

# **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 objectives<sup>1</sup>. 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 Act<sup>2</sup>.

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 advertising<sup>3</sup>.
- d) other licence conditions which broadcasters must comply with, such as requirements to pay fees and submit information which enables Ofcom to carry out its statutory duties. Further information can be found on Ofcom’s website for [television](#) and [radio](#) licences.
- e) 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

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

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

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

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

**It is Ofcom's policy to describe fully 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.**

## Notice of Sanction

### Audio description provision

*ESPN, January to December 2012*

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#### Introduction

ESPN is a sports television channel broadcasting a combination of live sports events and sports related programming. The licence for this service is held by ESPN (Europe, Middle East, Africa) Limited (“ESPN” or “the Licensee”). The sanction relates to the licensee’s under-provision of audio description over 2012.

Condition 9(1) of ESPN’s licence states “the Licensee shall ensure that the provisions of the Code on Subtitling, Signing and Audio-Description (“the Television Access Services Code”) are observed in the provision of the Licensed Service”. In 2012, under the Television Access Services Code, ESPN was required to audio describe 5% of relevant content. ESPN’s access service returns for 2012 indicated that they had provided audio description on 2.3% of its relevant content, 2.7% short of its target.

#### Summary of Decision

In its findings published on 5 August 2013 in issue 235 of the Broadcast Bulletin<sup>1</sup>, Ofcom found that the under-provision of audio description constituted a serious and, in the light of a similar breach from 2011, repeated breach of the Television Access Services Code. Ofcom found that the programme breached Rule 8 (now Rule 9)<sup>2</sup> of the Code.

Rule 9: “broadcasters are required to meet the targets set out in the table below.”

Anniversary of relevant date	Subtitling	Signing	Audio Description
First	10%	1%	2%
Second	10%	1%	4%
Third	35%	2%	6%
Fourth	35%	2%	8%
Fifth	60%	3%	10%
Sixth	60%	3%	10%
Seventh	70%	4%	10%
Eighth	70%	4%	10%
Ninth	70%	4%	10%
Tenth	80%	5%	10%

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb235/obb235.pdf>

<sup>2</sup> During most of the period of the breach, this was referred to as Rule 8. The revised Code published on 18 December 2012 renumbered it as Rule 9, but made no substantive change.

ESPN's audio description target for 2012 was 5% as the channel's anniversary fell midway through the year and was thus an average of the second and third anniversary targets.

Ofcom considered that as a result of the Licensee's failure to provide audio description to the level required visually impaired consumers were excluded from content provided by ESPN that, under the requirements of the Act and the Television Access Services Code required by the Act, should have been made accessible to them.

In accordance with Ofcom's Penalty Guidelines, Ofcom decided it was appropriate and proportionate in the circumstances to impose a financial penalty of **£120,000** on ESPN (Europe, Middle East and Africa) Limited in respect of the Code breach (payable to HM Paymaster General). In addition, Ofcom considers that the Licensee should broadcast a statement of Ofcom's findings in this case, on a date and in a form to be determined by Ofcom.

The full decision is available at:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Ofcom-Decision-ESPN.pdf>.

## Note to Broadcasters

### Guidance on Section Nine of the Broadcasting Code

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**This note provides important guidance on compliance with the Code's rules on commercial references in programming, in particular those relating to product placement. It should be read in conjunction with the existing Code guidance, which can be found on Ofcom's website.**

**In summary, licensees are advised that:**

- **A programme *about* a product or service, such as a holiday destination or high-street retailer, is likely to test the distinction between advertising and editorial *if* it is funded (either wholly or in part) by the organisation whose specific interests are featured.**
- **Programmes that are about the creation or transformation of people, places or things, such as makeover or cookery shows, should avoid the impression that success is dependent on the use of a placed product.**
- **Placed products that do not carry discernible branding, such as clothing or furniture, may only be identified during editorial if identification is integrated into the programme's narrative.**

#### Introduction

Section Nine of the Code contains rules that apply to commercial references in television programmes. The rules, which are underpinned by European and UK law, ensure that the principles of editorial independence; distinction between advertising and editorial content; transparency of commercial arrangements; and consumer protection are maintained. Section Nine contains overarching rules that apply to all commercial references and specific rules for different types of commercial references, such as sponsorship and product placement.

#### Product placement

Product placement is the inclusion of, or reference to, a product, service or trade mark in a programme in return for payment, or other valuable consideration, to the broadcaster, programme producer or any person connected with either. Product placement has been permitted in programmes broadcast on Ofcom-licensed television services since 28 February 2011, subject to the rules in Section Nine of the Code.

Section Nine of the Code contains a number of rules about what type of products can be placed, in which programmes, and how those products can be featured. Among other things, the rules require that:

- product placement must not influence the content and scheduling of a programme in a way that affects the responsibility and editorial independence of the broadcaster (Rule 9.8);
- references to placed products, services and trade marks must not be promotional (Rule 9.9); and

- references to placed products, services and trade marks must not be unduly prominent (Rule 9.10).

The introduction of the product placement rules heralded a significant change to the regulation of commercial references in television programming. In the three years since its introduction, product placement has been deployed in a slowly growing number of programmes across a range of broadcasters and programme types, and involving a range of brands, products and services. Ofcom recognises that although there has been a recent increase in the number of programmes with product placement, the market for such arrangements is still nascent.

Ofcom is also aware that when considering the compliance with the Code of product placement arrangements:

- licensees have few significant precedent decisions on the use of product placement on which to base their compliance decisions; and
- this is a complex area involving subjective editorial judgement, potentially inhibiting some licensees and producers who are considering using product placement.

In order to assist licensees when considering the acceptability of certain types of product placement, Ofcom is issuing the guidance set out below. We have identified three areas where we believe broadcasters will benefit from additional guidance: i) maintaining a distinction between programme and advertising content; ii) the use of product placement in instructional programming; and iii) the placement of generic products. This guidance should be read in conjunction with Ofcom's Guidance Notes on Section Nine of the Code, which can be found on Ofcom's website.<sup>1</sup>

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### Distinction between programme and advertising content

A primary tenet of the rules in Section Nine of the Code is the maintenance of a distinction between programme content and advertising. The use of references to products and services in programmes for commercial purposes clearly tests this principle. Accordingly, the key purpose of the product placement rules is to prevent such arrangements distorting the editorial content of programmes.

Product placement is permitted where a reference to a product, service or trade mark (which is made in return for payment or other valuable consideration) is woven into a programme's narrative. It is important to emphasise that product placement does not provide companies with scope to fund programmes that are essentially about their brands. Legitimate product placement is where the placement is embedded within a programme, not where the placed product becomes the focus of the editorial content. There is a significant likelihood that a programme centred on a placed product would fall foul of both the product placement rules and other rules in Section Nine – in particular Rule 9.2, which states that "Broadcasters must ensure editorial content is distinct from advertising".

Therefore, to comply with the rules in Section Nine, a programme's narrative must always serve an editorial end: its purpose must not be, or appear to be, to promote

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>

the products of a third party included within it. Where a reference to a product is included in a programme for commercial purposes, broadcasters need to take care that the lines between advertising and programming are not blurred.

A product reference that is used to support, and is secondary to, an editorial narrative is unlikely to raise concerns under Rule 9.2, regardless of whether it is included solely for an editorial purpose (prop placement) or for a combined editorial/commercial purpose (product placement). When a product reference appears in such a context, the programme's narrative is likely to be unaffected by the inclusion or omission of the product.

However, where a programme's narrative is dependent on a particular product, broadcasters should consider very carefully whether the way in which the programme has been funded raises issues under Rule 9.2. This does not mean that a programme based on a particular commercial entity or product is necessarily incompatible with the Code. There are many established programme genres where the subject matter of a programme is a company, product etc. For example, 'behind the scenes' programmes that explore the operation of a particular company; 'making of' programmes that look at the production of particular products; and 'travelogues', which seek to provide insight about travel destinations. The Code has always provided broadcasters and programme producers with the scope to make programmes in these genres. However, broadcasters should be aware that the introduction of the product placement rules did not open the door for companies to fund programmes essentially designed to further their specific commercial interests.

If the broadcaster or a programme maker (or any person connected to either) receives payment or other valuable consideration from a company to produce content about the company's product(s), the content is likely to engage the product placement rules and may be questionable under these rules and also Rule 9.2. Such funding arrangements may compromise the programme maker/broadcaster's freedom to reflect an independent observation of the subject matter and lead to the impression that content has been created primarily for promotional rather than editorial purposes.

It is important to note that the Code does not prevent a programme maker using resources made available to it by a company whose interests are featured in a programme e.g. access to the company's operations or a tourist destination. Using products/services obtained in this way, and featuring them in programme content, will not necessarily be contrary to the Code's requirements provided that references in the programme are included for editorial and not commercial purposes.

**Although the product placement rules permit paid for references to products, services and trade marks in programmes, they do not allow commercial entities to fund programmes about their specific interests. Broadcasters are required to maintain a distinction between advertising and programming and accordingly must think carefully as to whether commercial and contractual arrangements that engage the product placement rules blur the boundaries between advertising and programming.**

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### Instructional programming – e.g. ‘Make over’ and cookery programmes

Ofcom has considered the appropriateness of placing products in programmes that provide viewers with information about specific products and services, including programmes based around cookery and fashion.

Rule 9.12(b) prohibits product placement in consumer advice programmes.<sup>2</sup> However, the Code does permit its use in other programme genres, such as reality programming. Programming that falls within permitted genres may contain information about, or demonstrations of, particular products, such as those relating to cookery, fashion or DIY. If broadcasters wish to include product placement in such programmes, they need firstly to satisfy themselves that the content does not fall into the ‘consumer advice’ category. They should then consider carefully whether their chosen approach is likely to be perceived as promotional. In particular, demonstrations or tasks with positive outcomes predicated on the use of specific brands are likely to be difficult to reconcile with Rule 9.9 of the Code.

For example, in ‘make over’ shows that feature a positive transformation – e.g. of a person or home – the specific placed product should not be seen as the reason for the positive change. The use of product placement in these circumstances poses inherent difficulties and content is likely to be viewed as promoting the placed products.

In cookery programmes, it is usual to show presenters and guests enjoying a dish prepared during the programme. Given the context of such programmes, there is likely to be clear editorial justification for positive commentary. However, the use of placed products in the production of dishes may be problematic under Rule 9.9, if the success of a recipe appears to be dependent on the use of a specific branded ingredient rather than a generic variant.

Positive comments that relate to generic products or services (e.g. non-proprietary food products, clothing, decorating products) are less likely to be in breach of Rule 9.9. In such circumstances, broadcasters should ensure that programmes do not contain other information that will lead viewers to infer that a positive attribute relates to a specific brand of product or specific retailer that has been placed in the programme. For example, broadcasters should adopt a cautious approach when referring to price information to avoid any impression that the price refers to placed products.

**Ofcom accepts that advertisers will want to seek out product placement opportunities that enable their brands or products to be presented to audiences in a positive light. However, broadcasters must ensure that such references are appropriately limited. If ‘make over’ or cookery programmes focus on the positive attributes of placed products, they are likely to conflict with Section Nine of the Code. We advise licensees to consider very carefully whether references to placed products, services or trade marks in ‘make over’ or cookery programmes primarily serve an editorial or promotional purpose.**

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<sup>2</sup> A consumer advice programme is one that offers advice on, or reviews of, products or services. Such programmes usually refer to the price, availability or attributes of specific products or services, often in a comparative context.

### Identifying generic and unbranded placement

Product placement provides the opportunity for brands to gain exposure through programme content. To comply with the product placement rules, product placement should fit within the editorial content in which it appears. Inevitably, this fit will be easier to achieve in some programme genres and for some products.

Products that feature prominent or distinctive branding may be more attractive to those looking at using product placement as a way to gain brand exposure. Although there is equal scope for both branded and unbranded products to be placed in programmes, the degree of brand exposure gained through generic or unbranded placement is unlikely to match that of a branded product. Broadcasters may take steps to provide viewers with information about unbranded products placed in programmes. However, Ofcom's published guidance<sup>3</sup> makes clear that broadcasters should think carefully about the appropriate point at which to provide such information.

A reference during a programme to the brand or supplier of a placed product that is not readily identifiable is likely to be justifiable only if it can be accommodated plausibly into the programme's narrative. Brand references that are not part of the programme's narrative (e.g. their purpose is solely to identify a placed product) are likely to give rise to issues of undue prominence and promotion.

**Broadcasters should exercise particular caution when identifying generic and unbranded product placement within programmes. Where a reference cannot be accommodated editorially, broadcasters should consider identifying generic and unbranded products during end credits.**

\* \* \*

### Conclusion

**Section Nine of the Code provides significant scope for including commercial references in programming. Product placement in particular provides latitude for brands to be integrated creatively into programme content. However, Ofcom takes this opportunity to remind all broadcasters that it is a primary tenet of the regulatory framework that editorial content must remain distinct from advertising.**

All licensees should ensure that this formal guidance is understood by their compliance staff and is applied when complying programmes involving product placement arrangements.

Any licensee who requires guidance on the product placement rules should contact Suzanne Wright at [suzanne.wright@ofcom.org.uk](mailto:suzanne.wright@ofcom.org.uk).

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<sup>3</sup> See paragraph 1.124 of Ofcom's Guidance Notes to Section Nine of the Code.

## Standards cases

### In Breach

#### Sponsorship credits

*Channel Nine UK, 19 February 2014, 18:00 to 23:00*

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##### Introduction

Channel Nine UK is a general entertainment channel that is broadcast in Bengali and serves the Bangladeshi community in the UK and Europe. The licence for Channel Nine UK is held by Runners TV Limited (“Runners TV” or “the Licensee”). The channel re-transmits content from Channel Nine in Bangladesh.

During routine monitoring of compliance with advertising scheduling rules, Ofcom noted a number of sponsorship credits that appeared to contain calls to action and advertising messages.

##### *Enlightened Journey and Chef’s World, sponsored by JMG Cargo*

The sponsorship credit for this international cargo company, attached to two different programmes, was broadcast on five occasions between 18:00 and 22:00 on 19 February 2014. The credit consisted of an image of an aeroplane incorporated into the logo of the company and the following text: “*JMG Cargo Specialist*”, “*Call us today*” and “*Open 7 days a week*”. The credit also included the company’s address, two telephone numbers, and a website address. Under the text “*New Branch*”, a further address and four telephone numbers were listed.

