted as an “advertisement”, the existence of such a crime highlights that Parliament considered public provision on any advice on how to treat cancer to be in a special category, and therefore it should be tightly regulated in the public interest and only provided by those appropriately qualified or authorised to do so.

We also considered the risk of potential harm caused directly to any viewers by following Dr Naram’s advice to use his recommended ayurvedic remedies. Ayurvedic treatments are a form of traditional alternative medicine widely practised in the Indian sub-continent. We note however that concerns have been raised about the potential toxicity of certain ayurvedic medicines and that, to date, there is no evidence that ayurvedic herbal medicines can prevent, treat or cure cancer²¹. In the absence of such evidence, we considered that there was also an appreciable risk of harm to viewers who actively followed the alternative treatments Dr Naram promoted in this programme.

We took into account the Licensee’s comments that Dr Naram was “reputable” in the field of Ayurveda and had “helped thousands of patients across the globe”. However, in our view if Dr Naram was a widely known and reputed practitioner in ayurvedic practices, this was in fact likely to increase the risk of potential harm: his reputation might have encouraged more viewers to take his advice at the expense of personalised medical care provided by a qualified practitioner.

We next considered whether the Licensee took steps to provide adequate protection to viewers from this potentially harmful material.

In this broadcast the treatments recommended by Dr Naram for serious medical conditions consisted of herbal remedies using readily available ingredients and/or a range of ayurvedic products, promoted through his ‘Ancient Youth Secrets’ brand. In circumstances where a programme provides health advice on serious medical conditions, the Code requires that the broadcaster applied “generally accepted standards” to provide adequate protection from harmful material. The purpose of this requirement is to mitigate any risk that viewers who suffer from such conditions might use unsafe or untested products, or forego or delay conventional medical treatment in favour of advice given in a programme, with consequent harm caused to their health.

Clearly the more serious the risk of harm, the greater the protection that should be provided to viewers. For all the reasons set out above, Ofcom’s assessment was that Dr Naram’s claims that his recommended alternative remedies could successfully treat or cure serious medical conditions like cancer or hernias created a material and

²¹ <http://www.cancerresearchuk.org/cancer-help/about-cancer/treatment/complementary-alternative/therapies/ayurvedic-medicine>

serious risk of harm to viewers, especially any who were vulnerable because they already had these illnesses. However, Dr Naram did not, at any point, make any reference to the need to seek conventional and qualified medical advice for these potentially serious illnesses. Nor did he give any information or warning about the effectiveness of the remedies he was recommending. Nor did the Licensee broadcast any form of warning or information about Dr Naram's advice before, during or at the end of the programme.

Although the presenter made references in the programme to conventional methods to treat cancer such as "*chemotherapy*" and "*radiotherapy*" (as detailed in the Introduction), these were very brief. We were concerned that the presenter immediately appeared to disparage the effectiveness of these conventional methods by stating: "*Research that was conducted in Europe says that cancer is not cured*". We considered the likely effect of Dr Naram's statements about conventional treatments for cancer was to question the efficacy of these treatments and imply that they were ineffective. In Ofcom's view therefore Dr Naram's references to conventional treatments for cancer, rather than mitigate the risk of harm to viewers, increased that risk.

In summary, Zee TV did not take any measures to provide adequate protection to viewers from this potentially harmful material. It permitted the presenter – who was not a qualified medical practitioner – to give unsubstantiated and unqualified medical advice with significant potential for harm to viewers. We noted Zee TV's clear and immediate admission that this broadcast material breached the Code and was broadcast due to "human error" by its staff in India. Nonetheless, for all the reasons set out above, we concluded the broadcast material clearly breached Rule 2.1.

Rule 9.4

Rule 9.4 states that products, services and trade marks must not be promoted in programming.

Ofcom's published guidance²² on Rule 9.4 states: "In general, products or services should not be referred to using favourable or superlative language...".

We noted that in this lifestyle advice programme, Dr Naram made a number of references to ayurvedic products which he claimed had the potential to cure "*all types*" of cancers and hernias.

Specifically, the programme contained several instances of favourable and superlative language being used to describe the benefits of Dr Naram's own ayurvedic products. For example, Dr Naram's described his 'Life Yog Formula' as "*beneficial for any type of cancer*" and that "*this formula works amazingly*". We also noted that Dr Naram's formulas (as detailed in the Introduction) were described as "*the best remedy for all forms of hernia. It will prove particularly effective for umbilical hernia*" when explaining the benefits to be gained by using these products as instructed. In Ofcom's view the cumulative effect of the favourable and superlative language used by Dr Naram about the benefits of the products described was clearly promotional and therefore in breach of Rule 9.4.

²² <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>

Rule 9.5

Rule 9.5 states that no undue prominence may be given in programming to a product, service or trade mark. Undue prominence may result from a reference to a product, service or trade mark where there is no editorial justification, or from the manner in which a product, service or trade mark is referred to.

We noted that the first segment of this programme provided advice to viewers about the claimed benefits of ayurvedic products. However, we noted that Dr Naram's own range of ayurvedic products were the only ayurvedic products mentioned during this segment. In addition, we noted that Dr Naram spoke specifically about his product range for approximately half of the segment's length, which included details of his own website where these products could be purchased. As a result, we concluded that the prominence given by Dr Naram to his product range could not be editorially justified and that this content was therefore in breach of Rule 9.5.

Conclusion

We noted the Licensee's clear and immediate admission that this broadcast material breached the Code, was broadcast due to "human error" by its staff in India, and that Zee TV has taken various steps to improve compliance and training in relation to the Code. Nonetheless, Ofcom regards the breach of Rule 2.1 in this case with particular seriousness, because it contravened a fundamental requirement of the Code for broadcasters to provide viewers with adequate protection from harmful content.

Ofcom is therefore putting the Licensee on notice that the breach of Rule 2.1 in this case is being considered for the imposition of a statutory sanction.

Breaches of Rules 2.1, 9.4 and 9.5

In Breach

BRFM Drivetime

BRFM 95.6, 21 July 2014, 17:50

Introduction

BRFM 95.6 is community radio station based on the Isle of Sheppey in Kent. The station's output comprises a wide range of music and aims to provide "leisure, educational, employment and community support". The licence for the service is held by B.R.F.M. Bridge Radio Limited ("the Licensee").

BRFM Drivetime is a music request show broadcast between 16:00 and 19:00 on weekdays. A complainant alerted Ofcom to a remark made by the presenter which they considered derogatory towards homosexual people. After playing a song requested by a listener named Jason, the presenter said:

"Take That and Garden. Message for Jason: [name of member of station staff] just called you a poof".

Ofcom considered the material raised issues warranting investigation under Rule 2.3 of the Code, which states that:

"In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include, but is not limited to...discriminatory treatment or language (for example on the grounds of...sexual orientation)".

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

Response

The Licensee stressed that the comment was not intended as an insult. It explained that the presenter was joking to a friend of the station about the song being played for him and the comment was about the choice of song rather than the sexual orientation of any individual. The Licensee added that the presenter was not a regular presenter at the station. It said that, although she knew not to swear, she believed the word she had used was a term of endearment and would not be regarded as offensive.

However, the Licensee acknowledged that the use of this word could have been offensive to listeners and said that it has since updated its internal compliance documents given to presenters. In addition, it said that every presenter has been asked to exercise caution over their language on air to avoid offending listeners.

Decision

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including 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". This objective is reflected in Section Two of the Code.

Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive material is justified by the context. The rule specifically refers to “discriminatory treatment or language (for example on the grounds of... sexual orientation)”.

Ofcom considered first whether the presenter’s comment had the potential to cause offence.

Ofcom’s research on offensive language¹ indicates that the word “poof” can be considered offensive if used against an individual or in a derogatory context. Ofcom noted that in this case the presenter used the word to ridicule the person’s choice of song. We therefore concluded that the use of the word in this context was derogatory and had the potential to offend listeners.

Ofcom went on to consider whether the broadcast of the material was justified by the context.

Ofcom noted that the Licensee said that the presenter intended her comment to be perceived as a light-hearted joke between friends. However, in our view, this would not have been clear to listeners, who would therefore have been likely to assume that it was used in a derogatory context. Given the likely expectations of the audience for a programming of this nature on a community radio station, Ofcom did not consider this pejorative use of the word “poof” was justified by the context.

We noted the measures taken by the Licensee to improve compliance after it was alerted to this matter. Nonetheless we concluded that in this instance the Licensee did not apply generally accepted standards. Consequently, the material breached Rule 2.3 of the Code.

Breach of Rule 2.3

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

Advertising Scheduling cases

In Breach

Breach findings table

Code on the Scheduling of Television Advertising compliance reports

Rule 4 of the Code on the Scheduling of Television Advertising (“COSTA”) states:

“... time devoted to television advertising and teleshopping spots on any channel must not exceed 12 minutes”.

