

# Broadcast and On Demand Bulletin

Issue 501, 1 July 2024



## Complaint by Miss J about *Wales at Six* and *Wales This Week: Weight Loss Jabs*

<b>Type of case</b>	Fairness and Privacy
<b>Outcome</b>	Not upheld
<b>Service</b>	ITV1 Wales
<b>Date &amp; time</b>	19 February 2024, 18:00; and, 19 March 2024, 20:00
<b>Category</b>	Privacy
<b>Summary</b>	We have not upheld this complaint about unwarranted infringement of privacy in connection with the obtaining of material included in the programmes, and in the programmes as broadcast.

### Case summary

The *Wales at Six* programme reported on an investigation by S4C programme *Y Byd ar Bedwar* [The World on Four] about weight-loss products (namely, injections), and the potential dangers to health by the sale and use of unlicensed products. The report showed secretly filmed footage of undercover reporters' interactions with an unnamed seller (the complainant) of weight-loss products.

The *Wales This Week* programme investigated weight-loss products, the people using them, and how easy it appeared to be to acquire unlicensed products without a prescription. During the programme, two reporters went undercover to see if they could acquire unlicensed weight-loss products. The complainant was one of the two people shown in the programme selling the product to the reporters. She complained that her privacy was unwarrantably infringed in the obtaining and subsequent broadcast of the secretly filmed footage of her.

Ofcom's decision was that the complainant had a legitimate expectation of privacy in relation to the obtaining and subsequent broadcast in both programmes of the footage of her without her consent.

However, we considered that the complainant's legitimate expectation of privacy did not outweigh the broadcaster's right to freedom of expression and the public interest in the material broadcast. Therefore, our decision is that there was no unwarranted infringement of the complainant's privacy in connection with the obtaining, and subsequent broadcast of the footage of her included in the programmes.

## Programme summary

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### *Wales at Six, 19 February 2024, 18:00*

On 19 February 2024, *Wales at Six* broadcast a report regarding an investigation by S4C programme *Y Byd ar Bedwar* [The World on Four] about weight-loss products.

The newsreader introduced the main stories of the evening: *"On tonight's 'Wales at Six', the growing popularity of weight-loss injections. We go undercover looking at the potential dangers of unlicensed products"* and a preview was shown of the report. Brief footage of an unnamed woman (the complainant), whose face was blurred, was included. It showed the complainant holding a packet containing what appeared to be syringes.

Later in the programme, the newsreader introduced the story:

*"Injections are becoming the latest trend in weight loss, but there are concerns tonight that people's health is being put at risk. Certain brands are approved for use on the NHS and privately, but an investigation by Welsh language programme Y Byd ar Bedwar has found that some unlicensed versions of the injections are being sold in Wales in potentially dangerous circumstances. Nest Jenkins reports"*.

The report showed secretly filmed footage captured by hidden cameras worn by undercover reporters of their interactions with an unnamed seller (the complainant) of weight-loss products. The footage appeared to show the complainant in a kitchen holding a bag of syringes and photographs could be seen on a sideboard in the background with the images blurred. Throughout the secretly filmed footage shown in the programme, the complainant's face was blurred, and her voice appeared to have been altered. The presenter said in commentary:

*"She's one of two sellers we found in Wales advertising and selling unlicensed weight-loss injections to anyone willing to pay the price. The licenced version of what they're selling, semaglutide, is a prescription only medicine. We weren't able to find this seller's name on medical or healthcare professional registers. She tells us that she's mixed what's in the vial herself"*.

The footage showed the complainant and one of the undercover reporters having the following exchange:

Complainant: *"I'll mix it up and then I'll take the one out of it for me [a reporter says: "yeah"] and then just sell the other four weeks on.*

Reporter: *You don't need a prescription then either do you?*

Complainant: *No, it comes through my pharmacy, see"*.

Later in the report, the presenter was shown with an “weight-loss expert” and dietician viewing the secretly filmed footage, as they discussed his thoughts on what it showed. Further footage of the complainant in the kitchen was shown of her asking one of the undercover reporters if they could fill in a form: *“if you can fill that one in for me”*. The footage of the reporter asking the complainant whether a prescription was needed was also repeated. Again, the complainant’s face was blurred, and her voice appeared to have been altered. After viewing the footage, the dietician said: *“Well, you absolutely do need a prescription for Wegovy. You can’t buy it over the counter, you do need a prescription. And there are a lot of red flags there actually”,* and *“Who’s regulating this? By the sounds of things, this person’s answering to no one. That is concerning for patient safety ultimately”*.

Toward the end of the report, a brief segment of the footage of the complainant was shown again, while the presenter said: *“We asked both sellers for a response to our findings... The other seller [the complainant] didn’t respond to our questions”*.

The report concluded with information about when the full *Y Byd ar Bedwar* programme would be broadcast on S4C.

The news programme continued, and later, the newsreader recapped *“tonight’s top story”*. Brief footage of the complainant holding the packet of syringes was shown again, her face blurred, as the newsreader said:

*“Injections are becoming the latest trend in weight loss, but there are concerns that people’s health is being put at risk. Certain brands are approved for use on the NHS and privately, but an investigation by Welsh language programme ‘A Byd ar Bedwar’ has found that some unlicensed versions of the injections are being sold in Wales”*.