##### *Jibon o Chintay Islam, sponsored by Hathi Claims*

The sponsorship credit for this accident claims company was broadcast at 18:33 and 22:27 on 19 February 2014. The credit featured a man sitting in the driving seat of a car, with text stating the name of the company, its telephone number and website address. The text then changed to read: “*Had An Accident Not Your Fault? One Call Does It All*”. This was followed by a telephone number.

##### *Chondraboti, sponsored by SFS*

The sponsorship credit for this education consultancy was broadcast at 18:33 and 18:47 on 19 February 2014. The credit featured footage of the CEO of SFS, Abu Sadat, identified in text. Additional text stated: “*Admission going on Feb/March Intake*” and “*BA (Hon’s) Business/IT/Law/Health care MBA/Top up*”. A telephone number and address were also shown.

Ofcom considered that the material raised issues warranting investigation under Rule 9.22(a):

- “Rule 9.22: Sponsorship credits must be distinct from advertising. In particular:
- (a) Sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action. Credits must not encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself. Such credits may

include explicit reference to the sponsor's products, services or trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement."

We therefore asked the Licensee for its comments as to how the content complied with Rule 9.22(a).

## Response

Runners TV apologised, stating that in all instances it accepted "the sponsorship credits fail to meet the standard required". The Licensee also stated that although its staff had received training, including specific instructions regarding sponsorship credits, the editor had failed to implement these on this occasion. The credits had been "subsequently edited and revised", and the editor had been "formally warned", according to the Licensee.

## Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that "the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with". The rules in Section Nine of the Code, among others, reflect this objective.

The EU Audiovisual Media Services Directive limits the amount of advertising a broadcaster can transmit and requires that advertising is kept distinct from other parts of the programme service. Sponsorship credits are treated as part of the sponsored content and do not count towards the amount of airtime a broadcaster is allowed to use for advertising. To prevent credits effectively becoming advertisements, and therefore increasing the amount of advertising transmitted, broadcasters are required to ensure that sponsorship credits do not contain advertising messages.

Rule 9.22(a) of the Code therefore requires that sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action, or encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself and references to the sponsor's products, services or trade marks should be for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement.

In particular, Ofcom's published guidance<sup>1</sup> on Rule 9.22(a) includes the following:

- "detailed descriptions of products/services or references to multiple products...are likely to detract from the sponsorship message and result in content that is more akin to advertising";
- "the use of the sponsor's slogans, straplines, jingles and so on...[may] be used within a credit, for the purpose of helping to identify the sponsor and/or the sponsorship arrangement, provided they do not encourage the purchase or rental of the sponsor's products or services";

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<sup>1</sup> See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>.

- “claims about the sponsor’s products/services (in particular those that are capable of objective substantiation) are likely to be considered as advertising messages and therefore should not be included in sponsorship credits. Examples include:...the use of promotional language and/or superlatives to describe the sponsor and/or its products and services (e.g. referring to: the breadth of range of products a sponsor provides or how easy a sponsor’s product is to use)”;
- “basic contact details (e.g. websites or telephone numbers) may be given in credits but these should not be accompanied by language that is likely to be viewed as an invitation to the audience to contact the sponsor”; and
- “if sponsorship credits contain contact details, these should be minimal”.

Ofcom considered each of the sponsorship credits against Rule 9.22(a).

*Enlightened Journey and Chef’s World, sponsored by JMG Cargo*

Ofcom considered that the text “*Call us today*”, shown alongside several telephone numbers, directly invited the viewer to contact the sponsor and was therefore a clear call to action.

In addition, we noted that the text also stated “*Open 7 days a week*” and “*New Branch*”. In our view, these constituted claims about the convenience of accessing the service provided by the company, and were therefore advertising messages.

Finally, Ofcom considered that the contact details provided in this credit (i.e. four telephone numbers, two addresses and a website address) significantly exceeded the minimum information necessary to allow viewers to identify the sponsor.

For these reasons, we concluded that the sponsorship credit was in breach of Rule 9.22(a).

*Jibon o Chintay Islam, sponsored by Hathi Claims*

In Ofcom’s opinion, the text “*Had An Accident Not Your Fault? One Call Does It All*” was a slogan or strapline designed to encourage the purchase of services provided by the sponsor. In addition, Ofcom considered that the text, followed by a telephone number, also constituted a clear call to action. The credit was therefore in breach of Rule 9.22(a).

*Chondroboti, sponsored by SFC*

We considered the text “*Admission going on Feb/March Intake*” encouraged the viewer to use the service provided by SFS, and was therefore an advertising message.

Ofcom also considered that the text “*BA (Hon’s) Business/IT/Law/Health care MBA/Top up*” was a reference to multiple products available from the company, which detracted from the sponsorship message and resulted in content that was more akin to advertising.

The credit was therefore in breach in Rule 9.22(a).

Conclusion

Ofcom noted the apology given by the Licensee. However, Ofcom is concerned about Runners TV's record of non-compliance with regard to Rule 9.22(a). In issue 236 of Ofcom's Broadcast Bulletin, Ofcom recorded a breach of Rule 9.22(a) against this Licensee<sup>2</sup>. The Finding stated: "Ofcom expects the Licensee to take the necessary steps to ensure the compliance of its sponsorship credits and will continue to monitor this."

In issue 246 of Ofcom's Broadcast Bulletin, Ofcom recorded a further breach of Rule 9.22(a) against Runners TV<sup>3</sup>, as a result of which the Licensee was required to attend a meeting to discuss its compliance procedures. This meeting was held on 5 February 2014 with revised compliance procedures supplied to Ofcom on 5 March 2014.

Ofcom is concerned that the training put in place by Runners TV following a meeting about the Licensee's compliance with Rule 9.22(a) was insufficient for its staff to notice multiple clear breaches of Rule 9.22(a).

**Ofcom will continue to monitor sponsorship credits broadcast on Channel Nine UK. We are putting the Licensee on notice that any further breaches of the Code in this area will lead to Ofcom considering the imposition of a statutory sanction.**

#### **Breaches of Rule 9.22(a)**

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<sup>2</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb236/obb236.pdf>.

<sup>3</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/246/obb246.pdf>.

## Resolved

### BBC Radio Scotland Football

*BBC Radio Scotland, 16 March 2014, 17:50*

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#### Introduction

BBC Radio Scotland is the BBC national radio service for Scotland and features news, sport and entertainment programmes.

A complaint alerted Ofcom to the use of offensive language in the live broadcast of a post-match interview with Aberdeen Football Club (Aberdeen FC) Chairman, Stewart Milne, during this programme broadcast on a Sunday afternoon.

Ofcom noted the use of the word “fucking”, at about 42 seconds into the interview:

Stewart Milne: *“...19 years, 120 minutes and then fucking penalties [starts laughing].”*

Presenter: *“[Laughing] I think we better apologise for that use of uh, uh industrial language in that [laughs] penalties yes.”*

Stewart Milne: *“Penalties. My apologies. I hope there was nobody listening.”*

Presenter: *“... I think the whole of Aberdeen and the North-East were listening. Apologies to anyone who was offended by that use of extreme emotional language...”*

At the end of the interview the studio presenter made another apology:

*“... and uh apologies, Stewart got a wee bit carried away with some colourful language right at the start of that interview...”*

We considered that the material raised issues warranting an investigation under the Rule 1.14 of the Code, which states:

*“The most offensive language must not be broadcast...when children are particularly likely to be listening (in the case of radio).”*

#### Response

Ofcom did not consider it necessary to seek the BBC’s comments before reaching a Preliminary View on this matter.

#### Decision

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as to ensure the standards objectives, including that “persons under the age of eighteen are protected”. This objective is reflected in Section One of the Code.

Rule 1.14 states that the most offensive language must not be broadcast on radio when children are particularly likely to be listening. Ofcom’s research on offensive

language<sup>1</sup> clearly notes that the word “fucking” is considered by audiences to be among the most offensive language.

Ofcom’s guidance on offensive language on radio<sup>2</sup> says that:

“For the purpose of determining when children are particularly likely to be listening, Ofcom will take into account of all relevant information available to it. However, based on Ofcom’s analysis of audience listening data, and previous Ofcom decisions, radio broadcasters should have particular regard to broadcasting content at the following times:..

- between 06:00 and 19:00 at weekends all year around...”.

Given that the post-match interview was broadcast at 17:50 on a Sunday, the most offensive language was broadcast at a time when children were particularly likely to be listening. Rule 1.14 was therefore breached.

Ofcom however took into account that this use of the most offensive language was during a live unscripted interview and that the sports presenter promptly intervened and apologised for the inappropriate language used. We noted that further apologies followed by Stewart Milne and the studio presenter.

Ofcom therefore considers the matter resolved.

## **Resolved**

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

<sup>2</sup> Ofcom Guidance, Offensive language on radio, December 2011 (<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/offensive-language.pdf>)

## Resolved

### Drivetime

107 Jack FM (Berkshire), 3 March 2014, 16:10

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#### Introduction

107 Jack FM (Berkshire) is a local commercial radio station based in Reading. The licence for the service is held by the Reading Broadcasting Company Limited (“the Licensee”).

A complainant alerted Ofcom to the broadcast late on a Monday afternoon during school term time of offensive language during the song “Another Love” by Tom Odell. Having listened to the material, Ofcom noted the song contained the following line:

“So I’ll use my voice, I’ll be so fucking rude”.

Ofcom considered the material raised issues warranting investigation under Rule 1.14 of the Code, which states:

“The most offensive language must not be broadcast...when children are particularly likely to be listening...”.

We therefore asked the Licensee how the material complied with this rule.

#### Response

The Licensee said it was “disappointed” that it had broadcast offensive language in this song.

The Licensee explained that 107 Jack FM had launched on the previous day as a change of name from Reading 107. It added that the launch was a significant rebrand which included updating the database of music with hundreds of songs not already on the computer playout system within a very short period of time. The Licensee said it was very conscious of Rule 1.14 of the Code and had hired a freelance producer to check songs for offensive language before loading them onto the system.

When questioned about the incident, this producer said he was already familiar with the song from hearing it on other radio stations and was not aware there was a version with offensive language. In addition, the website he had used to check the lyrics of the song included the edited version and therefore he did not identify the offensive language.

The Licensee said it broadcast two apologies about the incident the following day: once during its peak listener period at 08:17 and once at 16:05 with the aim of reaching regular listeners of the *Drivetime* slot. It also instructed the producer to check every song that had been recently loaded onto the computer playout system to ensure that no other songs had been erroneously cleared for broadcast.

#### Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives,

one of which is that “persons under the age of eighteen are protected”. This objective is reflected in Section One of the Code.

Ofcom research on offensive language<sup>1</sup> notes that the word “fuck” and its derivatives are considered by audiences to be amongst the most offensive language. Rule 1.14 of the Code states that “the most offensive language must not be broadcast when children are particularly likely to be listening”. Ofcom’s Guidance on Offensive language on radio<sup>2</sup> advises radio broadcasters when interpreting the phrase “when children are particularly likely to be listening” to “have particular regard to broadcasting content...between 15:00 and 19:00 during term time”.

In this case the most offensive language was broadcast at around 16:10 during term time. Rule 1.14 was therefore breached.

However, we noted that the Licensee broadcast two apologies the next day and has taken measures to remove from its database or edit any further songs that may contain offensive language. In the circumstances, we consider the matter resolved.

## **Resolved**

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

<sup>2</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/offensive-language.pdf>

## Advertising Scheduling cases

### In Breach

#### Advertising minutage

*SAB, 22 July to 27 September 2013, various dates and times*

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#### Introduction

SAB is a general entertainment service which broadcasts a range of programmes originally shown in India to an international audience. The licence for SAB is held by MSM Asia Limited (“MSM” or “the Licensee”).

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

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

During monitoring of licensees’ compliance with COSTA, Ofcom noted that there were five instances when this channel exceeded the maximum allowance for advertising in any clock hour. The overruns in the affected hours ranged from 55 seconds to four minutes and five seconds.

We asked MSM for information about these instances. In response, the Licensee stated that in none of the clock hours in question had the amount of advertising exceeded 12 minutes. Ofcom therefore requested recordings of the relevant output to assess exactly how much advertising had been broadcast.

When assessing the content, Ofcom noted the amount of advertising broadcast did not match the information provided by the Licensee, and exceeded the maximum allowance. Ofcom therefore considered the matter raised issues warranting investigation in respect of Rule 4 of COSTA and asked the Licensee for its comments with regard to this rule.

#### Response

MSM said that “under no circumstances have extra commercial[s] been booked or ordered”. However, after investigating the issue the Licensee confirmed that the amount of advertising broadcast had exceeded 12 minutes on each of these five occasions and that the incidents were related to the broadcast of films on the channel.

MSM explained that such issues were “primarily” the result of programming material arriving from its parent service in India on the day of broadcast without “exactly matching scheduled/planned duration.” The Licensee also said that it reviewed any film content it obtained from India to ensure compliance with Code rules in relation to matters such as harm and offence. However, the Licensee said that editing carried out to secure compliance could alter the internal break pattern of the film. This was because “filler” material (such as programme trailers) which it included did not always match the length of the material which has been edited out. In addition, MSM said that because films were not always received in the same technical format, making the necessary technical changes for broadcast in the UK could also cause a shift in break patterns.

MSM explained that each of these issues could cause breaks to be broadcast at a different time than planned, with the effect that advertising planned for transmission in one clock hour could be pushed into the next clock hour.

The Licensee added these issues impacted on the channel's internal records on the amount of advertising broadcast, which was why in its original correspondence with Ofcom it had not recognised it had exceeded the permitted advertising allowance.

As a result, MSM said more compliance checks were being undertaken to ensure advertising breaks in one clock hour did not overlap with the next clock hour. This included the implementation of additional software checks to monitor advertising minutage for each clock hour to highlight "any overruns prompting corrective action before playout." In addition, the Licensee submitted that the channel's internal logging of advertising was being investigated by the parent company in India to ensure its records were accurate.