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
Channel 5+24	17 August 2014, 22:00	COSTA Rule 4	The Licensee notified Ofcom that the channel exceeded the permitted advertising allowance by 57 seconds. Finding: Breach

Broadcast Licence Condition cases

Non-payment of broadcasting licence fees

Ofcom is partly funded by the licence fees it charges television and radio licensees. Ofcom has a statutory duty to ensure that the aggregate amount of fees paid by licensees meets the cost of Ofcom's regulation of broadcasting. The principles which Ofcom applies when determining the fees to be paid by licensees are set out in the Statement of Charging Principles¹. The detailed fees and charges which are payable by broadcasting licensees are set out in Ofcom's Tariff Tables².

The payment of a fee is a licence requirement³. Failure by a licensee to pay its licence fee when required represents a serious and fundamental breach of a broadcast licence, as it means that Ofcom is unable properly to carry out its regulatory duties.

Resolved

The following licensees have failed to pay their annual licence fee in accordance with the original deadline, and have therefore been found in breach of their licences. They have subsequently submitted a late payment and we therefore consider the matter **resolved**. This decision will be kept on record and will be taken into account should any similar issues arise in future.

Licensee	Licence Number	Service Name
Alison Kingdom	LRSL000180BA	Radio City
Wendy Bowe	LRSL000182BA	The Mouth
Asian Star Community Radio Limited	CR000067BA	Asian Star 101.6
Charles Dale	LRSL000184BA	BFBS Gurkha Radio
Chris Welsh	LRSL000181BA	HBS Radio
Awaaz Radio Limited	CR000208BA	Awaaz Radio
Folkestone Fringe	DP000159BA	Boat Project

1

http://stakeholders.ofcom.org.uk/binaries/consultations/socp/statement/charging_principles.pdf

2 <http://www.ofcom.org.uk/files/2013/03/tariff-tables-2013-14.pdf>

3 Contained in Licence Condition 3 for radio licensees and Licence Condition 4 for television licensees.

In Breach

Retention and production of recordings

Sunrise FM (Bradford), 12 August 2014, 12:30

Introduction

Sunrise FM is a local commercial FM radio station providing a music, entertainment and information service for the Asian community in the Bradford area. The licence is held by Bradford City Radio Ltd (or “the Licensee”).

A listener alerted Ofcom to a presenter making “disparaging and divisive” comments about a political group at around 12:30 on Tuesday 12 August.

Ofcom asked the Licensee to provide a recording of the output. The Licensee explained that between around 10:20 and 15:00 on the date concerned a technical issue in the main studio meant broadcasts were taking place from its second studio, normally used for training purposes. The logger in that studio failed to record the output for that period and it was therefore unable to provide the recording.

Ofcom considered that this raised issues warranting investigation under Conditions 8(2)(a) and (b) of Bradford City Radio Ltd’s licence, which require that the Licensee will:

- “(a) make and retain, for a period of 42 days from the date of its inclusion, a recording of every programme included in the Licensed Service...
- (b) at the request of Ofcom forthwith produce to Ofcom any...recording for examination or reproduction;...”.

Ofcom therefore asked the Licensee for its formal comments on its compliance with these licence conditions.

Response

The Licensee apologised that it was unable to provide the recording, and confirmed that it had since rectified both technical issues and that its logging facility was functioning correctly to avoid any similar failure in the future.

Decision

Under the Communications Act 2003, Ofcom has a duty to ensure that in each broadcaster’s licence there are conditions requiring the licensee to retain recordings of each programme broadcast, in a specified form and for a specific period after broadcast, and to comply with any request to produce such recordings issued by Ofcom. Community Radio licences enshrine these obligations in Licence Conditions 8(2)(a) and (b).

Under Licence Condition 8(2)(a), Ofcom requires licensees to make a recording of every programme included in the service, and to retain these for 42 days after broadcast. Under Licence Condition 8(2)(b) Ofcom requires licensees to produce such recordings forthwith upon request.

It is a condition of all radio licences that the licensee adopts procedures for the retention of recordings and produces recordings to Ofcom forthwith on request.

In this case, Ofcom recognised that the Licensee's failure to provide Ofcom with the recordings was due to a series of technical problems which had since been rectified. However, the Licensee is nevertheless obliged under the terms of its licence to ensure that recordings of its output are retained for 42 days.

The failure to provide Ofcom with the recordings requested is a significant breach of Sunrise FM's licence, which, in this particular case, significantly affects Ofcom's ability to assess the station's compliance with the Code.

Should similar compliance issues arise Ofcom may take further regulatory action.

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

Fairness and Privacy cases

Upheld

Complaint by Mr D

Police Interceptors, Channel 5, 17 February 2014

Summary

Ofcom has upheld the complaint made by Mr D of unwarranted infringement of privacy in the programme as broadcast.

The programme was part of a series that followed the work of police officers carrying out their public duties. This episode included unobscured footage of Mr D and his friend as they were stopped and searched by a police officer who suspected them to be in possession of cannabis. Mr D's friend was found to have a small amount of cannabis in his possession. Mr D was not found to be in possession of any cannabis. Mr D was referred to in the programme by the police officer by his first name. The police officer also disclosed that Mr D had been stopped by the police before and found to be in possession of cannabis.

Ofcom found that, in the particular circumstances of this case, Mr D had a legitimate expectation of privacy with regard to the broadcast of the footage of and information about him, albeit limited to some extent. We concluded that the broadcaster's right to freedom of expression and the public interest in broadcasting this material without consent was outweighed by Mr D's expectation of privacy in the circumstances. Therefore, Ofcom concluded that Mr D's privacy was unwarrantably infringed in the programme as broadcast.

Introduction and programme summary

On 17 February 2014, Channel 5 broadcast an edition of its reality documentary series, *Police Interceptors*, which examines the work of police officers carrying out their public duties.

The section of the programme which featured the complainant, Mr D, began with the programme's narrator explaining that it was the day of the Spalding Flower Parade, where money was raised for local charities. The narrator stated that the parade was popular with local people and that the town was particularly busy on parade day. The police officer featured in this section of the programme, PC Dan Briginshaw, said that because there was a large police presence in the town during the parade, it was possible that some people might think there would be a lack of police officers on the outskirts of the town and, consequently, try to commit crimes in these places. The narrator then said:

"With so many people flocking to the area, it isn't too long before Dan [the police officer featured] spots someone he's dealt with before".

The police officer explained that he was going to stop the two men walking along the pavement towards the police car because he suspected that they might be in possession of cannabis. One of these men was Mr D. As the two men approached, the police officer asked them how they were and requested that they stop. (The footage of the two men was shown unobscured throughout the relevant section of the programme). The narrator then said:

“Dan knows that this pair have horticultural interests, although the plants these lads are into aren’t the type you’ll find at the Spalding Flower Show”.

The police officer approached Mr D and said:

“Just a quick stop, obviously last time I spoke to you [the complainant’s name was “bleeped” out here], you had cannabis on you. Any on you today? Because I am going to search you”.

Mr D replied *“no, go on then”*, and the police officer proceeded to search him for drugs. While he searched Mr D, the officer said *“Section 23 of the Misuse of Drugs Act”*. The other man had his hands by his sides, and the police officer (while he searched Mr D) turned to the other man and said:

“Can you just keep your hands where I can see them for the time being, ‘cause I can smell weed like it’s going out of fashion. Is it you that’s got it? I’m not going to mess about, if you’ve got some, get it out and we’ll deal with it on the streets if we can. Just take it out of your pockets and keep your hands where I can see them”.

The second man produced a small bag of cannabis and handed it to the police officer, who said: *“thank you, any more?”* The man stated that he did not have any more drugs, after which the narrator said: *“once again, Dan’s local knowledge has come up trumps”*. When asked, the second man also stated that he had not had any informal warnings or fixed penalty notices for cannabis. As a result, the officer stated that they would be able to deal with the matter on the street, and the man would not need to go into custody. The narrator then said:

“It’s hardly the drugs bust of the century, but Dan’s instincts have served him well”.

The police officer explained to the camera that he had stopped the men because he thought they would have cannabis in their possession. He said that they smelled of cannabis and that the man accompanying Mr D had *“handed it over, simple as that”*. The narrator explained:

“Satisfied that neither of the guys have any other drugs, Dan can get on with the paperwork”.

The man accompanying Mr D proceeded to fill out the paperwork, leaning on the bonnet of the officer’s police car. While the man was filling out the forms, the police officer briefly spoke to Mr D:

“Nice seeing you in a good mood. Last time you were in a right foul mood [when] you were with me, [Mr D’s first name]”.

to which Mr D replied,

“Well yeah, that’s because you just randomly stopped someone in the street and robbed them while they tried to...”.

