

# **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.**

## Targeted Review of Licensing and Enforcement

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In Ofcom's Annual Plan 2013/2014, we committed to review how we license television and radio services and enforce general licence conditions and content standards on those services. Our aim in this work was to increase protection of audiences by: ensuring licensees are fully aware of their obligations; detecting non-compliant content and conduct more effectively; and enforcing against it robustly. We have now concluded a comprehensive review of our licensing and content standards enforcement processes. We are now implementing some changes, detailed below, to strengthen our processes. We did not conduct a consultation as part of this review as it did not involve any proposed change to our published procedures.

### **Content monitoring**

In the past, Ofcom has generally conducted ad hoc monitoring, as required. We are now in the process of expanding our content monitoring programme to increase our ability to detect content which raises issues of potential harm to the audience. This will enable us to check whether licensees found in breach of our rules and licence conditions, and those on whom we have imposed sanctions, have improved their compliance. It will also enable us to check content broadcast on channels/stations about which we receive low numbers of complaints. Any investigations and Findings which result from our content monitoring will be published in the Broadcast Bulletin in the normal way.

### **Compliance investigations**

Licensees are required by a condition in their licences to have sufficient compliance procedures in place to ensure compliance with Ofcom's codes and licence conditions. To detect serious and systemic compliance problems as early as possible, and therefore protect audiences from potential harm, we have implemented a new enforcement approach. In cases where we are concerned about a licensee's compliance procedures, based on its recent compliance history, we will conduct an investigation under our General procedures for investigating breaches of broadcast licences<sup>1</sup>.

### **Ensuring applicants and licensees are fit and proper to hold broadcasting licences**

Ofcom has a statutory duty under the Broadcasting Act 1990 and the Broadcasting Act 1996 to ensure that we do not grant a licence to any person unless we are satisfied that the person is "a fit and proper person to hold it". We also have a duty to ensure that licensees remain fit and proper to hold a licence throughout the lifetime of the licence.

In this area, we will be making the following changes:

#### **Changes to licence application forms**

We will be revising licence application forms to ensure that we obtain relevant information about an applicant and that they are easier for applicants to complete.

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<sup>1</sup> See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/general-procedures.pdf>.

In cases where application forms are completed by agents or third party representatives, if we have any questions following receipt of the application we will address our questions to the applicant rather than the agent or third party.

In the case of short-term restricted service licences for radio, as the majority of applicants are individuals rather than companies, we now require mandatory requirement for proof of identification and address.

### Annual licensing audit

We have expanded our existing annual licence validation of licensee contact details to include requests for other information which we require to carry out our duties. Our new annual licensing audit enables us to check any changes to licensees' up-to-date information, such as ownership or contact detail changes<sup>2</sup> and confirmation of whether the service is currently broadcasting and how. We have recently completed the licensing audit process for television licensees, and will shortly begin the process with our radio licensees.

Please note that it is important to respond to our licensing audit by the deadlines provided. Ofcom is likely to take further regulatory action against those licensees who do not respond as requested.

We will also be conducting checks that television channels provided by a satellite uplink service in the UK hold a valid Ofcom licence, or in cases where the service falls outside UK jurisdiction, a licence or authorisation from the relevant European Member State.

### Assistance for licence applicants and licensees

To improve the overall compliance of our licensees, we will work to actively assist applicants and licensees in their understanding of their regulatory obligations.

### Guidance notes for applicants

To ensure that licence applicants have clear information about the obligations of holding a licence at the application stage, we will shortly be revising our guidance notes for licence applicants. We intend to include a compliance checklist (which may also be a useful reference for licensees), that will provide links to all the relevant information, codes and rules which are available on our website.

### Meetings

In addition to the meetings we already hold with existing licensees, we will be inviting new licensees to meet with us. When a new licence is issued or awarded, the licensee will receive an invitation to attend a meeting with Ofcom. During the meeting we will offer general support on regulatory obligations and the application of our codes, rules and licence requirements in order to provide licensees with a toolkit to devise and/or review their own compliance arrangements to ensure they are sufficiently robust. During these meetings we will not be able to advise licensees how they should set up their compliance function or offer any form of pre-clearance of its content because these areas must remain the responsibility of the licensee. Rather,

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<sup>2</sup> Licensees are reminded that they are still obliged under their licences to inform Ofcom of any changes to control within 28 days of the change/s occurring. We also request that licensees inform us of any changes to contact details as and when they occur.

the meeting would be a practical session providing guidance on any areas of concern raised by the licensee and offering an overview of relevant licence obligations and procedures, and particular issues that the licensee should be mindful of. If existing licensees have any specific concerns they would appreciate Ofcom's guidance on, they should contact [OfcomStandardsTeam@ofcom.org.uk](mailto:OfcomStandardsTeam@ofcom.org.uk). We may be able to assist (with general guidance only) through telephone conversations, email correspondence or a meeting as appropriate.

### **Broadcast Bulletin**

We appreciate that our Broadcast Bulletin is a lengthy and at times a necessarily technical and complex publication. To make it more user-friendly we will be including introductory notes directing licensees to, and commenting on, decisions and issues which Ofcom regards as important and relevant to broadcasters.

### **Ofcom's Broadcasting updates**

We recommend that all licensees sign up to receive Ofcom's broadcasting updates to ensure that they remain across Ofcom's publications for example Broadcast Bulletins, sanctions adjudications and licensing updates. To sign up please go to [www.ofcom.org.uk](http://www.ofcom.org.uk) select "Email updates" and follow the instructions.

### **Changes to the way we will handle late payment of licence fees**

Some licensees do not pay licence fees by the payment date provided on their invoice. In previous years we have launched investigations into licensees' failure to pay their licence fee by the payment date and have either resolved cases in which licensees have paid the fee late, or revoked licences where the fee remained unpaid. We noted that some licensees pay their fee late each year and that a 'resolved' Finding published in the Broadcast Bulletin has not been a sufficient deterrent to prevent this recurring.

Therefore, from April 2015, licensees who fail to pay their licence fee by the payment date are likely to be found in breach of the relevant licence condition. Breach Findings will be published in the Broadcast Bulletin. Where the fee remains unpaid, we will proceed to consider the imposition of a statutory sanction in the form of a financial penalty, as well as the revocation of the licence.

Further communication on this new process will be sent to all licensees shortly.

### **Changes to short-term Restricted Service Licence applications for radio**

We currently grant short-term Restricted Service Licences ("S-RSLs") on the AM and FM wavebands for:

- coverage of special events (including festivals such as Ramadan and Christmas);
- other special projects (e.g. training); and
- trial services (e.g. in preparation for applying for a community radio licence).

Within the context of our duties to ensure a wide range of radio services, and to manage and use radio spectrum efficiently, we limit licensees to:

- a small geographical coverage area (typically a two mile radius in an urban area, or a three to four mile radius in a rural area);



- a usual maximum of 28 consecutive days; and
- a maximum of two licences per year, with a minimum four-month gap between the end of the first broadcast and the start of the second (although only one licence per year is permitted in the area within the M25).

To ensure that our S-RSL licensing processes remain fair, robust, and that the available spectrum is used optimally, we are planning to make the following changes:

- 1) 'Trial' S-RSL broadcasts will only be granted in areas where new permanent analogue licences (i.e. FM and AM) are due to be advertised by Ofcom. For clarity, our S-RSL guidance notes will contain links to the web pages which list our forthcoming licence advertisements in commercial and community radio.
- 2) The duration of any 'event' S-RSL broadcasts will need to broadly reflect the duration of the event. While we may permit the service to broadcast some days pre- or post-event, it is likely that we will reject applications where a short duration event (e.g. a weekend) has been used to justify a full 28-day S-RSL. A letter of corroboration, confirming the event's duration, will be required from the event organiser.

### **Review of new processes**

We will keep these changes under review and will refine them where necessary to ensure that we are providing appropriate protection to audiences.

If you have any feedback on these new processes please contact [lauren.cleverley@ofcom.org.uk](mailto:lauren.cleverley@ofcom.org.uk).

## Note to Broadcasters

### Election programming

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On 7 May 2015, the General Election will be held in the UK. In addition, local and mayoral elections will be held in a number of English local authority areas.

Ofcom reminds all broadcasters that great care needs to be taken when broadcasting election-related programming. In particular, broadcasters should ensure that they comply with Section Five (Due Impartiality)<sup>1</sup> and Section Six (Elections and Referendums)<sup>2</sup> of the Code, as well as the prohibition of political advertising contained in section 321 of the Communications Act 2003.

Ofcom will consider any breach arising from election-related programming to be potentially serious, and will consider taking regulatory action, as appropriate, in such cases, including considering the imposition of a statutory sanction.

If a complaint is made which raises a substantive issue concerning due impartiality during the election period, and in Ofcom's opinion the complaint, if upheld, might require redress before the election, it will be considered by Ofcom's Election Committee<sup>3</sup>. In such circumstances, it will be necessary for Ofcom to act expeditiously in order to determine the outcome of any such complaints in a proportionate and transparent manner before the election. Given this, Ofcom may expedite any investigation carried out in relation to potential breaches of the impartiality provisions of the Code during the election period and broadcasters should be prepared to engage with Ofcom on short timescales.

Broadcasters should note that, following a public Consultation, Ofcom has today published an updated version of the Ofcom list of major parties<sup>4</sup> ahead of the elections taking place on 7 May 2015. Broadcasters should consult the list of major parties to ensure that any election-related programming complies with Section Six of the Code.

For further information about the various elections being contested on 7 May 2015 (including information about "election periods"<sup>5</sup> as defined by the Code), broadcasters should visit the Electoral Commission website at [www.electoralcommission.org.uk](http://www.electoralcommission.org.uk).

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<sup>1</sup> See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/831190/section5.pdf> Ofcom's published Guidance to Section Five of the Code can be found at: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section5.pdf>

<sup>2</sup> See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/831190/section6.pdf> Ofcom's published Guidance to Section Six of the Code can be found at: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section6.pdf>

<sup>3</sup> See Ofcom Election Committee's Terms of Reference <http://www.ofcom.org.uk/about/how-ofcom-is-run/committees/election-committee/terms-of-reference/>

<sup>4</sup> See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/major-parties.pdf>

<sup>5</sup> For the forthcoming elections on 7 May 2015 the "election period" commences on 30 March 2015.

Broadcasters are also reminded that if they would find it helpful to have informal guidance on Sections Five and Six of the Code, they can contact Ofcom directly ([adam.baxter@ofcom.org.uk](mailto:adam.baxter@ofcom.org.uk)).

## Standards cases

### In Breach

#### The Newspapers

*Latest TV, 24 October 2014, 18:30*

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##### Introduction

Latest TV is the local television service for the Greater Brighton area that includes a significant part of West Sussex including Worthing and Shoreham. *The Newspapers* is a current affairs programme in which a presenter, Mike Mendoza, and a guest reviewer discuss recent articles in local newspapers. The licence for Latest TV is held by Latest TV Limited ("LTVL" or "the Licensee").

A viewer alerted Ofcom to one programme, which featured as guest reviewer Tim Loughton, Conservative Party MP for East Worthing and Shoreham. The complainant objected to the programme not making clear that Mike Mendoza was a sitting local councillor for the Conservative Party, and considered that the programme amounted to a "party political broadcast for the Conservative Party".

We noted that the presenter Mike Mendoza was, at the time of broadcast, a sitting Conservative Party councillor for Adur Council<sup>1</sup>.

We considered this content raised issues warranting investigation under Rule 5.8<sup>2</sup> of the Code:

"Any personal interest of a reporter or presenter, which would call into question the due impartiality of the programme, must be made clear to the audience".

Ofcom asked LTVL to provide comments on how the programme complied with the above rules. We also sought representations from Mike Mendoza, the presenter in this programme.

##### Licensee Response

The Licensee said that: "The absence of an announcement that Mike Mendoza was a councillor was accidental and remedied as soon as possible as the LTVL Management Team were aware".

By way of background, LTVL said that the presenter in this case, Mike Mendoza is a former broadcast journalist and "respected professional who was recommended to The Management Team for both his professional skills and the fact that he is based in Adur and Worthing region – which is a large part of our broadcast region but not one where the Management team had many contacts and or detailed local

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<sup>1</sup> Ofcom understands that Mike Mendoza resigned his seat as a local councillor on 29 October 2014.

<sup>2</sup> After investigation, we considered that the programme complied with Rule 5.5 of the Code, which states: "Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service... This may be achieved within a programme or over a series of programmes taken as a whole".

knowledge". It added that it only became aware that Mike Mendoza was still a sitting councillor when alerted to that fact by the complaint in this case but that senior staff did know that Mike Mendoza had been Mayor of Adur until June 2014. When LTVL learnt that Mike Mendoza was still a sitting councillor, it gave him "the choice of either resigning his role as presenter or resigning as a councillor". It added that he "resigned [as a councillor] as soon as he could and now continues to present the programme". The Licensee said that it had not "knowingly...set out to mislead the public and not make clear political allegiances when dealing with matters of political or industrial controversy and matters relating to current public policy".

In conclusion, LTVL said that: "Despite the fact that Mr Mendoza was a Conservative Councillor at the time of our first broadcasts, which LTVL did not know, he has been highly professional in the execution of his role and got the guests to speak their views. We believe Mr Mendoza always acted impartially".

### **Mike Mendoza's Response**

Ofcom's Procedures for investigating breaches of content standards for television and radio<sup>3</sup> permit Ofcom to seek representations from third parties "who may be directly affected by the outcome of Ofcom's investigation and determination of a complaint(s) and who may have interests independent of the relevant broadcaster of that programme (e.g. presenters, producers and/or independent programme-makers)". In the circumstances of this case, Ofcom considered that Mike Mendoza, the presenter in this programme, met these criteria and therefore gave him the opportunity to respond to submit representations.

Mike Mendoza said he "was not aware of" Rule 5.8 in relation to councillors presenting current affairs programmes. However, he added that: "With over 40 years broadcasting experience, I was aware...that as a councillor I could not be heard on air once an election had been called and...I was under the impression, [this] was the only ruling that covered my situation". He concluded by saying that: "As soon as I was made aware (the very minute) I resigned from Adur District Council to take immediate effect".

### **Decision**

Under the Communications Act 2003 ("the Act"), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that the special impartiality requirements set out in section 320 of the Act are complied with. This objective is reflected in Section Five of the Code.

Broadcasters are required to comply with the rules in Section Five to ensure that the impartiality requirements of the Act are complied with, including that due impartiality is preserved on matters of political or industrial controversy and matters relating to current public policy.

When applying the requirement to preserve due impartiality, Ofcom must take into account Article 10 of the European Convention on Human Rights. This provides for the broadcaster's and audience's right to freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without interference by public authority. The broadcaster's right to freedom of expression is not absolute. In carrying out its duties, Ofcom must balance the right to freedom of

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<sup>3</sup> <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>

expression on one hand against the requirement in the Code to preserve “due impartiality” on matters relating to political or industrial controversy or matters relating to current public policy.

In this case, we noted that the programme dealt with a number of policy matters at national level and at the local level (for example in relation to the policies of Adur Council, Brighton and Hove City Council and West Sussex County Council) in a range of policy areas. We therefore considered the programme dealt with matters of political controversy and matters relating to current public policy, and therefore the rules in Section Five were applicable.

We considered this programme under Rule 5.8, which states:

“Any personal interest of a reporter or presenter, which would call into question the due impartiality of the programme, must be made clear to the audience”.

The purpose of Rule 5.8 is to alert viewers to relationships that may be seen to undermine or call into question the due impartiality of a programme.

In this case, we noted the Licensee’s representations that it engaged the service of Mike Mendoza because of “his professional skills and the fact that he is based in Adur and Worthing region – which is a large part of our broadcast region but not one where the Management team had many contacts and or detailed local knowledge”. However, we noted that whilst presenting an edition of *The Newspapers* which featured a sitting Conservative Party MP from the local area as his guest, Mr Mendoza was a sitting councillor representing the same party in the same local area. We considered that this was an important personal interest of the presenter which would have called into question the due impartiality of the programme. The audience however were not informed of this fact.

Once LTVL became aware that Mike Mendoza was a sitting Conservative Party councillor it gave him “the choice of either resigning his role as presenter or resigning as a councillor”. Mike Mendoza said that “[a]s soon as [he] was made aware” of Rule 5.8 he resigned from Adur District Council with “immediate effect”. In addition, we noted the Licensee’s representation that it had not “knowingly...set out to mislead the public and not make clear political allegiances” of its presenters, and that senior staff at LTVL had known that Mike Mendoza had been Mayor of Adur until June 2014 and that they “believed he was no longer a councillor”. We also noted Mike Mendoza’s representations that he was not aware of the requirement contained in Rule 5.8, and that he knew that he “could not be heard on air once an election had been called”<sup>4</sup>. However, as made clear in Ofcom’s published Guidance<sup>5</sup> to Section Five of the Code, Ofcom would expect that, when dealing with matters covered by special impartiality requirements, broadcasters would put in place procedures so that reporters and presenters are at least aware of Rule 5.8 and have an opportunity to make a declaration to the broadcaster.

In reaching our Decision, we took into account LTVL’s representations that: “Despite the fact that Mr Mendoza was a Conservative Councillor at the time of our first

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<sup>4</sup> Rule 6.6 of the Code states: “Candidates in UK elections, and representatives of permitted participants in UK referendums, must not act as news presenters, interviewers or presenters of any type of programme during the election period”.

<sup>5</sup> See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section5.pdf>, paragraph 1.46.

broadcasts he has been highly professional in the execution of his role and got the guests to speak their views. We believe Mr Mendoza always acted impartially”; and that: “The absence of an announcement that Mike Mendoza was a councillor was accidental and remedied as soon as possible as the LVTL Management Team were aware”.

Ofcom welcomes local television services engaging with the local democratic process, and including programming that facilitates civic understanding and fair and well-informed debate through coverage of local news and current affairs<sup>6</sup>. However, in doing so, local television licensees must comply with all the relevant due impartiality rules in Section Five of the Code, including Rule 5.8.

In this case, for all the reasons set out above, we have recorded a breach of Rule 5.8 of the Code.

### **Breach of Rule 5.8**

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<sup>6</sup> See Ofcom’s published Statement *Licensing Local Television*, <http://stakeholders.ofcom.org.uk/binaries/consultations/localtv/statement/local-tv-statement.pdf>, paragraph 1.33.

## In Breach

### Launch Show

*Made in Leeds, 6 November 2014, 20:47 and 7 November 2014, 08:00*

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#### Introduction

The *Launch Show* was broadcast on the launch night of Made in Leeds, the new local television service for Leeds and surrounding areas in West Yorkshire. The licence for Made in Leeds is held by Made Television Limited (“Made TV” or “the Licensee”).

Ofcom was alerted to an instance of offensive language broadcast at 20:47 and again at 08:00 during a repeat of the same programme the next morning.

Ofcom noted that a presenter was conducting a series of vox pops with adults, late at night in Leeds, in a segment called “How to pull a lady”. The presenter interviewed two male friends and asked how they worked together to attract women:

Presenter: *“How does this lad pack work? We’re here to pull birds here...”*

Man 1: *It’s good cop, bad cop, that’s what it is.*

Man 2: *Exactly. [Inaudible]...he’s the cunt and I’m nice. It works.*

Presenter: *It’s Gipton’s answer to Ant and Dec”.*

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

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

We therefore requested comments from the Licensee about its compliance with this rule.

#### Response

The Licensee stated that the incident was “wholly unacceptable” and it sincerely regretted the broadcast of this material and any offence caused to its viewers. The Licensee explained that because this programme was broadcast on the launch night of the service, there were delays in completing the programme and the material was broadcast “without the full quality control process we now have in place”. As a result the *Launch Show* was manually inserted into the live playout. Made TV said that if the material had been played out through the correct transmission systems the programme would have been flagged as post-watershed and it would not have been broadcast before 21:00.

The Licensee also explained that the problem was not picked up before broadcast because it was not “clearly communicated” to the broadcast team on the night that the material contained the word “cunt”.

Made TV explained that once the error was identified, an apology was made via social media and directly to viewers who contacted the service. The Licensee stated



that it took the issue “incredibly seriously”: the member of staff responsible had been “removed from their duties”, and measures had been taken to ensure the problem would not happen again. Made TV had made the broadcast team aware that the correct transmission systems must be used for all scheduled programmes to prevent such incidents occurring again. All staff have been reminded of the service’s responsibilities under its licence. The Licensee said that, as a further compliance measure, any future instances where material might require manual insertion into live playout will require sign off by senior management.

## **Decision**

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

Rule 1.14 of the Code states that “the most offensive language must not be broadcast before the watershed...”. Ofcom research on offensive language<sup>1</sup> notes that the word “cunt” is considered by audiences to be amongst the most offensive language and unacceptable for broadcast pre-watershed. In this case the word was broadcast at 20:47 and again during the repeat of the same programme at 08:00 the next morning.

Ofcom fully acknowledges the challenges faced by new local television services, especially on launch. They must however have appropriate arrangements in place to ensure compliance with the Code. In this case, Ofcom was particularly concerned that the Licensee’s compliance processes did not identify the broadcast of the most offensive language when the programme was first shown on 6 November 2014, and did not take the necessary swift action to ensure it was not repeated the following morning.

In this case, the most offensive language was broadcast twice – before the watershed and at breakfast time – and at both times it was likely that children were available to view. These were clear breaches of Rule 1.14 of the Code.

## **Breaches of Rule 1.14**

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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>).

## In Breach

### Clubaholic.tv trailer

*Made in Leeds, 6 November 2014, 20:45 and 7 November 2014, 08:00*

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#### Introduction

The licence for the local television service for Leeds and surrounding areas in West Yorkshire, *Made in Leeds*, is held by Made Television Limited (“Made TVL” or “the Licensee”).

During *The Launch Show*, broadcast on the launch night of *Made in Leeds*, Ofcom noted a trailer for *Clubaholic.tv* which contained flashing images.

Certain types of flashing images can trigger seizures in viewers who are susceptible to photosensitive epilepsy (“PSE”). Ofcom therefore carried out an assessment of the broadcast content against Ofcom’s Technical Guidance to broadcasters on flashing images (the “PSE Guidance”)<sup>1</sup>. The Guidance states that a sequence containing flashing at a rate of more than three flashes per second which exceeds specific intensity thresholds may be potentially harmful.

We noted that the trailer for *Clubaholic.tv* contained sequences from inside a night club accompanied by strobe lighting effects which created an ongoing series of rapid flashing images. The majority of these flashes were at a relatively low level and fell below the limits in the PSE Guidance. However, at around 25 seconds into the trailer a sequence of approximately 1.5 seconds in duration was accompanied by more pronounced strobe lighting effects. During this sequence, flashing appeared at a rate of approximately nine flashes per second at an intensity which significantly exceeded the limits set out in the PSE Guidance.

Ofcom therefore considered the material raised issues under Rule 2.12 of the Code, which states:

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

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

#### Response

The Licensee said that it accepted the trailer should have included a warning to inform viewers of the risk it posed to those with photosensitive epilepsy.

Made TVL said it understood that “a simple graphical warning” did “not suffice” when there was an opportunity to remove the scenes featuring the flashing images in post-production. However, it said that in this case the programme file was delivered late to

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/812612/section2.pdf>

the transmission team and as a result the programme was transmitted “without undergoing the correct quality control”. It added that this was not a scheduled trailer and therefore was not broadcast repeatedly. It was shown only once within *The Launch Night* programme.

Made TVL stated that it took this issue very seriously and had taken measures to ensure it would not happen again. The member of staff responsible had been removed from their post and measures were taken to ensure that programme files did not “bypass” the scheduling system. The Licensee stated it sincerely regretted the broadcast of this material and the “potential harm it may have caused.”

## **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 “generally accepted standards are applied to the content of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material”.

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

In this case, Ofcom’s technical assessment of this material found that 1.5 seconds of the trailer significantly exceeded the maximum limits set out in Ofcom guidance to broadcasters on flashing images and therefore posed a significant risk of harm to viewers in the audience with PSE.

As Rule 2.12 makes clear there may be circumstances where “it is not reasonably practicable to follow the Ofcom [PSE] guidance”, and broadcasters can demonstrate that it is editorially justified to broadcast the problematic material containing the flashing images, provided that an adequate warning is given at the start of the programme and/or programme item. It may for example not be reasonably practicable to follow the PSE Guidance with a live broadcast, but it may be editorially justified nonetheless to broadcast material containing problematic flashing images. In these circumstances, it is essential that appropriate warnings are given to assist viewers with PSE to avoid instances of flashing images the broadcaster cannot reasonably control.

Material that breaches the PSE Guidance should only be shown in circumstances where it is not “reasonably practical” to follow the PSE Guidance because, for example, the material is broadcast live. In such circumstances, a warning is necessary. Ofcom’s view was that in this case it was reasonably practicable for the Licensee to follow the PSE Guidance because the trailer was pre-recorded and edited before it was broadcast.

The broadcast was therefore in breach of Rule 2.12 of the Code.

## **Breach of Rule 2.12**

## Advertising Scheduling cases

### In Breach

#### Advertising minutage

*Heat TV, 26 November 2014, 15:00*

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##### Introduction

Heat TV is a music entertainment channel broadcast on digital satellite platforms. The licence for Heat TV is held by The Box Plus Network Limited (“Box” 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 its routine monitoring of compliance with COSTA, Ofcom identified an instance on 26 November 2014 where the amount of advertising on Heat TV in a single clock hour exceeded the permitted allowance by 46 seconds.

Ofcom considered this raised issues warranting investigation under Rule 4 of COSTA and therefore sought comments from the Licensee with regard to this rule.

##### Response

The Licensee apologised for the overrun which it said was caused by human error. Box explained that a last-minute revision to correct an error in the programme schedule resulted in a shorter programme duration and some advertisements from the 16:00 clock hour being moved to the 15:00 clock hour.

The Licensee said that following this incident it had reminded its staff to check schedules carefully before transmission to ensure compliance with COSTA.

##### 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.

In this case, Ofcom found that the amount of advertising broadcast by Heat TV was in breach of Rule 4 of COSTA.

##### Breach of Rule 4 of COSTA

## In Breach

### Breach findings table

*Code on the Scheduling of Television Advertising compliance reports*

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

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

| Channel | Transmission date and time | Code and rule / licence condition | Summary finding   |
|---------|----------------------------|-----------------------------------|---|
| Samaa   | 22 December 2014, 13:00    | Rule 4 of COSTA                   | <p>Ofcom noted during monitoring that Samaa exceeded the permitted advertising allowance in a clock hour on 22 December by 25 seconds.</p> <p>The licence holder for Samaa, Up and Coming TV Limited (“UCTV”), said that while it is permitted 12 minutes of advertising in a clock hour, it only carries 11 minutes and 30 seconds to ensure it does not exceed the permitted advertising allowance.</p> <p>UCTV explained this overrun occurred due to a technical error, which pushed some commercials intended for the 14:00 clock hour into the 13:00 clock hour.</p> <p><b>Breach</b></p> |

## Broadcast Licence Conditions cases

### In Breach

#### Provision of recordings

*Sentinelle TV, DM News Plus, 9 and 23 June 2014, 00:00*

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##### Introduction

DM News Plus is a news and general entertainment channel, available on digital satellite, which broadcasts in Urdu, Punjabi, Pothohari and English to the UK Asian community. The licence for the channel is held by DM Global Media Limited ("DM Global" or "the Licensee").

Following receipt of a fairness complaint, Ofcom initially requested recordings of the programme *Sentinelle TV* broadcast on 10 and 23 June 2014. No response was received from the Licensee. Ofcom therefore made a further request for the recordings, but again no response was received.

Condition 20(1) of DM Global's Television Licensable Content Service ("TLCS") licence requires the Licensee to comply with requests for information by Ofcom about fairness complaints. It states that:

"(1) The Licensee shall comply with such directions and requests for information as may be given to him by Ofcom following receipt by him from Ofcom of a copy of a fairness complaint that relates to the provision of the Licensed Service, and in particular the Licensee shall, if so requested:

- (a) provide Ofcom with a recording in sound and vision of the programme, or any specified part of it, to which the complaint relates if and so far as such a recording is in his possession."

Ofcom considered that this matter raised issues warranting investigation under Condition 20(1)(a) and therefore wrote to the Licensee asking for its comments on how DM Global complied with the licence condition in this case.

Ofcom received a response from DM Global requesting an extension of time because it said that the person responsible for compliance had been unwell and that its email account had been "hacked and had no access". Ofcom responded granting an extension to provide any comments and again requested a copy of the recordings.

Ofcom then received a copy of recordings for 9, 10 and 23 June 2014 (the recording for the 9 June 2014 programme had been requested for a separate complaint). However, on sending a copy of the recordings to the complainant to assist them with making their fairness complaint to Ofcom, the complainant explained that he had made a mistake regarding the date of one of the programmes. The complainant confirmed that he wished to make a complaint about material broadcast on 9 and 23 June 2014 and not 10 June 2014. As Ofcom had already been provided with a copy of the programme from 9 June 2014 (for another complaint), we sent a copy of this to the complainant.

Later, the complainant informed Ofcom that the recordings from 9 and 23 June 2014 were incomplete and did not contain the full content of the programmes. The

complainant provided Ofcom with his own complete recordings of the programmes. Ofcom therefore wrote to the Licensee asking it to:

- confirm that the complainant's copies of the recordings were faithful and accurate recordings of the programmes broadcast on 9 and 23 June 2014, and if so, whether it was content for Ofcom to rely on these in order to assess the complaint, and, if applicable, investigate it; and,
- explain why it did not send complete recordings of the programmes to Ofcom as requested.

A deadline of five working days was given for receipt of this information. No response was received. Following a further reminder from Ofcom, we received a response from the Licensee, providing recordings of programmes for an unrelated case and stating that it would respond to Ofcom's request for information within 48 hours.

A week later, Ofcom received a further response from the Licensee stating:

"We have been through the tapes partially but require further time due to the language. The recordings we sent were formulated from our tri-caster system as the original was expired or hacked due to the time lapse. Can you please confirm in the interim, is the programme not fully recorded or is the issue on the content".

As Ofcom had not received confirmation from the Licensee that the copies of the recordings supplied by the complainant were accurate recordings of the programmes as broadcast, in the circumstances of this particular case, it was unable to proceed with its assessment of the fairness complaint.

Ofcom therefore subsequently wrote to the Licensee again asking for its comments on how DM Global complied with Licence Condition 20(1)(a) (as outlined above) in this case.

## **Response**

The Licensee stated:

"...I have explained previously that I had not deliberately breached the regulations and have not deliberately withheld information from you for failing to supply the recordings".

The Licensee also said that the individual responsible for compliance had been ill and was undergoing hospital treatment and as a result "...was unable to respond to you [Ofcom] in a timely manner or allocate someone to respond to you".

The Licensee further explained that:

"I believe I delivered all the recordings to you in accordance with the licence responsibility with a short delay due to the above. Therefore this investigation should be closed as I have complied to my best ability..."

The Licensee also said that steps had been taken "...to have [a] person monitor the recordings and emails so there can be no further delay or breaches in this matter".

## Decision

Condition 20(1) of the Licence places an obligation on licensees to comply with requests from Ofcom for information in relation to any fairness complaint. In particular, Condition 20(1)(a) requires the Licensee to comply with a request by Ofcom for a recording in sound and vision of a programme, or any specified part of it, to which a fairness complaint relates.

Breaches of Condition 20(1) are significant because they can impede Ofcom's ability to assess whether a particular broadcast raises potential issues under the Code, in accordance with our statutory duties under section 110 of the Broadcasting Act 1996.

For Ofcom to fulfil its duty to assess and investigate fairness complaints effectively, broadcasters must provide recordings of programmes in a timely way in accordance with Ofcom's specified deadlines. It is unacceptable for a broadcaster to delay unreasonably the supply of recordings and information to Ofcom, or to fail to supply recordings in full, or to fail to supply requested recordings and/or other requested information at all.

In this case, on receipt of a fairness complaint, Ofcom requested recordings of two programmes to enable Ofcom to assess the complaint. Despite repeated requests by Ofcom for these recordings, the Licensee failed to provide complete copies of them.

Ofcom is also concerned that, contrary to the directions given to the Licensee to respond to Ofcom by the deadlines given, DM Global appears repeatedly to have ignored them and has attributed its failure to respond in a timely manner to technical difficulties and staff illness. While Ofcom accepts that broadcasters may, from time to time, experience difficulties with their data systems and staff illness, we expect them to have contingency plans in place to ensure that, at the very least, they can continue to receive (and respond to) communications from the regulator.

On this occasion, the failure by the Licensee to provide the material requested by Ofcom prevented us from assessing the relevant broadcast material in fulfilment of our statutory duties.

DM Global therefore breached Condition 20(1)(a) of its licence.

In issue 270 of the Broadcast Bulletin<sup>1</sup>, Ofcom recorded five breaches for failures by DM Global to provide recordings in other cases. In that Finding, Ofcom put the Licensee on notice that it would be considering those five breaches for the imposition of a statutory sanction.

In addition to this, in issue 273 of the Broadcast Bulletin<sup>2</sup>, Ofcom recorded a further breach for failure by DM Global to provide recordings of programmes.

Ofcom is very concerned about DM Global's ability to comply with the conditions in its licence requiring it to provide recordings to Ofcom on request. Ofcom therefore

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2691/obb270.pdf>

<sup>2</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb273/Issue273.pdf>



intends to monitor DM Global's compliance with these conditions to determine whether any additional regulatory action is necessary.

**Breaches of TLCS Licence Condition 20(1)(a)**

## In Breach

### Provision of licensed service

*Voice of Africa Radio (Newham)*

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#### Introduction

Voice of Africa Radio (“VOAR” or “the Licensee”) is licensed under the Broadcasting Act 1990 to provide a community radio service for the African community in Newham, East London on 94.0 MHz FM (“the Licensed Service”).

Condition 2(1) of VOAR’s licence requires it to provide the Licensed Service as specified in the Annex to the licence for the duration of the licence period, which expires on 14 August 2017. In providing the community radio service, VOAR is required to meet its ‘Key Commitments’,<sup>1</sup> as set out in the licence Annex. The Key Commitments set out how the station will serve its target community and include a description of the programme service.

Information was provided to Ofcom which raised concerns that the Licensed Service was being provided by a party other than the Licensee. On 19 November 2014, Ofcom wrote to the company which it had reason to believe was providing the service on 94.0 MHz FM instead of VOAR, and informed that company that if it were doing so, it should cease broadcasting since it did not hold a licence and therefore its broadcasts were unlawful. Ofcom advised the company that it has powers to take illegal stations off air by disconnecting transmitters and, subject to representations that it received, it would take enforcement action if the company continued to broadcast on 94.0 MHz FM. This correspondence was copied to VOAR, as the Licensee. VOAR did not provide any comments in response to this correspondence.

On 26 November 2014, an Ofcom engineer visited VOAR’s transmitter site. The engineer reported that the transmitter had been removed earlier that day, and that broadcasting on 94.0 MHz had ceased. At the time of writing, the Licensed Service has not been resumed by VOAR.

Ofcom considered that the failure of VOAR to provide the Licensed Service since 26 November 2014 raised issues warranting investigation under Conditions 2(1) and 2(4) contained in Part 2 of the Schedule to VOAR’s licence. These state, respectively:

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

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

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<sup>1</sup> Voice of Africa Radio’s Key Commitments:

<http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000070.pdf>

## Response

Ofcom received correspondence from the Licensee after the Licensed Service ceased broadcasting on 26 November 2014. This included a response to an information request made by Ofcom under Condition 9 of VOAR's licence. The Licensee's correspondence did not refer to the removal of the transmitter and did not set out any steps that the Licensee was taking, or was proposing to take, in order to resume broadcasting.

After receiving Ofcom's Preliminary View (of a breach of Licence Condition 2(1) and 2(4) for failing to provide the service), VOAR explained that the station's transmitter "had been switched off due to your letter...asking broadcasting to cease immediately. So we followed your clear instructions." VOAR acknowledged that it may have misunderstood Ofcom's letter.

## Decision

Ofcom has a range of duties in relation to radio broadcasting, including securing a range and diversity of local radio services which are calculated to appeal to a variety of tastes and interests, and the optimal use of the radio spectrum. Ofcom discharges these duties by including in the local radio service licences that it grants conditions requiring the provision of the specified licensed service. Provision by a licensee of the radio service specified in its licence on the frequency assigned to it is the fundamental purpose for which a community radio licence is granted. Accordingly, in the case of a service being off the air, the licensee is not fulfilling the fundamental purpose for which the licence was granted and the listener is clearly not served at all by that licensee.

In this case, Ofcom has evidence that the Licensed Service had not been provided since 26 November 2014.

VOAR said that it ceased broadcasting in the belief that it was following Ofcom's instructions in Ofcom's letter to VOAR of 19 November 2014, although it acknowledged that it may have misunderstood the contents of the correspondence.

Ofcom's letter to VOAR of 19 November 2014 stated that Ofcom believed another (named) company was broadcasting a radio service on 94.0 MHz without a licence and that Ofcom had "written to [the named company] to inform it of Ofcom's provisional view that it is broadcasting a radio service without a licence and should cease do so immediately". A copy of this letter, addressed to the named company, was provided to VOAR. We considered that the letter to VOAR of 19 November 2014 was unequivocal: there was no instruction to VOAR (the Licensee) to stop broadcasting its licensed service; the instruction to cease broadcasting was clearly directed at the named company, which did not hold a licence. We noted that VOAR did not provide any response to Ofcom's letter of 19 November 2014 nor query its contents at the time.

We concluded that VOAR had breached Licence Conditions 2(1) and 2(4) for failing to provide its Licensed Service.

**Ofcom considers these breaches to be serious. We are therefore putting the Licensee on notice that we will consider these breaches for the imposition of a statutory sanction.**

Additionally, Ofcom is putting VOAR on notice that we may return to consider separately other issues that have emerged in relation to VOAR's compliance with the conditions of its licence, including whether the Licensee was in control of the Licensed Service broadcast on 94.0 MHz FM prior to 26 November 2014.

**Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by Voice of Africa Radio (licence number CR000070BA).**

## In Breach

### Provision of information: Change of Control to a Licensee

*CHS.TV Limited*

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#### Introduction

Ofcom is required to ensure that Television Licensable Content Service (“TLCS”) licensees do not contravene statutory restrictions on the holders of TLCS licences. Every TLCS licence therefore contains a condition which requires the licensee to inform Ofcom within a specified period of proposed changes to those holding shares in, acting as a director of, or controlling the licensee company.

Licence Condition 13(1) requires that:

“Where the Licensee is a body corporate, the Licensee shall notify Ofcom:

- (a) of proposals affecting shareholdings in the Licensee or any body corporate which controls the Licensee, or the directors of the Licensee or the directors of any body corporate which controls the Licensee, and of any proposals to enter into any arrangements of the type referred to in Condition 13(2) below, by giving advance notice of such proposals where they are known to the Licensee as soon as reasonably practicable where such proposals would constitute a change in the persons having control over the Licensee within the meaning of Schedule 2, Part I paragraph 1(3) of the 1990 Act; and
- (b) of changes, transactions or events affecting shareholdings in the Licensee or any body corporate which controls the Licensee, or the directors of the Licensee or the directors of any body corporate which controls the Licensee (irrespective of whether proposals for them have fallen to be notified) within 28 days of the Licensee becoming aware of any such change, transaction or event and where such change, transaction or event would constitute a change in the persons having control over the Licensee within the meaning of Schedule 2, Part I paragraph 1(3) of the 1990 Act. ”

In June 2014, Ofcom identified from Companies House records that a change of directors of the licensee for the CHS.TV service, CHS.TV Limited (or “the Licensee”), had taken place in September 2013. The person who had until that point been the sole director of CHS.TV Limited had resigned (Jamal Nasser) and two new directors had been appointed (Harish Joshi and Tazidur Choudhury). The Licensee had not provided Ofcom with notification of this change in the directors of the Licensee either in advance or within the required 28 day period following this occurrence.

Ofcom considered that this matter raised issues warranting investigation under Conditions 13(1)(a) and (b) of CHS.TV Limited’s TLCS licence.

Ofcom therefore wrote to the Licensee on 6 June 2014, explaining that Ofcom had become aware of this change in directors and reminded the Licensee of its obligations under Condition 13(1)(b) to notify a change to those holding shares in, acting as a director of, or controlling the licensee company within 28 days of the Licensee becoming aware of such a change. Ofcom also required the Licensee to

provide us with information relating to this recent change of control.<sup>1</sup> The Licensee subsequently provided Ofcom with information which confirmed that there had been a change in the directors of the Licensee (as described above) and also the members of the Licensee.<sup>2</sup>

Subsequent to this, it came to Ofcom's attention that there had been a further change in the persons having control of the Licensee. Companies House records showed that, on 10 July 2014, Mr Harish Joshi resigned as a director of CHS.TV Limited, so that Mr Tazidur Choudhury became the sole director of CHS.TV Limited. Ofcom did not receive notification of this change in the directors either in advance or within the required 28 day period following this occurrence.

## Response

The Licensee confirmed it did not wish to make representations.

## Decision

Under the Broadcasting Act 1990 ("the 1990 Act") and the Communications Act 2003 ("the 2003 Act"), there are a number of statutory restrictions on the holders of TLCS licences. These fall into two main categories: (i) a person must be fit and proper to hold a licence, as set out in sections 3(3) of the 1990 Act and section 235(3)(a) of the 2003 Act; and (ii) certain categories of person are disqualified from holding a licence, or participating above a certain level in a body which holds a licence, as set out in section 5 and Schedule 2, Part II of the 1990 Act and section 235(3)(b) of the 2003 Act.

Ofcom must be aware of the identity of those holding licences, so that it has the necessary information to enable it to ensure that it is meeting its duties in relation to those statutory requirements.

In this case, two changes of control of the Licensee took place which fell within the scope of the changes which must be notified to Ofcom as required under Condition 13(1)(a) and (b) in Part 2 of the Schedule to the Licence. The first change of control involved a change of all the individuals acting as directors, and who were members, of the Licensee. The second change of control involved a change in the directors of the Licensee, so that one director resigned leaving one sole director in control of the Licensee.

If the Licensee had been aware in advance of the proposed changes, in accordance with Condition 13(1)(a), the Licensee should have given advance notice to Ofcom of them as soon as reasonably practicable. In addition, the deadline for notifying Ofcom of these changes of control in accordance with Condition 13(1)(b) was 28 days after the Licensee had become aware that the changes had taken place. The Licensee did not do so.

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<sup>1</sup> Where there has been a change in the persons holding shares in, acting as a director of, or controlling the licensee company, Ofcom requires the Licensee to complete the form 'Notification of a change to a broadcast Licensee' [http://licensing.ofcom.org.uk/binaries/tv/cc\\_form2.rtf](http://licensing.ofcom.org.uk/binaries/tv/cc_form2.rtf)

<sup>2</sup> CHS.TV Limited is a company limited by guarantee and therefore does not have a share capital. It does, however, have members who are entitled to vote at general meetings of the company.

Ofcom was particularly concerned that a second change of control had taken place, while Ofcom was investigating the Licensee's failure to notify Ofcom of its first change of control. Further, the second failure to notify Ofcom occurred after Ofcom had recently reminded the Licensee of its obligations to notify Ofcom of a change of those persons having control of the Licensee in accordance with Condition 13 of the licence.

Ofcom considers that CHS.TV Limited failed to notify Ofcom about two changes of the persons having control of the Licensee either in advance of the changes taking place or within the required 28 day period.

The Licensee's failure to notify Ofcom in advance of either of the two changes was in breach of Licence Condition 13(1)(a) and that the Licensee's failure to notify Ofcom of either of the two changes of control within 28 days following those events taking place was in breach of Licence Condition 13(1)(b).

Ofcom will monitor the Companies House records of the Licensee to assess its ongoing compliance with these conditions. Any further breaches of these conditions are likely to result in Ofcom considering the imposition of a statutory sanction.

**Breaches of Licence Condition 13(1)(a) and (b) in Part 2 of the Schedule to the TLCS Licence**

## Fairness and Privacy cases

### Not Upheld

#### Complaint by Mr Thomas Murray

*BBC Scotland Investigates: Lawyers Behaving Badly, BBC1 Scotland, 15 January 2014*

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#### Summary

Ofcom has not upheld this complaint made on behalf of Mr Thomas Murray 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 three solicitors who had been investigated for professional misconduct by the Law Society of Scotland and the Scottish Solicitors Discipline Tribunal (the body to which the Law Society of Scotland referred serious allegations of misconduct). One of these solicitors was Mr Murray (the complainant).

Ofcom found that:

- Mr Murray was not treated unfairly in the programme as broadcast. This was because the broadcaster took reasonable care to satisfy itself that the programme did not present, disregard or omit material facts with regard to Mr Murray in a way that resulted in unfairness to him. In addition, the use of deception to obtain the footage of Mr Murray was warranted in the circumstances of this case and the programme gave viewers an accurate picture of the nature of the deception practised on him and the comments which Mr Murray made to the presenter during the recording of this footage (i.e. when he understood the presenter to be a potential client).
- There was no unwarranted infringement of Mr Murray's privacy in connection with the obtaining of material included in the programme or in the programme as broadcast. This was because the intrusion into his privacy through the recording and use of secretly filmed footage of him was warranted by the public interest and because Mr Murray did not have a legitimate expectation of privacy with regard to the limited information about the location of his home which was included in the programme.

#### Introduction and programme summary

On 15 January 2014, BBC1 Scotland broadcast an edition of its current affairs programme *BBC Scotland Investigates* presented by Samantha Poling. The programme investigated the system of self-regulation which applies to solicitors in Scotland. In particular, it considered whether the Law Society of Scotland ("the Law Society") should both represent and regulate solicitors in Scotland. The programme included three solicitors who had been investigated for professional misconduct by the Law Society and the Scottish Solicitors Discipline Tribunal (the body to which the Law Society referred serious allegations of misconduct). One of these solicitors was struck off the Law Society's register of practising solicitors for incompetence. However, the programme alleged that he was still providing legal services. Another had been suspended twice, most recently for having "*borrowed £60,000 from a client without consent*", and was being investigated by the Scottish Solicitors Discipline Tribunal ("the SSDT") for allegedly posing as the solicitor assigned to supervise his



work following his previous suspension. The third solicitor featured was Mr Thomas Murray (the complainant).

The programme included contributions from two of Mr Murray's former clients Mr Stuart Usher and Mr Neil McKechnie. It said that in 1999 Mr Usher hired Mr Murray to represent him concerning alleged professional negligence in the management of a family trust fund and made a payment in advance to Mr Murray of £3,500. The programme said: *"legally that payment has to be put into a separate client account which a solicitor can't draw on until he's done the work but Murray immediately transferred the cash into his firm's account"*. Mr Usher was shown saying that Mr Murray: *"never did the job I'd given the £3,500 to do...[and therefore] I got rid of him and reported him to the Law Society"*.

The programme said that in 2000 Mr McKechnie hired Mr Murray to represent him in both a divorce and an employment case but a year after taking on these cases Mr Murray became bankrupt. It claimed that although Mr Murray's bankruptcy meant that he was automatically suspended from practising as a solicitor in Scotland he failed to inform either Mr McKechnie or a second client from Germany about his change in circumstance. The programme said that in 2004, having found it increasingly difficult to contact Mr Murray, Mr McKechnie complained to the Law Society about him.

The programme said that several years after Mr Usher made his complaint: *"the tribunal [i.e. the SSdT] found Murray had eventually done work worth £3,500 but it also found him guilty of professional misconduct. The tribunal's damning report stated he was guilty of deception and dishonesty and had misled his client"*. It also said that: *"a second case against Murray relating to the German client found the same and in Neil McKechnie's case Murray was found guilty of inadequate professional service and ordered to pay back £3,000 of fees and £1,000 compensation. Despite all this Mr Murray was never struck off"*.

The programme included a panel of three experts in legal ethics and regulation who reviewed some of the cases featured. All the members of this panel were based in England which used a system of independent regulation of solicitors. Having reviewed the complaints against Mr Murray, the panel members all agreed that, given that there had been two clear findings of dishonesty against Mr Murray in the same year, he should have been struck off – rather than being censured and given some restrictions on his practising certificate (i.e. the sanctions which the SSdT in fact placed on Mr Murray after its findings against him).

Later the programme said that: *"despite the lapse of time his [Mr Murray's] former clients remain aggrieved"*. This was followed by footage of Mr Usher saying that he still wanted Mr Murray to pay him £3,500 plus interest and Mr McKechnie claiming that Mr Murray owed him fees of around £6,000 plus £1,000 compensation. The programme then said: *"the tribunal decided not to strike him off and Murray decided not to pay McKechnie the fees and compensation he was awarded, despite being ordered to, instead he returned to a home abroad"*.

The programme broadcast an image of a computer screen showing an Italian website listing directors and auditors. The image included a listing for Mr Murray setting out various personal details including his full name, his place of birth, his citizenship and part of his address in Italy. This was followed by footage of the presenter standing in front of a range of hills while she said: *"Behind me sits the province of Lucca and it sits right at the bottom of the beautiful hills of Tuscany. Now in one of the hills is a 400 year old farmhouse, and, for the last few years it's been home to one certain Scottish solicitor"*. The footage changed to show several streets

with the presenter walking past a number of shop fronts. This section of footage ended with a view of an estate agency where Mr Murray worked with the name of the business blanked out. During this footage the programme said: *"Borgo a Mozzano is the area where Thomas Murray has been living and working thus making recovery of compensation difficult for Neil McKechnie"*. It went on to say that Mr Murray worked as an estate agent before showing secretly recorded footage of Mr Murray talking to the presenter (whom he believed to be a prospective client).

The footage of Mr Murray showed him: in the estate agency; taking Samantha Poling to view properties; during a visit to a café; and, driving her back to her car.

During the footage recorded in the café Mr Murray was shown having the following conversation with the presenter:

Mr Murray: *"I was a lawyer in Scotland, okay, not an estate agent.*  
Presenter: *So have you been able to draw on your, on the Scottish law experience to work here?*  
Mr Murray: *Definitely.*  
Presenter: *And, do you find that it really helps?*  
Mr Murray: *Yeah"*.

Afterwards the programme said that because he held an estate agent's licence in Italy Mr Murray would: *"draw up some of the legal paperwork"*. This was followed by footage of an exchange between Mr Murray and the presenter in which Mr Murray, who was apparently describing the process of buying a property in Italy, said: *"I will draw you up an offer which you sign"*. Following an interjection from Samantha Poling, Mr Murray confirmed that it would be *"a legally binding offer"* and that she [i.e. the purchaser] would also have to pay a deposit of around £5,000.

Towards the end of the footage, the presenter said that Mr Murray left her with: *"these comforting words"*...

Mr Murray: *"I would go back to doing law again.*  
Presenter: *Would you?*  
Mr Murray: *Yes, I'm still registered as a lawyer in Scotland. I am still on the solicitors' roll"*.

The programme then said:

*"Mr Murray is doing nothing illegal in his new life as an estate agent but he's left behind a number of dissatisfied clients one of whom is still waiting to be paid the fees and compensation he was awarded"*.

The section of the programme ended with a representative of the Law Society talking about how it and the SSDT had dealt with the complaints against Mr Murray. Then the programme said: *"The Law Society of Scotland later told us the case against Thomas Hugh Murray remains open due to his failure to pay the fees and compensation as ordered by the Tribunal. We've since discovered that the Law Society intends to submit a new complaint concerning Mr Murray to the SSDT"*. It added that: *"Mr Murray declined to give a comment to this programme. However, through his solicitor he pointed out that he'd gained a decree against Neil McKechnie for £150,000 which remained unpaid"*.

The secretly recorded footage showed Mr Murray unobscured on a number of occasions and still images (taken from this footage) in which Mr Murray's face was

clearly shown were included earlier in the programme. The programme also referred to him by his first name and surname (both singly and together) and by his full name on a number of occasions.

## Summary of the complaint and the broadcaster's response

### *Unjust or unfair treatment*

In summary, on behalf of Mr Thomas Murray, his solicitor (Mr Campbell Deane) complained that Mr Murray was treated unjustly or unfairly in the programme as broadcast because:

- a) Material facts about or related to Mr Murray were presented, disregarded or omitted in a manner which gave viewers an unfair impression of him. The complainant gave the following examples of information included in or omitted from the programme which he said resulted in Mr Murray being unfairly portrayed:
  - i) Mr Murray's comments to the programme's presenter about going "*back to doing law again...*" were shown out of context and thereby gave the unfair impression that he would be returning to Scotland to practise law. Mr Deane said that Mr Murray had understood that these comments were part of a general discussion and on more than one occasion had specifically indicated that he had no intention of returning to Scotland.

Mr Deane added that this point was made to the programme makers in a letter he had sent to them on 9 January 2014, i.e. prior to the broadcast.

In response the BBC said that unedited footage of Mr Murray's comments to Samantha Poling about returning to Scotland to practise law again (a copy of which was provided to Ofcom) showed that Mr Murray did not say that he had no intention of returning to Scotland. Rather, the statement "**I would** go back to do law again" [broadcaster's emphasis], alongside several other comments included in this unedited footage, made it clear that Mr Murray's return to Scotland would be contingent on specific circumstances, notably the outcome of the forthcoming vote on Scottish independence, and that were the circumstances right he would consider returning to Scotland where he was still registered as a solicitor and where he could again work in that capacity.

- ii) By heavily focussing on Mr Murray, in contrast to the other two solicitors featured, the programme gave the impression that his offences were either of equal or greater magnitude than those of these two solicitors. This was unfair because Mr Murray had not been convicted of any criminal offence and because, according to the programme, these two solicitors were continuing to offer legal advice and/or present themselves as solicitors<sup>1</sup> while Mr Murray had not practised law for 13 years.

The BBC denied that the programme gave the impression that Mr Murray's offences were more serious than those of the other two solicitors' featured. It said that the time allotted to Mr Murray's story was based on the fact that despite the SSDT's three findings of dishonesty, relating to the misuse and misappropriation of client's money, against Mr Murray he continued to work in an occupation where trust and integrity are paramount and where (as the

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<sup>1</sup> See Introduction and programme summary for description of the claims made about these solicitors in the programme.

secret filmed footage makes clear) he may be involved in taking customer deposits. Also, in the view of the programme's expert panel, the findings against Mr Murray should have led to him being struck-off as a practising solicitor.

- iii) The programme omitted to mention the long-running and on-going dispute between Mr Neil McKechnie (a former client of Mr Murray) and Mr Murray (despite being made aware of it in pre-broadcast correspondence). Mr Deane also said that, although the programme acknowledged that Mr Murray had obtained a decree for £150,000 against Mr McKechnie, it did not ask Mr McKechnie if he considered the existence of this decree provided a valid reason for Mr Murray's non-payment of the order made by the Scottish Solicitors Discipline Tribunal ("the SSDT").

The BBC said that the programme was concerned with the conduct and regulation of solicitors, not with the activities of their clients. It added that any duty of fairness to Mr Murray in reporting this matter was discharged by making clear at the end of the report that there had been a dispute between Mr Murray and Mr McKechnie and that Mr Murray had secured an order that Mr McKechnie pay him £150,000.

The broadcaster also said that, in its view, the order that Mr McKechnie should pay Mr Murray £150,000 did not mitigate the impact of Mr Murray's own actions: both those which resulted in the finding that Mr Murray had behaved dishonestly and deceptively with regard to Mr McKechnie and had misled him, and Mr Murray's subsequent refusal to repay fees, and pay compensation, to Mr McKechnie as ordered by the SSDT.

- b) The programme makers used deception and surreptitious filming to obtain footage of Mr Murray.

By way of background, Mr Deane said that in order to obtain the footage of the complainant the presenter (posing as a potential client) spent one and half days with Mr Murray viewing properties. He said at no point during this time did the presenter ask Mr Murray any questions about either Mr Usher or Mr McKechnie or the findings of the SSDT. Mr Deane added that, given her failure to ask any such questions and the programme's admission that Mr Murray had done nothing illegal in his role as an estate agent, "there was no public interest...in broadcasting [footage of] Mr Murray's current business activities". Mr Deane also said that the programme makers had not requested an interview with Mr Murray before filming him covertly and that nothing obtained through the use of covert filming could not have been obtained from a direct request to Mr Murray for an interview.

The BBC said that the primary purpose of the secret filming was to determine whether Mr Murray was continuing to use his status as a solicitor in Scotland to reassure clients who might be considering asking him to act for them in property transactions, thereby placing him in a position of trust – notably in relation to their money. The resulting footage revealed that this was the case. It also said that the footage showed that, despite using his position as a registered solicitor in this manner, Mr Murray failed to mention the disciplinary proceedings against him which, as noted above, resulted in findings of dishonesty, deception and misleading clients on Mr Murray's part. The BBC said that there was a compelling public interest in gathering and broadcasting the information included in this footage because of Mr Murray's business activities at the time.

*Unwarranted infringement of privacy*

- c) Mr Deane complained that Mr Murray's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because it was filmed secretly without his permission.

Mr Deane said that Mr Murray had a legitimate expectation of privacy and it was not in the public interest to film him in this manner. In particular, he said:

- the information about Mr Murray obtained through recording this footage could have been obtained without covert filming;
  - at no time prior to the filming was Mr Murray asked to comment on the allegations made about him in the programme;
  - there was no prima facie evidence of wrongdoing on Mr Murray's part with regard to any of his current activities and there was no need to film Mr Murray secretly in order to clarify any matter regarding the SSDT findings against him, which concerned matters relating to his practice as a solicitor between 1999 and 2002, as these were all in the public domain; and,
  - Mr Murray was not hiding from the authorities and had not acted in manner to warrant investigation about his whereabouts.
- d) Mr Deane also complained that Mr Murray's privacy was unwarrantably infringed in the programme as broadcast because secretly recorded footage of him was broadcast without his permission.

He said that Mr Murray had a legitimate expectation of privacy in this regard and it was not in the public interest to broadcast footage of him filmed in this manner. Mr Deane also re-iterated the points made in relation to the complaint of unwarranted infringement of privacy at head c) above with regard to this head of complaint.

The BBC responded to heads c) and d) of this complaint together. It said that any expectation of privacy Mr Murray had was limited by the fact that he was filmed conducting professional negotiations with a prospective client (it said that in such circumstances it is the client who has a greater expectation of privacy). The BBC also argued that any breach of Mr Murray's privacy was warranted by the public interest in gathering the evidence which the programme makers had set out to obtain.

The BBC then addressed each of the points raised by Mr Deane in relation to the whether or not there was a public interest justification for the recording and subsequent use of secretly filmed footage of Mr Murray in turn.

It said that the relevant information could not have been gathered without the secret filming. The BBC said that the only other way the programme could have obtained the information about Mr Murray's potential intention to return to Scotland, would have been to ask him about it when he was informed him about the plan to broadcast this programme and its likely contents. It added that Mr Murray's denial that he had told the reporter that he would consider returning to Scotland to practise law (as set out in the complaint) suggested that he would not have given an accurate response to the programme makers if they had opted for this course.

The BBC said that the Ofcom Broadcasting Code (“the Code”) required that allegations [of wrongdoing] should be put to Mr Murray clearly and in good time and that there is no requirement regarding how this should be done [for example, at the time the secret filming took place]. The BBC added that allegations were put to Mr Murray in a detailed written request prior to the broadcast which was sent in time for him to take advice and formulate a full response.

The broadcaster said that the programme did not allege current wrongdoing on Mr Murray’s part and explicitly said that he was guilty of nothing illegal. However, it argued that, for the reasons already given, there was a clear public interest in investigating whether Mr Murray’s background and the professional findings against him were relevant to his current professional occupation. The BBC added that the evidence gathered (by means of the secret filming) supported the view that this was the case.

In response to the final point raised by Mr Deane, the BBC said that the programme neither alleged that Mr Murray was hiding from the authorities nor that he had cause to do so.

- e) Mr Deane complained that the programme disclosed Mr Murray’s home address and said it was not warranted to do so in the public interest. He said that in post-broadcast correspondence the programme makers argued that “Mr Murray’s home address was a matter of public record”. However, Mr Deane added that the programme had pixelated Mr Murray’s address when showing documents relating to the SSDT findings, presumably because disclosing this information was not warranted and would breach Mr Murray’s privacy, but the address was not pixelated in the screen shot of Mr Murray’s details on an Italian website listing directors and auditors.

In response, the BBC said that Mr Murray’s address, as shown in the programme, appeared on a public document relating to his accreditation as an estate agent in Italy. It argued that therefore, it attracted no expectation of privacy and the programme would have been entitled to show it in full. However, only part of it was shown in order to demonstrate that Mr Murray was resident in Italy without disclosing the address in its entirety.

The BBC said that the SSDT documents which included Mr Murray’s address were pixelated because they showed his address in Italy, and his former address in Scotland, in full. It also said that the fact that these addresses were obscured did not negate the fact that, as public documents easily available on the internet, and given the context in which they originated (i.e. the SSDT findings against Mr Murray), they too attracted no reasonable expectation of privacy. It added that therefore, the programme would have been entitled to show these addresses in full had the programme makers deemed it appropriate.

### **Ofcom’s Initial Preliminary View**

Ofcom prepared a Preliminary View on this case that Mr Murray’s complaint should not be upheld. In particular, at head a) i) of this Initial Preliminary View we concluded that, notwithstanding the omission from the programme of the circumstances which would need to apply before Mr Murray would consider returning to practise law in Scotland the inclusion of the following exchange in the programme did not result in unfairness to the complainant:

Mr Murray: *"I would go back to doing law again.*  
Presenter: *Would you?*  
Mr Murray: *Yes, I'm still registered as a lawyer in Scotland. I am still on the solicitors' roll".*

Mr Deane commented on head a) i) of this Initial Preliminary View. The further points made by Mr Deane in relation to this element of the complaint and the BBC's sole comment in response are summarised below.

Mr Deane argued that the unedited footage of Mr Murray provided to Ofcom by the BBC (which he said was only a fraction of the total recorded) was an insufficient base from which to determine whether the way in which Mr Murray's comments to the programme's presenter about going *"back to doing law again..."* were presented resulted in unfairness to him. Mr Deane said that this footage was "in no way balanced or representative" of the material recorded over the two days during which Mr Murray was filmed. He added that during this period Mr Murray was asked about returning to Scotland on several occasions not just during the section of unedited footage provided to Ofcom with the BBC's first statement in response to this complaint.

Mr Deane said that during one of these conversations the presenter's companion (who was present during the filming) became somewhat angry and, in response to Mr Murray saying that he would only think about going back if Scotland became independent, shouted out "but that's not going to happen" to which Mr Murray replied "No". Mr Deane argued that this conversation conveyed a meaning which was "contrary" to that of the conversation in the unedited footage seen by Ofcom.

Mr Deane also argued that it was possible to interpret even the conversation between the presenter and Mr Murray which was included in the unedited footage that Ofcom had already assessed as Mr Murray indicating that he had no intention of going back to Scotland to practice law.

Mr Deane indicated that the following elements of this conversation (set out in chronological order) illustrated his argument:

Presenter: "Do you miss Scotland at all?"  
Mr Murray: "Can't say that I do".

Mr Deane said that during the discussion which followed, about the then forthcoming referendum on Scottish independence, Mr Murray explained why he would vote 'Yes'.

Presenter: "So you would give up this lifestyle?"  
Mr Murray: "I only said that I would think about it. I didn't say that I would".

Presenter: "Would you do estate agency in Scotland?"  
Mr Murray: "I could go back to do law again as I am still registered as a lawyer so I could do that yes."

Presenter: "Would you want to?"  
Mr Murray: "Not at the moment, No".

The BBC chose not to make any further substantive points in response to this Initial Preliminary View other than to say that, in contrast to Mr Deane's claim that Mr Murray said that he "could" go back to do law again in Scotland, it believed it was

quite clear from the broadcast footage that Mr Murray said that he "would" do law again<sup>2</sup>.

### **Request for additional unedited footage and further representations**

In light of the representations Mr Deane made on behalf of Mr Murray, as set out above, Ofcom asked the BBC to provide a copy of all of the remaining unedited footage of Mr Murray recorded during the making of the above programme<sup>3</sup>.

Once this material was provided to Ofcom a copy was sent to the complainant and he was invited to comment on the sections of unedited footage which he had not already seen (i.e. everything other than the 23 minutes of unedited footage which was provided as part of the BBC's initial response to this complaint). The BBC was subsequently given an opportunity to respond to the complainant's comments regarding the additional unedited footage.

The further points made by Mr Deane on behalf of Mr Murray and the BBC's response to these points are summarised below.<sup>4</sup>

Mr Deane said that Mr Murray was not satisfied that all of the unedited footage had been provided. In particular, Mr Deane said that Mr Murray was not provided with footage (of the return from a visit to a property) which he believed included a conversation during which the presenter's companion became angry at the presenter's persistent questioning about whether or not Mr Murray would return to Scotland (see Mr Deane's representation on the Initial Preliminary View above for more details of this "missing conversation").

Mr Deane also said that at the end of the last of the recordings of unedited footage provided by the BBC the presenter could be heard talking to another programme maker whom Mr Murray believed had either followed him while he took the presenter and her companion to various properties/locations or was already in place at these locations – notably at a converted mill which Mr Murray took the presenter to see. Mr Deane said that none of the material which Mr Murray believed to have been filmed/recorded by this other programme maker was provided. Lastly, Mr Deane said that none of the footage recorded while the presenter was "checking the Roll of Estate Agents" was provided.

In response, the BBC said that all of the secretly filmed footage which was recorded by the presenter was disclosed to Ofcom and the complainant. It also said that the presenter had no recollection of a conversation along the lines alleged by Mr Murray (i.e. the "missing conversation") and that it did not understand to what Mr Murray was

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<sup>2</sup> Having listened again to the relevant exchange within the broadcast footage we observed that Mr Murray used the word "would" rather than "could" in saying "I would go back to do law again...".

<sup>3</sup> As set out in the broadcaster's response to head a) i) above, as part of its initial response to this complaint the BBC provided a section of unedited footage (recorded during the making of this programme) during which Mr Murray discussed the possibility of his deciding to return to Scotland and what he would do should he decide to return there.

<sup>4</sup> We note the complainant did not specify to which element of complaint the points set out below related. However, given the complainant's response to the Initial Preliminary View, Ofcom regards these comments as further representations on head a) i) Ofcom's Initial Preliminary View on this complaint.



referring when he talked about footage recorded while the presenter was “checking the Roll of Estate Agents”.

The BBC acknowledged that, as well as the material recorded by the presenter, the programme included two sequences showing the arrival and departure of Mr Murray from his office and the office from a passing car, respectively. It said that this footage was filmed from some distance away by a cameraman accompanied by the programme’s producer and included no audio. The BBC added that all of the audio recorded was on the secretly filmed footage which had been disclosed.

The broadcaster said that there was only one conversation during which Mr Murray made his views on Scottish independence perfectly clear and this conversation, which took place in the car, was recorded and had been disclosed. It added that, as the secretly filmed material showed, that there was no evidence that the presenter’s companion and Mr Murray discussed this particular subject.

Mr Deane said that the programme unfairly omitted Mr Murray’s explanations (given to the presenter and her companion during the time he was secretly being recorded) that: the legal aspects of the prospective house purchase would be undertaken by a Notaio (i.e. a notary public) or Italian lawyer (not by him) and that the Notaio or Italian lawyer could be one of their choosing; the purchase offer which he would draw up for them had been approved by a Notaio; and, that other estate agents also draw up initial purchase offers. Mr Deane said that this last comment by Mr Murray would have suggested that it was normal practice for estate agents in Italy to draw up initial purchase offers but that this was not the impression given by the programme. He said that the programme suggested that Mr Murray drew up the offer because he was previously a lawyer. Mr Deane indicated specific sections of the unedited footage during which he said Mr Murray could be heard explaining the points noted above to the presenter.

The BBC said that Mr Murray made it clear to the presenter on several occasions that he would draw up the paperwork concerning the legally binding offer. It noted various extracts from the unedited recordings to illustrate and said that it was clear from these conversations that Mr Murray was claiming to be the person who would draft the legally binding offer documents and thereby offering reassurance to the client. The BBC also said that the programme did not suggest Mr Murray drew up the offer “because he was previously a lawyer” it stated quite clearly that his estate agency licence “allows” him to draw up such offers. The BBC said that while this may be common practice in Italy, it is not so in the UK and argued that British clients – with which Mr Murray stated he dealt with regularly - would take comfort from the belief that the transaction and drawing up of legal documents was being undertaken by a British lawyer, registered on the solicitors roll, and holding a current practice certificate.

Mr Deane said that in the unedited footage Mr Murray could be heard saying that he did not miss doing the law and that he now hates going back to Scotland. He argued that this did not tie in the programme’s suggestion that “Mr Murray would be returning to Scotland to do law”.

The BBC said that the following transcript (taken from the unedited footage) clearly showed that Mr Murray said that he might return to Scotland in certain circumstances and that, if he did, he “*would go back to doing law again*”. It said that Mr Murray said that this was because he was “*still registered as a lawyer in Scotland*” and he “*could go back and do that*”.

Presenter: "Would this be a place that you would come to?  
Mr Murray: Yes and no. Barga is nice enough. But I didn't come here to live amongst ex-pats. So that part puts me off.  
Presenter: Do you miss Scotland?  
Mr Murray: I can't say I do. The only thing which I have in my mind which would even make me think about going back would be if we became independent. If it becomes independent I will give it some thought.

(Mr Murray then talked about issues relating to Scottish independence.)

Presenter: "You would give up this lifestyle? This life?  
Mr Murray: I said I would think about it. That's a different matter.  
Presenter: Would you do estate agency back there?  
Mr Murray: I would go back to doing law again.  
Presenter: Would you?  
Mr Murray: Yes because I have still got...(indistinct)...I am still registered as a lawyer in Scotland. I am still on the solicitor's roll. I could go back and do that.  
Presenter: Would you want to?  
Mr Murray: At the moment, no.

However, the broadcaster argued that Mr Murray's intentions regarding returning to Scotland were not the central point. It said that Mr Murray's statements offered reassurance to potential clients that they were dealing with a lawyer registered in Scotland with a current practice certificate to whom they could entrust the task of drawing up legally binding documents. The BBC said that clients would be unaware that Mr Murray had been suspended from practicing law, and twice found guilty by legal tribunals of professional misconduct for committing deception, dishonesty and having misled clients, and of having provided inadequate professional service. They would also be unaware that Mr Murray still owed a former client a substantial sum of money arising from a compensation order made against him (see head a) iii) of the Decision below for Ofcom's consideration of Mr Murray's complaint about the way in which the programme presented his dealings with this client) and that the Law Society was in the process of submitting yet another complaint about him to the SSDT.

The BBC also provided a transcript of an un-transmitted portion of an interview with Ms Carole Ford, the Convenor of the Law Society of Scotland's Regulation Committee, who contributed to the programme. The transcript showed that at the time the programme was made Ms Ford told the programme's presenter that: there were two cases still outstanding against Mr Murray; he remained on the roll of solicitors "purely as a technical issue so that the Law Society can pursue him"; he was not able to practise as a lawyer because "he doesn't have a current practising certificate"; and, the Law Society would not give Mr Murray a practising certificate "until this case is concluded" and planned to continue to pursue the case against him.

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

Following the parties' submissions in connection with additional unedited footage, Ofcom prepared a Revised Preliminary View on this case so it consider what impact, if any, the additional unedited footage (and the representations thereon) had on head a) i) of the Initial Preliminary View on this complaint (i.e. that the inclusion of Mr Murray's comments to the programme's presenter about going "*back to doing law again...*" did not result in unfairness to him).

In the Revised Preliminary View we acknowledged that, during the period in which he was filmed secretly, Mr Murray had made a number of comments that could be interpreted to indicate that he was not keen to return to Scotland.

However, taking into account all the relevant factors (notably that Mr Murray had told the presenter that if he were to return to Scotland he would not be an estate agent and went on to say that he would “*go back to doing law again*”, which he could do because he was still on the solicitor’s roll) we concluded that, notwithstanding the omission from the programme of the circumstances which would need to apply before Mr Murray would consider returning to Scotland (i.e. Scotland becoming independent), the inclusion of the relevant exchange in the programme, and, in particular, Mr Murray’s claim about going back to doing law did not result in unfairness to the complainant (see Decision below for detailed consideration of this head of complaint). The Preliminary View in relation to heads a) i) and ii) and b) to e) of the complaint remained the same.

### **Representations on Ofcom’s Revised Preliminary View**

Mr Deane responded to this Revised Preliminary View on behalf of Mr Murray. Those comments which are relevant to the consideration of head a) i) of this complaint are summarised below.

Mr Deane said that Mr Murray remained concerned that not all of the secretly filmed unedited footage of him had been provided by the BBC. The comments provided by Mr Deane repeated the claim that Mr Murray believed that specific sections of footage had been filmed but not provided.

Mr Deane also reiterated Mr Murray’s previous claim that the unedited footage showed that the programme unfairly omitted Mr Murray’s explanations about the role of the Notaio in drawing up a purchase offer.

In addition, Mr Deane repeated Mr Murray’s argument that with regard to the comments about him going “*back to doing law again...*”, the programme had relied on one conversation and “chose[n] to ignore other conversations within which Mr Murray clearly stated that he would not be returning to Scotland. Mr Deane added that the BBC’s argument that Mr Murray’s statements offered reassurance to clients was “wholly without foundation”. He said that Mr Murray had never told the presenter whether or not he had a practising certificate from the Law Society; he (Mr Murray) did not need one to carry out his job as an estate agent in Italy (which he was qualified to do) and at no time did he say that he was acting as a lawyer or providing legal advice as a solicitor. Mr Deane also said that there was no duty on Mr Murray to disclose to any potential client the difficulties which he was having with the Law Society.

The BBC chose not to make any further points in response to this complaint other than to reiterate that it was asked to provide Ofcom with copies of all the secretly filmed unedited footage in relation to Mr Murray and it has done so.

### **Decision**

Ofcom’s statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unjust or unfair treatment and unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes in such services.

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

In reaching this Decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript and both parties' written submissions – including pre-broadcast correspondence between the broadcaster and the complainant. We also took into account an unedited recording of the secretly filmed footage of Mr Murray's conversation with programme's presenter (when she was undercover) about potentially returning to Scotland to practise law again as well as the additional unedited footage provided by the BBC after the Initial Preliminary View. Ofcom also took careful account of the representations made by both parties in response to the Initial Preliminary View; the additional unedited footage; and, the Revised Preliminary View.

### *Unjust or unfair treatment*

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

- a) Ofcom first considered Mr Murray's complaint that he was treated unjustly or unfairly because material facts were presented, disregarded or omitted in a manner which gave viewers an unfair impression of him.

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

We considered each sub-head of this part of the complaint in order to reach an overall view as to whether Mr Murray was treated unfairly in the programme as broadcast.

- i) Ofcom began by assessing the complaint that Mr Murray's comments to the programme's presenter about going "*back to doing law again...*" were shown out of context and thereby gave the unfair impression that he would be returning to Scotland to practise law.

We noted that (as set out in the "Introduction and Programme Summary" section above) the programme included footage of the following exchange between Mr Murray and the presenter (when she was posing as potential client):

|            |  |
|------------|--|
| Mr Murray: | <i>"I would go back to doing law again.</i>  |
| Presenter: | <i>Would you?</i>  |
| Mr Murray: | <i>Yes, I'm still registered as a lawyer in Scotland. I am still on the solicitors' roll".</i> |

In our opinion viewers would have understood this exchange to have indicated that it was possible that Mr Murray would go back to practise as a solicitor in Scotland and that he could do so because he was still registered as a solicitor in Scotland.

This section of the programme was an edited version of a longer exchange recorded during secret filming of Mr Murray.

It is important to note that the editing of a programme is an editorial matter for a broadcaster. However, in accordance with Practice 7.6 of the Code (which states that when a programme is edited, contributions should be represented fairly) broadcasters must ensure that the programme as broadcast does not result in unfairness to an individual or organisation.

Mr Deane said that when making these comments Mr Murray had understood that they were part of a general discussion and that on more than one occasion he had specifically indicated that he had no intention of returning to Scotland. In its response to the complaint, the BBC said that the section of the unedited recording from which this exchange was taken (a copy of which was provided) showed that that Mr Murray did not say that he had no intention of returning to Scotland. The broadcaster also said that several of the comments Mr Murray made alongside his statement that he “**would** go back to do law again” [broadcaster’s emphasis] made it clear that his return to Scotland would be contingent on the outcome of the then forthcoming vote on Scottish independence, and that were the circumstances right he would consider returning to Scotland where he was still registered as a solicitor and where he could again work in that capacity.

In response to the Initial Preliminary View that the inclusion in the programme of the relevant exchange did not result in unfairness to Mr Murray, Mr Deane submitted that the unedited footage of Mr Murray initially provided to Ofcom was an insufficient base from which to determine whether the way in which Mr Murray’s comments to the programme’s presenter about going “*back to doing law again...*” were presented resulted in unfairness to him.

In light of Mr Deane’s representations, we asked the BBC to provide a copy of all of the remaining unedited footage of Mr Murray recorded during the making of the above programme and gave both parties an opportunity to comment on this footage (see “Request for additional unedited footage and further representations” section above for details).

We noted that, having received a copy of the additional unedited footage, Mr Murray said that he believed that some of the unedited footage of him was missing – notably a conversation during which the presenter’s companion allegedly became angry at the presenter’s persistent questioning of Mr Murray about whether or not he would return to Scotland. However, we also noted that, in response to this claim, the BBC said that all of the secretly filmed footage which was recorded by the presenter had been disclosed; there were two sections of footage showing Mr Murray and/or his office from a distance (parts of which were included in the programme) which had not been provided but they included no audio; and, that all of the audio recorded was on the secretly filmed footage which had been disclosed. We noted that Mr Murray raised the same point in response to the Revised Preliminary View and the BBC reiterated that it had provided Ofcom with copies of all the secretly filmed unedited footage in relation to Mr Murray.

Ofcom is satisfied with the broadcaster's explanation that it has been provided with all the unedited footage which is germane to the point under consideration – i.e. all the secretly recorded footage which includes audio of comments made by Mr Murray to the presenter.

In response to the Initial Preliminary View Mr Deane also said that the unedited footage showed that the programme unfairly omitted a number of explanations, given by Mr Murray to the presenter, about the legal aspects of the prospective house purchase (in particular, the fact that they would be undertaken by a notaio or Italian lawyer and not by Mr Murray) and instead suggested that Mr Murray would have drawn up the purchase offer because he was previously a lawyer.

We observed that the unedited footage shows that Mr Murray told the presenter that: the drawing up of purchase offers by estate agents was common practice in Italy; that any purchase offer he drew up would be based on a template drafted by a notaio; and, that the legal aspects of any house purchase [other than the drawing up of the purchase offer] would be undertaken by either a notaio or an Italian lawyer.

However, as noted above, broadcasters have the editorial freedom to select and edit material as they wish provided that the programme as broadcast does not result in unfairness to the individual concerned.

As set out in the "Introduction and programme summary" above, Mr Murray was shown saying to the presenter *"I will draw you up an offer which you sign"*, confirming that it would be *"a legally binding offer"* and, explaining that it had to be accompanied by a deposit of £5,000.

Immediately afterwards (and just before showing Mr Murray's comments about going *"back to doing law again"*) the programme said:

*"So a solicitor the Scottish regulation system deemed to be dishonest, found guilty of deception and misleading clients, is going to be doing some of the legal work for my half a million pound house purchase, a man whom in the opinion of our panel of experts should have been struck off. As Murray drove me back to my car for the last time, he left me with these comforting words..."*

However, we observed that the programme also explained that *"Tom's estate agency license in Italy means he's the one who would draw up some of the legal paperwork"* and that *"Thomas Murray is doing nothing illegal in his new life as an estate agent..."*

In our view, given the inclusion of these two comments, viewers would have understood that the drawing up of initial purchase offers by estate agents (i.e. anyone who held an estate agency licence as Mr Murray did) was common practice in Italy and that there was nothing wrong in Mr Murray doing so. In particular, notwithstanding the description of the initial purchase offer as *"some of the legal paperwork"* (a phrase which in our opinion reflected the fact that, in general, an offer of this type made in the UK, would be drawn up by a solicitor), we do not consider that a reasonable viewer would have understood the programme to have claimed that Mr Murray would have drawn up an initial purchase offer on behalf of clients because he was previously a lawyer.

We noted that in response to the Revised Preliminary View Mr Deane said that the BBC's argument that Mr Murray's statements offered reassurance to clients was "wholly without foundation". Mr Deane also said that Mr Murray had never told the presenter (who, as noted above, he had believed to be a prospective client) whether or not he had a practising certificate from the Law Society; he (Mr Murray) did not need one to carry out his job as an estate agent in Italy (which he was qualified to do) and at no time did he say that he was acting as a lawyer or providing legal advice as a solicitor. Mr Deane also said that there was no duty on Mr Murray to disclose to any potential client the difficulties which he was having with the Law Society.

In relation to these comments, we observed that the programme did not claim that Mr Murray had told the presenter he had a practising certificate; nor indicated that he needed one to work as an estate agent Italy. Rather, as set out above, the programme made clear that it was legitimate for Mr Murray to draw up purchase offers because he held an estate agent's licence.

We also observed that the programme did not explicitly state that Mr Murray had a duty to disclose his difficulties with the Law Society to potential property purchasers. Nonetheless, in our view it did indicate he was prepared to talk about his previous legal experience as mean of reassuring a prospective client (namely the undercover presenter) but had not disclosed the Law Society's findings against him on this same occasion.

We considered that, given that the programme included footage of Mr Murray talking to the presenter about the fact that he used to be a lawyer in Scotland and confirming that he had been able to draw on his "*Scottish law experience*" in his current work, viewers would have been able to draw their own conclusions on the extent, if any, to which Mr Murray relied on his previous legal experience in Scotland to provide reassurance to prospective property purchasers.

Taking account of all of these factors, we considered that the broadcaster had taken reasonable care to satisfy itself that, in relation to the way in which Mr Murray's role in the legal aspects of a house purchase was presented, material facts were not presented or omitted or disregarded in a way that portrayed Mr Murray unfairly.

We then turned back to the complaint that the way in which Mr Murray's comments about going "*back to doing law again...*" were presented resulted in unfairness to him. We noted that Mr Deane said that in the additional unedited footage Mr Murray could be heard saying he did not miss doing the law and that he now hates going back to Scotland. Mr Deane argued that this did not tie in the programme's suggestion that "Mr Murray would be returning to Scotland to do law". In response to the Revised Preliminary View, Mr Deane also said that the programme had "chose[n] to ignore other conversations within which Mr Murray clearly stated that he would not be returning to Scotland.

Having assessed the additional unedited footage, Ofcom accepts that Mr Murray made a number of comments that could be interpreted to indicate that he was not keen to return to Scotland – notably, in response to questions from the presenter he said that he did not miss Scotland and that he now hated going back home (i.e. to Scotland).

We also noted that Mr Deane considers that it is possible to interpret the full conversation between the presenter and Mr Murray from which the relevant

exchange was drawn as Mr Murray indicating that he had no intention of going back to Scotland to practice law.

With regard to this exchange, we observed that, when asked by the presenter if he missed Scotland Mr Murray responded: "I can't say that I do. The only thing that would even make me think about going back was if it became independent". He subsequently explained that, in his view, the current system (i.e. government from Westminster) was not democratic. However, during this conversation Mr Murray did not (as indicated both in this complaint and a letter sent by Mr Deane to the programme makers on Mr Murray's behalf prior to the broadcast) specifically state that he had no intention of ever returning to Scotland. Rather, when asked by the presenter if he would "give up this lifestyle" Mr Murray replied "I said I'd think about it..." and when asked if he would "do estate agency back there [i.e. Scotland]" Mr Murray said: "I would go back to doing law again...I'm still registered as a lawyer in Scotland...I am still on the solicitor's roll. I could go back and do that". In addition, when asked if he would want to do this (i.e. go back to being a lawyer in Scotland) Mr Murray responded: "At the moment, no".

In our view, the key to determining if Mr Murray was treated unfairly is not whether or not he would return to Scotland, but whether the inclusion of his comment about going "*back to doing law again*" in the programme resulted in unfairness. This is because with regard to the three solicitors who had been investigated for professional misconduct by the Law Society and the SSDT (of whom Mr Murray was one) the focus of the programme was whether or not they had been appropriately disciplined and if they should, either in theory or practice, be able to work as lawyers.

It is clear that Mr Murray told the presenter that if he were to return to Scotland he would not be an estate agent and that he went on to say that he would "*go back to doing law again*", which he could do because he was still on the solicitor's roll.

Therefore, taking account of all of the factors set out above, we concluded that, notwithstanding the omission from the programme of the circumstances which would need to apply before Mr Murray would consider returning to Scotland (i.e. Scotland becoming independent), the inclusion of this exchange in the programme, and, in particular, Mr Murray's claim about going back to doing law did not result in unfairness to the complainant.

- ii) Ofcom next assessed the complaint that by heavily focussing on Mr Murray, in contrast to the other two solicitors featured, the programme gave the impression that his offences were either of equal or greater magnitude compared to those of these two solicitors.

We observed that of the time given in the programme to the three solicitors whom the SSDT had made findings against, the majority was allotted to Mr Murray (approximately ten and half minutes compared to six and half minutes and two and half minutes to the other two solicitors).

The amount of time given to a particular element of a programme compared to others is an editorial decision for the broadcaster. In making these decisions however, programme makers must ensure that material facts are not presented unfairly and that those against whom significant allegations are made are given an opportunity to respond.



We noted that it was made clear that the SSDT had made findings of serious misconduct against all three of the solicitors featured. The circumstances of these findings were set out in the programme and, in particular, the programme included specific information about the misconduct of each of the two other solicitors featured alongside Mr Murray. For example, the programme said that despite being “*struck off for being hopelessly incompetent*” the first lawyer featured continued to advise “*vulnerable clients*” regarding immigration and asylum issues. It also: set out a history of complaints made against the third solicitor; explained that the SSDT had heard a case against him relating to his “*borrowing £60,000 of client’s money without consent*”; and, claimed that he had circumvented the restrictions placed on his certificate to practise by adopting the identity of the solicitor who had been assigned to supervise his work. The programme made clear that, although only the first solicitor featured had been “*struck off*” the register of practising solicitors in Scotland by the SSDT, the view of the panel of legal experts who contributed to the programme was that this would have been the appropriate sanction for both of the other two solicitors featured – one of whom was Mr Murray.

In its response the BBC said the time allotted to Mr Murray’s story was based on the fact that despite the SSDT’s three findings of dishonesty, relating to the misuse and misappropriation of client’s money, against Mr Murray he continued to work in an occupation where trust and integrity were paramount and in which he might be involved in taking customer deposits.

Although Mr Murray complained about the omission of specific information relating to his dealings with Mr McKechnie (see Decision at head a) iii) below for details) he did not dispute either the information included in the programme about the SSDT findings against him, or the fact that he now worked in a role in which financial probity was important.

In light of these observations, we concluded that the fact that more time was given to Mr Murray’s story than to the two other solicitors featured did not result in unfairness to the complainant.

- iii) Ofcom considered the complaint that the programme omitted to mention the long-running and on-going dispute between Mr Neil McKechnie (a former client of Mr Murray) and Mr Murray despite being made aware of it in pre-broadcast correspondence.

Mr Deane said that, although the programme acknowledged that Mr Murray had obtained a decree for £150,000 against Mr McKechnie, it did not ask Mr McKechnie if he considered the existence of this decree provided a valid reason for Mr Murray’s non-payment of the order made by the SSDT.

As set out in the “Introduction and programme summary” above, Mr McKechnie was one of two former clients of Mr Murray who contributed to the programme. We observed that the programme set out the history behind the SSDT finding against Mr Murray with regard to the work he carried out for Mr McKechnie. In particular, it said that despite becoming bankrupt a year after he first took on both a divorce and an employment case for Mr McKechnie (i.e. in 2001) – and thereby being automatically suspended from practising as a solicitor in Scotland – Mr Murray failed to make his client aware of the change in his status. It also made it clear that Mr McKechnie did not complain to the SSDT until 2004 and that the outcome of this complaint was that: “*Murray was found guilty of inadequate professional service and ordered to pay back £3,000 of fees and £1,000*

*compensation*". In addition, the programme indicated that at the time the programme was being made Mr McKechnie "remain[ed] *aggrieved*" and considered that Mr Murray still owed him fees of around £6,000 plus £1,000 compensation. Further, as acknowledged in the complaint, the programme said that although Mr Murray decided not to respond to the claims made about him in the programme he did say: "*that he'd gained a decree against Neil McKechnie for £150,000 which remained unpaid*".

We considered that viewers would have understood both the nature and the lengthy time-span of the disagreement between Mr Murray and Mr McKechnie. They also would have been aware that neither party to this dispute had conceded to the other's point of view with regard to whether it would be appropriate for Mr Murray to pay Mr McKechnie the fees and compensation he was ordered to by the SSdT.

For these reasons, we concluded that the manner in which the relationship between Mr Murray and Mr McKechnie was presented (and in particular the fact that the programme did not include Mr McKechnie's position with regard to the £150,000 decree and its impact, if any, on his continuing claim against Mr Murray) would not have resulted in unfairness to the complainant.

Having assessed each sub-head identified in the entertained complaint as being particularly unfair to Mr Murray separately, Ofcom concluded that as regards each of these sub-heads, the material facts were not presented, omitted or disregarded in a way that portrayed Mr Murray unfairly in the programme as broadcast.

Ofcom also carefully assessed the parts of the programme relating specifically to Mr Murray as a whole, to reach a view as to whether the programme in its entirety was unfair. We noted in particular that the complainant had not disputed the validity of several key pieces of factual information about him included in the programme (notably the details of the SSdT findings against him; the claim that he had not paid fees and compensation to Mr McKechnie as ordered; and, the location and nature of his current work). After careful consideration Ofcom found that, when taken as a whole, the portrayal of Mr Murray did not result in unfairness to him in the programme as broadcast.

- b) Ofcom then considered Mr Murray's complaint that he was treated unjustly or unfairly because the programme makers used deception and surreptitious filming to obtain footage of Mr Murray.

In assessing this part of the complaint, Ofcom had particular regard to Practice 7.2 of the Code which states that broadcasters and programme makers should normally be fair in their dealings with potential contributors to programmes unless, exceptionally, it is justified to do otherwise. Ofcom also had regard to Practice 7.14 of the Code. This states that broadcasters or programme makers should not normally obtain or seek information, audio, pictures or an agreement to contribute through misrepresentation or deception. (Deception includes surreptitious filming or recording.) However, it may be warranted to use material obtained through misrepresentation or deception without consent if it is in the public interest and cannot reasonably be obtained by other means.

We noted that Mr Murray was filmed secretly while he talked to the presenter of the programme who was posing as a potential client of the estate agency for

which Mr Murray worked, and that some of this footage was included in the programme.

From the information submitted by both parties we understood that prior to recording the secretly filmed footage the programme makers did not ask Mr Murray about his previous conduct (i.e. the incidents featured in the programme). However, in its response to this complaint, the BBC said that the secret filming was carried out to determine whether Mr Murray was continuing to use his status as a solicitor to reassure clients who might be considering asking him to act for them in property transactions, thereby placing him in a position of trust – notably in relation to their money. This contrasted with the complainant's view that the secret filming was a means to elicit information from Mr Murray about his relationship with Mr Usher and Mr McKechnie or the SSDT findings.

In this context, we noted that in the complaint Mr Deane acknowledged that the presenter did not ask Mr Murray any questions about his past conduct during the recording of this footage. We also noted that the secretly filmed footage included in the programme focused on how Mr Murray conducted himself in his current role as an estate agent in Italy.

The BBC said that the secretly filmed footage showed that, despite using his position as a registered solicitor to reassure potential clients, Mr Murray did not mention the disciplinary proceedings against him.

We observed that Mr Murray would have regularly dealt with potential clients in his role as an estate agent and that, on the information available to us, it appeared that while posing as a potential client the presenter spoke to Mr Murray about matters pertaining to his current role. We considered that a deception of this nature was relatively minor.

Having taken account of the factors set out above, we took the view that it would not have been possible for the programme makers to have obtained evidence of how Mr Murray would usually behave towards prospective clients without the use of deception and secret filming. This was because we considered it was unlikely that Mr Murray would have spoken to the presenter in a candid manner had he been aware that he was being filmed by the programme makers rather than believing that he was showing properties to a potential client.

We also considered that the obtaining of this footage and its subsequent inclusion in the programme enabled viewers to assess for themselves to what degree Mr Murray was prepared to rely on his former status as a solicitor in order to help to secure the custom of potential clients. In addition, in the context of the programme as a whole, the relevant footage provided a direct illustration of the impact which the SSDT findings had on Mr Murray's ability to act in a position where trust was essential.

Ofcom next went on to consider how the relevant material was presented in the programme as broadcast in order to ascertain if it resulted in unfairness to him.

The secretly filmed footage of Mr Murray included in the programme showed him:

- talking about and showing properties for sale to the presenter;
- explaining that he used to work as a lawyer in Scotland and agreeing that he had drawn on that experience in his current role; and,

- setting out how, if a client wanted to buy a property, he would draw up a legal binding offer which would need to be accompanied by a deposit of £5,000.

As noted above, the programme also included secretly filmed footage of an exchange between Mr Murray and the presenter about the possibility that Mr Murray could go back to Scotland to practise as a solicitor. We recognised that Mr Deane had complained that this was unfair to Mr Murray because he had informed the programme makers that he had no intention of returning to Scotland. However, as set in the Decision at head a) i) above, we concluded that the inclusion of this exchange in the programme did not result in unfairness to Mr Murray.

The basis on which the comments made by Mr Murray in the secretly recorded footage which was included in the programme (i.e. that he understood that he was talking to a prospective client) was made clear to viewers. In addition, from the footage it appeared that Mr Murray was expressing himself in his own words and that he did so freely (i.e. that he did not make any of these comments under duress). Further, in our view, there was nothing particularly contentious about the information Mr Murray gave to the presenter. This was because the conversation either pertained to his work as an estate agent and the functions which he would carry out for any client, or formed part of a general conversation which someone in Mr Murray's position might be expected to have with a potential client. We also observed that Mr Deane did not provide Ofcom with any evidence to support the view that the inclusion of the relevant footage in the programme resulted in unfairness to Mr Murray.

Taking all of the factors set out above into account, we took the view that there was a public interest in the programme makers recording and subsequently broadcasting the relevant footage, and that the deception practised on Mr Murray in order to enable them to do so was warranted. This was because the obtaining and subsequent use of this footage enabled viewers to judge for themselves whether and to what degree Mr Murray was prepared to rely on his previous career as solicitor to reassure potential clients and because it was unlikely that Mr Murray would have spoken to the presenter in a candid manner had he been aware that he was being filmed by the programme makers rather than believing that he was showing properties to a potential client. The programme informed viewers about the nature of the deception practised on Mr Murray and gave an accurate picture of the comments he made to the presenter when she was posing as a prospective client. Therefore, we found that there was no unfairness to Mr Murray in the programme as broadcast in this respect.

#### *Unwarranted infringement of privacy*

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

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

- c) Mr Deane complained that Mr Murray's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because footage of him was filmed secretly without his permission.

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 had regard to Practice 8.9. This states that the means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme.

Ofcom first considered whether the surreptitious filming was, in itself, warranted.

Mr Deane said that Mr Murray was not asked to comment on the allegations made about him prior to the recording of this footage. He also argued that the information about Mr Murray obtained through recording this footage could have been obtained without surreptitious filming. In its response, the BBC argued that the surreptitious filming was warranted because there was a public interest in gathering evidence regarding whether Mr Murray was continuing to use his status as a solicitor to reassure clients who might be considering asking him to act for them in property transactions, thereby placing him in a position of trust – notably in relation to their money. It said that filming the complainant secretly (and the subsequent inclusion of some of this footage in the programme) was the only way in which to establish and demonstrate whether or not this was the case.

As set out in the Decision at head b) above, in our view, it would not have been possible for the programme makers to have obtained evidence of how Mr Murray would usually behave towards prospective clients without the use of deception and secret filming. We also noted our earlier conclusion that the deception practised on Mr Murray in order to obtain this footage (i.e. the presenter posing as a prospective client) was relatively minor. In addition, we took the view that the use of this deception would have been unlikely to have elicited any information from Mr Murray other than that which he would be willing to provide to any client.

Therefore, in Ofcom's 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 Murray had a legitimate expectation of privacy in the circumstances in which he was filmed, i.e. surreptitiously by the undercover presenter. As stated in the Code: "legitimate expectations of privacy will vary according to the place and nature of the information, activity or condition in question".

The filming took place: in the office of the estate agency where Mr Murray worked; as Mr Murray was driving to or showing properties to the presenter; and during breaks between showings. From the footage provided to Ofcom, the conversation between the complainant and the presenter focused on: the properties being shown; the role that Mr Murray would play if the presenter wished to make an offer for any of the properties (notably the drawing up of a legally binding offer); and, Mr Murray's comments about his previous work as a

solicitor in Scotland – including whether he might consider going back to Scotland to practise law. 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, the BBC argued that the client rather than the estate agent would usually be considered to have a greater expectation of privacy in respect of an exchange of this type. In addition, we noted that the complaint did not indicate that Mr Murray disclosed any private information about his personal life, nor any private and sensitive business or financial information in relation to his work during the recording of this footage and none of the footage seen by Ofcom suggested that he had.

Taking these factors into account, Ofcom concluded that Mr Murray had a legitimate expectation of privacy in relation to the surreptitiously filmed material, but that this expectation was limited by the fact that the content of the conversation was not particularly private or sensitive in nature.

Ofcom went on to consider whether it was warranted to infringe Mr Murray's expectation of 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.

Mr Deane argued that there was no prima facie evidence of wrongdoing on Mr Murray's part with regard to any of his current activities and there was no need to film Mr Murray secretly in order to clarify any matter regarding the SSDT findings against him as these were all in the public domain. Mr Deane also said that Mr Murray was not hiding from the authorities and had not acted in manner to warrant investigation about his whereabouts. However, we observed that, as set out above, the purpose of this filming was not find evidence of wrongdoing or to seek information about the SSDT findings. Rather, the recording was undertaken in order to assess how, in light of the previous findings against him, Mr Murray acted towards current clients in circumstances where he [Mr Murray] might well be dealing with financial matters. In addition, we observed that the programme did not indicate that Mr Murray had been hiding or that his location was unknown.

We considered that there was public interest in the programme makers recording (and subsequently broadcasting) the relevant footage. This was because, as noted above, doing so enabled viewers to assess for themselves to what degree Mr Murray was prepared to rely on his former status as a solicitor in order to help to secure the custom of potential clients. It also allowed the programme to provide a direct illustration of the impact (or lack thereof) which the SSDT findings had on Mr Murray's ability to act in a position where trust was essential.

Given all the factors set out above (and in particular that the three SSDT findings against Mr Murray concerned his financial probity), Ofcom considered the broadcaster's right to freedom of expression and the public interest in obtaining footage of Mr Murray's conduct towards clients of the estate agency and notably

the extent to which he was prepared to rely on his former role as solicitor to reassure said clients, outweighed the complainant's expectation of privacy.

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

- d) Mr Deane complained Mr Murray's privacy was unwarrantably infringed in the programme as broadcast because secretly filmed footage of him was broadcast without his permission.

In relation to the part of the complaint, we had regard to Practices 8.6 and 8.14 of the Code. Practice 8.6 of the Code 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.

Having already reached the view that the use of surreptitious filming to obtain the relevant material was warranted, Ofcom considered the extent to which Mr Murray had a legitimate expectation of privacy in the broadcast of this material in the programme. We took account of the circumstances in which Mr Murray was filmed as well as the actual material broadcast. Mr Murray was unaware that his conversation with the undercover presenter was filmed. Ofcom took the view that conversations 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, Mr Murray did not disclose anything particularly private in relation to either his work or personal life in the footage included in the programme. Taking these factors into account, Ofcom considered that Mr Murray had a legitimate expectation of privacy in relation to broadcast of the footage, but that this expectation was limited because the content of the conversation was not particularly private or sensitive in nature.

Ofcom next assessed whether broadcasting this footage was warranted.

Ofcom carefully balanced Mr Murray's right to privacy in relation to the broadcast footage obtained through surreptitious filming against both 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 the footage of Mr Murray because, as noted above, doing so enabled viewers to assess for themselves to what degree Mr Murray was prepared to rely on his former status as a solicitor in order to help to secure the custom of potential clients. In addition, as previously noted, the footage also allowed the programme to provide viewers with a direct illustration of the impact which the SSDT findings had on Mr Murray's ability to act in a position where trust was essential.

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 footage of Mr Murray's current conduct towards clients, outweighed the complainant's limited expectation of privacy.

Ofcom therefore found that Mr Murray's privacy was not unwarrantably infringed in the programme as broadcast in this respect.

- e) Ofcom lastly assessed Mr Deane's complaint that Mr Murray's privacy was unwarrantably infringed in the programme as broadcast because the programme disclosed part of Mr Murray's home address which he said was not warranted by the public interest.

Practice 8.2 of the Code states that information which discloses the location of person's home or family should not be revealed without permission, unless it is warranted.

When showing copies of the SSDT findings against Mr Murray, the programme pixelated Mr Murray's address. In addition, when showing Mr Murray's accreditation as an estate agent in Italy the programme showed only the following part of Mr Murray's address: "Molazzana (LU) Localita ' Canale...". As set out in the "Introduction and programme summary" above, the programme also said that Mr Murray lived in a 400 year old farmhouse in the hills near Borgo a Mozzano in the province of Lucca, Tuscany.

We considered that the programme included significant information relating to Mr Murray's home address. However, we also observed that there are a number of old farmhouses in the area near Borgo a Mozzano and that the programme did not include either the name or number of Mr Murray's property or any images of it from which (in combination with the information which was included) its location might have been identifiable. In light of this we considered that the programme did not reveal the precise location of Mr Murray's home.

To establish whether or not Mr Murray's privacy was unwarrantably infringed in the broadcast of the programme in relation to the information about the location of his home which was broadcast, Ofcom assessed the extent to which he had a legitimate expectation of privacy in this respect.

Mr Murray did not consent to the disclosure of the information relating to the location of his home in the programme. However, as set out above, the programme did not disclose its precise location. In addition, we noted that, in its response to the complaint, the BBC said that Mr Murray's accreditation as an estate agent in Italy, which was shown in the programme, was a public document.

Taking account of all of these factors, we concluded that Mr Murray did not have a legitimate expectation of privacy with regard to the inclusion of the information which disclosed part, but not all, of his Italian address in the programme.

Given this conclusion, it was not necessary for Ofcom to consider whether any infringement of Mr Murray's privacy in regard to the broadcast of the relevant information was warranted.

Ofcom therefore found that Mr Murray's privacy was not unwarrantably infringed in the programme as broadcast in this respect.

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



## Not Upheld

### Complaint by Ms K

*CCTV: Caught on Camera – Lift Watching, Channel 4, 9 June 2014*

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#### Summary

Ofcom has not upheld Ms K's complaint of unwarranted infringement of privacy in the programme as broadcast

The programme included CCTV footage of Ms K performing oral sex on a man in a lift. Ms K's face and that of the man she was with were obscured and their voices were not heard. Ms K was not named in the programme.

Ofcom found that Ms K had a limited legitimate expectation of privacy. However, in the particular circumstances of this case, to the limited extent that Ms K's privacy may have been infringed, the public interest in broadcasting footage showing the role of CCTV cameras in monitoring anti-social behaviour outweighed Ms K's expectation of privacy. Therefore, Ofcom found that Ms K's privacy was not unwarrantably infringed in the programme as broadcast.

#### Introduction and programme summary

On 9 June 2014, Channel 4 broadcast an edition of its reality documentary series *CCTV: Caught on Camera*. This episode, entitled *Lift Watching*, examined the use of CCTV cameras to monitor the public areas of 19 council-owned tower blocks in Southampton and included the views and opinions of CCTV operators and residents on the impact of CCTV. The programme also showed CCTV footage of a variety of people and their behaviour in the lifts and the communal areas of the tower blocks.

The programme began with an introductory montage of clips taken from the CCTV footage. One clip showed, briefly, a woman (the complainant, Ms K) performing oral sex on a man in a lift. Accompanying this footage, one CCTV operator said: *"Us humans, we are disgusting sometimes"*.

Further on in the programme, more CCTV footage of Ms K in the lift was shown. This part of the programme began with the CCTV operators discussing the drunken behaviour that they witnessed, particularly on Friday and Saturday nights. At this point, a second CCTV operator said:

*"Every Friday night, there will be couples going out of the lift dressed up. And they will be coming home at some point. And they'll be coming home in a state, whether that's drunk, angry, cuddly, loving, sex. It, there is always some sort of state"*.

CCTV footage of Ms K and a man entering a lift and then Ms K performing oral sex on him was shown. This was interwoven with footage of the same CCTV operator being interviewed. He explained that when people are having sex in a lift: *"they don't give a shit about the camera, they don't care about the camera. He's got his leg up and he's as happy as Larry"*. The CCTV footage then showed the man leaving the lift and fastening up his trousers. A third CCTV operator was shown at this point admitting that she herself had been caught having sex in public.

Immediately following this, the programme showed Ms K in the lift pulling up her underwear. Ms K's naked upper thigh and pelvic area was partially shown. Ms K was shown from behind as she left the lift. The back of her dress was around her waist revealing her underwear. The total duration of the footage of Ms K shown in the programme was approximately 31 seconds. Ms K was neither shown nor discussed in any other section of the programme.

Ms K's face and that of the man she was with were obscured and their voices were not heard. Ms K was not named in the programme.

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

Ms K complained that her privacy was unwarrantably infringed in the programme as broadcast because CCTV footage of her engaged in sexual activity with a man in a lift was included in the programme without her consent.

Ms K's face was obscured in the programme; however, she said that friends and family had recognised her from the footage and that the programme had negatively affected her social relationships and her employment prospects. She said that the stress of being recognised in the programme had caused her to go into premature labour. Ms K also said that at the time the CCTV footage was filmed, she had been very drunk and that she had not been "at the best point in her life".

In response, Channel 4 said that the series provided a unique insight into the uses of CCTV, explored the various uses of CCTV in Britain, provided unique access to CCTV surveillance teams and the agencies they work with and considered whether the use of CCTV makes the public any safer. The broadcaster said that the programme featured testimony from the surveillance teams monitoring Southampton's 19 council-owned tower blocks. The broadcaster felt that it was vital to a fair portrayal of these controllers that the programme included an honest representation of the behaviour they are exposed to and required to deal with. Channel 4 said that the programme also featured a range of residents' opinions on CCTV (including those who akin it to a "nanny state" and those who believe the cameras have made the area safer), and that it was necessary to show clips of a range of CCTV footage from the tower blocks (for example, footage of drug deals, graffiti artists, people urinating in the lifts and various other displays of anti-social behaviour) in order for viewers to fully understand these points of view.

The broadcaster said that from the outset of the *CCTV: Caught on Camera* series it paid careful attention to the issue of contributor privacy. In particular, Channel 4 said that prior to filming it was agreed that the production company and Channel 4 would only seek to include and identify individuals without consent where it was determined that an individual did not have an expectation of privacy; or, in cases where the individual did retain an expectation of privacy, that broadcast and identification was justified by the public interest.

Channel 4 said that while it recognised that footage of a person engaging in a private sex act would normally give rise to a legitimate expectation of privacy, this was not a private occasion, but occurred in a communal lift, accessible to all residents and visitors, and which was fitted with 24 hour CCTV cameras. Further, Channel 4 also said that Southampton City Council had placed "extensive and prominently displayed signage" in and around all of the tower blocks, in areas covered by CCTV including the lifts, to notify residents and other members of the public about the use of CCTV. Channel 4 said that these signs read as follows:

***“WARNING 24 Hour CCTV. Images are being recorded for the purposes of crime prevention and public safety and may be shared with third parties. The scheme is controlled by Southampton City Council’s Concierge Service”.***

In reviewing the unedited CCTV footage of the complainant, Channel 4 said that it was clear that the cameras were prominently placed, easily visible and not inconspicuous. Channel 4 said that the unedited footage showed Ms K entering the lift, immediately pulling down her underwear and crouching on the floor to urinate in the lift, while the man stood in front of her, smoking. The broadcaster said that while Ms K was crouched on the floor, she appeared to gesture with her head towards the cameras, and that the man attempted to cover the cameras with his hands. The broadcaster said that, given the man’s attempt to cover the cameras and the fact that the cameras were not covert and were prominent and easily visible, it therefore seemed reasonable to assume that Ms K and the man were aware that the cameras were recording them. Channel 4 said that the man remained in this position very briefly before removing his hands from the cameras. Channel 4 noted that the man then undid his flies and that Ms K, who was still crouched on the floor urinating, then briefly performed an act of oral sex on the man. The broadcaster said that when the lift stopped, the man quickly exited the lift and held the door open, while the woman remained crouched on the floor urinating, so that the interior of the lift was visible to the corridor and could have been seen by members of the public who may have been waiting to use the lift. Channel 4 stated that Ms K then stood up, pulled up her underwear and exited the lift.

Channel 4 said it was clear from the CCTV footage that neither Ms K (nor the man) “had any regard for other residents who use the lifts; nor did the complainant have any apparent concern that she may be seen by other residents or members of the public when the lift doors were open; nor any regard as to the effect on other people of seeing the complainant performing an act [of] oral sex on the man and urinating on the floor”. Channel 4 stated that in these specific circumstances, any legitimate expectation of privacy the Complainant had was severely limited.

Further, Channel 4 noted that performing sexual activities in public may amount to a criminal offence and, as such, Ms K’s behaviour, in performing the sexual activity, further limited any expectation of privacy she may have had. The broadcaster also said that a person cannot have a legitimate expectation of privacy in circumstances where their behaviour is severely anti-social and contravenes public decency in the manner shown in the CCTV footage i.e. urinating on the floor of a communal lift and performing a sex act in a communal lift.

In response to Ms K’s claim that she had been very drunk and had not been “at the best point in her life” at the time the CCTV footage had been filmed, Channel 4 said that the footage does not show the complainant to be in distress. The broadcaster said that neither did the CCTV footage show Ms K to be heavily intoxicated nor unaware of her actions, as she seemed to be aware of the cameras and able to balance whilst crouching on the floor, walked out of the lift unaided and did not seem to be a particular risk to herself.

Channel 4 noted that the complainant had identified herself as being the woman in the CCTV footage but that because the identity of the woman was unknown it was unable to corroborate whether this was the case. Channel 4 added that the complainant had provided no evidence as to who had allegedly identified her and how they had identified her.

Further, Channel 4 said that the CCTV footage was “grainy”, that the face of the Complainant and the man were heavily blurred and fully obscured and that it took proportionate steps to ensure that the complainant was unidentifiable. The broadcaster added that Ms K was not named, was not wearing anything particularly distinctive, there was no audio of her voice and there were no details given about her. Channel 4 stated that Ms K’s address was not revealed (other than the fact that she was present in one of the tower blocks) and the footage was not attributable to a particular tower block, and nor was the tower block from which the footage was taken identifiable. Channel 4 stated that there are 19 Council-controlled tower blocks in Southampton, in which live more than 4,500 people who are monitored by over 300 CCTV cameras. It said that the programme featured CCTV footage taken from 15 of the tower blocks. Similarly, no personal information was given about the man filmed with her.

In relation to whether or not Channel 4 should have obtained Ms K’s consent, it said that it was not a necessary prerequisite to obtain Ms K’s consent because the inclusion of her in the programme was in an unidentifiable manner. Therefore, Channel 4 said that Ms K and the man were unidentifiable so there could be no infringement of Ms K’s privacy.

In any event, Channel 4 said that Ofcom’s Broadcasting Code (“the Code”) cited “protecting public health or safety” as an example of a matter which would be considered in the public interest to reveal. The broadcaster added that the editorial aims of the programme clearly fulfilled this criterion. Channel 4 stated that there was a clear public interest in developing viewers’ understanding and awareness about the purpose of CCTV, its prevalence how it is used, the extent to which people are monitored and by whom, its efficacy in terms of crime prevention, crime reduction and reducing anti-social behaviour and whether or not it protects public health and safety.

Channel 4 submitted that the inclusion of the CCTV clips featuring the complainant was a clear demonstration of why the CCTV systems and controllers were installed at significant public expense. It also stated its belief that showing such material in the programme helped to develop viewers’ understanding of the effects of anti-social behaviour on other members of the public. Therefore, Channel 4 said that in blurring the complainant and the man, appropriate steps were taken in balancing any limited privacy rights of the individuals concerned and the competing rights of freedom of expression of the programme maker, Channel 4 and the viewing public.

Channel 4 concluded that any intrusion into the complainant’s privacy in the programme as broadcast, which the broadcaster did not admit, was entirely warranted by the public interest value of the matters revealed. It said that the steps taken to conceal the complainant’s identity and whereabouts were proportionate in the circumstances.

### **Ofcom’s Preliminary View**

Ofcom prepared a Preliminary View in this case that the complaint of unwarranted infringement of privacy in the programme as broadcast should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View, however, neither Ms K nor Channel 4 chose to do so.

## Decision

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

The individual's right to privacy has to be balanced against the competing rights of the broadcasters to freedom of expression. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate. This is reflected in how Ofcom applies Rule 8.1 of the Code which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

In reaching this decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast and both parties' written submissions. We also examined the unedited CCTV footage of Ms K.

Ofcom considered Ms K's complaint that her privacy was unwarrantably infringed in the programme as broadcast because CCTV footage of her engaged in sexual activity with a man in a lift was included in the programme without her consent.

We firstly considered the extent to which Ms K had a legitimate expectation of privacy in the circumstances in relation to the CCTV footage of her broadcast in the programme.

Section Eight (Privacy) of the Code states that legitimate expectations of privacy this will vary according to a range of factors including the place, the nature of the information and the activity in question. Further, the Code states that there "may be circumstances where people can reasonably expect privacy even in a public place" and that "[s]ome activities [...] may be of such a private nature that filming or recording, even in a public place, could involve an infringement of privacy". Further, the Guidance to Section Eight (Privacy) of the Code states that "[p]rivacy is least likely to be infringed in a public place" but that "there may be circumstances where people can reasonably expect a *degree* of privacy even in a public place" (emphasis in original). The Guidance states that in such circumstances the degree of privacy people can reasonably expect in a public place will "always be dependent on the circumstances".

As set out in the "Introduction and programme summary" section above, Ofcom noted that Ms K was shown accompanied by a man as she entered a lift in one of the Council tower blocks. She was then shown, albeit briefly, crouched on the floor, where she performed oral sex on the man.

Ofcom noted that CCTV footage of Ms K engaging in a private activity, i.e. performing oral sex, was shown in the programme. However, we noted that she carried out this private activity in a public place, namely in an area to which the general public had access and which was covered by 24-hour CCTV surveillance monitored by CCTV operators.

We also took into account that the unedited footage of Ms K and her male companion which showed Ms K gesturing towards the CCTV cameras in the lift and the man then reaching up to cover these cameras with his hands. We also noted the broadcaster's comments that the lift, and other communal areas of the tower blocks, contained prominent signage notifying residents of the tower blocks and the general public that 24-hour CCTV surveillance monitored by CCTV operators was in operation and that the footage may be shared with third parties. This, in our view, demonstrated that Ms K was likely to have been aware of the presence of the two CCTV cameras and that she was being filmed. However, we also noted that Ms K said she had been very drunk at the time she was filmed and, in our view, this may have affected her ability, to some extent, to fully understand the potential consequences of her actions.

Taking all of these factors into account, we considered that, on balance, Ms K had a legitimate expectation of privacy in relation to the broadcast of the CCTV footage of her in the programme. However, her legitimate expectation of privacy was limited because the filming had been conducted in a place where the public had access and that Ms K appeared aware of the presence of CCTV cameras.

Having found that Ms K had a limited legitimate expectation of privacy, we next assessed whether or not Ms K was identifiable in the programme as broadcast.

We noted that Ms K was not named in the programme nor was her voice heard in the CCTV footage. We also noted the techniques used to disguise Ms K's identity in the programme, i.e. her face was obscured. We also considered that there was nothing particularly distinctive about her physical appearance and clothing that could be reasonably regarded as rendering her identifiable to ordinary viewers. Further, we also noted that the man was not named in the programme, his voice was not heard in the CCTV footage, his face was obscured and there was nothing particularly distinctive about his physical appearance or clothing to identify him to ordinary viewers. As such, we took the view that it was not possible for ordinary viewers to identify Ms K through any association she may have had with the man. Further, the tower block in which the lift was situated was not identified. Nevertheless, we considered that the limited information given about the location of the tower block and the inclusion of the footage of Ms K (which she said people had recognised her from) may have made her identifiable to a very limited number of individuals who already knew her. Therefore, the extent of any infringement into Ms K already limited expectation of privacy was limited.

We then assessed whether Ms K's consent had been obtained by Channel 4 in accordance with the provisions of the Code.

In making this assessment we had particular regard to Practice 8.6 of the Code which states that: "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". We also had regard to Practice 8.4 of the Code which states that: "Broadcasters should ensure that words, images or actions filmed or recorded in, or broadcast from, a public place, are not so private that prior consent is required before broadcast from the individual or

organisation concerned, unless broadcasting without their consent is warranted.” Further, we also considered Practice 8.5 of the Code which states: “Any infringement of privacy in the making of a programme should be with the person’s and/or organisation’s consent or otherwise be warranted”.

It was not disputed that the broadcaster had not sought Ms K’s consent before broadcasting the CCTV footage.

Given that Ms K had, in our view, a limited expectation of privacy in relation to the footage of her broadcast in the programme, Ofcom then considered whether this infringement of privacy was warranted. In determining whether or not the infringement into Ms K’s privacy was warranted in the circumstances, we balanced the broadcaster’s right to freedom of expression and viewers’ right to receive information and ideas without unnecessary interference and the meaning of “warranted” under Section Eight (Privacy) of the Code.

The Code states that “warranted” has a particular meaning, that is, “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”. Further, the Code states that if the reason that the infringement of privacy is warranted 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”. The Code gives examples of public interest which include revealing or detecting crime, and protecting public health or safety.

Ofcom considered that there is a genuine public interest in broadcasting programmes of this nature, in particular programmes, such as this, which examine the role of CCTV operators in monitoring and reacting to incidents raising issues of public health and safety and anti-social behaviour. In our view, showing such material in programmes helps to develop the public’s understanding of the way CCTV cameras are used to capture anti-social behaviour, and to illustrate the types of such anti-social behaviour publicly-funded CCTV operators witness and the potential challenges they face as a consequence. We also noted the steps taken by the broadcaster to limit any identification of the Complainant and that any infringement of her limited expectation of privacy was minimal.

Therefore, on balance, taking into account all the factors set out above, Ofcom considered that, in the circumstances of this case, the broadcaster’s right to freedom of expression and the public interest outweighed Ms K’s limited expectation of privacy in relation to the broadcast of CCTV footage of her in the programme.

Ofcom therefore concluded that there was no unwarranted infringement of Ms K’s privacy in the programme as broadcast.

**Therefore, Ofcom’s has not upheld Ms K’s complaint of unwarranted infringement of privacy in the programme as broadcast.**

## Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 17 February and 2 March 2015 and decided that the broadcaster did not breach Ofcom's codes, licence conditions or other regulatory requirements.

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

| Programme                          | Broadcaster      | Transmission date | Categories                              |
|------------------------------------|------------------|-------------------|---|
| Victoria Derbyshire                | BBC Radio 5 Live | 13/08/2014        | Crime                                   |
| Tonight                            | ITV              | 17/04/2014        | Generally accepted standards            |
| Latest Homes Live                  | Latest TV        | 27/10/2014        | Advertising/editorial distinction       |
| Psychic Sally on the Road          | Pick             | 20/10/2014        | Exorcism, the occult and the paranormal |
| XFM Breakfast Show with Tim Cocker | XFM Manchester   | 27/01/2015        | Disability discrimination/offence       |

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 17 February and 2 March 2015 because they did not raise issues warranting investigation.

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

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

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

| Programme                        | Broadcaster | Transmission Date | Categories                               | Number of complaints |
|----------------------------------|-------------|-------------------|--|----------------------|
| The Box+ Streaming Chart: Top 20 | 4Music      | 08/02/2015        | Scheduling                               | 1                    |
| Can't Pay? We'll Take it Away!   | 5*          | 23/02/2015        | Offensive language                       | 1                    |
| Law & Order                      | 5USA        | 18/02/2015        | Offensive language                       | 1                    |
| News                             | Al Jazeera  | 23/12/2014        | Generally accepted standards             | 1                    |
| BBC website                      | BBC         | n/a               | Outside of remit / other                 | 1                    |
| BBC News                         | BBC 1       | 16/02/2015        | Due accuracy                             | 1                    |
| BBC News at One                  | BBC 1       | 26/02/2015        | Religious/Beliefs discrimination/offence | 1                    |
| BBC News at Ten                  | BBC 1       | 24/02/2015        | Due impartiality/bias                    | 1                    |
| Breakfast                        | BBC 1       | 23/02/2015        | Outside of remit / other                 | 1                    |
| Breakfast                        | BBC 1       | 24/02/2015        | Generally accepted standards             | 1                    |
| Breakfast                        | BBC 1       | 02/03/2015        | Generally accepted standards             | 1                    |
| Call the Midwife                 | BBC 1       | 01/02/2015        | Scheduling                               | 7                    |
| Call the Midwife                 | BBC 1       | 22/02/2015        | Generally accepted standards             | 1                    |
| Casualty                         | BBC 1       | 21/02/2015        | Generally accepted standards             | 1                    |
| Death in Paradise                | BBC 1       | 15/01/2015        | Harm                                     | 2                    |
| EastEnders                       | BBC 1       | 25/12/2014        | Generally accepted standards             | 1                    |
| EastEnders                       | BBC 1       | 20/01/2015        | Scheduling                               | 3                    |
| EastEnders                       | BBC 1       | 30/01/2015        | Generally accepted standards             | 2                    |
| EastEnders                       | BBC 1       | 19/02/2015        | Outside of remit / other                 | 13                   |
| EastEnders                       | BBC 1       | 19/02/2015        | Violence and dangerous behaviour         | 1                    |
| EastEnders                       | BBC 1       | 20/02/2015        | Generally accepted standards             | 3                    |
| EastEnders                       | BBC 1       | 27/02/2015        | Generally accepted standards             | 1                    |
| EastEnders (trailer)             | BBC 1       | 14/01/2015        | Scheduling                               | 1                    |

| Programme  | Broadcaster      | Transmission Date | Categories                               | Number of complaints |
|--|------------------|-------------------|--|----------------------|
| EastEnders (trailer)                                   | BBC 1            | n/a               | Scheduling                               | 1                    |
| Now You See It   | BBC 1            | 24/01/2015        | Animal welfare                           | 1                    |
| Question Time  | BBC 1            | 22/01/2015        | Race discrimination/offence              | 3                    |
| Regional News and Weather                              | BBC 1            | 06/02/2015        | Gender discrimination/offence            | 1                    |
| Regional News and Weather                              | BBC 1            | 26/02/2015        | Generally accepted standards             | 1                    |
| Still Open All Hours                                   | BBC 1            | 26/12/2013        | Disability discrimination/offence        | 1                    |
| The British Academy Film Awards                        | BBC 1            | 08/02/2015        | Generally accepted standards             | 1                    |
| The Casual Vacancy                                     | BBC 1            | 15/02/2015        | Due impartiality/bias                    | 1                    |
| The Casual Vacancy                                     | BBC 1            | 15/02/2015        | Offensive language                       | 1                    |
| The Graham Norton Show                                 | BBC 1            | 20/02/2015        | Generally accepted standards             | 1                    |
| The League Cup Show                                    | BBC 1            | 02/03/2015        | Outside of remit / other                 | 1                    |
| The One Show   | BBC 1            | 04/02/2015        | Disability discrimination/offence        | 1                    |
| The One Show   | BBC 1            | 27/02/2015        | Generally accepted standards             | 1                    |
| The Voice UK   | BBC 1            | 21/02/2015        | Outside of remit / other                 | 3                    |
| Britain's Supermarket Revolution: What's in it for Us? | BBC 2            | 27/02/2015        | Gender discrimination/offence            | 1                    |
| Charlie Brooker's Weekly Wipe                          | BBC 2            | 12/02/2015        | Violence and dangerous behaviour         | 1                    |
| Dragons' Den   | BBC 2            | 25/01/2015        | Fairness                                 | 1                    |
| Inside the Commons                                     | BBC 2            | 17/02/2015        | Due impartiality/bias                    | 1                    |
| The Fifteen Billion Pound Railway                      | BBC 2            | 01/03/2015        | Sexual material                          | 1                    |
| The Motorway: Life in the Fast Lane                    | BBC 2            | 15/02/2015        | Violence and dangerous behaviour         | 1                    |
| Top Gear   | BBC 2            | 28/12/2014        | Generally accepted standards             | 1                    |
| Top Gear   | BBC 2            | 08/02/2015        | Race discrimination/offence              | 1                    |
| Top Gear   | BBC 2            | 15/02/2015        | Generally accepted standards             | 1                    |
| Wolf Hall  | BBC 2            | 04/02/2015        | Religious/Beliefs discrimination/offence | 1                    |
| Wolf Hall  | BBC 2            | 18/02/2015        | Offensive language                       | 6                    |
| An Idiot's Guide to Politics                           | BBC 3            | 16/02/2015        | Offensive language                       | 1                    |
| Storyville: The Great European Disaster Movie          | BBC 4            | 01/03/2015        | Due impartiality/bias                    | 6                    |
| Al Murray's Great British Spy Movies                   | BBC iPlayer      | n/a               | Outside of remit / other                 | 1                    |
| BBC News   | BBC News Channel | 26/01/2015        | Generally accepted standards             | 1                    |

| Programme                             | Broadcaster                              | Transmission Date | Categories                               | Number of complaints |
|---------------------------------------|--|-------------------|--|----------------------|
| BBC News                              | BBC News Channel                         | 12/02/2015        | Due impartiality/bias                    | 1                    |
| BBC News                              | BBC News Channel                         | 26/02/2015        | Generally accepted standards             | 1                    |
| BBC News                              | BBC News Channel                         | n/a               | Due impartiality/bias                    | 1                    |
| Programming                           | BBC Radio 1                              | 02/02/2015        | Age discrimination/offence               | 1                    |
| Graham Norton                         | BBC Radio 2                              | 07/02/2015        | Generally accepted standards             | 1                    |
| Jeremy Vine                           | BBC Radio 2                              | 04/02/2015        | Generally accepted standards             | 1                    |
| Jeremy Vine                           | BBC Radio 2                              | 13/02/2015        | Violence and dangerous behaviour         | 1                    |
| Analysis                              | BBC Radio 4                              | 26/01/2015        | Race discrimination/offence              | 1                    |
| Trodd en Bratt Say 'Well Done You'    | BBC Radio 4                              | 17/02/2015        | Scheduling                               | 1                    |
| Live Sports Extra                     | BBC Radio 5 Live                         | 28/02/2015        | Outside of remit / other                 | 1                    |
| Sunday Gardening                      | BBC Radio Kent                           | 22/02/2015        | Commercial communications on radio       | 1                    |
| Iain Lee                              | BBC Three Counties Radio                 | 23/02/2015        | Outside of remit / other                 | 1                    |
| Shongbad Nirrokkan                    | Betar Bangla                             | 10/01/2015        | Generally accepted standards             | 1                    |
| Crossroads                            | Big Centre TV                            | 28/02/2015        | Outside of remit / other                 | 1                    |
| Programming                           | BT Sport                                 | 18/02/2015        | Outside of remit / other                 | 1                    |
| Capital Breakfast With Graeme & Sarah | Capital FM (North Wales Coast)           | 12/02/2015        | Sexual material                          | 1                    |
| Advertisement                         | Cartoon Network                          | 24/02/2015        | Advertising content                      | 1                    |
| Regular Show                          | Cartoon Network (Central Eastern Europe) | 11/01/2015        | Violence and dangerous behaviour         | 1                    |
| Deadwood                              | CBS Action                               | 16/02/2015        | Offensive language                       | 1                    |
| Stars in their Eyes                   | Challenge                                | 28/02/2015        | Race discrimination/offence              | 1                    |
| Advertisement                         | Channel 4                                | 18/01/2015        | Offensive language                       | 1                    |
| Angry, White and Proud                | Channel 4                                | 14/01/2015        | Race discrimination/offence              | 1                    |
| Angry, White and Proud                | Channel 4                                | 14/01/2015        | Religious/Beliefs discrimination/offence | 4                    |
| Banana (trailer)                      | Channel 4                                | 17/02/2015        | Scheduling                               | 1                    |
| Bodysockers                           | Channel 4                                | 28/01/2015        | Generally accepted standards             | 1                    |
| Channel 4 News                        | Channel 4                                | 20/01/2015        | Generally accepted standards             | 2                    |
| Channel 4 News                        | Channel 4                                | 23/01/2015        | Crime                                    | 1                    |
| Channel 4 News                        | Channel 4                                | 17/02/2015        | Sexual material                          | 3                    |
| Cucumber                              | Channel 4                                | 12/02/2015        | Sexual material                          | 1                    |

| Programme                                      | Broadcaster | Transmission Date | Categories                               | Number of complaints |
|--|-------------|-------------------|--|----------------------|
| Cucumber                                       | Channel 4   | 19/02/2015        | Generally accepted standards             | 1                    |
| Cucumber                                       | Channel 4   | 19/02/2015        | Offensive language                       | 1                    |
| Dispatches: Politicians For Hire               | Channel 4   | 23/02/2015        | Due impartiality/bias                    | 1                    |
| Drugs Live: Cannabis on Trial                  | Channel 4   | 03/03/2015        | Outside of remit / other                 | 1                    |
| Edge of the City                               | Channel 4   | n/a               | Outside of remit / other                 | 1                    |
| Gogglebox                                      | Channel 4   | 20/02/2015        | Disability discrimination/offence        | 1                    |
| Gogglebox                                      | Channel 4   | 20/02/2015        | Offensive language                       | 1                    |
| Hollyoaks                                      | Channel 4   | 16/02/2015        | Generally accepted standards             | 1                    |
| Hollyoaks                                      | Channel 4   | 18/02/2015        | Offensive language                       | 1                    |
| Mitsubishi's sponsorship of documentaries on 4 | Channel 4   | 22/02/2015        | Generally accepted standards             | 1                    |
| 10,000 BC                                      | Channel 5   | 10/02/2015        | Animal welfare                           | 1                    |
| 10,000 BC                                      | Channel 5   | 16/02/2015        | Animal welfare                           | 1                    |
| 10,000 BC                                      | Channel 5   | 17/02/2015        | Animal welfare                           | 1                    |
| Age Gap Love                                   | Channel 5   | 28/01/2015        | Generally accepted standards             | 1                    |
| Car Crash TV                                   | Channel 5   | 02/02/2015        | Generally accepted standards             | 1                    |
| Celebrity Big Brother's Bit on the Side        | Channel 5   | 06/02/2015        | Generally accepted standards             | 1                    |
| Cowboy Builders                                | Channel 5   | 04/02/2015        | Competitions                             | 1                    |
| Dream Bingo's sponsorship of Neighbours        | Channel 5   | 23/02/2015        | Gambling                                 | 1                    |
| Ice Road Truckers                              | Channel 5   | 16/01/2015        | Offensive language                       | 1                    |
| My Big Benefits Family                         | Channel 5   | 15/01/2015        | Generally accepted standards             | 1                    |
| Race to the Pole                               | Channel 5   | 16/01/2015        | Offensive language                       | 2                    |
| Stand by Me                                    | Channel 5   | 22/02/2015        | Offensive language                       | 1                    |
| Storage: Flog the Lot!                         | Channel 5   | 19/01/2015        | Offensive language                       | 2                    |
| The Classic Car Show                           | Channel 5   | 12/02/2015        | Offensive language                       | 1                    |
| The Hotel Inspector                            | Channel 5   | 18/01/2015        | Offensive language                       | 8                    |
| The Nightmare Neighbour Next Door              | Channel 5   | 15/01/2015        | Offensive language                       | 1                    |
| The Secrets of the Tea Chimps                  | Channel 5   | 13/01/2015        | Animal welfare                           | 1                    |
| The Wright Stuff                               | Channel 5   | 16/01/2015        | Religious/Beliefs discrimination/offence | 1                    |
| The Folk Show                                  | Chorley FM  | n/a               | Fairness                                 | 1                    |
| Advertisement                                  | CITV        | 19/02/2015        | Advertising content                      | 1                    |
| News   | Classic FM  | 01/02/2015        | Due impartiality/bias                    | 1                    |

| Programme                              | Broadcaster        | Transmission Date | Categories                                | Number of complaints |
|--|--------------------|-------------------|---|----------------------|
| Advertisement                          | Dave               | 26/02/2015        | Advertising content                       | 1                    |
| Advertisement                          | E4                 | 24/02/2015        | Advertising content                       | 1                    |
| Suburgatory                            | E4                 | 15/01/2015        | Race discrimination/offence               | 1                    |
| Troy                                   | E4                 | n/a               | Animal welfare                            | 1                    |
| Hannity                                | Fox News           | 10/01/2015        | Crime                                     | 1                    |
| Subh-e-Pakistan                        | Geo TV             | 22/12/2014        | Religious/Beliefs discrimination/offence  | 7                    |
| Subh-e-Pakistan                        | Geo TV             | 29/12/2014        | Religious/Beliefs discrimination/offence  | 1                    |
| Mud Men                                | H2                 | 16/01/2015        | Generally accepted standards              | 1                    |
| Programming                            | Heart FM Northwest | 29/01/2015        | Format                                    | 1                    |
| Rich Williams                          | Heart FM Yorkshire | 11/02/2015        | Scheduling                                | 1                    |
| 1000 Heartbeats                        | ITV                | 24/02/2015        | Materially misleading                     | 1                    |
| Advertisement                          | ITV                | 21/02/2015        | Advertising content                       | 1                    |
| Advertisement                          | ITV                | 23/02/2015        | Advertising content                       | 1                    |
| Advertisements                         | ITV                | 18/01/2015        | Advertising content                       | 1                    |
| Ant and Dec's Saturday Night Takeaway  | ITV                | 21/02/2015        | Scheduling                                | 1                    |
| Aunt Bessie's sponsorship of The Chase | ITV                | 06/02/2015        | Crime                                     | 1                    |
| Benidorm                               | ITV                | 16/01/2015        | Disability discrimination/offence         | 1                    |
| Benidorm                               | ITV                | 16/01/2015        | Gender discrimination/offence             | 1                    |
| Benidorm                               | ITV                | 03/02/2015        | Race discrimination/offence               | 1                    |
| Broadchurch                            | ITV                | 19/01/2015        | Sexual orientation discrimination/offence | 1                    |
| Broadchurch                            | ITV                | 16/02/2015        | Drugs, smoking, solvents or alcohol       | 1                    |
| Broadchurch                            | ITV                | 23/02/2015        | Generally accepted standards              | 1                    |
| Broadchurch                            | ITV                | 23/02/2015        | Materially misleading                     | 1                    |
| Coronation Street                      | ITV                | 16/01/2015        | Disability discrimination/offence         | 1                    |
| Coronation Street                      | ITV                | 13/02/2015        | Sexual orientation discrimination/offence | 1                    |
| Coronation Street                      | ITV                | 25/02/2015        | Promotion of products/services            | 1                    |
| Emmerdale                              | ITV                | 15/01/2015        | Scheduling                                | 1                    |
| Emmerdale                              | ITV                | 12/02/2015        | Generally accepted standards              | 1                    |
| Emmerdale                              | ITV                | 18/02/2015        | Generally accepted standards              | 1                    |
| Foyle's War                            | ITV                | 11/01/2015        | Generally accepted standards              | 23                   |
| Good Morning Britain                   | ITV                | 04/02/2015        | Competitions                              | 1                    |

| Programme                       | Broadcaster     | Transmission Date | Categories                         | Number of complaints |
|---------------------------------|-----------------|-------------------|------------------------------------|----------------------|
| Jackpot247                      | ITV             | 15/01/2015        | Generally accepted standards       | 1                    |
| Judge Rinder                    | ITV             | 09/02/2015        | Generally accepted standards       | 1                    |
| Judge Rinder                    | ITV             | 16/02/2015        | Materially misleading              | 1                    |
| Loose Women                     | ITV             | 27/01/2015        | Generally accepted standards       | 1                    |
| Loose Women                     | ITV             | 28/01/2015        | Materially misleading              | 39                   |
| Loose Women                     | ITV             | 13/02/2015        | Gender discrimination/offence      | 1                    |
| Lorraine                        | ITV             | 03/02/2015        | Scheduling                         | 4                    |
| Mel and Sue                     | ITV             | 20/02/2015        | Outside of remit / other           | 1                    |
| Programming                     | ITV             | n/a               | Outside of remit / other           | 1                    |
| The Chase: Celebrity Special    | ITV             | 01/03/2015        | Generally accepted standards       | 1                    |
| The Jeremy Kyle Show            | ITV             | 31/01/2015        | Scheduling                         | 2                    |
| The Jeremy Kyle Show            | ITV             | 02/02/2015        | Generally accepted standards       | 1                    |
| The Jonathan Ross Show          | ITV             | 28/02/2015        | Generally accepted standards       | 1                    |
| The Kyle Files                  | ITV             | 05/02/2015        | Scheduling                         | 1                    |
| The Kyle Files (trailer)        | ITV             | 21/01/2015        | Scheduling                         | 1                    |
| This Morning                    | ITV             | 15/01/2015        | Materially misleading              | 4                    |
| This Morning                    | ITV             | 20/02/2015        | Disability discrimination/offence  | 1                    |
| Tipping Point                   | ITV             | 22/02/2015        | Competitions                       | 1                    |
| You've Been Framed!             | ITV             | 28/02/2015        | Generally accepted standards       | 1                    |
| Advertisement                   | ITV / Channel 4 | 01/03/2015        | Advertising content                | 1                    |
| ITV News London                 | ITV London      | 25/02/2015        | Due impartiality/bias              | 1                    |
| Cockroaches                     | ITV2            | 27/01/2015        | Race discrimination/offence        | 1                    |
| Cockroaches                     | ITV2            | 28/01/2015        | Race discrimination/offence        | 1                    |
| Dinner Date                     | ITV2            | 18/02/2015        | Race discrimination/offence        | 1                    |
| On the Buses                    | ITV3            | 26/01/2015        | Gender discrimination/offence      | 1                    |
| Goodwood: Cars of the Future    | ITV4            | 29/12/2014        | Advertising content                | 1                    |
| The Chase: Celebrity Special    | ITV4            | 10/02/2015        | Transgender discrimination/offence | 1                    |
| UEFA Europa League Live         | ITV4            | 19/02/2015        | Outside of remit / other           | 1                    |
| The Real Housewives of Cheshire | ITVBe           | 12/01/2015        | Race discrimination/offence        | 1                    |
| The Real Housewives of Cheshire | ITVBe           | 12/01/2015        | Offensive language                 | 1                    |

| Programme                              | Broadcaster          | Transmission Date | Categories                                | Number of complaints |
|--|----------------------|-------------------|---|----------------------|
| Programming                            | Kiss 101             | 23/01/2015        | Offensive language                        | 1                    |
| Nick Ferrari                           | LBC 97.3 FM          | 03/02/2015        | Religious/Beliefs discrimination/offence  | 3                    |
| Gangs of Tooting Broadway              | London Live          | 25/01/2015        | Generally accepted standards              | 1                    |
| Come Dine With Me                      | More4                | 21/02/2015        | Generally accepted standards              | 1                    |
| Gogglebox                              | More4                | 09/02/2015        | Sexual orientation discrimination/offence | 1                    |
| Grand Designs                          | More4                | 12/01/2015        | Offensive language                        | 1                    |
| Micky Flanagan: Back in the Game       | More4                | 28/12/2014        | Generally accepted standards              | 1                    |
| Earth Girls Are Easy                   | Movie Mix            | 26/01/2015        | Scheduling                                | 1                    |
| Advertisement                          | n/a                  | n/a               | Advertising content                       | 3                    |
| Advertisement                          | Nick Jr              | 25/02/2015        | Advertising content                       | 2                    |
| Programming                            | Play TV              | 02/03/2015        | Outside of remit / other                  | 1                    |
| Programming                            | Revelation TV        | 16/01/2015        | Outside of remit / other                  | 1                    |
| Website                                | Sky                  | n/a               | Outside of remit / other                  | 1                    |
| Fortitude                              | Sky Atlantic         | 19/02/2015        | Offensive language                        | 1                    |
| Desi Rascals                           | Sky Living           | 30/01/2015        | Generally accepted standards              | 1                    |
| News, Sport, Weather                   | Sky News             | 07/02/2015        | Due accuracy                              | 1                    |
| Press Preview                          | Sky News             | 13/01/2015        | Race discrimination/offence               | 1                    |
| Press Preview                          | Sky News             | 14/01/2015        | Generally accepted standards              | 1                    |
| Sky News                               | Sky News             | 07/02/2015        | Materially misleading                     | 1                    |
| Sky News                               | