

## Complaint by Mrs Rachael Tooher-Rudd about *How To Stop Nuisance Calls*

Type of case	Fairness and Privacy
Outcome	Upheld
Service	Channel 5
Date & time	29 July 2020, 20:00
Category	Fairness
Summary	Ofcom has upheld this complaint about unjust or unfair treatment in the programme as broadcast.

### Case summary

The programme examined the rise of “nuisance” calls, with a particular focus on calls made during the national Covid-19 lockdown period. The programme referred to the complainant, Mrs Rachael Tooher-Rudd as having “ran” an automated calls company along with her husband, and which was fined £400,000 by the Information Commissioner’s Office (“the ICO”). She complained that this was wrong and that she had nothing to do with running the company.

Ofcom found that the broadcaster did not take reasonable care to satisfy itself that material facts had not been presented, disregarded, or omitted in a way that was unfair to Mrs Tooher-Rudd.

### Programme summary

On 29 July 2020, Channel 5 broadcast *How To Stop Nuisance Calls*, a programme originally broadcast in November 2019, but updated and rebroadcast to take account of the COVID-19 pandemic. The programme looked at the rise of cold, or nuisance calls and how “*since Lockdown, fraudsters are out to get your money more than ever*”.

During the programme, the programme’s presenter said that:

*“even though more people than ever are at home and using the phone, scammers still need to cast the net as wide as possible. That means making as many calls as they can...To do that, they need to get organised and it’s surprisingly easy”.*

The presenter then explained that it was possible to create your own call centre online and that you can also use a very basic type of computer which can make up to 200 calls with the same recorded message per second. The presenter said that this was known as a “Robocall” and that these devices were to “*blame them for most of your nuisance calls*”.

The programme then included interview footage of Mr David Clancy of the ICO who said:

*“There’s billions of calls being pushed into the UK on almost a daily basis. Some of these calls are legitimate, a lot of the calls will be nuisance calls and will cause people to suffer a degree of harm”.*

The programme then showed footage from an episode of Channel 4’s *Come Dine With Me* programme (captioned ‘ITV Studios, 2006’<sup>1</sup>), showing the contestants (one of whom was the complainant, Mrs Tooher-Rudd) meeting a semi-clad “waiter”.

The presenter said:

*“Red head Rachael Tooher-Rudd was known for ogling a topless waiter on this saucy episode of a light-hearted cooking show, with her husband Greg also tempted by her meal”.* [Footage of a man entering and then walking out of a kitchen was shown as Mrs Tooher-Rudd was cooking with two young children (whose faces were obscured)].

The voiceover to the original *Come Dine With Me* programme was then heard saying: “*That’s husband Greg under the thumb. I don’t think that’s the last we’ll see of him today*”. The footage ended and a recording of an automated call was played, which said: “*All UK major banks are offering full automatic refunds on all PPI policies*”. The presenter then said:

*“But in 2016, the pair also ran a company that made a 100 million automated calls about accident claims and PPI, leading the Information Commissioner’s Office to fine them a record £400,000. But can you stop the robo-callers?”*

Mr Clancy said that to prevent “robo-callers” the ICO “*would encourage people to register their telephone preference service and people could use call blockers. There are various ones out there*”.

The programme then moved on to look at how call centres accessed people’s phone numbers. The complainant was not shown or referred to again in the remainder of the programme.

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

### **Complaint**

Mrs Tooher-Rudd complained that she was treated unjustly and unfairly in the programme because the programme stated wrongly that she had “run” the company (Keurboom Communications, “Keurboom”) with her husband. She said that she was not involved in the running of the company and that “this had been confirmed legally and by the regulators” (i.e. the ICO and the Insolvency Service).

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<sup>1</sup> The programme had been originally broadcast on Channel 4.  
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Mrs Tooher-Rudd said that the footage of her used in the programme was “to make me look a fool and to expose me”. She added that she had “done nothing wrong and yet I am subject to defamatory abuse”.

## Broadcaster’s response

### *Background*

Channel 5 said that Keurboom was a private company limited by shares and was incorporated in May 2014. It said that the company had two issued shares and the shareholders were listed as Mrs Tooher-Rudd and her husband, Mr Gregory Rudd who was also listed as Company Director and Company Secretary.