The police officer interrupted, and said: *“you were smoking weed! What else am I supposed to do?”* The narrator then stated that *“they may be narked that Dan’s spoiled their fun for the day, but as far as he’s concerned, it’s a simple case of right and wrong”*.

The section which featured the complainant ended with the police officer addressing the camera:

“I’ve met possibly both of them before, but certainly one [Mr D], and every time I’ve stopped him he’s had cannabis, and today the other lad’s got some weed on him probably only worth £10, and he was looking forward to smoking it. But it’s illegal whether people agree with that or not. He reeked of it, so I searched for it and found it, and luckily for him, he’s eligible for a street warning form”.

The narrator concluded:

“Having given the lad a warning for possession of cannabis, Dan hits the road and his next stop is the flower parade”.

Summary of the complaint and the broadcaster’s response

Mr D complained that his privacy was unwarrantably infringed in the programme as broadcast because unobscured footage of him was included in the programme without his consent. In particular, Mr D said that while he had not “done anything criminal” when he was filmed, he was identified in the programme and reference was made to him having been in trouble with the police before. Mr D said that at no point did the programme makers inform him that the footage would subsequently be broadcast.

By way of background to his complaint, in an email dated 14 March 2014, Mr D stated that, following the programme he had been recognised by three people and some of his work colleagues. He said that he was concerned that any future employers might recognise him from the programme, which could, incorrectly, give them “a false bad impression” of him.

In response, Channel 5 submitted that: “Where a person has been negligent or intentionally broken the law, Article 8 cannot be used in aid to create a right to privacy in relation to their actions... The commission of a crime and the aftermath of the commission, including search, detainment and arrest, cannot be considered private matters”. In support of its position, Channel 5 referred to statements made in various cases, including the decision in the European Court of Human Rights (“ECHR”) *Axel Springer* case¹ and the Supreme Court judgment in *Kinloch v HM Advocate* [2012] UKSC 62.²

With regard to the complaint itself, Channel 5 said that the key exchange in the relevant section of the programme was that between the complainant and the police officer about the previous occasion on which they had met (see the “Introduction and

¹ Channel 5 referred to this paragraph in the ECHR judgment: *Axel Springer AG v Germany* (application no 39954/08; 7/02/2012) “In order for Article 8 [of the European Convention on Human Rights] to come into play, however, an attack on a person’s reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of the right to respect for private life (see *A v Norway*). The Court has held, moreover, that Article 8 cannot be relied on in order to complain of a loss of reputation which is the foreseeable consequence of one’s own actions such as, for example, the commission of a criminal offence (see *Sidabras and Dziutas v Lithuania*)”.

² Channel 5 in particular emphasised the following statement of Lord Hope in respect of whether a person subject to police surveillance in a public street had a legitimate expectation of privacy: “The criminal nature of what he was doing, if that was what it was found to be, was not an aspect of his private life that he was entitled to keep private”.

programme summary” section above). Channel 5 said that it was the complainant, who asserted that the police officer had “*robbed*” him on that occasion. Channel 5 argued that this was important because:

- the complainant volunteered this information and was not compelled to say anything in response to the police officer’s throw away comment about his [Mr D’s] mood the last time they met;
- the entire exchange between the police officer and the two men was cordial prior to the complainant accusing the police officer of “*randomly stopping*” and “*robbing*” him;
- having been so accused the police officer was entitled to set the record straight and state the facts about the previous occasion when cannabis had been found on the complainant where he had been dealt with for possessing an illegal substance;
- if the complainant had not accused the police officer of robbing him, the final sequence would have been quite different and the complainant’s identity would have been obscured. It was because the complainant said what he did that the sequence was broadcast in the form it was; and
- by making these comments to the police officer, the complainant made it clear that he did not accept that the law should prohibit the personal use of cannabis and he resented the police officer enforcing the law. Channel 5 argued that it was in the public interest for viewers to be made aware of the complainant’s thoughts on this matter and his attitude to proper enforcement of the law; and, to see that he was prepared to countenance further breaches of the law.

Channel 5 said that the filming took place at the side of the road on public property during a public event which was being policed and that the camera crew filmed openly. It said that there was no obligation to inform any member of the public that footage of them recorded in such circumstances would be broadcast on television. Channel 5 added that this was not a sensitive situation and Mr D was calm and in control and not in a vulnerable state.

The broadcaster said that the footage shown was not of a random search, but a search which took place because the police officer had reasonable grounds to suspect that one or both of the men may have been in possession of a controlled drug. Channel 5 noted that this suspicion proved to be correct in regard to Mr D’s companion.

Channel 5 said that it was a fact and matter of public record that Mr D has been in trouble with the police previously for cannabis possession. Channel 5 said that the criminal nature of Mr D’s activities when he last met the police officer (i.e. being found to be in possession of an illegal substance and this being dealt with according to the law) was not an aspect of his private life which he was entitled to keep private. It also said that nor could any activity with which Mr D was involved either before, at the time of or after the filming be considered private for the reasons already set out above.

The broadcaster argued that no right to privacy attached to any of Mr D’s relevant behaviour because he (rather than anyone else) took issue with his previous treatment by the police officer. Mr D’s false allegations about the police officer’s conduct on that occasion constituted anti-social behaviour, which Channel 5 argued was an entirely foreseeable consequence of his own decisions (i.e. Mr D’s decision to state that the last time they met the police officer had “*randomly stopped*” and “*robbed*” him). The broadcaster added that given that Mr D’s actions were not carried

out in private and did not attract any reasonable expectation of privacy, it was open for the programme to identify him in relation to these matters.

In any case, Channel 5 argued that, even if Ofcom concluded that Mr D had a legitimate expectation of privacy with regard to some or part of the material broadcast, any balancing exercise between the complainant's right to privacy and the broadcaster's right of freedom of expression would determine that Channel 5's right to freely communicate the issues dealt with in the programme to its audience outweighed Mr D's right to privacy. In addition, it said there was a clear public interest in showing a realistic picture of the way in which the police are treated as they go about their public duty to keep the peace, to prevent and to punish crime and wrongdoing.

Representations on Ofcom's Preliminary View

Ofcom prepared a Preliminary View in this case that the complaint of unwarranted infringement of privacy in the programme as broadcast should be upheld. We provisionally concluded that Mr D did have a legitimate expectation of privacy, although limited, and that the infringement of his privacy was not warranted. We considered that, in the specific circumstances of this case, Mr D's right to privacy was not outweighed by the broadcaster's right to freedom of expression and the public interest in broadcasting the relevant material.

Both parties were given the opportunity to comment on the Preliminary View. Both parties made submissions and relevant ones are summarised below.

Mr D's representations

Mr D noted that he was recognised not only "by three people and some of his work colleagues" but also by most of his family members and that this had a negative impact on his relationship with these members of his family. Mr D also said that several months prior to the programme he had moved to a different county in order to "start a new life and contribute to society" and that "this (i.e. his inclusion in the programme) had made it harder to do so".

Channel 5's representations

Channel 5 said that Ofcom had not responded satisfactorily in the Preliminary View to its various legal arguments that Mr D did not have a legitimate expectation of privacy. The broadcaster submitted that, other than *Axel Springer*, Ofcom had ignored the case law cited by Channel 5 in its previous submissions. It argued that Ofcom provided no authority for its assertion that: "It is not correct that Article 8 rights can never be engaged in relation to the circumstances of a person's unlawful activity".

Channel 5 also said for example that Ofcom had provided no authority for its opinion, set out in the Preliminary View, that privacy rights can be "limited". Channel 5 argued that Ofcom should properly explain its reasoning. The broadcaster added that a refusal of Ofcom to provide its reasoning on the matter could create a "chilling effect" on the broadcaster's right to exercise its freedom of expression.

Channel 5 said that, in its opinion, Ofcom appeared to hold views about the law on privacy which suggested that Ofcom believed that individuals have a "right to be forgotten". Channel 5 said that Ofcom's approach suggests that Ofcom believes that as time elapsed Article 10 rights may or will dwindle, making it impermissible for

material to be broadcast in relation to which a person has a limited right to privacy. Channel 5 made reference to comments by a House of Lords Select Committee (with which Channel 5 said it agreed) on the position of the European Commission on the 'right to be forgotten' in a data protection context relating to data on the web accessible through search engines,³ and submitted that such a "right to be forgotten" is "misguided in principle and unworkable in practice".

Channel 5 argued that Mr D did not have a legitimate expectation of privacy (whether limited or otherwise) in relation to the footage broadcast. Channel 5 made the following points in support of this.

Channel 5 suggested that the circumstances in which the footage of Mr D was recorded (i.e. openly on the public highway) were similar to the circumstances that pertained in the *Hannon* case (cited by Ofcom in its Preliminary View – see footnote 8 below), in which Mr Justice Mann stated that an aeroplane is not a place where members of the public have an expectation of privacy; rather, it is similar to a public street with a limited number of passers-by.

The broadcaster also argued that Ofcom had provided no authority to support its opinion in the Preliminary View that it was reasonable to regard being stopped and searched for suspected possession of cannabis as a "sensitive situation". The broadcaster added that Ofcom had not explained "why something being sensitive equates with a right recognised as protected under Article 8". Channel 5 said there was no authority to support this.

The question which needs to be considered, Channel 5 said, is "not whether a particular individual regards themselves as in an embarrassing predicament" but "whether a reasonable person would in the particular case consider that an exchange or an action attracted privacy rights". Channel 5 also stated that it was difficult to see why a reasonable person would consider Mr D's exchange with the police officer about their previous interaction attracted any right to privacy, especially when that exchange is made in public. In Channel 5's view, discussions with police officers in relation to the commission of crimes are "inherently not private".

The broadcaster also said that Mr D's conversation with the police officer about their previous interaction could not be regarded as attracting any right to privacy, especially given that the comments were made in public, because it referred to a police officer enforcing the law and was inherently anti-social because Mr D was complaining about being denied the opportunity to engage in illegal conduct. Channel 5 said that the fact that Mr D himself, whilst being filmed on a public road, had referred to the previous incident where the illegal substance he was carrying was confiscated and had expressed his view that the police officer had wronged him were matters which affected the overall position. Channel 5 said that it would not have identified Mr D or made reference to the police officer's prior dealings with him if he had not said these things.

Channel 5 also said that it considered that Ofcom should assess the footage of Mr D which was broadcast separately from the revelations about his cannabis use.

In addition, Channel 5 argued that in the Preliminary View Ofcom had wrongly concluded that its Article 10 rights were outweighed by Mr D's Article 8 rights in light

³ Channel 5 in particular quoted from paragraphs 47-48, 52-53 and 61-62 of the following report <http://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-home-affairs-sub-committee-f/news/right-to-be-forgotten-report/> .

of case law of the European Court of Human Rights, in particular the *Von Hannover* case⁴, which sets out relevant factors to bear in mind in conducting this balancing exercise between these competing rights.

Channel 5 said that Ofcom had failed to explain its reasoning for reaching this conclusion and submitted that (should Ofcom continue to conclude that Mr D had a legitimate expectation of privacy) Channel 5's Article 10 rights were sufficiently strong to outweigh Mr D's, in particular for the following reasons:

- The filming occurred in public and Mr D was aware of the filming;
- There was nothing inherently sensational or offensive about the broadcast or the segment concerning Mr D and there was no indication that he was distressed by the encounter;
- Cannabis use continues to be illegal and its illegality is a legitimate topic of public interest;
- Police officers encounter illegal drug use frequently and it is in the public interest to remind viewers of that and the illegality of cannabis use;
- It is in the public interest to contribute to the discussion of the illegality of cannabis use by illustrating the differing viewpoints through real life exchanges between users and police officers;
- It was only because of Mr D's reference to the previous incident to the cannabis he was carrying that meant he was identified in the programme; and
- The fact that Mr D may have wished to keep his illegal cannabis use secret or was embarrassed by it should not outweigh any of those factors.

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, the transcript and both parties' written submissions. We also took account of both parties' relevant representations in response to Ofcom's Preliminary View on this complaint (which was to uphold the complaint).

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

⁴ *Von Hannover v Germany (No 2)* [2012] ECHR 228. Channel 5 also referred to *Couderc and Hachette Filipacchi Associés v France* [2014] ECHR 167.

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

In assessing Mr D's complaint that his privacy was unwarrantably infringed in the broadcast of the programme because footage of him was shown without his consent, Ofcom had regard to Practice 8.4 of the Code. This states that broadcasters should ensure that actions filmed or recorded in, or broadcast from, a public place, are not so private that prior consent is required before broadcast from the individual concerned, unless broadcasting without their consent is warranted. Ofcom also had regard to Practice 8.6 of the Code, which states that, if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

In considering whether or not Mr D's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first assessed the extent to which he had a legitimate expectation of privacy in relation to the unobscured footage of him as broadcast.

Ofcom also considered Channel 5's submissions in relation to Mr D's complaint. As noted in earlier fairness and privacy decisions⁵, Ofcom does not agree with Channel 5's interpretation of the *Axel Springer* case. It is not correct that Article 8 rights can never be engaged when a person interacts with the police in relation to unlawful activity, for example, during an arrest, nor that discussions with police officers about the commission of crimes are "inherently" not private. Ofcom does not consider that the case law which Channel 5 relies upon⁶ supports such an inflexible approach to the determination of whether an individual has a legitimate expectation of privacy in the broadcast of footage relating to such circumstances.

Channel 5 said that, in its opinion, Ofcom appeared to hold views about the law on privacy which suggested that Ofcom believed individuals have a "right to be forgotten". Channel 5 considered that such a "right to be forgotten" is "misguided in principle and unworkable in practice" (in line with comments by a House of Lords Select Committee referred to above). In Ofcom's view, those comments are not relevant to the present situation which concerns an individual's rights to privacy under Article 8 of the European Convention on Human Rights in a broadcasting context, and not the application of the Data Protection Directive in the context of online searches (which was the context in which the comments of the House of Lords Select Committee were made). Channel 5 also appears to have misunderstood Ofcom's position on this issue – Ofcom is not suggesting that Article 8 means that individuals have a 'right to be forgotten' in this context.

Ofcom considers that the test as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be judged in light of the

⁵ See Complaint by Miss C, *Criminals: Caught on Camera*, Channel 5, 18 October 2013, <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb252/obb252.pdf> and Complaint by Miss Jodie Musgrave, *Police Interceptors*, Channel 5, 23 September 2013 <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb259/obb259.pdf>

⁶ Including *Kinloch* (as mentioned above), *X v United Kingdom* ECHR 5877/22, *S and Marper v UK* 30562/04 and 30566/04 and *Rio Ferdinand v MGN Limited* [2011] EWHC 2454.

circumstances in which the individual concerned finds him or herself.⁷ Ofcom will therefore continue to approach each case on its facts. Ofcom's view regarding the fact sensitive nature of this assessment is consistent with the interpretation of the *Axel Springer* case in a recent judgment of the High Court, *Hannon v News Group Newspapers Ltd* [2014] EWHC 1580 (Ch)⁸.

In our view, whether or not an individual has a legitimate expectation of privacy in relation to the broadcast of footage of that individual being stopped and searched, and the broadcast of information about previous interaction with the police, depends on all the relevant circumstances.

In the case of the broadcast of footage of the individual being stopped and searched these circumstances may include:

- whether the footage was filmed in a public place;
- whether the individual was identifiable from either the information and/or footage included in the programme;
- whether the individual was vulnerable in any way (e.g. through the consumption of alcohol or drugs or because of an illness or disability);
- whether the broadcast showed the individual doing something, or disclosed information about that individual, which was confidential, sensitive or personal; and
- whether the footage showed that the individual had committed a criminal offence on the occasion in question;

⁷ See for example, Anthony Clarke MR in *Murray v Big Pictures* [2009] CH 481, paragraph 36: "the question whether there is a reasonable expectation of privacy is a broad one, which takes account of all the circumstances of the case. They include the attributes of the claimant, the nature of the activity in which the claimant was engaged, the place at which it was happening, the nature and purpose of the intrusion, the absence of consent and whether it was known or could be inferred, the effect on the claimant and the circumstances in which and the purposes for which the information came in the hands of the publisher". This approach was cited recently in *Weller v Associated Newspapers* at paragraph 37.

⁸ In *Hannon* Mr Justice Mann noted that *Axel Springer*: "does not support an absolute right of the press to have, and to publish, the fact of an arrest, and its circumstances. At most it supports a submission that, if the facts justify it, that right exists and the countervailing privacy rights do not. As with a large number of disputes under Convention rights, **that is a question of fact and degree, and is highly fact sensitive**" (paragraph 96). (Ofcom noted that Channel 5 had argued that this case was not authority for the above position because the argument was not made in that case and Mr Justice Mann was not making a final ruling on the facts. However, Ofcom considers that the issues considered in that case (whether there is a reasonable expectation of privacy in relation to an arrest and reasons for it) are analogous to the issues in the present case and the fact that there was no final ruling on this point on the facts is not material to the principal point, namely whether, as a matter of established legal precedent, there can be no reasonable expectation of privacy in relation to the circumstances of a person's unlawful activity in a public place.)