The programme continued without further reference to, or footage of, the complainant.

### *Wales This Week: Weight Loss Jabs, 19 March 2024, 20:00*

On 19 March 2024, ITV Wales broadcast an edition of *Wales This Week*, a current affairs programme, titled *Weight Loss Jabs*. The programme investigated weight-loss products (particularly, injections), the people using them, and how easy it appeared to be to acquire unlicensed products.

The programme was introduced as follows:

*“Injections; they are the latest trend in the world of weight loss, with certain brands approved for use on the NHS and privately. But, with an increase in demand and a shortage of supply, some people are turning to unlicensed injections in a desperate bid to lose weight. Nest Jenkins [the presenter] investigates”*.

The programme then showed an introductory montage of upcoming parts of the programme. The presenter, said:

*“Weight-loss injections are increasingly popular... And those approved are available both on the NHS and in private clinics. But with soaring demand, came a global shortage... Leaving some people buying injections without knowing what’s in them or how it could affect them”*.

The preview showed brief footage that had been captured by the programme makers on a hidden camera. It showed a woman (the complainant), whose face was blurred, handing a packet to an individual who was off camera. The footage also showed the complainant being handed money by a woman. The reporter continued:

*“Our hidden cameras reveal that unlicensed products are being sold here in Wales, to anyone willing to pay the price”.*

Later, as part of the programme’s investigation, two reporters went undercover to see if they could purchase unlicensed products. The presenter said: *“The demand for weight-loss injections has surged in recent months, so much so that people are willing to give unlicensed versions a go. And I wanted to see just how easy it is to get hold of these products here in Wales”* and was shown researching products online.

While looking at her laptop, the presenter said: *“From a quick social media search, I can find two sellers openly advertising unbranded semaglutide as an injection to lose weight, for a fraction of what you’d pay for the prescribed versions”.* Footage showed what appeared to be adverts for weight-loss products on the presenter’s laptop.

The programme then showed footage of the two undercover reporters driving to the location of one of the sellers and walking along the pavement. The presenter said:

*“So, I sent our undercover journalists there, wearing hidden cameras. Neither of them are overweight and not close to having a BMI of 30, as is recommended by NICE. The first seller tells us to come to her house. We weren’t able to find this seller’s name on medical or healthcare professional registers”.*

Secretly filmed footage captured by the hidden cameras worn by the undercover reporters was shown of their interactions with an unnamed seller (the complainant). Throughout the secretly filmed footage shown in the programme, the complainant’s face was blurred, and her voice appeared to have been altered.

The complainant was shown greeting them in the hallway of a home: *“Hiya, come in. You ok?”*. The footage then showed the complainant in what appeared to be a kitchen, the presenter said in commentary:

*“She gives our journalist a form to sign. But, before starting to fill it, the seller offers to administer an injection there and then”.*

Photographs could be seen on a sideboard in the background with the images blurred.

The following exchange took place between the complainant and one of the undercover reporters. Subtitles of the conversation were also included:

Complainant: *“If you can fill that one in for me. Do you want to do the first one with me today or?”*

Reporter: *I’d rather do it and take time.*

Complainant: *No that’s fine, I just need to pop everything into the pack.*

Reporter: *Ok. Is this Ozempic or the Wegovy thing?*

Complainant: *No, this is neither, it's semaglutide. It's the strongest, stronger one".*

Footage of the complainant showing the undercover reporter a bag with the various syringes in it was shown as the presenter said: *"The licensed version of semaglutide would be branded as Ozempic or Wegovy and would come in a prefilled pen".* The following exchange then took place:

Complainant: *"These, I mix it up, yeah, because they normally come in eight weeks supply see. Some people don't want to pay eight weeks.*

Reporter: *Yeah.*

Complainant: *So, like I said, I'll mix it up, and then I'll take the one out of it for me [a reporter says: "yeah"], and then just sell the other four weeks on.*

Reporter: *You don't need a prescription then either do you?*

Complainant: *No, it comes through my pharmacy see, so it's all done that way".*

One of the undercover reporters was then shown filling out a form. The presenter said: *"This seller offers a range of beauty treatments. The form she gives asks no relevant medical questions on weight-loss injections".*

The footage then showed the complainant talking to the reporters: *"It's these forms are medical forms. They're for all of my treatments that I do",* to which one of the reporters replied: *"Ah, ok".*

The presenter continued: *"Without looking at the form, she sells four weeks' worth of injections for £110 - that's around half of what the licensed semaglutide pens would cost privately".* The complainant then thanked and said goodbye to the undercover reporters as they left.

Later in the programme, the presenter was shown with an "obesity specialist dietician" viewing the secretly filmed footage, as they discussed his thoughts on what it showed; some of the footage that had already been shown in the programme was repeated. Again, the complainant's face was blurred, and her voice appeared to have been altered.