The broadcaster said that between April 2015 and June 2016, it understood that the ICO received over 1,000 complaints from members of the public about certain nuisance calls. It said that inquiries by the ICO had found that, between October 2014 and March 2016, up to 99.5 million automated marketing calls had been made through Keurboom’s lines to people who had not provided their consent. The broadcaster said that the ICO had found there had been a serious contravention by Keurboom and that it had used automated calling to deliberately send, or instigate, automated marketing calls on a “massive scale”. The broadcaster said that the ICO had imposed a penalty of £400,000 (the maximum that could be imposed at the time was £500,000). The broadcaster said that in imposing the penalty, the ICO had taken into account that the company did not co-operate with the investigation and that it did not identify the person who was sending the automated marketing calls, nor did it provide the address of the person or a telephone number on which they could be reached. Channel 5 said that the fine was the subject of articles by a number of national newspapers in 2017 (it provided Ofcom with website links to these articles<sup>2</sup>) and was the subject of a press release by the ICO<sup>3</sup>.

Channel 5 said that both Keurboom and Mr Rudd pleaded guilty to failing to comply with an information notice to provide information to the ICO when they appeared at Luton Magistrates Court in April 2016. Following the ICO’s Notice of Intention to issue the penalty, Keurboom entered Creditors Voluntary Liquidation in March 2017, and the ICO referred Mr Rudd’s conduct as a director to the Insolvency Service. The broadcaster said that on 12 December 2019, a disqualification undertaking from Mr Rudd for six years was accepted by the Insolvency Service after he did not dispute that he failed to ensure Keurboom complied with its responsibilities and, effective from 2 January 2020, Mr

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<sup>2</sup> [‘Supermum’ and teacher who starred on Come Dine With Me is exposed as boss of cold calling firm fined £400,000 for bombarding millions with nuisance calls, Mail Online, 14 May 2017;](#)  
[Boss of firm fined for making 100 million nuisance phonecalls shrugs "They're part of life", mirror.co.uk, 11 May 2017;](#)  
[TV cook behind 100m nuisance calls, The Times, 15 May 2017;](#)  
[CALL ON MEAT Former Come Dine With Me ‘supermum’ contestant is unmasked as cold calling queen, thesun.co.uk, 14 May 2017.](#)

<sup>3</sup> [Press Release: Record fine for firm behind nearly 100 million nuisance calls, ICO, 10 May 2017.](#)

Rudd was effectively disqualified as a director for six years. Channel 5 provided Ofcom with a website link to the ICO's Monetary Penalty Notice decision<sup>4</sup> and a press release from The Insolvency Service<sup>5</sup>.

### *Response to the complaint*

Channel 5 said that during the making of the programme broadcast in November 2019, the programme makers had endeavoured to contact Mrs Tooher-Rudd, sending her a message on social media dated 11 October 2019 and a letter dated 14 October 2019, but received no response. Channel 5 said that from the information provided by Mrs Tooher-Rudd to Ofcom, it now understood that her personal circumstances may have prevented her from responding at that time. However, it said that after the broadcast of the programme in November 2019, neither Channel 5 nor the programme maker had received any communication from Mrs Tooher-Rudd or Mr Rudd on her behalf and so no edit was made to the section of the programme relating to Mrs Tooher-Rudd at the time or when the programme was "reversioned" for broadcast in July 2020.

Following the broadcast of the programme on 29 July 2020, Channel 5 was alerted by Mr Rudd that Mrs Tooher-Rudd was not involved in "running" "Keurboom". It said that it immediately took steps to ensure that the programme was made unavailable for broadcast and it was taken down from its video on demand service while the matter was investigated. Following its investigation, the broadcaster said that it accepted that Mrs Tooher-Rudd was not a director of Keurboom and that the programme should have stated that "the pair also **owned** a company" (emphasis added by Channel 5), rather than that they "ran" the company. However, the broadcaster said that it did not accept that the inaccuracy – which was a brief reference in the programme – resulted in unfairness to Mrs Tooher-Rudd.

The broadcaster said that referring to Mrs Tooher-Rudd as running the company, rather than owning it jointly with Mr Rudd, would not be a distinction that viewers would have considered significant, nor would it have affected viewers' understanding of Mrs Tooher-Rudd in a way that was unfair to her.

The broadcaster said that previous media coverage in 2017 about Keurboom had made it clear that Mrs Tooher-Rudd was an owner of Keurboom and that there was no suggestion she was involved in running the company. The broadcaster added that despite this, the complainant had claimed she had received abuse as a result of the coverage. Channel 5 said that it appeared, therefore, that the mere association with Keurboom would likely to have affected viewers' understanding of Mrs Tooher-Rudd and that saying she "ran" rather than "owned" the company was unlikely to have affected viewers' understanding of Mrs Tooher-Rudd in a way that was unfair to her. The broadcaster said that given this, and as one of only two shareholders of Keurboom, it was difficult to accept that Mrs Tooher-Rudd was not, at the very least, aware of the company's activities.

### **Preliminary View**

Ofcom prepared a Preliminary View that the complaint should be upheld. Both parties were given the opportunity to make representations on the Preliminary View. Mrs Tooher-Rudd initially did not make any representations. Channel 5 made representations. Following receipt of Channel 5's representations, Ofcom invited Mrs Tooher-Rudd to comment on Channel 5's representation concerning her awareness of the company's activities. Mrs Tooher-Rudd's made representations on

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<sup>4</sup> [Monetary Penalty Notice to Keurboom Communications Limited, ICO, 3 May 2017.](#)

<sup>5</sup> [Press Release: Facilitating nuisance calls lands Cambridge director with ban, Insolvency Service, 6 January 2020.](#)  
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this point, which were subsequently provided to Channel 5 who made further representations. Both parties' representations are summarised below, insofar as they are relevant to the complaint entertained and considered by Ofcom, below.

### Broadcaster's representations

Channel 5 reiterated its position that the inaccuracy in the programme in stating that Mrs Tooher-Rudd "ran" the company, rather than owned it, was an inaccuracy of form and not substance and did not result in unfairness to the complainant.

Channel 5 said that while it regretted that the programme misstated Mrs Tooher-Rudd's position within the company, the Preliminary View failed to take into account that Mrs Tooher-Rudd had already been the subject of criticism arising from media coverage that identified her role in the company despite such coverage correctly identifying her role as an owner of the Keurboom (as set out in Channel 5's response to the entertained complaint). Channel 5 provided examples to Ofcom of criticism from readers who had commented on press reporting which correctly identified Mrs Tooher-Rudd's position in the company (Channel 5's emphasis added):

"The fine was insufficient to punish someone who brought untold misery to thousands of people. I hope it ruins **her** financially. **She knew what she was doing**".

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"**They are both thieves**, lock them up".

Channel 5 said that while it did not endorse the content of these reader comments, they demonstrated that members of the public who had read the previous media coverage (which correctly stated Mrs Tooher-Rudd's role within the company) considered her role to be deserving of criticism.

Channel 5 referred to the application of Practice 7.9 and said that as well as finding that facts have been presented in a particular way, the broadcaster must also have done so in a way that was unfair to a complainant. Channel 5's reiterated its position that there can be no unfairness where, Mrs Tooher-Rudd would have been subjected to criticism from viewers even if it were stated in the programme that she "owned" rather than "ran" the company. The broadcaster said that its position was in line with the position in defamation law, where it has been said that:

"It would be manifestly absurd to suggest that the claimants could recover damages for the publication of the meaning I have found, **to people who already took that view of their professional conduct**" (Channel 5's emphasis added)<sup>6</sup>.

Channel 5 said that Ofcom's Preliminary View was at odds with this clear guidance and penalises Channel 5 for "the mere fact of a factual inaccuracy".

Channel 5 said that the Preliminary View also relied upon a number of assumptions. Channel 5 said it was not reasonable for Ofcom to conclude that viewers were likely to have understood the use of the

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<sup>6</sup> Warby J, *Alexander-Theodotou and ors v Kounis* [2019] EWHC 956 (QB) at para 67.  
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word “ran” to mean that Mrs Tooher-Rudd had had a role in the day to day management of the company, rather than “just holding a share in it” and it was unclear as to the reason Ofcom considered these two roles to be mutually exclusive. Channel 5 said that one shareholder of many thousands in a large company may be “just” a shareholder, however on the facts of this case, Mrs Tooher-Rudd owned half of the company and her husband owned the other half. Channel 5 said that on the basis of these undisputed facts, it was not reasonable for Ofcom to conclude that the complainant was “just” a shareholder and was therefore not, at the very least, aware of the activities of the company of which she owned half.