Ofcom's view is also consistent with the leading judgment in *Re JR38 for Judicial Review* [2013] NIQB 44, a case which cites the statement in *Kinloch* on which Channel 5 seeks to rely. See the judgment of Morgan LCJ at paragraph 28 at which he notes: "*I accept that the determination of whether the retention and use of photographs constitutes an interference with Article 8 requires a fact specific consideration in every case*". Morgan LCJ found at paragraph 30 that this was a case in which the claimant's Art. 8 rights are engaged in connection with the publication of a photograph of a child by the police indicating he was wanted for interview in connection with involvement in potential criminal activity.

- the time that had elapsed between the events depicted in the footage and its broadcast (or re-broadcast); and
- any change in factual circumstances between the events depicted and the broadcast which may affect the extent to which the material could be considered to be private or confidential (for example, whether since the incident filmed the individual concerned was charged and/or found guilty of any offences).

In the case of the broadcast of information about an individual's previous interactions with the police these circumstances may include:

- whether the individual was identifiable from either the information and/or footage included in the programme;
- whether the programme disclosed information about the individual which was confidential, sensitive or personal;
- the relative seriousness of the conduct in question and the outcome it attracted (for example, whether there was a subsequent conviction for a criminal offence);
- whether any information about that conduct was in the public domain;
- the time that had elapsed between the event disclosed (i.e. the conduct in question) and the broadcast of the information about it; and
- any change in factual circumstances between the event disclosed and the broadcast which may affect the extent to which the material could be considered to be private or confidential.

We noted that assessing whether or not Mr D had a legitimate expectation of privacy would depend on all the relevant circumstances. Ofcom analysed the circumstances in which Mr D was filmed and what footage and information was subsequently broadcast (as set out in the "Introduction and programme summary" section above).

The footage of Mr D included in the programme was filmed while he was in a public place. From viewing the footage as broadcast, it appeared to us that the communication between Mr D and the police officer was calm and there was no indication that Mr D was in any way distressed by the encounter. However, we also noted that Mr D:

- was shown while being stopped and searched for suspected possession of cannabis (we considered that it was reasonable to regard this footage of Mr D as him being shown in a sensitive situation);
- was identifiable from the material broadcast (although his name was bleeped out when the police officer first approached him he was subsequently referred to by his first name by the police officer and his face, which was unobscured, appeared on screen for approximately 55 seconds during most of which time his face was shown clearly); and
- was not found to have any illegal substances in his possession (although the man he was with was found to be in possession of some cannabis).

We noted that after the stop and search footage was shown the programme included an exchange between Mr D and the police officer in which it was disclosed that on the previous occasion when they had met, Mr D had been found with cannabis in his possession. As noted above, on this occasion, i.e. the occasion shown in the programme, Mr D was found not to have any illegal substances on him.

In addition, the comments made by the police officer (see above) indicated that on every previous occasion the police officer had stopped the complainant (who as, noted above, was identifiable), he had found him to be in possession of or smoking

cannabis. For example, at the end of the relevant section of the programme the police officer said: “*everytime I’ve stopped him [Mr D] he’s had cannabis*”.

Although in principle convictions for criminal offences are matters of public record, disclosure of information about an individual’s criminal convictions may engage an individual’s rights under Article 8 depending on the circumstances in which they are referred to, for example, how long ago they took place, whether they are in fact in the public domain, and the possible effect of broadcasting this material on the individual⁹. Ofcom noted that Channel 5 had argued that case law such as *R (T & JB) v Secretary of State for the Home Office* [2014] 35 and the judgment of Lord Hope in *R (L) v Commissioner for the Police of the Metropolis* [2009] UKSC 3 (referred to in footnote 9) was not particularly relevant in the circumstances of this case, because, in Channel 5’s view, it was material that Mr D himself had mentioned his previous interaction with the police whilst being filmed in public. Ofcom accepts that the circumstances of this case are different to those discussed in these cases, which relate primarily to disclosure of information gathered on individuals’ past convictions by public authorities. However, Ofcom considers that the point of principle mentioned in those cases remains pertinent, namely that disclosure of information relating to individuals’ criminal convictions may engage Article 8 rights depending on the particular factual circumstances. Again, Ofcom considers that this means that it is therefore necessary to assess whether a legitimate expectation of privacy arises in a particular case having regard to all the relevant circumstances.

Ofcom understands that information about Mr D’s previous interactions with the police in respect of his possession of cannabis were not in the public domain prior to the broadcast and would not form part of a criminal record¹⁰.

⁹ See, for example, the recent Supreme Court judgment *R (T & JB) v Secretary of State for the Home Office* [2014] 35 and the judgment of Lord Hope in *R (L) v Commissioner for the Police of the Metropolis* [2009] UKSC 3 at paragraph 27, which relates to the disclosure of information as part of an Enhanced Criminal Record Certificate [ECRC], which need to be obtained for certain types of employment: “information about an applicant’s convictions which is collected and stored in central records can fall within the scope of private life within the meaning of Article 8(1), with the result that it will interfere with an applicant’s private life when it is released. It is, in one sense, public information because the convictions took place in public. But the systemic storing of this information in central records means that it is available for disclosure...long after the event when everyone other than the person concerned is likely to have forgotten about it. As it recedes into the past, it becomes a part of the person’s private life which must be respected. Moreover, much of the other information that may find its way into an ECRC relates to things that happen behind closed doors. A caution takes place in private, and the police gather and record information from a variety of sources which would not otherwise be made public”.

¹⁰ Section 5 of the Misuse of Drugs Act 1971 (the Act) states that it is unlawful for a person to be in possession of a controlled drug. Under the Act, cannabis is a Class B drug. A Cannabis Warning is a non-statutory out-of-court process for disposing of cannabis possession offences. It is an informal verbal warning administered by a police officer, either on the street or at a police station, to deal with adults caught in possession of small amounts of cannabis consistent with personal use. Under ACPO guidelines, Cannabis Warnings are part of a three-stage escalation procedure for a first-time offence of possession of cannabis. It is expected that in the absence of any aggravating factors that an offender will receive a Cannabis Warning for a first possession offence, a Penalty Notice for Disorder for a second offence and then be arrested for a third offence. The implications of receiving a Cannabis Warning are that the cannabis is confiscated and a record of the Cannabis Warning is made on local systems (but not on any central records). It does not form part of a criminal record but it may be disclosed as part of an enhanced Disclosure and Barring Service check if deemed relevant.

As explained above, Channel 5 questioned Ofcom's Preliminary View that Mr D had a legitimate expectation of privacy with regard to the broadcast of the relevant material. We considered the key points made by the broadcaster on this issue.

Channel 5 said that because of the circumstances in which the footage of Mr D was recorded he could not be regarded as having a legitimate expectation of privacy in regard to the broadcast of this footage, in particular because Mr D himself had referred to the previous incident where the illegal substance he was carrying was confiscated whilst being filmed on a public road.

Channel 5 also indicated that it was not reasonable for Ofcom to have concluded that being stopped and searched for suspected possession of cannabis as a "sensitive situation" or to equate this with a right to privacy.

As set out above, when determining if Mr D had a legitimate expectation of privacy in the footage as broadcast we have taken account of the fact that the footage of him was filmed openly in a public place. However, Ofcom has concluded that, notwithstanding this, Mr D had a legitimate expectation of privacy with regard to this footage as broadcast. This conclusion was based on a number of factors, one of which is that we considered that Mr D was filmed in a sensitive situation. We hold this view because when a member of the public is being questioned, and in this case stopped and searched, by the police on possible suspicion of having committed, or being involved, with a criminal offence, that individual will often feel under pressure and we consider that the broadcast of it is likely to engage his Article 8 rights. As already noted, in this case Mr D was not found to have committed an offence.

Channel 5 also argued that that Mr D had no legitimate expectation of privacy with regard to the broadcast of his follow-up conversation with the police officer because it referred to a police officer enforcing the law and was inherently anti-social because Mr D was complaining about being denied the opportunity to engage in illegal conduct.

We considered that Mr D had a legitimate expectation of privacy with regard to the broadcast of the footage of this conversation for similar reasons to those that pertain to the stop and search footage. While we again acknowledge that the footage was recorded openly in a public place, the conversation which was subsequently broadcast concerned a sensitive subject (that on the previous occasion when they had met, Mr D had been found with cannabis in his possession); Mr D was identifiable and thereby linked to the incident in question; and, on the information available, Ofcom understands that this incident was not a matter of public record or otherwise in the public domain prior to the broadcast of this programme.

In its response to the Preliminary View, Channel 5 argued that the fact Mr D, whilst being filmed on a public road, had referred to his previous meeting with the police officer (during which the cannabis he was carrying was confiscated by that police officer) negated any legitimate expectation of privacy he might have had with regard to the broadcast of this footage.

We acknowledged that, while he was being filmed, Mr D said that he had been "*randomly stopped*" and "*robbed*" by the police officer the last time that they had met.

However, Ofcom noted that Mr D made these comments only in response to the police officer's initial comments to him about Mr D's mood on that occasion. Ofcom considered that Mr D would not have been aware at the time that he was speaking to the police officer, that this specific footage would be broadcast, nor if it was, that he

would be identifiable in the broadcast and thereby linked to it. Moreover, Mr D could not have known at the time that he referred to his previous meeting with the police officer, that footage of the police officer saying: *“every time I’ve stopped him [Mr D] he’s had cannabis”* would also be broadcast.

As set out in more detail below, we do not consider that Mr D’s conversation with the police officer constituted anti-social behaviour. It is clear from the conversation that he did not agree with the law as it stood. However, he was not aggressive towards the police officer and from the broadcast footage; it appeared that Mr D was simply responding to a comment which the police officer made about his mood on the previous occasion on which they met.

The broadcast of footage of conversations or actions which occurred in a public place will not always attract a legitimate expectation of privacy. However, in this case the footage showed the complainant in a situation which was sensitive, he was identifiable; he had not committed an offence on that occasion and the information about his previous conduct had not previously been in the public domain. For these reasons, we concluded that the complainant had a legitimate expectation of privacy in regard to the broadcast of the relevant footage and the information which the programme disclosed about him.

Taking all of these factors together, we concluded that Mr D had a legitimate expectation of privacy with regard to the footage of him being stopped and searched and his exchange with the police officer about his previous interaction with the police (that he had previously been found to be in possession of cannabis) in the programme as broadcast. However, this expectation was limited to some extent by the fact that Mr D was filmed in a public place, and, in respect of the information broadcast about his previous interactions with the police, by the fact that being in possession of cannabis is unlawful (albeit these previous interactions may not in fact have given rise to a criminal record in relation to the possession of cannabis in the case of the complainant).

We noted that Channel 5 argued that there was no authority to support the proposition that an expectation of privacy may be “limited” and that the matters which Ofcom had suggested may “limit” a legitimate expectation of privacy in the circumstances of this case instead should only come into play in considering where the balance lies between competing Article 8 and Article 10 rights. We do not agree with Channel 5 that an expectation of privacy may not be “limited” in the circumstances of a particular case. As noted above, we consider that the question of whether an individual’s Article 8 rights are engaged is fact sensitive, depending on the circumstances. In some cases, having regard to the particular circumstances, we may consider that an individual’s legitimate expectation of privacy with regard to the broadcast of footage about (or otherwise related to) him or her may be of a lesser degree than in others. In such circumstances, when assessing whether an intrusion into the individual’s right to privacy was warranted, we would attach less weight to that individual’s expectation of privacy, which we describe as “limited” in such cases.

Ofcom then assessed whether Mr D’s consent had been secured before the footage and personal information about him was broadcast in accordance with Practice 8.6. It was not disputed that the broadcaster had not sought Mr D’s consent for the material to be included in the programme.

Ofcom went on to consider whether it was warranted to infringe Mr D’s privacy in this manner in relation to each element of the material broadcast. 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.

Given that Mr D had an expectation of privacy in relation to the broadcast (although limited to some extent), we assessed the broadcaster's competing right to freedom of expression and the audience's right to receive information and ideas without unnecessary interference. In particular, we considered whether there was sufficient public interest or other reason to justify the intrusion into Mr D's privacy in broadcasting the footage of him and disclosing information relating to his past dealings with the police.

We noted that Channel 5 had made various points in support of its view that its Article 10 rights and the public interest in broadcasting this material outweighed Mr D's right to privacy in the circumstances of this case, in particular in light of the factors discussed in the *Von Hannover* case for the assessment of whether or not an individual's Article 8 rights would be sufficient to outweigh the Article 10 rights of a publisher.¹¹

Ofcom considered that, as Channel 5 has argued, there is a genuine public interest in broadcasting programmes of this nature, specifically those which examine the daily, routine work of police officers, their relationship with those with whom they come into contact, the way that offences such as possession of cannabis can be dealt with by the police on the street and which illustrate the adverse results of unlawful behaviour. In our view, showing such material in programmes helps to develop the public's understanding of the way police officers make their decisions and detect criminal and antisocial behaviour.

In our view, this public interest justification was capable of extending to the broadcast of the footage of Mr D being stopped and searched and to the subsequent exchange between the police officer and Mr D about the last occasion on which they met and the police officer's subsequent reference to having found the complainant to have had cannabis in his possession on every previous occasion he had searched him. This was because this footage illustrated the day-to-day work of the police and contributed to the public's understanding of the legal status of cannabis and the enforcement of the law in this area. It also allowed viewers to hear the differing perspectives of a person who has previously been found in possession of cannabis and a police officer who regularly deals with this matter and contributed to the public debate about the legal status of cannabis and the enforcement of the law in this area.

However, it was necessary to intensely focus on whether the broadcaster's right to freedom of expression and the public interest in broadcasting the material outweighed Mr D's expectation of privacy in the footage as broadcast in the circumstances of this case, having regard to all relevant factors. In particular, we took into account the fact that the inclusion of unobscured images of Mr D's face and the reference to him by his first name meant he was identifiable from the footage as broadcast, and thereby linked him directly to the information disclosed about his previous interactions with the police, including the police officer's statement that on

¹¹ These factors are: (i) contribution to a debate of general interest; (ii) how well known the subject is and the nature of the report; (iii) the prior conduct of the subject (in particular in terms of whether or not they have previously sought publicity); (iv) the content, form and consequences of publication; and (v) the circumstances in which the photos (or footage in this case) were taken.

every previous occasion he had stopped the complainant he had found him to be in possession of cannabis.

In this context, we noted that Channel 5 had argued that this was not a “random search” and the police officer’s suspicions proved to be correct in relation to the complainant’s companion and that it was therefore important to report that the pair were known to this officer. Channel 5 also said that the complainant’s identity would have been obscured (including in respect of the stop and search footage discussed above) if the complainant had not commented on their previous interactions and accused the complainant of “robbing” him, and had argued that it was in the public interest to allow the police officer to “set the record straight” by setting out the facts about their previous interactions and to report the complainant’s views on that issue.

Channel 5 further argued in its submissions in response to Ofcom’s Preliminary View that identifying Mr D and broadcasting the footage referring to his history of illegal cannabis use was in the public interest given that Mr D was unrepentant about his illegal use of cannabis and it was in the public interest to remind viewers of the illegality of cannabis use and to illustrate the differing viewpoints through real life exchanges between users and police officers.

Channel 5 also argued that the fact that Mr D may have wished to keep his previous interactions with the police regarding his cannabis use secret or was embarrassed by it would not outweigh the public interest in this case, particularly given that the filming was done openly in public and there was nothing inherently sensational or offensive about the broadcast.

However, although we agreed with Channel 5 that there was some public interest in broadcasting the footage of Mr D for the reasons outlined above, we were not persuaded that the fact that Mr D was previously known to the police was sufficient to justify broadcasting the unobscured footage of Mr D in the circumstances of this case. As set out above, we acknowledged that the filming had taken place openly in a public place. We also understand that Mr D had admitted to being in possession of cannabis on the last occasion he encountered the police officer, and seemingly on several other occasions he had been found to be in possession of cannabis. Nonetheless, we understand that on that previous occasion the police officer decided that it was appropriate to give Mr D one of the least severe penalties available for this offence (confiscating the cannabis and giving a Cannabis Warning, as explained above, which does not give rise to a criminal record). The information regarding Mr D’s previous possession of cannabis was not a matter of public record. Nor was it otherwise known to the general public or a matter of public debate, prior to the broadcast of the footage of Mr D’s encounter with the police officer and the police officer’s comments on his past history with the complainant. In addition, as the footage showed, Mr D was not found to be in possession of any illegal substances on this occasion.

With regard to the conversation between Mr D and the police officer about the previous occasion on which they met, we did not agree with Channel 5’s assertion that Mr D’s comments constituted anti-social behaviour on his part. We considered that the complainant’s use of the terms “*randomly searched*” and “*robbed*” in reference to the police officer’s previous actions appeared to be part of a calm exchange (given the circumstances) between the police officer and both Mr D and his companion. Although Mr D and the police officer had different interpretations of the events which occurred during their previous meeting, Mr D did not appear to be particularly angry about it but simply responded to the police officer’s comment that Mr D was in a better mood than the previous time they had met. In our view, Mr D

was explaining, using perhaps slightly loaded language, that he had been unhappy on that previous occasion because he had been searched and his cannabis confiscated by the police.

In light of Channel 5's comments regarding *Von Hannover*, we also considered the extent to which an analysis of the factors mentioned in that case may be relevant to our decision. We considered that we have already had regard to those factors as relevant to the circumstances of this case and that, on balance, for the reasons outlined below, they tended to support the view that Mr D's right to privacy in relation to the broadcast of the footage outweighed the broadcaster's right to freedom of expression and the public interest in broadcasting this material in the particular circumstances of this case. In particular:

- As we acknowledged above, the broadcast of the relevant material – notably footage of Mr D's exchange with the police officer – contributed to a matter of public debate (namely the work of the police, in particular in relation to cannabis use).
- The relevant footage was recorded openly and in a public place, but showed the complainant in a sensitive situation (being stopped and searched and questioned by the police) as discussed above.
- Mr D is not a public figure and, on the information available, it does not appear to Ofcom that Mr D has ever sought publicity and was unknown prior to this broadcast. Moreover, details of his previous interactions with the police were unlikely to be in the public domain.
- In terms of the content and form of the broadcast, we noted that Mr D was identifiable in the footage as broadcast and was therefore linked directly in the footage as broadcast to the sensitive information about his being stopped and searched and his previous interactions with the police, although he had not committed an offence on the occasion in question.
- With regard to the consequences of broadcast, details of Mr D's previous interactions with the police were put into the public domain for the first time by this broadcast. In Ofcom's view, this would impact on his private life.

Lastly, it is important to make clear that in making this decision Ofcom has not been concerned with whether or to what extent Mr D might have been caused embarrassment by his inclusion in the programme. Rather, given our view that Mr D had a legitimate expectation of privacy with regard to the relevant material and did not consent to its broadcast, we have considered whether the infringement of his privacy was warranted.

In conclusion, we accepted, as explained above, that there was some public interest in showing the police's day-to-day activities and the differing perspectives of the complainant and the police officer on cannabis possession. However, on balance, we did not consider that this was sufficient in the circumstances of this case to justify the broadcast of footage of Mr D (from which he was identifiable) in respect of his interaction with the police officer and the disclosure of information that he had previously been found to be in possession of cannabis.

For all the reasons set out above, we concluded that Mr D's right to privacy was not outweighed by the broadcaster's right to freedom of expression in this instance.

Therefore, Ofcom found that there was an unwarranted infringement of Mr D's privacy in the programme as broadcast.

Therefore, Ofcom has upheld Mr D's complaint of unwarranted infringement of privacy in the programme as broadcast.

Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 7 and 20 October 2014 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
Suspects (trailer)	Channel 5	Various	Scheduling
Advertising minutage	SAB	31/08/2014	Advertising minutage
Advertising minutage	Samaa	11/08/2014	Advertising minutage
Marakkath Thakumo	Spectrum Radio	22/06/2014	Crime

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

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

Licensee	Categories
South West Sound Limited	Format

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

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 7 and 20 October 2014 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
Advertising	4seven	08/10/2014	Advertising content	1
Gogglebox	4seven	12/10/2014	Animal welfare	1
Scrotal Recall (trailer)	4seven	30/09/2014	Scheduling	1
Police Interceptors	5*	03/10/2014	Offensive language	1
Top 20 Funniest	5*	08/10/2014	Under 18s in programmes	1
Programming	Attheraces	n/a	Materially misleading	1
Subtitling	BBC / ITV	n/a	Television Access Services	1
News	BBC / ITV / Sky News	15/10/2014	Outside of remit / other	1
BBC Music promotion	BBC 1	07/09/2014	Advertising/editorial distinction	1
Doctor Who	BBC 1	04/10/2014	Violence and dangerous behaviour	1
Doctor Who	BBC 1	04/10/2014	Offensive language	2
Doctor Who	BBC 1	Various	Gender discrimination/offence	1
EastEnders	BBC 1	13/10/2014	Offensive language	1
Inside Out	BBC 1	06/10/2014	Due impartiality/bias	1
Life Story (trailer)	BBC 1	13/10/2014	Animal welfare	1
Panorama: The Farage Factor	BBC 1	13/10/2014	Offensive language	2
Panorama: The Farage Factor	BBC 1	13/10/2014	Due impartiality/bias	17
Question Time	BBC 1	02/10/2014	Generally accepted standards	4
Regional News and Weather	BBC 1	14/10/2014	Due impartiality/bias	1
Strictly Come Dancing	BBC 1	18/10/2014	Generally accepted standards	1
Strictly Come Dancing	BBC 1	05/10/2014	Voting	1
The Andrew Marr Show	BBC 1	21/09/2014	Generally accepted standards	1
The Andrew Marr Show	BBC 1	12/10/2014	Race discrimination/offence	1

The Great British Bake Off	BBC 1	08/10/2014	Outside of remit / other	2
The One Show	BBC 1	13/10/2014	Due impartiality/bias	1
Would I Lie to You?	BBC 1	10/10/2014	Transgender discrimination/offence	3
BBC News	BBC 1 / BBC News Channel	13/10/2014	Due impartiality/bias	1
Dances with Wolves	BBC 2	12/10/2014	Violence and dangerous behaviour	1
Genesis: Together and Apart	BBC 2	04/10/2014	Generally accepted standards	6
Panorama: Workers on the Breadline	BBC 2	10/10/2014	Due accuracy	1
Peaky Blinders	BBC 2	02/10/2014	Generally accepted standards	1
Peaky Blinders	BBC 2	02/10/2014	Generally accepted standards	1
Peaky Blinders	BBC 2	02/10/2014	Generally accepted standards	1
Top Gear	BBC 2	n/a	Outside of remit / other	4
University Challenge	BBC 2	06/10/2014	Offensive language	1
Don't Tell the Bride	BBC 3	07/10/2014	Violence and dangerous behaviour	1
Live at the Apollo	BBC 3	08/10/2014	Disability discrimination/offence	1
Life Story (trailer)	BBC Channels	n/a	Scheduling	1
BBC News	BBC News Channel	08/10/2014	Offensive language	1
BBC Radio 1 Teen Awards	BBC Radio 1	19/10/2014	Sexual orientation discrimination/offence	1
Chris Evans	BBC Radio 2	08/10/2014	Outside of remit / other	1
Saturday Live	BBC Radio 4	20/09/2014	Generally accepted standards	1
The Museum of Everything	BBC Radio 4 Extra	15/10/2014	Sexual orientation discrimination/offence	1
Afternoon Edition	BBC Radio 5 Live	06/10/2014	Due impartiality/bias	1
Broken Silence	Brit Asia TV	26/08/2014	Generally accepted standards	1
Broken Silence	Brit Asia TV	04/10/2014	Generally accepted standards	1
Vodafone Big Top 40	Capital FM (East Midlands)	28/09/2014	Offensive language	1
Family Feud	Channel 10 (Australia)	15/10/2014	Outside of remit / other	1
Alan Carr: Chatty Man	Channel 4	19/09/2014	Product placement	1
Educating the East End	Channel 4	09/10/2014	Under 18s in programmes	1
Gogglebox	Channel 4	10/10/2014	Race discrimination/offence	1
Gogglebox	Channel 4	03/10/2014	Generally accepted standards	2
Gogglebox	Channel 4	10/10/2014	Generally accepted standards	2

Gogglebox	Channel 4	10/10/2014	Animal welfare	75
Gogglebox	Channel 4	14/10/2014	Animal welfare	2
Homeland	Channel 4	12/10/2014	Advertising scheduling	1
Homeland	Channel 4	19/10/2014	Generally accepted standards	2
Mitsubishi's sponsorship of documentaries on 4	Channel 4	05/10/2014	Generally accepted standards	1
Mitsubishi's sponsorship of documentaries on 4	Channel 4	01/10/2014	Generally accepted standards	1
Mitsubishi's sponsorship of documentaries on 4	Channel 4	13/10/2014	Generally accepted standards	1
Obsessive Compulsive Cleaners	Channel 4	14/10/2014	Disability discrimination/offence	1
Scrotal Recall	Channel 4	02/10/2014	Materially misleading	1
Scrotal Recall (trailer)	Channel 4	21/09/2014	Scheduling	1
Scrotal Recall (trailer)	Channel 4	22/09/2014	Scheduling	1
Stand Up To Cancer	Channel 4	07/10/2014	Generally accepted standards	1
Sunday Brunch	Channel 4	12/10/2014	Offensive language	1
The Men with Many Wives	Channel 4	24/09/2014	Religious/Beliefs discrimination/offence	1
Unreported World	Channel 4	03/10/2014	Scheduling	5
Unreported World (trailer)	Channel 4	26/09/2014	Generally accepted standards	1
5 News at 5	Channel 5	29/09/2014	Due impartiality/bias	1
Benefit House: Me and My 22 Kids	Channel 5	02/10/2014	Materially misleading	1
Body of Proof (trailer)	Channel 5	15/10/2014	Scheduling	1
Body of Proof (trailer)	Channel 5	17/10/2014	Scheduling	1
Caught on Camera	Channel 5	07/10/2014	Violence and dangerous behaviour	2
Celebrity Big Brother	Channel 5	27/08/2014	Disability discrimination/offence	1
Kids Who Kill	Channel 5	09/10/2014	Generally accepted standards	1
Kids Who Kill	Channel 5	09/10/2014	Materially misleading	1
The Journey of Natty Gann	Channel 5	14/09/2014	Scheduling	1
The Wright Stuff	Channel 5	02/10/2014	Due impartiality/bias	2
Body of Proof (trailer)	Channel 5 +1	14/10/2014	Scheduling	1
Nerds and Monsters	CITV	07/10/2014	Scheduling	1
Programming	Clubland TV	04/10/2014	Offensive language	1
Programming	Clyde2	n/a	Format	1

Programming	Codesouth	06/10/2014	Offensive language	1
Secretsales.com's sponsorship of Friends	Comedy Central	02/10/2014	Sponsorship credits	1
South Park (trailer)	Comedy Central	23/09/2014	Offensive language	1
Just Eat's sponsorship of programmes on Dave	Dave	20/09/2014	Sponsorship credits	1
New Tricks	Drama	03/10/2014	Outside of remit / other	1
Advertising	E4	22/09/2014	Advertising minutage	1
Channel ident	E4	14/10/2014	Generally accepted standards	1
How I Met Your Mother	E4	09/09/2014	Race discrimination/offence	1
Scrotal Recall (trailer)	E4	25/09/2014	Scheduling	1
TV Show	Ere Wash Sound	n/a	Competitions	1
Heart Breakfast with Matt and Michelle	Heart FM Berkshire	14/10/2014	Scheduling	1
Who's On Heart competition	Heart Radio	n/a	Competitions	1
Advertising	ITV	02/10/2014	Advertising content	1
Advertising	ITV	06/10/2014	Advertising content	2
Advertising	ITV	12/10/2014	Advertising content	1
Advertising	ITV	15/10/2014	Advertising content	1
Aunt Bessie's sponsorship of Tipping Point	ITV	14/10/2014	Generally accepted standards	1
Coronation Street	ITV	15/10/2014	Sexual material	1
Coronation Street	ITV	Various	Disability discrimination/offence	1
Emmerdale	ITV	09/10/2014	Sexual material	1
Emmerdale	ITV	22/09/2014	Race discrimination/offence	1
Emmerdale	ITV	26/09/2014	Outside of remit / other	1
Emmerdale	ITV	25/09/2014	Violence and dangerous behaviour	1
Euro 2016 Qualifier	ITV	12/10/2014	Offensive language	1
Good Morning Britain	ITV	09/10/2014	Outside of remit / other	1
Grantchester	ITV	Various	Drugs, smoking, solvents or alcohol	1
ITV News	ITV	13/10/2014	Due impartiality/bias	1
ITV Sport (trailer)	ITV	07/10/2014	Materially misleading	1
Jurassic Park	ITV	11/10/2014	Offensive language	1
Loose Women	ITV	07/10/2014	Generally accepted standards	8
Skoda's sponsorship of drama on ITV	ITV	13/10/2014	Generally accepted standards	2

Sky Broadband's sponsorship of ITV showcase drama	ITV	08/10/2014	Age discrimination/offence	1
Sunday Night at the Palladium	ITV	12/10/2014	Disability discrimination/offence	9
TalkTalk's sponsorship of The X Factor	ITV	04/10/2014	Generally accepted standards	1
The Alan Titchmarsh Show	ITV	17/09/2014	Gender discrimination/offence	1
The Alan Titchmarsh Show	ITV	01/10/2014	Due impartiality/bias	1
The Jeremy Kyle Show	ITV	n/a	Religious/Beliefs discrimination/offence	1
The Only Way is Ibiza (Trailer)	ITV	04/10/2014	Scheduling	1
The X Factor (trailer)	ITV	n/a	Hypnotic and other techniques	1
This Morning	ITV	23/09/2014	Scheduling	1
This Morning	ITV	03/10/2014	Animal welfare	1
This Morning	ITV	12/09/2014	Materially misleading	4
This Morning	ITV	29/09/2014	Generally accepted standards	1
This Morning (trailer)	ITV	14/10/2014	Scheduling	1
Through the Keyhole	ITV	08/10/2014	Generally accepted standards	1
Advertising	ITV and Sky channels	n/a	Advertising content	1
The Only Way is Ibiza	ITV Be	08/10/2014	Gender discrimination/offence	1
Celebrity Juice	ITV2	18/09/2014	Television Access Services	1
Plebs	ITV2	22/09/2014	Generally accepted standards	1
Release the Hounds	ITV2	22/09/2014	Violence and dangerous behaviour	1
Release the Hounds	ITV2	06/10/2014	Generally accepted standards	2
Release the Hounds	ITV2	22/09/2014	Animal welfare	9
Tomorrow Never Dies	ITV2	19/09/2014	Nudity	1
You've Been Framed!	ITV2	14/10/2014	Generally accepted standards	1
A Touch of Frost	ITV3	02/10/2014	Generally accepted standards	1
Bastuklubben	Kanal 5	01/10/2014	Generally accepted standards	2
Partaj	Kanal 5	21/09/2014	Generally accepted standards	1
Partaj	Kanal 5	25/09/2014	Generally accepted standards	1
Paddy McGuinness	Key 103	05/10/2014	Scheduling	1
Duncan Barks	LBC 97.3 FM	16/09/2014	Race discrimination/offence	1
James O'Brien	LBC 97.3 FM	20/09/2014	Due impartiality/bias	1

James O'Brien	LBC 97.3 FM	29/09/2014	Due accuracy	1
James O'Brien	LBC 97.3 FM	09/10/2014	Generally accepted standards	1
Kim Wilde competition	Magic 105.4 fm	n/a	Materially misleading	1
Car SOS	More4	14/09/2014	Gender discrimination/offence	1
Masters of Sex (trailer)	More4	30/09/2014	Scheduling	1
Scrotal Recall (trailer)	More4	29/09/2014	Scheduling	1
Welcome Aboard Toxic Airlines	Movies4Men	23/09/2014	Due impartiality/bias	1
Fresh Vidz & Hot Hits!	MTV Hits	04/10/2014	Offensive language	1
Programming	n/a	n/a	Generally accepted standards	1
Takrar	PTV Prime	26/07/2014	Religious/Beliefs discrimination/offence	1
Danny & Rosie Show	Pulse1	25/09/2014	Competitions	1
Advertising	Quest	07/10/2014	Advertising content	1
Scandal	Sky Living	25/09/2014	Generally accepted standards	1
Advertising	Sky News	18/09/2014	Political advertising	1
Sky News	Sky News	08/10/2014	Religious/Beliefs discrimination/offence	1
Sky News	Sky News	18/09/2014	Generally accepted standards	2
Sky News	Sky News	06/10/2014	Generally accepted standards	1
Sky News Tonight with Adam Boulton	Sky News	06/10/2014	Due impartiality/bias	1
Sky News with Kay Burley	Sky News	13/10/2014	Due impartiality/bias	1
Special Report: Ebola Crisis	Sky News	12/10/2014	Generally accepted standards	1
Live Ford Super Sunday	Sky Sports 1	14/09/2014	Sponsorship	1
Ryder Cup	Sky Sports 4	n/a	Outside of remit / other	1
Forever (trailer)	Sky Sports 5	06/10/2014	Scheduling	1
Sky Sports Rugby League Finals	Sky Sports Channels	11/10/2014	Outside of remit / other	1
Formula 1	Sky Sports F1	21/09/2014	Product placement	1
Sports Bar	Talksport	16/09/2014	Commercial communications on radio	1
Crime Stories: Ted Bundy	truTV	09/09/2014	Scheduling	1
The System	truTV	23/09/2014	Scheduling	1
Jagad av Hundar	TV3	30/09/2014	Generally accepted standards	5
Advertising	UTV	07/10/2014	Advertising content	1
The Troubles I've Seen	UTV	11/09/2014	Generally accepted standards	1

Advertising	Watch	13/10/2014	Gender discrimination/offence	1
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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 9 and 22 October 2014.

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

Programme	Broadcaster	Transmission date
Advertising minutage	Channel 5+24	17 August 2014
Dynamo	Watch	26 September 2014
Emmerdale	ITV	25 September 2014
Gospel Show	Kemet Radio (Nottingham)	21 September 2014
James O'Brien	LBC 97.3 FM	9 October 2014
The Gypsy Matchmaker	Channel 4	3 September 2014
Wilson's of Rathkenny's sponsorship of Traffic and Travel	Downtown Radio	21 August 2014

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
Countdown to Murder	Channel 5	3 September 2014
Radio Yorkshire	Radio Yorkshire	11 September 2014

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/>.