## **Decision**

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content which it considers are best calculated to secure a number of standards objectives. One of these objectives is that "the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with".

Articles 20 and 23 of the Audiovisual Media Services Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has transposed these requirements by means of key rules in COSTA. Ofcom undertakes routine monitoring of its licensees' compliance with COSTA.

In this case, Ofcom noted that issues about the Licensee's compliance with COSTA had arisen because of changes it had made to secure compliance with aspects of the Code. Although we noted the Licensee had not sought to gain a commercial advantage by broadcasting more advertising than permitted in individual clock hours, the effect of the editorial changes it had made to programme content resulted in the channel exceeding its permitted advertising allowance on five occasions in breach of Rule 4 of COSTA.

Ofcom was concerned that MSM's compliance procedures had not taken account of the potential impact of late programme delivery, editorial decisions or technical formatting on the amount of advertising actually broadcast in individual clock hours. We were also concerned that, when we initially approached the Licensee for information about the instances considered in this case, it had sought to defend its position on the basis of inaccurate transmission data. It is evident that its approach to complying with the rules set out in COSTA was for some time inadequate.

Ofcom noted the Licensee's assurances of the measures it has subsequently taken to secure compliance with COSTA. However, Ofcom reminds MSM that it is a requirement of its licence to ensure that it has both adequate processes and sufficient resources and expertise in place to maintain compliance with all relevant codes and guidance.

## **Breaches of Rule 4 of COSTA**

## In Breach

### Breach findings table

*Code on the Scheduling of Television Advertising compliance reports*

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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.”

<b>Channel</b>	<b>Transmission date and time</b>	<b>Code and rule / licence condition</b>	<b>Summary finding</b>
NDTV 24x7	22 February 2014, 15:00	COSTA Rule 4	Ofcom noted, during monitoring, that NDTV 24x7 exceeded the permitted advertising allowance on this date by 50 seconds.  <b>Finding: Breach</b>

## In Breach

### **Providing a service in accordance with ‘Key Commitments’**

*Blast 106 (Belfast), 4, 5 and 6 February 2014*

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Ofcom amended this issue of the Broadcast Bulletin on 18 July 2014 to remove a Finding relating to Blast 106 Ltd following a Court judgment.

## Fairness and Privacy cases

### Not Upheld

#### Complaint by Mr Jonathan Hill on behalf of himself and on behalf of his company, Perfect Turf

*Watchdog, BBC1, 9 October 2013*

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#### Summary

Ofcom's has not upheld this complaint made by Mr Jonathan Hill of unjust or unfair treatment, and of unwarranted infringement of privacy in connection with the obtaining of material included in the programme and in the programme as broadcast.

The programme featured an investigation into Mr Hill and his turf company, Perfect Turf (of Purley). The report included an interview with a customer who claimed to be unhappy with his experience of Mr Hill and his company as well as secretly filmed footage of Mr Hill installing a new lawn at a property. The content of a telephone conversation between Mr Hill and the programme makers was also included.

Ofcom found that:

- The broadcaster took reasonable care to satisfy itself that material facts were not presented, omitted or disregarded in a way that portrayed Mr Hill and his company unfairly.
- Mr Hill's position was accurately reflected in the programme and the telephone conversation was not edited in a way which resulted in any unfairness to Mr Hill.
- Mr Hill had a limited expectation of privacy in connection with the obtaining of material included in the programme and in the broadcast of secretly filmed footage shown in the programme and of the contents of the telephone conversation between himself and the programme makers. However, the public interest in investigating consumer issues outweighed Mr Hill's expectation of privacy.

#### Introduction and programme summary

On 9 October 2013, BBC1 broadcast an edition of its consumer affairs series *Watchdog*. One of the reports in this edition was about Mr Jonathan Hill and his lawn turf company, Perfect Turf (of Purley), which were featured in the "*Rogue Trader*" section of the programme, presented by Mr Matthew Allwright.

The first section of the report included footage of the garden of a previous customer of Perfect Turf, Mr Chris Bonnett. After inspecting Mr Bonnett's lawn, the reporter commented that it was a "*pretty dreadful lawn*" and Mr Bonnett revealed that it had taken him two months to get the lawn in its current, better condition.

Mr Bonnett then provided the reporter with pictures of how the lawn laid by Perfect Turf looked after ten days and explained that:

*"It just wasn't fitted correctly, none of the joints were in place and it looked very brown and very old. It was patchy, lumpy...and it was so uneven it was almost dangerous in places".*

The reporter explained that Mr Bonnett had called and emailed Perfect Turf over the four weeks following the completion of the job to complain, but that he had not received a satisfactory answer and so tried to rectify the situation himself. Mr Bonnett explained that the area of lawn nearest the house which comprised of "a third of the lawn" was "so bad" that it had to be replaced with patio. The reporter then stated that "Jonathan Hill, the boss of Perfect Turf" was responsible for the "soily shambles".

The reporter introduced an expert on turf maintenance, Dr Tim Lodge (who had a PhD in turf maintenance), and asked for his opinion on three photographs of Mr Bonnett's lawn. He said:

*"Well it's pretty dreadful...Yes you can make out the lines between the turf in a well laid lawn but if it's been well looked after and well-constructed then those lines will disappear very, very quickly".*

After confirmation from Dr Lodge that there were some issues with Mr Bonnett's lawn, the reporter set up a "sting operation" at a house which needed a lawn completely relayed. A production team member, "Hannah", posed as the home owner of the property (where hidden cameras had been installed) and Perfect Turf was called to complete the job.

Secretly filmed footage of Mr Hill entering the property was shown. The programme then showed Mr Hill at work in the garden, first mowing the grass. The reporter explained the various processes required for laying turf and said that the old grass needed to be correctly removed. Dr Lodge added that:

*"One would normally either remove the turf of the existing surface with a turf cutter or spray off with total herbicide, kill the grass".*

Mr Hill was then shown collecting a "rotavator" (a machine used to cultivate the ground) from his van and the reporter said:

*"He's skipped a whole step...instead of removing the old turf he's just churning it back into the soil".*

In the second part of the report, the reporter commented that Mr Hill eventually started to use the rotavator for its intended use i.e. cultivating the soil, however, Dr Lodge stated that:

*"You need to fluff up at least six inches of the top soil to get a really good turf. So where he's just skimmed over it a little bit there, it's just scratching open the surface".*

The expert then said that: "it looks like they've finished but we've still got all these lumps and clumps of grass and soil which need to be broken up and they're going onto the next stage". The reporter explained that next Mr Hill needed to "level out the soil" and footage of Mr Hill raking the soil was shown. Mr Hill was shown placing a plank of scaffold wood on the floor and walking along it, prompting Dr Lodge to comment that:

*"I've never seen a plank being used for anything like this...It's not really doing anything at all...I mean that's going to be a very, very uneven surface".*

The reporter remarked on Mr Hill saying: *"what a plank, eh?"*

The reporter said that next Mr Hill had to *"fertilise the ground"* and claimed that, although they had: *"paid for fertiliser...we don't see him putting any down. Now he could have mixed it in beforehand but either way the turf is going to struggle 'cause what he's using contains compost"*.

Footage of Mr Hill placing topsoil containing compost on the ground was shown and the reporter explained that:

*"by laying compost underneath, Jonathan is turning our lawn into the garden equivalent of a trifle...the more layers there are beneath the turf, the harder it is to establish itself. That means water won't be able to get through all the layers and it will eventually dry up"*.

The reporter then said that turf cutters should be used to cut turf and strips should not be torn off. Footage of Mr Hill was then shown tearing pieces of turf. Dr Lodge commented that:

*"...because it is such small sections and because he is tearing it, it is probably going to die...those little tiny things haven't got much future in them"*.

Once Mr Hill had completed the job, the reporter confirmed that all Hannah had to do was: *"look after [the turf], and that means water, lots of water"*. Footage of Mr Hill talking to Hannah was shown in which he advised:

*"One thing that's really important, have you got a hosepipe and sprinkler? Cause it's going to want watering. If the weather stays like this, it will want it every day"*.

Dr Lodge commented on Mr Hill's statement that the grass would need a lot of water:

*"I think the guy knows what is going to happen. That compost material will get very dry, that particular turf is going to require an exceptionally large and frequent amount of water"*.

The reporter stated that Dr Lodge was invited to take a look at the lawn after it had been watered as instructed and left: *"to bed in for three days"*. The following conversation took place:

Reporter: *"We've got these big thick weedy bits, is that acceptable?"*

Dr Lodge: *It wouldn't be acceptable. There's a tolerance level which you're prepared to put up with up to a point, but I think this has gone over that and even worse, this turf is far from flat.*

Reporter: *This isn't level, looking around this garden it's a bit like the Brecon Beacons in profile.*

Dr Lodge: *Well the lumps are not going to go away and they're a pretty permanent feature of this lawn. Then there's the compost based topsoil...so you're moving from a layer of clay here into this layer of*

*almost pure organic matter, back into a clay soil. The turf is not going to like jumping over that gap.*

Reporter: *What does the future hold then for this lawn?*

Dr Lodge: *It is going to dry out pretty rapidly, all of the greenness is going to be lost from it, all of these undulations and gaps and so forth are going to get worse and worse than what will happen is that the weeds will start to come up through the gaps. It's going to look pretty much like a field rather than a lawn. Yeah it's one of the worst jobs I've seen".*

The reporter said that the programme makers struggled to make contact with Mr Hill to complain and a sequence showing unanswered telephone calls to Mr Hill being made was included. The reporter stated that he would have to arrange another job with Mr Hill in order to talk with him.

In the third and final section of the report, the reporter said that over the past two months the programme makers had failed to "*entice Mr Hill out*" and had decided to "*hit the road*" in an attempt to find Mr Hill, but that this was difficult: "*when his address on his website is incomplete*". However, after three months, the reporter confirmed that they had booked a new job with Perfect Turf at a different house, also set up with hidden cameras. However, Mr Hill was not present with the two employees from Perfect Turf who arrived to carry out the work and so the production team members posing as the homeowner cancelled the job.

Following this, an email from Mr Hill was read out by the reporter:

*"Please can you tell me who you are and who it is that's trying to catch up with me by insisting that I'm on a job that we carry out in person. No one has made any formal approach to contact me so I have no idea what this is regarding. Is there a telephone number I can call you on?"*

The reporter then explained that it was unlikely they would be able to arrange a meeting with Mr Hill, so instead, they gave a phone number for Mr Hill to contact them on, which he did. The reporter explained that they could not play Mr Hill's voice and instead an actor's voice was used and this was "*precisely what he [said]*":

Mr Hill: *"Hello there. This is Jonathan Hill calling, you've sent me your number.*

Reporter: *Oh hello Jonathan, it's actually Matt Allwright here from BBC Rogue Traders...Can you understand why we've been trying to get in touch with you?*

Mr Hill: *...I think there's probably better people to try for.*

Reporter: *Well the experience we've had has been really negative Jonathan. The work that you do, the turf that you provide is very, very poor.*

Mr Hill: *Can I tell you something that is 100% true? I bet you haven't had any complaints about our turf in the last sort of four or five months because we have switched providers now.*

Reporter: *Ok well the turf that you provided for us on April the 30<sup>th</sup> was appalling you know and the preparation work you do on the ground is very poor,*

*you don't rotavate properly. There are some really basic things that you are missing out".*

The reporter then explained in voiceover how "perfect turf" should be laid and a sign with all the requirements for laying turf was visible in the background. The telephone conversation between Mr Hill and the reporter continued:

Mr Hill: *"Well we do have a lot of people that are happy as well, you know? I get emails all the time that I can forward to you but you know, people just can't believe how cheap we are compared to everyone else. You know we're half the price of the nearest competitor.*

Reporter: *Jonathan it's no good being cheap if the lawn is no good. You know you can't...call yourself Perfect Turf if it's anything but perfect.*

Mr Hill: *If people pay for the extra services, removing the old lawn and not just being turned over, then they do get the perfect lawn.*

Reporter: *That's not an extra service, that's a basic, that's like 101. You should call yourself like 'slightly bodged turf' or 'really not that good turf but what do you expect for the money?' Jonathan, do you want to come and meet us and talk this through? We can give you some very simple pointers about how to lay perfect turf.*

Mr Hill: *...We do go round to people's jobs if people are really upset about it, but with turf, it tends to rectify itself a lot of the time, as long as it's looked after properly...*

Reporter: *Yeah, but the main problem with it, Jonathan, is that when people do complain they can't get in touch with you. You came and did the job for us and it was a terrible job.*

Mr Hill: *I'm going to go now, OK?*

Reporter: *OK. You're going to change your name? You're not going to call yourself Perfect Turf anymore?*

Mr Hill: *Erm I don't know about that because we offer the perfect service, you know, a different service to different people with different budgets. Well, I'm going to go now".*

After the report and back in the *Watchdog* studio the reporter stated:

*"Jonathan Hill, hard to contact until you tell him he's going to be on the telly and then look, this is what you get, eight different letters from his lawyers presumably at great expense. Jonathan says he only receives a tiny percentage of customer complaints and these nearly always come from customers choosing the wrong turf or not carrying out proper aftercare. He says his firm never takes deposits up front and only takes payments when customers are satisfied with the work. He admits that when we secretly filmed him, it was his busiest period and the company was overstretched..."*

The reporter then walked the camera to a wire-framed partition in the studio, upon which was mounted a still portrait of Mr Hill and stated: *"...but great news, he's now*

*expanded the business to accommodate all that popular demand, however, for now he becomes the latest face on our Rogues Gallery”.*

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

### Unjust or unfair treatment

In summary, Mr Hill complained that he and his company were treated unjustly or unfairly in the programme as broadcast because:

- a) Material facts were presented, disregarded or omitted in a way which was unfair. In particular, and in relation to Mr Bonnett’s lawn and the fictitious job set up by the programme makers, Mr Hill gave the following as examples of how the programme resulted in unfairness to him and his company:

#### Mr Bonnett’s lawn

- i) The poor condition of Mr Bonnett’s lawn was presented unfairly as being the result of Mr Hill’s workmanship, rather than being caused by Mr Bonnett’s lack of aftercare. This was particularly unfair because Mr Hill’s work was represented by three photographs which showed only a handful of off colour turf patches out of the hundreds that were laid and that Dr Lodge, the programme’s expert, based his entire judgement of Mr Hill’s workmanship on these three photographs.