Channel 5 added that it was “wholly unclear” why Ofcom considered that it would be wrong for viewers to understand that Mrs Tooher-Rudd had joint responsibility over the business with her husband. It said, on the contrary, it would be entirely correct (and therefore involve no unfairness to the complainant) for viewers to understand that Mrs Tooher-Rudd had joint responsibility for the company of which she owned half. Channel 5 said that Ofcom’s Preliminary View that the programme had resulted in unfairness to the complainant lacked an evidential basis and did not accord with the reality of Mrs Tooher-Rudd’s position as joint owner of the company.

### Complainant’s representations

In response to Channel 5’s position that as a joint shareholder of Keurboom along with her husband, she would “at the very least, [have been] aware of the activities of the company of which she owned half”, Mrs Tooher-Rudd said that she had “no involvement whatsoever in the company’s business” and had “no knowledge of what services it offered or how it supplied them”. Mrs Tooher-Rudd said, while she was a shareholder, she “did not actually realise that was the case or have any real understanding of what it means”. Mrs Tooher-Rudd submitted that Keurboom was set up by her husband, with an accountant’s advice.

Mrs Tooher-Rudd said that the only reason she “was used by the media” was because of her appearance on the programme *Come Dine With Me* and that she was “an easy target for entertainment”.

Mrs Tooher-Rudd said that Channel 5’s defence of her complaint was based on “spiteful assumptions” and she suggested that Channel 5 had “no reason to believe I am responsible for any wrongdoing, let alone have done any research into determining the facts of the Keurboom case”.

### Additional representations made by Channel 5

Following Mrs Tooher-Rudd’s representations, Ofcom offered Channel 5 an opportunity to make additional representations. In this context, Channel 5 referred to two previous Ofcom decisions<sup>7</sup> to exemplify that the key consideration for Ofcom is whether any inaccuracy “had the potential to **materially and adversely affect viewers’ opinions of [the complainant] in a way that was unfair**” (Channel 5’s emphasis). Channel 5 said that it does not condone the reaction from members of the public to previous media interest. However, it reiterated its view that this reaction followed previous media reporting which did accurately state Mrs Tooher-Rudd’s role within the company. It added that it considered this reaction makes clear that, rightly or wrongly, the public felt strongly about the mere

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<sup>7</sup> [Ofcom Adjudication on complaint by Mr Mir Shakil Rahman about Aitraaz, New Vision TV, 30 December 2017, page 46](#) and [Ofcom Adjudication on complaint by the Sher Group about Sri Guru Singh Sabha Southall Elections Debate, KTV, 27 September 2017](#).

fact of Mrs Tooher-Rudd's joint ownership of the company. Channel 5 said that, therefore, it cannot be said that describing Mrs Tooher-Rudd as someone who “*ran*” the company had the potential to materially and adversely affect viewers' opinions about her in a way that was unfair.

## Decision

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

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

In reaching this decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme, and both parties' written submissions. We also took careful account of: (i) the representations made by Channel 5 in response to Ofcom's Preliminary View on the complaint; (ii) Mrs Tooher-Rudd's representations; and (iii) Channel 5's additional representations. After careful consideration, however, we considered that the points raised did not materially affect the outcome of Ofcom's Preliminary View to uphold the complaint.

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code (“the Code”). In addition to this rule, Section Seven (Fairness) of the Code contains “practices to be followed” by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 7.1 and failure to follow these practices will only constitute a breach where it results in unfairness to an individual or organisation in the programme. In considering this complaint, Ofcom had regard to the following Code Practices:

Practice 7.9 states:

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

Ofcom considered Mrs Tooher-Rudd's complaint that she was treated unjustly or unfairly in the programme as broadcast because the programme stated wrongly that she had “run” the company, Keurboom, with her husband.

As set out in the “Programme summary”, as part of broader coverage concerning the rise in “nuisance calls”, the programme showed footage of Mrs Tooher-Rudd taken from a Channel 4 *Come Dine with*

*Me* programme first broadcast in 2006, and said that at that time she “ran” a company with her husband “that made a 100 million automated calls about accident claims and PPI, leading the Information Commissioner’s Office to fine them a record £400,000”.