After viewing the footage of the complainant stating that the product was *"semaglutide... the strongest, stronger one",* the dietician said: *"What Ozempic and Wegovy is is semaglutide. That is what the drug is. So, for it to say that it's neither Ozempic or Wegovy, well Wegovy is the licensed medication, 2.4mg of semaglutide".* After viewing footage of the complainant saying that a prescription was not needed and it *"comes through [her] pharmacy",* the dietician said:

*"Well, you absolutely do need a prescription for Wegovy. It is a licensed medication. You can't buy it over the counter, you do need a prescription. And there are a lot of red flags there actually. And what's concerning is that who's regulating this? Who is thinking about the safety of all this? By the sounds of things, this person is answering to no one, or responsible to no one. That is concerning for patient safety ultimately".*

While looking at the product the undercover reporters had purchased from the complainant, the presenter asked whether this was *"something that you'd give your patients"* and the dietician answered: *"Absolutely not. There's no branding on there; there's nowhere that's written about the drugs, the medication you are taking, what you're taking, how much of it is in there. There's almost no information there whatsoever".*

Towards the end of the programme, a brief segment of the footage of the complainant was shown again, while the presenter said in narration: *“We asked both sellers for a response to our findings... The other seller [the complainant] said that the accusations were false.*

No further footage of the complainant was included in the remainder of the programme.

## Summary of the complaint and broadcaster’s response

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### Complaint

- a) Miss J complained that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programmes because she was filmed in her home without her consent. She said that she had an expectation of privacy in her own home, and that even a “guest” invited into her home does not “have the right to record myself with my child in the background”. The complainant added that her “private home... is not a public space”.
- b) Miss J also complained that her privacy was unwarrantably infringed in the programmes as broadcast because the footage of her in her home was included in the programmes without her consent.

### Broadcaster’s response

#### Background

ITV said that both programmes were produced by ITV News Cymru Wales, and broadcast on ITV Cymru Wales. It said that the footage which featured in the programmes was originally filmed and produced by ITV News Cymru Wales as part of an investigation for S4C programme *Y Byd ar Bedwar*, the relevant episode of which was broadcast on 19 February 2024. ITV’s response contained links to other documents to support its arguments, we have reproduced these below.

The broadcaster said that “obesity and its associated health effects have become a significant strain on the NHS in Wales, reportedly costing it £73 million a year”<sup>1</sup>. It said that there has been much discussion about the need to tackle obesity and that the UK Government had announced last year that those living with it would have access to new obesity drugs to help cut NHS waiting lists<sup>2</sup>.

ITV said that the programmes were produced and broadcast after the launch of semaglutide in the UK on 4 September 2023, when it was recommended for weight loss by the National Institute for Health and Care Excellence (“NICE”). The broadcaster said that semaglutide is thought to be particularly effective at achieving significant weight loss in the short term, as it is a “GLP-1 receptor agonist and supresses a person’s appetite”. The broadcaster explained that Wegovy and Ozempic were brand names for the licensed medication containing semaglutide in the UK, and that Wegovy is prescribed for weight loss, whereas Ozempic is prescribed for type 2 diabetes, and is reserved for those due to a global shortage of Ozempic<sup>3</sup>. ITV said that clinical trials into Wegovy have “shown that

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<sup>1</sup> [Primary Care Obesity Prevention - Public Health Wales \(nhs.wales\)](https://www.nhs.uk/health-topics/obesity-prevention/)

<sup>2</sup> [New drugs pilot to tackle obesity and cut NHS waiting lists - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/new-obesity-drugs-pilot)

<sup>3</sup> [Rising prices and serious shortages: new challenges in managing medicines supply for Wales \(senedd.wales\)](https://www.senedd.wales/parliamentary-business/health-and-social-care/rising-prices-and-serious-shortages-new-challenges-in-managing-medicines-supply-for-wales)

when it is used alongside dieting, physical activity, and behavioural support, Wegovy users can achieve up to a 15% reduction in body weight after one year”<sup>4</sup>. The broadcaster said that importantly, as part of its recommendation, NICE said that there is no evidence of the effectiveness of medicines containing semaglutide when used as a stand-alone treatment for weight loss, and they should be used alongside diet and exercise for those able to use it. It also said that medicines containing the drug should only be used for a maximum of two years and should be overseen by a specialist weight management service<sup>5</sup>. ITV said that the UK Government has confirmed that Wegovy is only for those dealing with obesity and weight-related problems, as opposed to individuals who want to lose weight<sup>6</sup>. The broadcaster said that for these reasons, Wegovy is a prescription only medication in the UK. It said that despite semaglutide being tightly controlled in the UK, there has been a recent rise in online sellers offering counterfeit versions of the licensed medications containing the drug, reselling prescribed medication, or offering raw ingredients for the buyer to mix themselves<sup>7</sup>.