By way of background, Mr Hill said that Mr Bonnett had walked on the lawn too soon after installation which had caused it to become uneven. Mr Hill provided an email from Mr Bonnett dated 13 September 2013 in which Mr Hill says that Mr Bonnett had admitted that he had only watered the lawn “every three days”. Mr Hill also said that he had provided the programme makers with an email from Mr Bonnett which said that the lawn, when laid, was “very green and nice” and that the programme’s producer had in an email accepted that, when first laid, the lawn “looked fine”.

In response, the BBC stated that Mr Bonnett contacted *Watchdog* in April 2013 after Perfect Turf had fitted a new lawn at his property in February 2013. Mr Bonnett had said that he was reasonably content with the work on the day the turf was laid but that soon afterwards, the lawn became brown, patchy and uneven and weeds had begun to grow through. In Mr and Mrs Bonnett’s view, the lawn had not been fitted correctly. The BBC added that a series of emails illustrated that Mr Bonnett’s complaints about his lawn had been dismissed by Mr Hill and no remedial action had been taken.

The BBC said that Mr Hill had on several occasions made accusations against Mr and Mrs Bonnett which were “without merit and unproven”. Mr Bonnett maintained that he had followed Perfect Turf’s aftercare instructions such as watering the lawn regularly, not walking on it for four weeks (other than to water it) and keeping his children and dogs off the lawn. The BBC stated that it was satisfied that Mr Bonnett had been honest in his account of his problems with Perfect Turf and that Mr Hill had provided no evidence to suggest the contrary.

The BBC said that the photographs of the lawn were taken approximately ten days after it had been laid by Perfect Turf and the three photographs shown in the programme portrayed an accurate depiction of the lawn as it was at that

point. The BBC said that no unfairness could therefore have resulted from the use of the pictures in the programme or from Dr Lodge's analysis of them. The BBC added that while only three photographs were shown in the programme, Dr Lodge considered that he was able to offer an informed opinion because he had reviewed further photographs to assist with his assessment of the lawn.

- ii) It was untrue, unreasonable, and therefore, unfair to include the allegation that Mr Bonnett had to resort to installing a patio to replace an area of the lawn laid by Mr Hill. Although Mr Bonnett did replace an area of the lawn with patio, Mr Hill said it was not because his workmanship was poor.

By way of background, Mr Hill said that he had informed the programme makers that Mr Bonnett had told him on the first day of work that he would be replacing part of the lawn with a patio, but that for the time being he wanted the area turfed to prevent his dogs walking mud into the house.

The BBC stated that Mr Bonnett had installed the patio following the work carried out by Perfect Turf and he said that he had not intended to have the patio installed prior to his lawn being laid. The BBC added that the programme as broadcast fairly and accurately reported Mr Bonnett's concerns.

- iii) It was unfair for the programme to criticise Mr Hill's use of compost in the topsoil stating that water would not be able to percolate through the "trifle" like layers. Mr Hill said that this was a very common method used in laying turf and that he had even provided the programme makers with an example of the use of this method in an online video on the BBC Gardeners' World website.

In response, the BBC said that according to Dr Lodge the use of compost in topsoil is a question of suitability. While in some cases such as where the soil is sandy and low in nutrients, it would be appropriate to use compost in topsoil in order to incorporate material rich in organic matter, this method was not suitable for the soil at the property featured in the programme because this soil was clay based.

The BBC explained that the "trifle" analogy was used to assist the audience in their understanding of the layering effect which had been created by adding compost and the programme clearly explained the issues caused by the use of this technique. The BBC stated that Mr Hill was informed of the criticism of this technique and the allegations made by the expert in their correspondence prior to the broadcast of the programme and he was given an appropriate and timely opportunity to respond to such allegations. Further, Dr Lodge's view on this technique was corroborated by another expert who advised the programme makers.

- iv) It was unfair for the programme to present the poor condition of the lawn as the result of Mr Hill's workmanship when, in fact, it was a result of the programme makers not following the aftercare and maintenance instructions given by Mr Hill after the lawn was laid.

In particular, Mr Hill said that the programme had unfairly stated that watering guidance had been followed. Mr Hill said that when he arrived at the property to carry out the work, no watering facilities were available for use immediately after the lawn had been installed, as he had advised were needed. Further,

Mr Hill said that the turf had been level when he had laid it, and that it was unfair for the reporter to later describe it as unlevel and like "*the Brecon Beacons in profile*". Mr Hill also said that the lawn as shown in the programme showed signs that it had been walked upon, despite his advice that it should not be walked on for several weeks.

The BBC said that Dr Lodge maintained that the techniques used by Mr Hill to remove the lawn were "totally inadequate" and "poor quality grass had been badly laid using unrecognised techniques which had resulted in a shoddy and uneven lawn". Further, Dr Lodge said that the lawn would have required more maintenance and care than could reasonably be expected. The BBC added that another expert who advised the programme makers had viewed the lawn in the same week and confirmed that poor practices had been used by Mr Hill.

The BBC said Dr Lodge's opinion was that it was poor practice for Mr Hill not to use a turf cutter or herbicide to remove the existing lawn. The BBC added that although Mr Hill had argued that there should have been no expectation for a turf cutter or herbicide to be used in the undercover secretly filmed job because these techniques had not been included in his quote, a homeowner would be relying on Mr Hill as a professional fitter of turf to carry out best practice such as removing the old lawn, and customers should not be required to have specialist knowledge of these practices in order to ensure that the work is of good quality. Dr Lodge's view was that the turf laid by Mr Hill would not result in a "*perfectly adequate lawn*" because neither a turf cutter nor herbicide had been used by Mr Hill.

Further, Dr Lodge also believed that the use of a plank of wood to level the soil was an inadequate technique. The BBC explained that to properly level the soil, the garden would have needed to be correctly rotavated i.e. the ground needed to be cultivated, to a much lower depth in order to break down the topsoil. The ground would have then needed to be "heeled"<sup>1</sup> and raked, and this process repeated a few times.

The BBC added that also during the programme Mr Hill was seen ripping the turf, which he, the expert and Dr Lodge all agreed was poor practice.

The BBC said that the programme reflected Mr Hill's view that it was important to water the newly laid turf. The BBC disputed Mr Hill's assertion that the turf had not been watered until two days after completion of the job. The BBC said that the delay in purchasing the watering equipment was less than an hour and the turf was watered every day in accordance with Mr Hill's instructions until the experts examined the lawn.

- b) Mr Hill said he was portrayed unfairly in the programme as being "an elusive person". Mr Hill said that the programme had stated that the address on his website was incomplete, but the address referred to had, in fact, been complete and was the address of the company's storage yard. This address was used on the website to avoid confusion for customers arriving at his office address to collect turf. He said that the programme makers had known exactly where his office was located as he had received a hand-delivered letter from them on the

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<sup>1</sup> "Heeling" is a process used in laying turf in which a person walks on the heels of their shoes to flatten the soil.

same day (i.e. 5 August 2013) as the telephone call featured in the programme with the programme's reporter.

The BBC argued that it considered Mr Hill to be "elusive" because during their investigation the programme makers had found that:

- Mr Hill often did not respond to his customers after he had carried out work on their lawns;
- the emails between Mr Bennett and Mr Hill showed that he had declined to rectify the work complained about; and
- the production team, when they attempted to reach Mr Hill to complain about the undercover job (calling on five separate occasions, leaving voicemail messages and emailing Perfect Turf) received no response.

With regards to the address published on Perfect Turf's website, the BBC said that at the time of investigating the company the address was incomplete or inaccurate. The BBC argued that the address was inadequate because it was listed with the road name but no building number to indicate where on the three and a half mile road the office could be found. The programme makers were therefore initially unable to find the company's office, however eventually an address was found for Mr Hill and a letter was hand delivered.

c) Mr Hill's response to the allegations made in the programme was edited unfairly. In particular, Mr Hill said that:

- i) the way the conversation was presented in the programme made it look like he was ignoring the points being made by the reporter, when, in fact, the footage of the phone call had been edited so that the answers he provided were not matched up with the questions he had been asked.
- ii) the programme portrayed him as ending the conversation while being asked difficult questions, when in fact he had politely requested to end the conversation at a later point in the conversation when it seemed "there was nothing left to say".

The BBC said that the telephone conversation between Mr Hill and the reporter was fairly and accurately represented within the programme, as was the statement Mr Hill had provided to the programme makers. The BBC added that the unedited footage served to illustrate that the programme was an accurate account of both Mr Hill's comments made during the telephone conversation and the manner in which the conversation was terminated. The BBC explained that the footage was not edited in a way which changed the meaning or otherwise misrepresented Mr Hill but rather assisted to make clear Mr Hill's perspective to viewers.

The BBC said that full details of the allegations were provided to Mr Hill following the telephone conversation and he had the benefit of advice from his solicitors. The BBC added that the programme included the points which he made during the telephone conversation and in the subsequent statement, including that:

- only a tiny proportion of customers complained;

- complaints were the result of poor aftercare or customers choosing the wrong turf;
- he had been overstretched at the time;
- he had since changed suppliers;
- he personally attended the homes of dissatisfied customers; and
- turf tends to rectify itself when looked after properly.

The BBC stated that Mr Hill continued to maintain that the poor quality of the gardens featured in the programme was due to the turf not being properly maintained, despite the evidence from experts that he was wrong and that the faults were caused by the quality of the turf supplied and the way in which it was laid.

#### Unwarranted infringement of privacy

- d) In summary, Mr Hill complained that his privacy was unwarrantably infringed in connection with the obtaining of the material included in the programme because:
- i) He was surreptitiously filmed on the basis of a complaint made by Mr Bonnett who, Mr Hill said, had misinformed the programme makers.

The BBC said that the investigation into Mr Hill and his business Perfect Turf was prompted by customer complaints, not limited to Mr and Mrs Bonnett. Nevertheless, the BBC said that the treatment of Mr and Mrs Bonnett fell short of what should have been reasonably expected from a professional person laying turf. The BBC added that it had been aware of serious complaints from a number of customers which suggested that problems with the quality of the work and a lack of accountability for it were on-going and undercover filming was arranged on the basis of that evidence.

The BBC said that the result of the undercover filming demonstrated that Mr Hill's work was not up to a reasonable standard and that he could not or would not deal with complaints about his work. The BBC added that while he was not informed that he was being filmed, he was recorded performing what experts, consistent with previous customer complaints, had asserted was poor quality work.

The BBC argued that there was a strong public interest in programmes which expose poor practice and that this relies, in part, on the ability for programme makers to film secretly and without the consent of the person featured. The BBC said that it would not have been possible to investigate and fully expose the conduct of Mr Hill without the use of surreptitious filming.

- ii) He was not informed that a telephone conversation between himself and the reporter was being recorded.

The BBC reiterated that the production team had sought on several occasions to contact Mr Hill and inform him of the concerns over the quality of his work, but had found him to be elusive. It added, as stated in the programme, that five attempts were made to reach Mr Hill by phone, with messages left on each occasion. In addition, the production team had attempted to book Mr Hill for further jobs in order to put the concerns directly to him on camera.

The BBC stated that the production team had concluded that based on their dealings with Mr Hill, the telephone conversation was perhaps the only opportunity for them to put the allegations to Mr Hill for his response.

The BBC said that it did not believe it was necessary to inform Mr Hill that his conversation with the reporter was being recorded. The BBC said that the reporter, Mr Allwright, identified himself from the outset, named the programme and explained the reasons it was investigating Mr Hill and his work. The BBC said that Mr Hill would have understood that he was speaking with a television reporter who wished to speak to him about his work in connection with the programme's investigation into it and his statements were on the record. The BBC said that his expectation of privacy in this context would therefore have been limited. Further, in a letter dated 9 August 2013 from Mr Hill's solicitors, Mr Hill indicated that he understood or suspected that the telephone conversation had been recorded because he asked whether the conversation would be broadcast.

- e) Mr Hill also complained that his privacy was unwarrantably infringed in the programme as broadcast because:
- i) He said that he had not given permission for the surreptitiously filmed footage of him to be included in the programme.

The BBC argued that Mr Hill had a limited expectation of privacy while conducting work at a customer's property, and in any event it was outweighed by the strong public interest in recording his actions in selling substandard goods and failing to offer adequate customer service.

The content of a telephone conversation between Mr Hill and the reporter (using an actor to voice Mr Hill's responses to the reporter) was broadcast without his permission.

As already stated, the BBC said that Mr Hill's expectation of privacy in relation to the recording of the telephone conversation was outweighed by the public interest considerations. With regards to the broadcast of the recording, the BBC said that there was a sufficient public interest in broadcasting the content of Mr Hill's response, and the use of an actor to voice the telephone conversation in the programme would have avoided any issue of privacy in connection with broadcasting Mr Hill's voice. The BBC argued that there was no requirement to seek Mr Hill's permission to broadcast the content of the response because the recording of the call served as a form of note-taking and Mr Hill was aware that he was speaking to the reporter of a television programme which was investigating his work.

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

Ofcom prepared a Preliminary View in this case that the complaint of unjust or unfair treatment and unwarranted infringement of privacy made by Mr Hill should not be upheld. We provisionally concluded that: the broadcaster had taken reasonable care to satisfy itself that material facts were not presented, omitted or disregarded in a way that portrayed Mr Hill and his company unfairly; his position was accurately reflected in the programme; and, the telephone conversation was not edited in a way which resulted in unfairness to Mr Hill. We also provisionally concluded that while Mr Hill had a limited expectation of privacy in connection with the obtaining of material included in the programme and in the broadcast of secretly filmed footage and the

content of the telephone conversation between himself and the programme makers, this expectation was outweighed by the public interest in investigation consumer issues.

Both parties were given the opportunity to make representations on the Preliminary View. The BBC did not make any representations on the Preliminary View. While Mr Hill made representations on the Preliminary View, we considered that some of his comments were either not directly relevant to the complaint as entertained and responded to by the broadcaster, or raised points that had already been addressed and reflected in the Preliminary View. The remaining comments made by Mr Hill in his representations that were relevant are summarised below.

#### *Mr Hill's relevant representations*

Mr Hill disputed the BBC's claim made in the programme that the watering of the newly laid turf had occurred as instructed (see head a) iv)). Mr Hill said that there was evidence to suggest that watering guidance had not been followed. Mr Hill stated that the watering of the turf had been "unfairly passed to a third party" because the tenant who resided at the property used by the BBC in the fictitious job setup was expected to maintain the watering of the turf. Mr Hill said that the tenant also confirmed that the hosepipe had not been brought until one full day after the turf had been laid and that the hosepipe that was brought was not long enough to reach the garden and another hosepipe had to be used.

Ofcom concluded that these relevant representations by Mr Hill did not materially affect Ofcom's conclusion that his complaint should not be upheld.

#### **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, we carefully considered all the relevant material provided by both parties. This included a recording and a transcript of the programme, unedited footage and a transcript of the telephone conversation between Mr Hill and the programme makers and both parties' written submissions and supporting material, including pre-broadcast correspondence between the broadcaster and the complainant's solicitors. We also took account of the representations made by Mr Hill in response to Ofcom's Preliminary View on this complaint (which was not to uphold).

#### Unjust or unfair treatment

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

- a) Ofcom first considered the complaint that material facts were presented, disregarded or omitted in a way which was unfair to Mr Hill and his company.

In considering this part of the complaint, Ofcom had particular regard to Practice 7.9 and considered whether the portrayal of Mr Hill's work in the programme was consistent with the broadcaster's responsibility to take reasonable care to ensure material facts had not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

The broadcaster and the complainant disagreed about the veracity of several allegations made in the programme. It is therefore important to clarify at the outset that it is not for Ofcom to determine whether particular claims made are factually correct or not. Rather, our role is to consider whether the inclusion or omission of the information amounted to unjust or unfair treatment of an individual or organisation.

Therefore, in assessing whether or not the programme complained of resulted in unfairness to Mr Hill, Ofcom considered in turn the particular sub-heads of complaint in relation to Mr Bonnett's lawn and the fictitious job set up by the programme makers as set out above in the "Summary of the complaint and the broadcaster's response" section. We examined each sub-head of complaint to reach an overall decision as to whether Mr Hill and his company were treated unjustly or unfairly in the context of the programme as a whole.

#### Mr Bonnett's lawn

- i) Ofcom began by assessing the complaint that the poor condition of Mr Bonnett's lawn was presented unfairly as being the result of Mr Hill's workmanship, rather than being caused by Mr Bonnett's lack of aftercare and that this was particularly unfair because Mr Hill's work was represented by three photographs which the programme's expert based his entire judgment of Mr Hill's work on.

Ofcom viewed the programme and in particular noted Mr Bonnett's recollection of his experience of Mr Hill's work, the three photographs used in the programme, and the expert's analysis of these photographs (see the "Introduction and programme summary" section) and whether this led to any unfairness to Mr Hill.

We noted that the BBC said in its statement in response to the complaint that it had no reason to doubt Mr and Mrs Bonnett's testimony and that Mr Hill had provided no evidence to disprove their account of the problems they had experienced with Perfect Turf. In contrast, Mr Hill said that he had provided the programme makers with evidence to suggest that the aftercare procedures, such as not walking on the lawn for up to four weeks and frequently watering the turf, were not followed by Mr and Mrs Bonnett. Mr Hill provided emails from Mr Bonnett, including one dated 13 September 2013 in which Mr Hill says that Mr Bonnett admits he had only watered the lawn "every three days".

Ofcom noted that prior to broadcast, the programme makers had informed Mr Hill of the allegations they intended to make, including those in relation to Mr Bonnett. We considered the information that Mr Hill provided to the programme makers prior to the broadcast, including the email from Mr

Bonnett to Mr Hill dated 13 September 2013. Mr Bonnett's statement, that he "*watered this turf every three days,*" must, in our view, be read in the context of the email overall, where Mr Bonnett prefaces this statement by stating that "*...despite every attempt to contact you, we were ignored by you. I sent you pictures/emails everything. Please read again my initial e mails, the cost was NOT the issue it was the poor quality of the turf and the poor quality of the work.*" It is not clear to us that Mr Bonnett is in fact admitting to poor aftercare of his lawn. Further, his statements in this email appear to be consistent with what he subsequently said in the broadcast.

Ofcom further noted that in response to these allegations, Mr Hill had provided a statement in which he said that "*he only received a tiny percentage of customer complaints and these nearly always come from customers choosing the wrong turf or not carrying out proper aftercare*" and that this statement was reflected in the programme as broadcast. We therefore considered that viewers were likely to have understood that Mr Bonnett was expressing his own opinion and that viewers would have been able to make up their own minds as to the veracity and credibility, or otherwise, of Mr Bonnett's account of his experience of Mr Hill's workmanship.

We also considered whether it was unfair for the programme to only include three photographs of Mr Bonnett's lawn and for the expert to base his entire judgement on these three photographs. Ofcom recognises that, consistent with the principle of editorial freedom, the broadcaster has the right to decide whether or not to include particular pieces of information or material in a programme. This is an editorial decision for broadcasters to make prior to the broadcast of a programme, provided this does not result in unfairness.

The BBC said that the photographs accurately depicted Mr Bonnett's lawn at the time (approximately ten days after the lawn had been laid by Mr Hill) and that although only three photographs were included in the programme, Dr Lodge had reviewed further photographs in order to assist with his analysis. We also acknowledged that during the programme Dr Lodge said: "*you can make out the lines between the turf in a well laid lawn but if it's been well looked after and well-constructed then those lines will disappear very, very quickly*". In Ofcom's view, the three photographs along with the expert's independent opinion allowed viewers to use their own judgment as to whether or not the condition of Mr Bonnett's lawn had been the result of Mr Hill's workmanship or other factors. For these reasons, we considered that the use of only three photographs in the programme did not result in unfairness to Mr Hill.

- ii) Ofcom next assessed the complaint that it was unfair to include the allegation that Mr Bonnett had to resort to installing a patio to replace an area of the lawn laid by Mr Hill.

We noted the comment made by Mr Bonnett in the programme as broadcast regarding the lawn laid by Mr Hill (see the "Introduction and programme summary" above) and it was clear that he considered that an area of the lawn fitted by Mr Hill had to be replaced with patio.

Ofcom noted that, prior to broadcast, in an email dated 11 September 2013 the programme makers had informed Mr Hill that "when Mr Bonnett dug up some of the turf to lay patio, he discovered that the ground had not been

properly prepped". In an letter dated 1 October 2013, the programme makers informed Mr Hill's solicitors that they would include "full details of Mr and Mrs Bonnett's dissatisfaction with the work carried out by [Mr Hill]" and in a further letter dated 7 October 2013, the programme makers specifically stated that they intended to include in the programme the allegation that "Mr and Mrs Bonnett...replaced part of the turf with a patio and had to throw away part of the lawn". In response, in a letter dated 7 October 2013, Mr Hill's solicitors said that Mr and Mrs Bonnett verbally informed Mr Hill's colleagues that: "they would eventually be replacing the area outside their back doors with a patio...but they simply wanted the lawn fitted there for the meantime to cover over the bare mud".

We took the view that there was no clear evidence from either the broadcaster or the complainant to confirm whether or not Mr and Mrs Bonnett had always intended to replace the particular area of lawn with the patio. However, we considered that the broadcaster had presented Mr Bonnett's concerns fairly and from what was said viewers were likely to have understood that Mr Bonnett was expressing his own opinions about the lawn fitted by Perfect Turf when referring to the patio, and including this statement in the programme did not result in unfairness.

- iii) Ofcom then considered the complaint that it was unfair for the programme to criticise Mr Hill's use of compost in the topsoil stating that water would not be able to percolate through the "*trifle*" like layers.

We noted from the BBC's statement that it said that Dr Lodge recognised that in some circumstances the use of compost in topsoil would be appropriate, particularly where the soil required material rich in organic matter. However, Dr Lodge said that in the circumstances of this case, the heavy clay soil meant that this was not a suitable method. Further, this view was corroborated by another expert who had advised the programme makers.

In light of these observations, Ofcom's decision was that the programme makers had a reasonable and credible basis for the inclusion in the programme of Dr Lodge's comments and the use of the "*trifle*" analogy was to assist with viewers' understanding of the comments made by the expert.

- iv) We next assessed the complaint that it was unfair for the programme to present the poor condition of the lawn as the result of Mr Hill's workmanship when, in fact, it was a result of the programme makers not following the aftercare and maintenance instructions given by Mr Hill after the lawn was laid.

Ofcom viewed the programme as broadcast and, in particular, noted the programme makers presentation of the installation of the lawn and the aftercare maintenance they carried out (see the "Introduction and programme summary" section).

We noted from the BBC's statement Dr Lodge's analysis of the techniques used by Mr Hill when laying the turf, which was corroborated by another expert who had advised the programme makers (see "Summary of the complaint and the broadcaster's response" section). We considered that the programme presented Mr Hill as using a number of techniques which Dr Lodge considered were "poor practice". In our view, the footage of Mr Hill installing the new lawn along with the expert's independent opinion and Mr

Hill's responses to the allegations in the telephone conversation and the statement he provided, allowed viewers to use their own judgement as to whether Mr Hill or another person had been responsible for the poor condition of the lawn.

Ofcom noted the reporter's statement in the programme that "*after watering it [the lawn] as instructed*". We considered that this statement had the potential to give the impression that all watering guidance had been followed, such as having watering facilities available for immediate use as requested by Mr Hill, when, in fact, "the purchase of the watering equipment was less than an hour". In various letters from Mr Hill's solicitors to the programme makers, they assert that newly laid turf should be watered immediately and that even a short delay can result in issues with the turf. And indeed we noted that the programme included Mr Hill's assertion as to the importance of watering the lawn in that he stated "*one thing that's really important, have you got a hosepipe and sprinkler? Cause it's going to want watering*". It was therefore clear in our view that viewers would have been aware of Mr Hill's advice that the new lawn needed to be watered regularly.

Ofcom considered Mr Hill's representations on the Preliminary View. Mr Hill did not agree with our view that there was no convincing evidence that the new lawn had not been watered regularly. We considered that, despite Mr Hill's claim that the tenant had been given the responsibility of maintaining the new lawn and that watering equipment had not been purchased until one full day after the turf had been laid in the fictitious job setup, Mr Hill has not provided any substantive evidence to corroborate this claim. In any event, given that the expert, Dr Lodge, had analysed the various techniques used by Mr Hill, and Mr Hill had responded to the allegations made in the programme, we considered that the reporter's comment about "*watering it [the lawn] as instructed*" would not have materially affected viewers' ability to gauge for themselves whether Mr Hill had been responsible for the poor condition of the lawn or not.

Having considered each sub-head of the complaint identified by Mr Hill as being particularly unfair to him, Ofcom found that the broadcaster had taken reasonable care to satisfy itself that material facts were not presented or omitted or disregarded in a way that portrayed Mr Hill or his company unfairly in the programme as broadcast. Ofcom also carefully assessed the parts of the programme as a whole relating specifically to Mr Hill and his company, to reach a view as to whether it was unfair, i.e. we assessed whether the various examples taken together created a cumulative effect that might portray Mr Hill in a way that was unfair. We concluded this was not the case.

After careful consideration, and for all the reasons set out above, Ofcom found no unfairness to Mr Hill in this respect in the programme as broadcast.

- b) Ofcom next considered Mr Hill's complaint that he was portrayed unfairly in the programme as being "an elusive person" and that the address on the website was incomplete. In assessing this, we had regard to Practice 7.9 (set out in head a) above).

Ofcom noted how the material was presented in the programme as broadcast (see the "Introduction and programme summary" section) and whether this led to any unfairness to Mr Hill. Ofcom considered that the report had the potential to portray Mr Hill as being "elusive". We had regard to the material broadcast and

the BBC's statement. In particular, we noted that the programme makers had repeatedly attempted to contact Mr Hill to complain about the new lawn laid specifically for the programme, but that he had not responded to their telephone calls or emails, something which previous customers, including Mr Bonnett, said they had also experienced.

With regards to the address of Mr Hill's office, Ofcom took the view that given that the road was three and a half miles long and that there was no building number given to indicate where on the road the office was located, it would have been with some difficulty, and taken some time, for the programme makers to locate Mr Hill's office.

Taking these factors into account, Ofcom's opinion was that Mr Hill had not been easy to contact and that to portray him as "elusive" was not unfair. Ofcom therefore considered that there was no unfairness in this respect.

- c) We next considered Mr Hill's complaint that his response to the allegations made in the programme was edited unfairly. In particular, Mr Hill said that:
- i) The way the conversation was presented in the programme made it look like he was ignoring the points being made by the reporter, when, in fact, the footage of the phone call had been edited so that the answers he provided were not matched up with the questions he had been asked.

In assessing this sub-head of the complaint Ofcom had regard to Practice 7.6 which states that when a programme is edited, contributions should be represented fairly, and Practice 7.9 (as set out in head a) above).

Ofcom carefully considered the unedited footage of the telephone conversation and compared this to the parts of the conversation included in the programme as broadcast. (Ofcom has marked the sections **not** included in the programme in bold).

In the unedited conversation the following exchange took place:

Reporter        *"the experience we've had has been really negative Jonathan, the work you do, the turf you provide, is very, very poor, **and then when we try to get in contact with you afterwards, it's nigh on impossible. We called you five times to complain about it and you never responded. And that's in...***

Mr Hill         ***Right ok***

Reporter        ***...that's in line with the experience other customers have had, otherwise we wouldn't be investigating you in the first place***

Mr Hill         *Right. Can I tell you something that's 100% true, in the last...I mean, I think you haven't had any complaints about our service in the last sort of four, five months, 'cause we have switched providers now.*

Reporter        *Okay. Well the turf...that you provided for us on April the 30<sup>th</sup> was appalling...*

Mr Hill **...we really have switched provider now, if you have a look at any of our recent jobs...and you know, speak to any recent customers...we have really had a change and you know you won't see any more complaints"**

Reporter **"The main problem with it, Jonathan, is that when people do complain, they can't get in touch with you...the address that you give on your invoices is false, and if you then add to the fact you don't answer your phone or respond to emails when you're in these, these situations, that's why we're looking at this, not just a problem with what you're doing, but the way you're responding when things go wrong.**

Mr Hill *Right okay. We do...we revisit, we do go round the jobs you said, you know people who...are really upset about it, but with turfing that seems to rectify itself a lot of the time if it's looked after properly".*

...

Reporter **Well, let's put it this way, we organised two jobs, one wasn't right and we tried to complain five times, and we got nothing back...The other one you just didn't turn up at all. That's a long way from perfect isn't it?**

Mr Hill *Well we do have a load of people that are happy as well you know? I get emails all the time that I can forward you that...you know people that just can't believe how cheap we are compared to everyone else...you know we're half the price of our nearest competitor.*

...

Reporter **If you, if you did it properly, then they'd all be fine, and...they would be perfect...**

Mr Hill **But people, you know, ask you if, if they want to pay extra to have the old lawn removed and then it will be fine, and we, we, you know, we do provide better turf than we used to.**

Reporter **But Jonathan, you're calling yourself Perfect Turf. You know you can't, you can't call yourself Perfect Turf if it's anything but perfect, and it's such a long way from Perfect.**

Mr Hill **...if people pay for the extra service of removing the old lawn and upgrade to our service...they do get the perfect lawn.**

Reporter *That's not an extra service, that's a basic, that's like 101 to...*

Mr Hill **Well you know [there are] different levels you can go with...if people are willing to pay the extra service they will have the perfect lawn, but if they're also you know on a tight budget and, you know, don't want to pay a fortune and get it for half the price of everyone else and we'll**

**come and you know give you a green garden that's better than you started with.**

Reporter *Yeah, then you shouldn't call yourself Perfect Turf, you should call yourself like, like 'Slightly Bodged Turf', or 'Really Not That Good Turf', but 'What do you Expect for the Money'. **You know? And it...the expectation that you're setting people is that they will have perfect uninterrupted green, and that's so far from what we received, and what...other customers we've spoken to have received.** Jonathan? Do you want to come and meet us and talk this through? Cause **we can give you some points...we shouldn't have to, cause it's basics,** we can give you some, some very simple pointers about how to lay the perfect turf.*

...

Mr Hill *I'm actually going to go now **cause it's all so, rest assured we are, you know improving our service and investing in everything and training's going on so.***

Reporter ***It's too late for those customers who have already spent hundreds of pounds with you, have got terrible lawns, and who you then ignored. What, whatever you do to your service it's too late for them. Unless you're prepared to go back and give them their money back, you've let them down.***

Mr Hill ***Well I'll have to find out what these jobs are, cause most of our jobs are fine, it's only a handful that we've ever had any problems with and we would go back...I'll obviously look into them, but I am going to have to go now okay?***

Reporter *Okay, you're going to change your name? You're not gonna call yourself Perfect Turf anymore?*

Mr Hill *Well I don't know about that cause we offer a perfect service, you know, different forms for different people with different budgets.*

Reporter ***You don't!***

Mr Hill ***...there's something for everyone. If they want to spend on an absolute quote that they're given then we're really obviously out of tune and they will have a perfect lawn.** Right I'm going to go now okay?*

At this point, the exchange between Mr Hill and the reporter concluded.

We recognised that broadcasters have a right to select and edit material, as long as they do so in a way that does not cause unfairness. Having compared the unedited material as set out above with the material included in the programme as broadcast, Ofcom noted that Mr Hill's responses to the questions asked by the presenter were included, on some occasions, out of sequence in the programme as broadcast. However, we considered that the

inclusion of Mr Hill's comments out of sequence did not make a significant difference to the sense of the exchange nor did it distort Mr Hill's position in a way that was unfair to him. We also considered that both the telephone conversation and the statement which was included in the programme clearly and accurately reflected Mr Hill's main responses to the allegations made by the programme makers and that the editing was unlikely to materially and adversely change viewer's perception of him in a way that was unfair.

- ii) The programme portrayed him as ending the conversation while being asked difficult questions, when in fact he had politely requested to end the conversation at a later point in the conversation when it seemed "there was nothing left to say".

Having regard to the unedited telephone conversations and the programme as broadcast (see above), we considered that Mr Hill had, on a number of occasions, stated that he wished to terminate the call before he eventually did so. Therefore, our decision was that the programme fairly presented the way in which the telephone conversation was terminated.

#### Unwarranted infringement of privacy

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

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

- d) Mr Hill complained that his privacy was unwarrantably infringed in connection with the obtaining of the material included in the programme because:
  - i) He was surreptitiously filmed on the basis of a complaint made by Mr Bonnett who, Mr Hill said, had misinformed the programme makers.

In considering this part of the complaint, Ofcom had regard to Practices 8.5 and 8.13. Practice 8.5 states that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted. Practice 8.13 says that surreptitious filming should only be used where it is warranted. Normally, it will only be warranted if: there is *prima facie* evidence of a story in the public interest; there are reasonable grounds to suspect that further material evidence could be obtained; and, it is necessary to the credibility and authenticity of the programme. Ofcom also has regard to Practice 8.9 which states that the means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme.

Before assessing the extent to which Mr Hill had a legitimate expectation of privacy in connection with the obtaining of the material included in the programme, Ofcom considered whether the surreptitious filming was, in itself, warranted.

In its statement, the BBC stated that it believed that the surreptitious filming had been warranted because there was a strong public interest in investigating the allegations, which had been made by a number of people, about problems with the quality of Mr Hill's work and the lack of accountability for it, such as not responding to customer complaints. The BBC argued that the filming of Mr Hill (and the subsequent inclusion of some of the footage in the programme) was necessary, particularly because programmes of this nature rely in part on the ability to film secretly without the consent of the person featured in order to expose certain types of behaviour. The BBC added that it would not have been possible to fully investigate and expose the conduct of Mr Hill without the use of this technique.

Ofcom understood that the investigation into Perfect Turf was prompted by complaints received by the *Watchdog* database and the programme makers had contacted Trading Standards who had also reported receiving complaints. In addition the BBC stated that: there was an unsatisfied County Court Judgment against Perfect Turf; there were several negative online reviews; and they had spoken to a number of dissatisfied customers who had confirmed that lawns fitted by Perfect Turf were of an unacceptably poor standard. Ofcom therefore accepted that the information gathered by the programme makers before the commencement of surreptitious filming amounted to *prima facie* evidence.

We then considered the other requirements of Practice 8.13 needed to warrant surreptitious filming. In our opinion, the programme makers had reasonable grounds to believe that, by setting up "sting jobs" at various properties and using hidden cameras to film Mr Hill fitting new lawns at these properties, further evidence could be obtained in relation to the claims made regarding problems with the quality of Mr Hill's work and his lack of accountability for these problems.

We also reasoned that attempts to obtain evidence in other ways, such as approaching Mr Hill directly, would be highly unlikely to be successful, and that the first-hand evidence of the techniques used by Mr Hill to install lawns added to the credibility and authenticity of the programme.

For these reasons in our view the use of surreptitious filming was warranted and the means of obtaining the material had been proportionate.

We then assessed the extent to which Mr Hill had a legitimate expectation of privacy in the circumstances in which he was filmed, i.e. surreptitiously with the use of hidden cameras. As stated in the Code, "legitimate expectations of privacy vary according to the place and nature of the information, activity or condition in question". Ofcom observed that the filming of Mr Hill took place at the property in which a production team member was posing as the homeowner and he was unaware that secret filming was taking place. He was shown fitting a lawn at the property and the conversations which took place between Mr Hill and the production team member took the form of discussions about the maintenance of the lawn and the cost of the lawn. It is Ofcom's view that, ordinarily, conversations of this type, i.e. conducted during the course of business and in which the parties felt that they could speak openly and freely, could reasonably be regarded as being confidential and therefore could attract an expectation of privacy. However, from the footage included in the programme, Mr Hill did not appear to disclose any private

information about his personal life, nor did the conversations appear to contain particularly private and sensitive business or financial information.

Taking these factors into account, Ofcom considered that Mr Hill had a legitimate expectation of privacy in relation to surreptitiously filmed material, but that his expectation was materially limited by the facts that the content of the conversations were not particularly private or sensitive in nature, and that individuals would normally have a lower expectation of privacy about the recording of material as opposed to its broadcast.

Ofcom then went on to consider whether it was warranted to infringe Mr Hill's privacy.

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. Examples of public interest could include revealing or detecting crime, protecting public health or safety, exposing misleading claims by individuals or organisations or disclosing incompetence that affects the public.

As noted above, Ofcom considered that there was genuine public interest in the programme's investigation into the allegations made by Mr Bonnett and a number of other former customers about Mr Hill's turf company. The purpose of the investigation was to expose any misleading claims made by Mr Hill and to disclose any relating lack of accountability which affected the public. Therefore, in this instance, there was justification for gathering more evidence to corroborate the complaints that had been made about Mr Hill.

On balance and given all the factors set out above, Ofcom considered the broadcaster's right to freedom of expression and the public interest in obtaining footage of Mr Hill's turf company that corroborated the allegations made in the programme outweighed Mr Hill's limited legitimate expectation of privacy.

- ii) He was not informed that a telephone conversation between himself and the reporter was being recorded.

In considering this element of the complaint, Ofcom first assessed whether the recording of the telephone conversation was, in itself, warranted. Ofcom had particular regard to Practice 8.12 which states that "broadcasters can record telephone calls between the broadcaster and the other party if they have from the outset of the call, identified themselves, explained the purpose of the call and that the call is being recorded for possible broadcast unless it is warranted not to do one or more of these practices" and "if at a later stage it becomes clear that a call that has been recorded will be broadcast (but this is not explained to the other party at the time of the call) then the broadcaster must obtain consent before broadcast from the other party, unless it is warranted not to do so".

Ofcom recognised that the telephone call was made by the programme makers in an attempt to get a response to the allegations made about Perfect Turf, having exhausted all other avenues. As described under head b) of the

BBC's response in the "Summary of the complaint and the broadcaster's response" section above, the programme makers believed that Mr Hill was being "elusive". In particular, the programme makers had attempted to contact Mr Hill on a number of occasions to raise concerns over the quality of his work and they had attempted to book Mr Hill for further jobs in the hope of putting the concerns to him directly and on camera. Having regard to Practice 8.12, Ofcom considered that recording a telephone conversation can be justified if the programme makers have from the outset identified themselves, explained the purpose of the call and that the call is being recorded for possible broadcast.

Ofcom noted that the reporter, Mr Allwright did identify himself and the programme from the outset, and also explained the reasons why he was investigating Mr Hill and his work. Ofcom noted that although the programme makers did not state that the telephone conversation was being recorded for possible broadcast, in a letter from Mr Hill's solicitor on 9 August 2013, Mr Hill indicated that "he understood or suspected that it [the telephone conversation] had been recorded".

In Ofcom's view, the allegations raised by the programme makers in their correspondence were serious and investigating them was a matter in the public interest. Given that the programme makers had been unable to contact Mr Hill to put their concerns to him, Ofcom considered that it was reasonable for the programme makers to assume that the telephone conversation may have been the only opportunity they had to speak with him and to put the allegations and the complaints against him for his response. Therefore it is Ofcom's view that the programme makers were warranted in their decision to record the telephone conversation with Mr Hill.

Ofcom then assessed the extent to which Mr Hill had a legitimate expectation of privacy in relation to the obtaining of this material.

Ofcom first considered the way the recording was conducted. As already noted, the reporter had identified himself, the programme and the reasons for their investigation into Mr Hill and his work from the outset of the conversation. However, although Mr Hill may have later concluded that the telephone conversation would be broadcast, the entire conversation was recorded without him being explicitly informed of this by the programme makers. Taking these factors into account, Ofcom considered that Mr Hill had a legitimate expectation of privacy in relation to the recording of the telephone conversation. However in our view it was limited in the circumstances because the content of the telephone conversations were not particularly private or sensitive in nature, and individuals would normally have a lower expectation of privacy about the recording of material as opposed to its broadcast.

Ofcom went on to consider whether the intrusion into Mr Hill's privacy was warranted.

As noted above in relation to the surreptitious filming, Ofcom considered the factors by which a broadcaster can demonstrate that an infringement of privacy is warranted. Ofcom noted the steps taken by the programme makers in attempting to put their allegations to Mr Hill for his response and considered that it was reasonable for the programme makers to have taken

the view that the telephone conversation may have taken place as the only opportunity to put the allegations to Mr Hill and for his response to be given.

As previously stated, Ofcom considered that there was a public interest justification in the programme investigating allegations of this sort and that recording the conversation formed a key part of the programme makers investigation in that it allowed viewers to make their own judgement as to whether Mr Hill had been responsible for the problems which had arisen with the newly fitted lawns. In these circumstances, Ofcom took the view that any infringement of privacy with regards to the recording of the telephone conversation was warranted.

Therefore, on balance, and given all the factors set out above, Ofcom considered the broadcaster's right to freedom of expression and the public interest in obtaining the footage of Mr Hill's response in the circumstances outweighed Mr Hill's limited legitimate expectation of privacy.

Ofcom found therefore that Mr Hill's privacy was not unwarrantably infringed in connection with the obtaining of material included in the programme as broadcast.

- e) Mr Hill complained that his privacy was unwarrantably infringed in the programme as broadcast because:
  - i) He said that he had not given permission for the surreptitiously filmed footage of him to be included in the programme.

In relation to the use of the surreptitiously filmed footage, Ofcom had regard to Practice 8.6 and 8.14. Practice 8.6 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. Practice 8.14 states that material gained by surreptitious filming and recording should only be broadcast when it is warranted.

Ofcom again considered whether it was warranted to film surreptitiously in accordance with Practice 8.13. As discussed in head d) i) immediately above, Ofcom considered that the use of surreptitious filming was warranted in the circumstances.

Having reached the view that the use of surreptitious filming was warranted, Ofcom next considered the extent to which Mr Hill had a legitimate expectation of privacy in the broadcast of the material in the programme.