We recognised that Channel 5 accepted that the reference to Mrs Tooher-Rudd having “run” the company was inaccurate and that it would have been preferable for the programme to have stated she “owned” the company instead, although Channel considered this inaccuracy was not unfair to Mrs Tooher-Rudd. We also considered that as a result of the way the segment was introduced with the footage of Mrs Tooher-Rudd taken from the 2006 *Come Dine with Me* programme, Channel 5 gave particular attention to Mrs Tooher-Rudd herself, as Mr Rudd was only mentioned in passing by his first name. He was also referred to in the footage as being “under the thumb” of Mrs Tooher-Rudd. This, we considered could have contributed to viewers’ impressions that Mrs Tooher-Rudd was a key focus of the discussion on nuisance calls and had specific personal involvement in the activities which led to the ICO fine. In this context we considered that the programme’s reference to Mrs Tooher-Rudd by her full name (and husband by his first name), and the reference to the fine being imposed on “them” would likely have been understood by viewers as indicating that Mrs Tooher-Rudd and her husband had both personally been fined by the ICO. We understand that the fine was in fact issued solely to Keurboom, while Mr Rudd, who was the sole director of the company, had previously received a separate fine as director of the company for failing to comply with information requests from the ICO. As such, Mrs Tooher-Rudd was never personally fined by the ICO.

We took into account Channel 5’s position, reiterated in its response and additional representations to Ofcom’s Preliminary View, that the inaccuracy about Mrs Tooher-Rudd’s role within Keurboom was unlikely to have affected viewers’ understanding of Mrs Tooher-Rudd in a way that was unfair to her. Channel 5 also suggested that its view was supported by the fact that there had been criticism of her from readers who had commented on press reporting which correctly identified Mrs Tooher-Rudd’s position in the company. Moreover, we took into account the broadcaster’s position that “as one of only two members of Keurboom, it was difficult to accept that Mrs Tooher-Rudd was not, at very least, aware of the company’s activities”. However, on this last point, we also considered Mrs Tooher-Rudd’s representations that she had no real understanding of her role as shareholder of Keurboom, “no involvement whatsoever in the company’s business” and had “no knowledge of what services it offered or how it supplied them”. While Ofcom’s role is not to make findings of fact as to Mrs Tooher-Rudd’s actual knowledge of Keurboom’s activities, we took into account that, in its additional representations, Channel 5 had not offered any evidence to support its claims relating to Mrs Tooher-Rudd’s awareness of Keurboom’s activities.

In light of the above, it is our view that the use of the word “ran”, in conjunction with the inference that both Mr Rudd and Mrs Tooher-Rudd had been personally fined by the ICO, mischaracterised Mrs Tooher-Rudd’s involvement in the management of Keurboom as it would likely have been understood by viewers to indicate that Mrs Tooher-Rudd had had a role in the day-to-day management of the company. This would have given viewers the impression, wrongly, that Mrs Tooher-Rudd had been found personally and jointly responsible for Keurboom’s breaches of regulations on nuisance calls. We did not agree with Channel 5 that it would not have made a difference if Channel 5 had accurately presented Mrs Tooher-Rudd’s involvement in Keurboom on the basis that there had been criticism of her by readers of press articles which had correctly explained her role as the owner of the company. If Channel 5 had presented Mrs Tooher-Rudd’s actual connection with Keurboom more clearly in the

programme, then viewers could have made up their own minds about the responsibility that Mrs Tooher-Rudd, as the company's joint owner, should bear in relation to its activities that had resulted in a fine being imposed on that company (and not, as the programme implied, on Mr Rudd and Mrs Tooher-Rudd). Given these factors, we considered that the manner in which the programme portrayed Mrs Tooher-Rudd's connection with Keurboom and its breaches of nuisance calls regulation was likely to have materially and adversely affected viewers opinions of her in a way that was unfair to her.

Therefore, for these reasons, we considered that that broadcaster had not taken reasonable care to ensure that material facts were not presented, disregarded or omitted in a way that was unfair to Mrs Tooher-Rudd in the programme as broadcast.

**Ofcom has upheld Mrs Tooher-Rudd's complaint of unjust or unfair treatment in the programme as broadcast.**