ITV said that the drug’s increased desirability to the public has been influenced by the fashion industry, as well as celebrities and influencers promoting it on social media<sup>8</sup>. The broadcaster said that The Medicines and Healthcare products Regulatory Agency (“MHRA”) “recently warned the public of the availability of unsafe, fake weight loss drugs in the UK and reminded the public that buying prescription-only medicines online without a prescription poses a direct danger to health, including that in some cases there have been hospitalisations in relation to the use of counterfeit weight loss drugs”<sup>9</sup>. ITV said that, therefore, in order to protect health and safety, it is paramount that members of the public are made aware of these risks. It said that the public should be provided with the correct information to be able to question whether a provider of such medicines is a medical professional and legally allowed to supply or prescribe it. It added that consumers need to know whether they are suitable for medicines containing the drug and have the correct management plan. ITV said that, as a public service broadcaster, raising public awareness on issues to do with public health or safety is one of its responsibilities, which it felt “strongly” about.

In regard to producing the programmes, ITV said that its production team and reporters conducted extensive research into the availability and use of weight-loss drugs in Wales, including considering first-hand case studies of those using them. It said that one interview with a user of weight-loss drugs was included in the programmes and explored her reasons for buying and using unlicensed and unlicensed medication. ITV said that another interviewee had wanted to lose weight before going on holiday, and after injecting herself with what she thought was a licensed product given to

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<sup>4</sup> [Accessing Wegovy for weight loss: Everything you need to know – Department of Health and Social Care Media Centre \(blog.gov.uk\)](#)

<sup>5</sup> [1 Recommendations | Semaglutide for managing overweight and obesity | Guidance | NICE](#)

<sup>6</sup> [Accessing Wegovy for weight loss: Everything you need to know – Department of Health and Social Care Media Centre \(blog.gov.uk\)](#)

<sup>7</sup> [Fake Ozempic and Wegovy drugs surge in Europe – POLITICO](#)

<sup>8</sup> [Experts on the dangers of Ozempic and skinny injections \(harpersbazaar.com\)](#)  
[Every Celebrity Who Has Spoken About Ozempic \(elle.com\)](#)  
[‘They’re dangerous... but I already bought them’ — teenagers exposed to prescription weight-loss drugs on TikTok - The Pharmaceutical Journal \(pharmaceutical-journal.com\)](#)

<sup>9</sup> [MHRA warns of unsafe fake weight loss pens - GOV.UK \(www.gov.uk\)](#)

her by a friend, she became ill and was treated in hospital. It said that both these contributors were happy with the programmes and their contributions to them.

The broadcaster said that in order to explore the possible risks to the public in Wales, it was necessary to the credibility and authenticity of the programmes to examine how easy it was to find individuals selling weight-loss medication unlawfully and without the required qualifications in Wales. It said that the complainant was one of these sellers, who at the time openly advertised medicine containing semaglutide for weight loss online. ITV said that the programme makers were able to verify this by gathering information about the complainant's practice from online advertising; text communications with the complainant; and by visiting her to purchase medications from her in person. Along with its response to the complaint, ITV provided Ofcom with screenshots of the complainant's online business page advertising the sale of weight-loss products, and copies of the programme makers correspondence with the complainant. It said that from the information gathered, there was a strong indication that footage could be obtained of the potentially unlawful practice, namely that the complainant was selling unlicensed weight-loss medication without a prescription, and that she was advertising and selling such medicine as a non-registered individual. ITV said that this practice posed a risk to public health and safety, and the programme makers therefore applied and obtained approval from S4C to secretly film its reporter's further interactions with the complainant when purchasing more unlicensed weight-loss medication. The broadcaster said that S4C approved the application on the basis that it met the requirements of Ofcom's Broadcasting Code (the "Code"); ITV said that it agreed with S4C's assessment in this regard.

ITV said that it then had to consider whether it was warranted to broadcast the footage captured for S4C's *Y Byd ar Bedwar* programme, and it took the view that it was. It said that it took advice from an expert (the dietician) in the field, who had extensive experience in weight management, and whose opinions regarding the actions of the complainant were included in the programmes. The broadcaster said that within the programmes, the dietician's comments "guided the viewer to recognise the particulars about what was wrong and potentially harmful with [the complainant's] actions". It said that he highlighted that the public should be wary of using medicines they suspect are unlicensed and should always obtain prescription medicines from a qualified healthcare provider.

ITV said it considered there was a strong public interest in conducting the investigation into unlicensed weight-loss medications being sold online by undertaking secret filming and broadcasting the evidence gathered. It said that by doing so, it revealed potentially unlawful activity and protected the public's health and safety by raising awareness of the risks involved. The broadcaster said that it considered the filming in connection with the programmes and their subsequent broadcast were undertaken in accordance with the Ofcom's Broadcasting Code, and as such, the complainant's privacy was not unwarrantably infringed in either the making or the broadcasting of the programmes.

### **Response to Complaint**

- a) ITV said that it accepted that the complainant had some expectation of privacy in her home, however, it considered this was severely limited by several factors. It said that the complainant was using her home as the premises to run a public-facing business and that any member of the public could contact her and visit her home to buy the products. The broadcaster also said that the complainant had chosen to put details of her business online and so in the public domain. It said that by carrying out a simple internet search using the business name, the neighbourhood

group came up as a result, which contained the complainant's name, email address, and a map showing the approximate location of her home.

The broadcaster submitted that any infringement of the complainant's privacy during the filming was also limited. ITV said that the programme makers took appropriate steps to limit the level of intrusion into the complainant's home and personal life. It said that the programme makers only filmed in the areas of Miss J's home accessible by members of the public who purchased products from her. It also said that the programme makers aimed to film the complainant's business and practice, rather than any aspects of her personal or family life, or any private and sensitive information about her.

ITV said that it refuted anyone else was present at the property when the undercover reporters attended on two occasions (10 and 23 January 2024). It said that on both occasions, the undercover reporters remained in the same room which they were invited into in order to purchase the weight-loss products, and the reporters' notes from the two visits stated that no one else was present. The broadcaster said that at no point did the complainant mention that anyone else was at home while the reporters were there, and on both occasions they visited the complainant during school hours, so it was unlikely that a child was present if they had attended school on those days.

The broadcaster accepted that the complainant did not consent to the filming that took place on the reporters' second visit to her home, however it submitted that filming the complainant in this way was warranted in the circumstances. It said that it had reasonable grounds to suspect the complainant was undertaking potentially unlawful practice – by selling unlicensed medicine as an unregistered person – and that the conduct posed a danger to public health and safety. ITV said that the programme makers had gathered *prima facie* evidence of a story in the public interest, and that it was clear from the complainant's online business page that she was selling weight-loss products. It cited one such post on the complainant's page which said: "We're excited to announce that our office now offers Semaglutide injections". ITV said that there were further posts by the complainant's online business page, promoting the business and advertising semaglutide kits for sale (screenshots of which the broadcaster provided to Ofcom), including on local online pages.

ITV said that its undercover reporters approached the complainant to purchase weight-loss injections via text message to the phone number she had provided on her online business page, and that the complainant had responded from a different number explaining that she had them "in stock now". The broadcaster said that Miss J voluntarily provided her home address to its reporter, and that the reporter attended the property to complete the sale of the unlicensed medicine for weight loss. It explained that this visit (10 January 2024) was an information gathering exercise, and so no filming was carried out. ITV said that during this first visit to the complainant's property, the reporter posed as a buyer wanting to use the weight-loss medicine and was able to request and purchase four vials of an unlicensed medicine purporting to contain semaglutide, which the complainant said she had "mixed" herself. It said that further searches undertaken by the programme makers identified that the complainant was not registered to sell medicine.

The broadcaster said that, on the basis of this *prima facie* evidence, it considered there were reasonable grounds to suspect that further material evidence of the complainant selling unlicensed medicine for weight loss could be gathered by visiting a second time, and secretly filming it.

ITV said that as the channel is a visual medium, and the programmes are investigative in nature, it considered it necessary to the credibility and authenticity of the programmes to carry out secret filming of the complainant selling unlicensed medication. It said that it was important to capture visual evidence of the complainant selling the medicine, how the sales process works, and what is potentially unlawful and dangerous about it. The broadcaster said that had they filmed the reporters' interactions with the complainant openly, or tried to do so, it would have been likely that she would not have consented, or behaved in a different manner than usual. ITV said that it considered it was important to capture evidence of her genuine behaviour, as she dealt with people she thought were customers. The broadcaster concluded that the secret filming of the complainant at her property was warranted and proportionate.

- b) ITV said that for the same reasons set out at head a), it accepted that the complainant had some expectation of privacy in her own home, but considered this was severely limited in the circumstances. It also said that it considered any infringement of Miss J's privacy in the broadcast of the programmes was also limited. The broadcaster said that the programmes did not disclose any private or sensitive information about the complainant, or any details about her personal or family life. It said that programmes did not name the complainant; only showed her face blurred, and with her voice distorted; did not reveal the location or address of the complainant's home or family; and any items visible in the background of the footage had been blurred, including photographs, that might identify the complainant or her family. ITV said that it did not consider disguising the complainant's identity in this way was required under the Ofcom Broadcasting Code, and was instead an editorial decision which enabled the viewers to focus on the issue of the complainant's conduct, rather than her identity. It said that, regardless, the disguising of her identity and location where she lived served to limit any infringement of her privacy.

The broadcaster again accepted that the complainant had not given her consent for the secretly filmed footage of her in her home to be included in the programmes. It said, however, that prior to broadcast of the programmes, it gave due consideration to the complainant's privacy, balancing this with the public interest in broadcasting the footage. ITV submitted that broadcasting the secretly filmed footage of the complainant in her home was warranted in the public interest; it said that the footage demonstrated that she was conducting unlawful practice by selling unlicensed medicine as an unregulated person, which was a potential danger to public health and safety. ITV said that the footage captured by surreptitious filming showed the complainant:

- giving the reporters a form to sign and then immediately asking if the reporter would like her to give the first injection;
- confirming that the medicine is not Ozempic or Wegovy, but semaglutide, "the stronger one";
- pointing to a transparent, sealed bag containing a number of syringes;
- confirming that she mixes the solution to inject herself;
- confirming that a prescription is not required;
- confirming that the form the reporter is asked to fill in is relevant to all her beauty treatments;

- not reviewing the form that the reporter has filled in before completing the sale of the weight-loss medication; and,
- selling the weight-loss medication containing semaglutide for £110, significantly less than the price of licensed medicines when sold privately via prescription.

The broadcaster said that when weighing up whether to include the footage in the programme, it consulted with the expert in weight management (the dietician), and showed him footage of the complainant in order to consider his professional opinion on her conduct. It said that the dietician confirmed that Wegovy and Ozempic are the licensed medications, and that the complainant should not have been selling her own mixed version for weight loss. The broadcaster said that he raised concerns about the safety of the product and the lack of regulation, given the complainant was not registered to do so, and had sold it without a prescription. It also said that he made clear what consumers should “look out for, including branding on the bottle containing the medication, as well as accompanying information about the drug and instructions about how to take it”. ITV said that it considered it was important to include these views in the programmes.

In conclusion, ITV said that it considered that broadcasting the material acquired by surreptitious filming was warranted in the circumstances to expose unlawful activity and protect the public’s health and safety. The broadcaster said that it corroborated and provided further evidence of concerns about the sale of unlicensed weight-loss injections through other contributors to the programmes, and by society more widely, for example the recent concerns raised by the MHRA. It said that ITV therefore felt strongly that the public interest in broadcasting the footage of the complainant in the programmes outweighed her right to privacy. ITV said that, in the circumstances, it considered it was warranted in the public interest to broadcast the footage captured surreptitiously of the complainant in the programmes.

## Ofcom’s Preliminary View

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Ofcom prepared a Preliminary View that Miss J’s complaint should be not upheld. Both parties were given the opportunity to make representations on the Preliminary View, but neither chose to do so.

## Decision

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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 unwarranted infringement of privacy in, or in connection with the obtaining of material included in programmes on 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 its decision, Ofcom carefully considered all the relevant material provided by both parties. This included recordings and transcripts of the programmes, the unedited footage, and both parties’ written submissions.

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 and the audience's right to receive ideas and information without undue interference. Neither right as such has precedence over the other and, where there is a conflict between the two, it is necessary to focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

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

In addition to this rule, Section Eight (Privacy) 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 8.1 and a failure to follow these practices will only constitute a breach where it results in an unwarranted infringement of privacy.

a) In considering Miss J's complaint that her privacy was unwarrantably infringed in connection with the obtaining of material that was subsequently shown in the programmes, Ofcom had regard to the following Code Practices:

- Practice 8.5: "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 8.9: "The means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme".
- Practice 8.13: "Surreptitious filming or recording 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; and
  - 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".

In assessing the complaint, we first considered whether the use of surreptitious filming was warranted in the circumstances, in accordance with Practice 8.13. We took into account the background information ITV provided regarding the increased use of injections for weight loss and the associated risks. We also acknowledged ITV's submission that in order to explore the possible risks to the public in Wales, it was necessary to the credibility and authenticity of the programmes to examine how easy it was to find individuals selling weight loss medication, something that was potentially unlawful in the UK. ITV added that as the channel is a visual medium, and given the programmes are investigative in nature, it considered it necessary to the credibility and authenticity of the programmes to capture visual evidence of the complainant selling the medicine.

We took into account ITV's submission that there was a strong public interest in investigating the sale of weight-loss medications online, and through the use of secret filming. The broadcaster submitted that there was *prima facie* evidence of a story in the public interest, and it had reasonable grounds to suspect that further material evidence of the complainant selling unlicensed medication for weight loss could be gathered by visiting the complainant for a second

time, and secretly filming it. As set out in detail above, ITV told us that the complainant had openly advertised medicine containing semaglutide for weight loss online, and that its undercover reporters had approached the complainant to purchase weight-loss injections. It said that following confirmation from the complainant that she had the product in stock, she invited the undercover reporter to her home to complete the sale, and the reporter was able to purchase four vials, or bottles, of unlicensed medication. We also took into account ITV's submission that further searches undertaken by the programme makers identified that the complainant was not registered to sell medicine. ITV said that from the information gathered, there was a strong indication that the complainant was advertising and selling unlicensed weight-loss medication without a prescription and as a non-registered individual. ITV added that it believed that footage could be obtained of this potentially unlawful practice taking place, which it considered posed a risk to public health and safety.

We also had regard to the specific information gathered by the programme makers through text messages between the undercover reporters and the complainant (copies of which were provided to Ofcom by ITV), in which the complainant said: "It's a bottle Hun I can mix it for you. Or I can supply the stuff to mix" and "I'll inject for you as it comes out of a premixed bottle I use for 1 week requests", which appeared to suggest that the complainant was selling weight-loss products, and offering to do the injections herself.

Taking all these factors into account, we considered that ITV had demonstrated that there was *prima facie* evidence of a story in the public interest relating to the sale of weight-loss products without prescriptions, and the potential dangers to health in doing this (as in this case, the services offered by the complainant). We had regard to ITV's submission that had the programme makers filmed the interactions with Miss J openly, or attempted to do so, it would have been unlikely that she would have consented or might have behaved in a different manner than usual. We also had particular regard to the fact the two undercover reporters had visited Miss J's home on 10 January 2024 – in a visit that was not filmed – and that they had successfully purchased the weight loss product on that visit. As such, we considered that, the programme makers had reasonable grounds to suspect that further evidence could be obtained by surreptitious filming and that it was necessary to the credibility and authenticity of the programmes for viewers to see the methods of selling a potentially harmful weight-loss product by someone not registered or qualified to do so first-hand. We therefore considered that the surreptitious filming was justified in the particular circumstances of this case, in accordance with Practice 8.13.

Given that the surreptitious filming had the potential to uncover evidence of the sale of weight-loss products without prescriptions, Ofcom was satisfied that the programme makers' actions in filming the complainant, who advertised and sold weight-loss products without prescriptions, surreptitiously, was proportionate to the public interest, and therefore in accordance with Practice 8.9.

We next assessed the extent to which the complainant had a legitimate expectation of privacy in the circumstances in which the footage included in the programmes was obtained. The test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be judged in light of the circumstances in which the individual concerned finds themselves.

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

*“...will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye. There may be circumstances where people can reasonably expect privacy even in a public place...”.*

Ofcom reviewed the unedited footage of the complainant; four separate clips showed the same interaction captured at various angles, with each clip lasting approximately seven minutes. Ofcom understood that the footage was filmed using four hidden body cameras worn by the two undercover reporters, and that the complainant was unaware that she was being filmed. From the footage, the two undercover reporters could be seen arriving at the complainant's home, and walking through to a kitchen/living room area. The complainant then asked which of the two reporters was buying the product and offered to do the first injection for her, the reporter said that they would rather do it themselves at home. The complainant then asked the reporter to fill in a form, and explained that the product was semaglutide, and the amount that needed to be injected each week. During the footage, Miss J was shown explaining that the semaglutide normally came in eight week supply, but that she sells a four week supply of it, and takes some out of the pack for herself. One of the reporters asked if a prescription was needed, to which the complainant said it was not, and that she obtained it through her pharmacy. Once the reporter had filled out the form, Miss J explained what was in the packet she was giving to the reporter, how often it needed to be injected, and that the bottle containing the product needed to be kept upright in the fridge. Towards the end of the footage, the complainant explained that it was £110 for the four week supply, and the reporters paid her for the product. She then explained where to administer the injection, and the technique for doing so. The complainant thanked the two reporters, and they left her home.

In the unedited footage, the complainant's face could be seen clearly, and her voice could be heard unaltered. Within two of the four clips of footage, photographs of children could be seen clearly on a sideboard in the background. The footage also showed the complainant disclosing to the reporters the side effects that she had experienced from the injections, and a negative experience she had while taking Ozempic.

We took into account ITV's submission that while it considered the complainant had some expectation of privacy in her home, this was limited given she was using her home to run a public-facing business, and that any member of the public could contact her and visit her home to buy the products. We recognised that Miss J was not aware that she was being filmed and the filming also took place in her private home, a place generally only accessible to those who live there or have been invited in. However, we also recognised that the complainant was filmed selling what we understood to be an unlicensed product without a prescription to the undercover reporter. We did not therefore consider that she was filmed engaging in any activity which might reasonably be considered personal or sensitive to her, and we took into account the broadcaster's submission that the programme makers had aimed to film only the complainant's business and practice, as opposed to any aspects of her personal or family life.

Taking all these factors into account, we considered that, in the particular circumstances of this case, Miss J had a legitimate expectation of privacy in relation to the obtaining of the broadcast footage of her.

The broadcaster did not dispute that the complainant was filmed without her consent. Therefore, Ofcom went on to consider whether the infringement of her legitimate expectation of privacy in the obtaining of the material was warranted.

The Code states that “warranted” has a particular meaning. This is that, where broadcasters wish to justify an infringement of privacy, 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, 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 and safety, exposing misleading claims by individuals or organisations or disclosing incompetence that affects the public.

Ofcom carefully balanced the complainant’s right to privacy with regards to the obtaining of the footage against the broadcaster’s right to freedom of expression and the audience’s associated right to receive information and ideas. As set out above, we considered that the complainant had a legitimate expectation of privacy in relation to the surreptitiously filmed footage of her by the programme makers given that she was filmed in her home, and in circumstances where she was unaware that she was being filmed.

In weighing up the competing rights of the parties, we took into account ITV’s submissions that it had reasonable grounds to suspect the complainant was conducting potentially unlawful practice – by selling unlicensed medicine as an unregistered person – and that the conduct posed a danger to public health and safety. We also acknowledged that the filming of the complainant was limited to only obtaining footage that was relevant to this public interest justification in capturing the sale of the weight-loss products without a prescription, and the circumstances in which the sale occurred. For example, the footage appeared to show the undercover reporters only ask questions about the product they were purchasing; the use of it and how to administer it; the form that one of them was asked to fill out; whether a prescription was needed; and the risks associated with the use of semaglutide. The filming itself focused only on the interaction between the undercover reporters and Miss J while the sale was taking place.

We also acknowledged the complainant’s concern that there was a “child in the background” while she was filmed in her home. We took into account ITV’s submission that it refuted anyone else was present at the property when the undercover reporters attended (on either 10 or 23 January 2024), and that the reporters’ notes reflected as such. We also recognised the broadcaster’s comments that the complainant did not mention that anyone else was present, and on both occasions the reporters visited during school hours. Having reviewed the unedited footage, it did not appear to Ofcom that there was a child in the footage, nor could one be heard in the audio.

Given the particular circumstances and public interest justification of obtaining the footage described set out above, Ofcom considered that the means of obtaining the footage featuring the complainant was proportionate and warranted. Further, Ofcom considered that, on balance, the broadcaster’s right to freedom of expression and the public interest in obtaining the footage of the complainant and the audience’s right to receive information outweighed her legitimate expectation of privacy in the circumstances.

Therefore, we considered that the complainant’s privacy was not unwarrantably infringed in connection with the use of surreptitious filming and the obtaining of material included in the programmes.

b) Next, we considered the complaint that Miss J's privacy was unwarrantably infringed in the programmes as broadcast. We had regard to the following Code Practices:

Practice 8.6: "If the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. (Callers to phone-in shows are deemed to have given consent to the broadcast of their contribution)".

Practice 8.14: "Material gained by surreptitious filming and recording should only be broadcast when it is warranted".

As explained in detail above, Ofcom considered that while the footage filmed of the complainant had been obtained surreptitiously without consent, the use of surreptitious filming was warranted in the circumstances. We therefore went on to assess whether the complainant had a legitimate expectation of privacy regarding the broadcast of the footage of her included in the programmes. We applied the same objective test set out in head a) above.

As set out in the "Programme summaries" section, both programmes included footage of Miss J in her home, selling weight-loss products to the undercover reporters. The footage included in the programmes showed the complainant: providing a form to one of the undercover reporters to fill out; explaining that a prescription was not needed; that she mixed up the product herself; and, that she used it herself. In addition to this, the 19 March programme showed the complainant offering to administer the first injection that day and explaining that the product was semaglutide.

We carefully scrutinised the relevant footage shown in the programmes and took into account that the complainant was not named, her face was blurred, and her voice had been altered. We also took into account the further steps that ITV had taken to disguise the complainant's identity, namely by not revealing the location or address of the complainant's home or family, and by blurring the personal effects such as photographs, which were visible in the footage. We noted too ITV's submission that it did not consider it was required under the Code to disguise the complainant's identity, but in any event, the steps it had taken to disguise her identity and the location where she lived served to limit any infringement of her privacy. In these circumstances, we considered that Miss J was unlikely to have been identifiable to viewers who did not already know her well, and that she openly sold weight-loss products online.

While we acknowledged that the complainant was not readily identifiable to viewers because of the measures put in place by the programme makers, we also took into account the factors set out in detail at head a) above. We recognised that footage of the complainant engaging in an activity which was potentially unlawful was included in the broadcast programmes, however, she was not aware that she was being filmed and the footage depicted her interactions with two people she had invited into her home. We again noted that her home would not normally be accessible to the public, other than those invited into it by her or others who lived there. Given this, we considered that, on balance, the complainant had a legitimate expectation of privacy in relation to the broadcast footage, albeit limited.

Again, it was not in dispute that the footage had been broadcast without the complainant's consent. Therefore, we next considered whether the infringement of privacy was warranted in the particular facts of the case.

We again carefully balanced the complainant's right to privacy over the relevant footage in the programmes with the broadcaster's right to freedom of expression. In particular, we considered whether there was sufficient public interest which might justify the infringement of the complainant's legitimate expectation of privacy in broadcasting the footage.

We took into account the broadcaster's submission that broadcasting the footage of the complainant was warranted in the circumstances as it exposed potentially unlawful activity, and would protect public health and safety. In Ofcom's view, there was a genuine public interest in broadcasting footage which showed viewers first-hand the ease with which weight-loss products could be acquired easily and without a prescription, in a situation where no medical questions were asked prior to the sale, save for the completion of a form, which the complainant did not appear to have read before she sold the product. In balancing the rights of the parties in this complaint, while the broadcast footage showed the complainant conducting business activities in her home, a place where the public would not normally have access, we recognised that the complainant was not named in the programmes and the footage of her had been blurred and her voice altered. We also acknowledged that the broadcaster had taken further steps to limit the extent of the intrusion by not including any personal details about her in the programmes, nor the area she lived in, and by blurring the personal effects which were visible in the footage.

Therefore, taking all the above factors into account, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the viewer's right to receive information and ideas without undue interference outweighed the complainant's limited legitimate expectation of privacy in relation to the inclusion of the footage of her in the programmes as broadcast. We therefore considered that the complainant's privacy was not unwarrantably infringed in the programmes as broadcast.

**Ofcom has not upheld Miss J's complaint of unwarranted infringement of privacy in connection with the obtaining of material included in the programmes, and in the programmes as broadcast.**