Ofcom again took account of the circumstances in which Mr Hill was filmed as well as the material that was broadcast. Mr Hill was unaware that he was being filmed carrying out the work at the property in which a production team member was posing as the owner. Again, Ofcom took the view that conversations and actions of this type, i.e. conducted during the course of business and in which both parties felt they could speak freely and openly, could reasonably be regarded as being confidential and therefore could attract an expectation of privacy. However, from the footage broadcast during the programme, Ofcom considered that Mr Hill did not disclose anything particularly private in relation to his personal life or business. Taking these factors into account, Ofcom considered that Mr Hill had a legitimate expectation of privacy in relation to broadcast of the footage, but that this

expectation was limited because nothing of a particularly private or confidential nature was disclosed.

Ofcom next took a view as to whether broadcasting this footage was warranted. We carefully balanced Mr Hill's right to privacy in relation to the broadcast footage obtained through surreptitious filming and weighed this against the broadcaster's right to freedom of expression and the audience's right to receive information in the public interest. We considered that there was a genuine public interest justification in broadcasting an examination of Mr Hill's conduct and the processes he used in laying the turf.

Therefore, taking all the factors set out above into account, Ofcom considered that the broadcaster's right to freedom of expression, and the public interest in broadcasting the material in order to corroborate the allegations made in the programme, outweighed Mr Hill's limited legitimate expectation of privacy in relation to the broadcast of the footage.

- ii) The content of a telephone conversation between Mr Hill and the reporter (using an actor to voice Mr Hill's responses to the reporter) was broadcast without his permission.

As discussed under head d) ii) above, Ofcom took the view that recording the telephone conversation between Mr Hill and the programme makers was warranted in the circumstances. We therefore went on to consider to what extent Mr Hill had an expectation of privacy in relation to the broadcast of the footage.

We viewed the programme material and noted that the telephone conversation was edited and Mr Hill's voice was not used in the programme as broadcast. Further, the telephone conversation did not disclose anything that could be regarded as particularly private or personal to Mr Hill. He was responding to the allegations made by the reporter which he had also provided in the form of his statement which was included in the programme; and he had spoken freely and openly with the understanding that he was having a conversation with the reporter of a television programme. However, Ofcom noted that the material had been obtained without Mr Hill knowing from the outset that the telephone conversation would be broadcast, although as already stated, Mr Hill later indicated that he suspected that the recording may be used in the programme. Taking these factors in account Ofcom considered that Mr Hill had a legitimate expectation of privacy in relation to the broadcast of the contents of the telephone conversation. However in our view it was limited in the circumstances because no private or confidential information was disclosed.

Ofcom next considered whether broadcasting the contents of the telephone conversation was warranted. We carefully balanced Mr Hill's right to privacy in relation to the broadcast of the contents of the telephone conversation and weighed this against the broadcaster's right to freedom of expression and the audience's right to receive information in the public interest. Ofcom noted the public interest of broadcasters investigating consumer issues in order to help protect members of the public. We also took into account that the programme makers had on various occasions tried to contact Mr Hill to provide his response to the allegations. We therefore considered that there was a genuine public interest justification in broadcasting Mr Hill's response to the broadcaster's allegations.

For these reasons, Ofcom found that the broadcaster's right to freedom of expression, and the public interest in broadcasting Mr Hill's response to the allegations made in the programme and the audiences right to receive this information, outweighed Mr Hill's limited legitimate expectation of privacy in relation to the broadcast of the contents of the telephone conversation.

Ofcom's Decision therefore is that Mr Hill's privacy was not unwarrantably infringed in the programme as broadcast.

**Therefore, Ofcom has not upheld Mr Hill's complaint of unfair treatment in the programme, and of unwarranted infringement of privacy in connection with the inclusion of material in the programme and in the programme as broadcast.**

## Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 6 and 19 May 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 radio

Programme	Broadcaster	Transmission date	Categories
BBC SE Regional News	BBC 1	13/02/2014	Generally accepted standards
Sharpe's Challenge	Drama	09/03/2014	Scheduling

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

## Complaints Assessed, Not Investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 6 and 19 May 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
Gogglebox	4Seven	12/05/2014	Race discrimination/offence	1
Posh Pawn	4Seven	09/05/2014	Offensive language	1
Programming	Al Ghad TV	21/04/2014	Retention and production of recordings	1
Programming	Ambur Radio 103.6 FM	17/04/2014	Generally accepted standards	1
Har Lamha Pur Josh	ARY News	29/03/2014	Product placement	1
News	ARY News	30/04/2014	Advertising/editorial distinction	1
Off The Record and Headline News	ARY News	06/05/2014	Advertising/editorial distinction	1
Programming	BBC	Various	Outside of remit / other	1
Programming	BBC	Various	Television Access Services	1
BBC London News	BBC 1	14/05/2014	Outside of remit / other	1
BBC News	BBC 1	06/05/2014	Animal welfare	1
BBC News	BBC 1	07/05/2014	Outside of remit / other	1
BBC News	BBC 1	12/05/2014	Outside of remit / other	1
BBC News	BBC 1	16/05/2014	Animal welfare	1
BBC News	BBC 1	Various	Outside of remit / other	1
Doctors	BBC 1	30/04/2014	Transgender discrimination/offence	1
EastEnders	BBC 1	24/04/2014	Scheduling	1
EastEnders	BBC 1	08/05/2014	Generally accepted standards	1
EastEnders	BBC 1	08/05/2014	Scheduling	1
EastEnders	BBC 1	12/05/2014	Drugs, smoking, solvents or alcohol	1
EastEnders	BBC 1	Various	Generally accepted standards	1
Eurovision Song Contest 2014	BBC 1	10/05/2014	Gender discrimination/offence	3
Eurovision Song Contest 2014	BBC 1	10/05/2014	Offensive language	1
Eurovision Song Contest 2014	BBC 1	10/05/2014	Scheduling	1

Eurovision Song Contest 2014	BBC 1	10/05/2014	Voting	1
Fake Britain	BBC 1	29/04/2014	Crime	1
Fake Britain	BBC 1	14/05/2014	Outside of remit / other	1
Great British Menu / Eurovision Song Contest	BBC 1	Various	Outside of remit / other	1
Happy Valley	BBC 1	06/05/2014	Generally accepted standards	1
Happy Valley	BBC 1	13/05/2014	Violence and dangerous behaviour	3
Have I Got News for You	BBC 1	02/05/2014	Gender discrimination/offence	1
Have I Got News for You	BBC 1	09/05/2014	Generally accepted standards	1
Holby City	BBC 1	11/03/2014	Crime	1
MasterChef	BBC 1	16/05/2014	Outside of remit / other	1
Party Election Broadcast by the British National Party	BBC 1	29/04/2014	Elections/Referendums	1
Party Election Broadcast by the British National Party	BBC 1	29/04/2014	Generally accepted standards	10
Party Election Broadcast by the British National Party	BBC 1	13/05/2014	Generally accepted standards	6
Party Election Broadcast by the English Democrats	BBC 1	12/05/2014	Race discrimination/offence	1
Party Election Broadcast by the Green Party	BBC 1	28/04/2014	Electronic Programme Guides	1
Party Election Broadcast by the Labour Party	BBC 1	24/04/2014	Outside of remit / other	1
Party Election Broadcast by the Labour Party	BBC 1	07/05/2014	Elections/Referendums	18
Party Election Broadcast by the Scottish National Party	BBC 1	22/04/2014	Elections/Referendums	2
Party Election Broadcast by the UK Independence Party	BBC 1	23/04/2014	Due accuracy	1
Party Election Broadcast by the UK Independence Party	BBC 1	23/04/2014	Race discrimination/offence	1
Question Time	BBC 1	08/05/2014	Outside of remit / other	3
Sunday Politics	BBC 1	11/05/2014	Outside of remit / other	1
The Andrew Marr Show	BBC 1	11/05/2014	Generally accepted standards	2
The British Academy Television Awards	BBC 1	18/05/2014	Generally accepted standards	1
The Graham Norton Show	BBC 1	02/05/2014	Generally accepted standards	1
The Guess List	BBC 1	29/04/2014	Gender discrimination/offence	1
The One Show	BBC 1	07/05/2014	Outside of remit / other	1
The One Show	BBC 1	14/05/2014	Outside of remit / other	1
This Week	BBC 1	15/05/2014	Outside of remit / other	2
Watchdog	BBC 1	14/05/2014	Fairness	1

Blethering Referendum	BBC 1 Scotland	05/05/2014	Elections/Referendums	1
Blethering Referendum	BBC 1 Scotland	12/05/2014	Outside of remit / other	1
Party Election Broadcast by the Britain First Party	BBC 1 Scotland	13/05/2014	Race discrimination/offence	14
Party Election Broadcast by the British National Party	BBC 1 Scotland	12/05/2014	Generally accepted standards	1
Party Election Broadcast by the Scottish National Party	BBC 1 Scotland	22/04/2014	Elections/Referendums	36
Party Election Broadcast by the Scottish National Party	BBC 1 Scotland	22/04/2014	Generally accepted standards	1
Party Election Broadcast by the Scottish National Party	BBC 1 Scotland	02/05/2014	Elections/Referendums	5
Party Election Broadcast by the Scottish National Party	BBC 1 Scotland	02/05/2014	Outside of remit / other	1
Party Election Broadcast by the Britain First Party	BBC 1 Wales	09/05/2014	Race discrimination/offence	14
Blurred Lines: The New Battle of the Sexes	BBC 2	08/05/2014	Outside of remit / other	1
Newsnight	BBC 2	16/05/2014	Outside of remit / other	1
Party Election Broadcast by the British National Party	BBC 2	29/04/2014	Generally accepted standards	5
Party Election Broadcast by the British National Party	BBC 2	13/05/2014	Generally accepted standards	3
Party Election Broadcast by the Labour Party	BBC 2	24/04/2014	Elections/Referendums	1
Party Election Broadcast by the Labour Party	BBC 2	24/04/2014	Outside of remit / other	1
Party Election Broadcast by the Labour Party	BBC 2	07/05/2014	Disability discrimination/offence	1
Party Election Broadcast by the Labour Party	BBC 2	07/05/2014	Elections/Referendums	1
Permission Impossible: Britain's Planners	BBC 2	04/03/2014	Television Access Services	1
Top Gear	BBC 2	02/03/2014	Generally accepted standards	1
Watermen: A Dirty Business	BBC 2	06/05/2014	Generally accepted standards	1
Party Election Broadcast by the Britain First Party	BBC 2 Scotland	13/05/2014	Elections/Referendums	3
Party Election Broadcast by the Scottish National Party	BBC 2 Scotland	02/05/2014	Elections/Referendums	2
Eurovision Song Contest 2014: Semi-Finals	BBC 3	08/05/2014	Generally accepted standards	1
How to Win Eurovision	BBC 3	09/05/2014	Offensive language	1
Jonah From Tonga	BBC 3	15/05/2014	Generally accepted standards	1
Russell Howard's Good News Extra	BBC 3	10/05/2014	Generally accepted standards	1
The Call Centre	BBC 3	14/05/2014	Offensive language	1

Tyger Takes On	BBC 3	15/05/2014	Generally accepted standards	1
Top of the Pops	BBC 4	06/03/2014	Race discrimination/offence	1
BBC News	BBC News Channel	02/05/2014	Outside of remit / other	1
BBC News	BBC News Channel	15/05/2014	Outside of remit / other	1
Blethering Referendum	BBC News Channel	11/05/2014	Violence and dangerous behaviour	1
Scottish Independence Referendum Committee	BBC Parliament	15/05/2014	Outside of remit / other	1
"Big Weekend" competition	BBC Radio 1	07/05/2014	Competitions	1
The Official Chart with Jameela Jamil	BBC Radio 1	11/05/2014	Scheduling	1
Free Thinking	BBC Radio 3	29/04/2014	Generally accepted standards	1
Any Questions	BBC Radio 4	02/05/2014	Elections/Referendums	1
BBC News	BBC Radio 4	01/05/2014	Generally accepted standards	1
BBC News	BBC Radio 4	08/05/2014	Outside of remit / other	1
BBC News	BBC Radio 4	08/05/2014	Outside of remit / other	1
News	BBC Radio 4	30/04/2014	Elections/Referendums	1
Secrets and Lattes	BBC Radio 4	05/05/2014	Offensive language	1
Victoria Derbyshire	BBC Radio 5 Live	26/03/2014	Generally accepted standards	2
Victoria Derbyshire	BBC Radio 5 Live	10/04/2014	Generally accepted standards	1
Programming	BET:BlackEntTV	04/05/2014	Race discrimination/offence	1
Mr Bean	Boomerang	04/05/2014	Scheduling	1
Capital Breakfast Show	Capital FM	28/04/2014	Scheduling	1
Cow and Chicken	Cartoon Network (Central Eastern Europe)	14/04/2014	Scheduling	1
Anadin's sponsorship of Deal or No Deal	Channel 4	04/05/2014	Gender discrimination/offence	1
Channel 4 News	Channel 4	30/04/2014	Due impartiality/bias	1
Channel 4 News	Channel 4	06/05/2014	Due accuracy	1
Channel 4 News	Channel 4	06/05/2014	Generally accepted standards	1
Channel 4 News	Channel 4	12/05/2014	Due impartiality/bias	1
Come Dine with Me	Channel 4	07/05/2014	Materially misleading	1
Derek	Channel 4	23/04/2014	Disability discrimination/offence	1
Derek	Channel 4	07/05/2014	Generally accepted standards	3
Derek	Channel 4	14/05/2014	Generally accepted standards	1
Food Unwrapped Easter Special	Channel 4	21/04/2014	Animal welfare	1
Gogglebox	Channel 4	25/04/2014	Generally accepted standards	1

Gogglebox	Channel 4	25/04/2014	Race discrimination/offence	1
Gogglebox	Channel 4	02/05/2014	Generally accepted standards	2
Gogglebox	Channel 4	02/05/2014	Religious/Beliefs discrimination/offence	2
Gogglebox	Channel 4	05/05/2014	Sexual orientation discrimination/offence	1
Gogglebox	Channel 4	09/05/2014	Generally accepted standards	1
Gogglebox	Channel 4	09/05/2014	Race discrimination/offence	27
Gogglebox	Channel 4	13/05/2014	Race discrimination/offence	3
Gogglebox	Channel 4	16/05/2014	Animal welfare	1
Gogglebox	Channel 4	16/05/2014	Sexual orientation discrimination/offence	1
Love for Sale with Rupert Everett	Channel 4	05/05/2014	Generally accepted standards	4
Mitsubishi's sponsorship of documentaries on 4	Channel 4	08/05/2014	Generally accepted standards	1
Mr Drew's School for Boys	Channel 4	29/04/2014	Offensive language	1
Posh Pawn	Channel 4	27/04/2014	Offensive language	2
Posh Pawn	Channel 4	01/05/2014	Crime	1
Random Acts	Channel 4	13/05/2014	Generally accepted standards	1
Sunday Brunch	Channel 4	18/05/2014	Offensive language	1
The Big Bang Theory	Channel 4	04/05/2014	Scheduling	1
The Island with Bear Grylls	Channel 4	05/05/2014	Animal welfare	1
The Island with Bear Grylls	Channel 4	05/05/2014	Gender discrimination/offence	1
The Island with Bear Grylls	Channel 4	08/05/2014	Animal welfare	1
The Island with Bear Grylls	Channel 4	12/05/2014	Animal welfare	93
The Island with Bear Grylls	Channel 4	12/05/2014	Generally accepted standards	2
The Island with Bear Grylls	Channel 4	12/05/2014	Materially misleading	1
The Island with Bear Grylls	Channel 4	15/05/2014	Animal welfare	3
Channel 4 News	Channel 4 +1	28/04/2014	Generally accepted standards	1
Beware! Cowboy Builders	Channel 5	01/05/2014	Fairness	1
Channel 5 News (trailer)	Channel 5	17/05/2014	Race discrimination/offence	1
Classic Car Rescue	Channel 5	21/04/2014	Offensive language	5
Classic Car Rescue	Channel 5	22/04/2014	Offensive language	1
Classic Car Rescue	Channel 5	28/04/2014	Offensive language	1
Classic Car Rescue	Channel 5	28/04/2014	Offensive language	1
Columbine	Channel 5	30/04/2014	Scheduling	1
Goodnight for Justice: Queen of Hearts	Channel 5	29/04/2014	Scheduling	1

Ice Road Truckers	Channel 5	25/04/2014	Offensive language	1
Neighbours	Channel 5	14/05/2014	Offensive language	1
Party Election Broadcast by the Scottish National Party	Channel 5	29/04/2014	Elections/Referendums	1
Party Election Broadcast by the Scottish National Party	Channel 5	13/05/2014	Elections/Referendums	1
The Gadget Show	Channel 5	14/04/2014	Generally accepted standards	1
The Nightmare Neighbour Next Door	Channel 5	01/04/2014	Offensive language	1
The Nightmare Neighbour Next Door	Channel 5	08/04/2014	Offensive language	1
The Wright Stuff	Channel 5	08/05/2014	Due impartiality/bias	1
Party Election Broadcast by the Britain First Party	Channel 5 (Scotland)	13/05/2014	Generally accepted standards	1
Advertisements	Channel i	27/04/2014	Advertising minutage	1
Tritio Mattra	Channel i	08/04/2014	Undue prominence	1
Super Scoreboard	Clyde 1	24/04/2014	Due accuracy	1
Workaholics (trailer)	Comedy Central	10/05/2014	Scheduling	1
Nightmare in Suburbia	Crime Investigation Network	30/04/2014	Surreptitious advertising	1
Halfords' sponsorship of Happy Motoring on Dave	Dave	01/05/2014	Generally accepted standards	1
Top Gear	Dave	03/05/2014	Offensive language	1
The Haunted Mansion (trailer)	Disney Channel	22/04/2014	Scheduling	1
Sally Lockhart - The Shadow In The North	Drama	11/05/2014	Violence and dangerous behaviour	1
The Hound of the Baskervilles	Drama Channel	03/05/2014	Offensive language	1
How I Met Your Mother	E4	08/05/2014	Violence and dangerous behaviour	1
After Dark (trailer)	FilmOn.tv	03/05/2014	Scheduling	1
Sash Yahan Koi Hai	Geo Tez	20/04/2014	Scheduling	1
Babestation	Get Lucky TV	30/04/2014	Religious/Beliefs discrimination/offence	1
Life's Too Short	Gold	11/05/2014	Disability discrimination/offence	1
"More Music Variety" slogan	Heart FM	Various	Materially misleading	2
Births, Deaths and Marriages	ITV	01/05/2014	Gender discrimination/offence	1
Britain's Got Talent	ITV	03/05/2014	Nudity	11
Britain's Got Talent	ITV	03/05/2014	Offensive language	2
Britain's Got Talent	ITV	10/05/2014	Disability discrimination/offence	1
Britain's Got Talent	ITV	10/05/2014	Generally accepted standards	2
Britain's Got Talent	ITV	10/05/2014	Outside of remit / other	2
Britain's Got Talent	ITV	17/05/2014	Offensive language	1

Comparethemarket.com's sponsorship of Coronation Street	ITV	09/05/2014	Sponsorship credits	1
Comparethemarket.com's sponsorship of Coronation Street	ITV	Various	Outside of remit / other	1
Coronation Street	ITV	05/05/2014	Generally accepted standards	1
Coronation Street	ITV	14/05/2014	Generally accepted standards	2
Coronation Street	ITV	16/05/2014	Scheduling	1
Coronation Street	ITV	Various	Drugs, smoking, solvents or alcohol	1
Daybreak	ITV	22/03/2014	Due accuracy	1
Daybreak	ITV	24/03/2014	Due accuracy	1
Dickinson's Real Deal	ITV	08/05/2014	Competitions	1
Emmerdale	ITV	25/04/2014	Sexual material	2
Emmerdale	ITV	29/04/2014	Scheduling	1
Emmerdale	ITV	02/05/2014	Generally accepted standards	1
Emmerdale	ITV	02/05/2014	Scheduling	7
Emmerdale	ITV	05/05/2014	Disability discrimination/offence	6
Emmerdale	ITV	05/05/2014	Generally accepted standards	1
Emmerdale	ITV	05/05/2014	Scheduling	1
Emmerdale	ITV	06/05/2014	Scheduling	1
Emmerdale	ITV	07/05/2014	Generally accepted standards	1
Emmerdale	ITV	14/05/2014	Generally accepted standards	1
FA Cup Final Live	ITV	17/05/2014	Outside of remit / other	3
Good Morning Britain	ITV	02/05/2014	Due accuracy	1
Good Morning Britain	ITV	12/05/2014	Generally accepted standards	3
Horrid Henry	ITV	04/05/2014	Scheduling	1
ITV News	ITV	08/05/2014	Due accuracy	1
Jackpot247	ITV	11/05/2014	Gambling	1
Loose Women	ITV	02/05/2014	Drugs, smoking, solvents or alcohol	2
Loose Women	ITV	02/05/2014	Generally accepted standards	1
Loose Women	ITV	02/05/2014	Nudity	1
Loose Women	ITV	02/05/2014	Scheduling	1
Loose Women	ITV	09/05/2014	Generally accepted standards	1
Party Election Broadcast by the Britain First Party	ITV	08/05/2014	Generally accepted standards	1
Party Election Broadcast by the British National Party	ITV	29/04/2014	Generally accepted standards	14
Party Election Broadcast by the British National Party	ITV	13/05/2014	Generally accepted standards	3

Party Election Broadcast by the Green Party	ITV	07/05/2014	Elections/Referendums	1
Party Election Broadcast by the Labour Party	ITV	07/05/2014	Disability discrimination/offence	2
Party Election Broadcast by the Labour Party	ITV	07/05/2014	Elections/Referendums	5
Party Election Broadcast by the UK Independence Party	ITV	23/04/2014	Elections/Referendums	1
Programming	ITV	Various	Outside of remit / other	1
The Hungry Sailors	ITV	10/05/2014	Animal welfare	1
The Jeremy Kyle Show	ITV	28/04/2014	Generally accepted standards	1
The Jeremy Kyle Show	ITV	02/05/2014	Generally accepted standards	1
The Jeremy Kyle Show	ITV	06/05/2014	Disability discrimination/offence	1
The Jeremy Kyle Show	ITV	07/05/2014	Generally accepted standards	1
The Paul O'Grady Show	ITV	14/05/2014	Violence and dangerous behaviour	1
Tonight: How Bad is Your Driving?	ITV	15/05/2014	Violence and dangerous behaviour	1
Vera	ITV	27/04/2014	Offensive language	1
Viral Tap (trailer)	ITV	03/05/2014	Offensive language	1
Ribby Hall's sponsorship of Granada Weather	ITV Granada	Various	Materially misleading	1
ITV News Cymru Wales	ITV Wales	12/05/2014	Outside of remit / other	1
ITV News Calendar	ITV Yorkshire	07/05/2014	Drugs, smoking, solvents or alcohol	1
Britain's Got More Talent	ITV2	03/05/2014	Race discrimination/offence	1
Celebrity Juice	ITV2	10/05/2014	Generally accepted standards	1
Emmerdale	ITV2	05/05/2014	Generally accepted standards	1
Viral Tap	ITV2	12/05/2014	Offensive language	1
You've Been Framed!	ITV2	25/04/2014	Religious/Beliefs discrimination/offence	1
You've Been Framed!	ITV2	02/05/2014	Religious/Beliefs discrimination/offence	1
You've Been Framed!	ITV2	05/05/2014	Generally accepted standards	1
You've Been Framed!	ITV2	07/05/2014	Generally accepted standards	1
You've Been Framed!	ITV2	08/05/2014	Religious/Beliefs discrimination/offence	1
The Chase: Celebrity Special	ITV4	06/05/2014	Outside of remit / other	1
Unibet's sponsorship of IPL Cricket	ITV4	Various	Race discrimination/offence	1
Robin Banks	Jack FM (Berkshire)	06/05/2014	Generally accepted standards	1
Kiss FM Breakfast Show	Kiss 100	13/05/2014	Race discrimination/offence	1
Advertisement by the European Parliament	LBC 97.3 FM	16/05/2014	Materially misleading	1

James O'Brien	LBC 97.3 FM	14/05/2014	Religious/Beliefs discrimination/offence	2
James O'Brien	LBC 97.3 FM	16/05/2014	Elections/Referendums	6
Ken Livingstone and David Mellor	LBC 97.3 FM	17/05/2014	Elections/Referendums	1
Nick Ferrari	LBC 97.3 FM	12/05/2014	Race discrimination/offence	2
Nick Ferrari	LBC 97.3 FM	13/05/2014	Race discrimination/offence	1
Steve Allen	LBC 97.3 FM	15/05/2014	Generally accepted standards	1
London's Burning	London Live	12/05/2014	Offensive language	1
Not the One Show	London Live	28/04/2014	Due impartiality/bias	1
News	RT	28/04/2014	Due accuracy	1
Pawb a'i Farn	S4C	06/02/2014	Due impartiality/bias	1
The Dog Thrower	Sky Arts 1	Various	Animal welfare	1
Game of Thrones	Sky Atlantic	21/04/2014	Generally accepted standards	2
Game of Thrones	Sky Atlantic	28/04/2014	Generally accepted standards	2
Laid Bare	Sky Livingit	20/04/2014	Sexual material	1
Boulton and Co	Sky News	01/05/2014	Due impartiality/bias	1
Press Preview	Sky News	Various	Due impartiality/bias	1
Sunrise	Sky News	19/04/2014	Undue prominence	1
Game of Thrones	Sky on demand	Various	Television Access Services	1
Programming	Sky on Demand	Various	Television Access Services	1
Football League	Sky Sports 1	05/04/2014	Race discrimination/offence	1
Premier League Football	Sky Sports 1	03/05/2014	Fairness	2
Premier League Football	Sky Sports 1	03/05/2014	Materially misleading	1
Premier League Football	Sky Sports 1	11/05/2014	Generally accepted standards	1
Ready	Star Gold	26/04/2014	Race discrimination/offence	1
Party Election Broadcast by the Scottish National Party	STV	27/03/2014	Elections/Referendums	1
Party Election Broadcast by the Britain First Party	STV	13/05/2014	Race discrimination/offence	2
Party Election Broadcast by the British National Party	STV	12/05/2014	Generally accepted standards	1
Party Election Broadcast by the British National Party	STV	12/05/2014	Political advertising	1
Party Election Broadcast by the Scottish National Party	STV	22/04/2014	Elections/Referendums	9
Party Election Broadcast by the Scottish National Party	STV	02/05/2014	Elections/Referendums	1
The Next Generation	STV	12/04/2014	Due impartiality/bias	1

Visit Scotland advertisement	STV	03/04/2014	Political advertising	1
Alan Brazil Sports Breakfast	Talksport	02/05/2014	Commercial communications on radio	1
Harry and His Pocket Full of Dinosaurs	Tiny Pop	11/05/2014	Offensive language	1
Talang Sverige (Sweden's Got Talent)	TV3 (Sweden)	03/05/2014	Gender discrimination/offence	1
Radiostyrd	TV6 (Sweden)	21/04/2014	Under 18s in programmes	1
Khawaja Sahib	Ummah Channel	05/05/2014	Generally accepted standards	1
Advertisement by the European Parliament	Various	Various	Materially misleading	1
News	Various	Various	Elections/Referendums	1
Party Election Broadcast by the UK Independence Party	Various	Various	Race discrimination/offence	1
Chaal Sitaron Ki	Venus TV	11/04/2014	Use of Premium Rate Numbers	1
Traffic News	Voar 94 FM	Various	Outside of remit / other	1

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

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

Licensee	Categories	Number of complaints
Smooth Radio (various local analogue licences)	Format	3

## 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 8 and 21 May 2014.

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

Programme	Broadcaster	Transmission date
Advertising minutage	Aaj Tak	6 April 2014
Advertising minutage	Discovery Channel (Slovenia)	Various
Advertising minutage	Samaa	2 April 2014
Advertising minutage	Universal Channel (Slovenia)	Various
Europar Shangbad	NTV	6 May 2014
Gloria TV	DM Plus	7 March 2014
Kathryn Wilson	Cool FM	5 April 2014
News	Channel Nine UK	19 February 2014
The Politics Show	Apni Awaz	6 May 2014
The Simpsons	Channel 4	9 April 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
Britain's Crime Capitals	Channel 5	21 April 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/>.

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

<b>Licensee</b>	<b>Licensed Service</b>
Ambur Community Radio Limited	Ambur Radio 103.6 FM

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

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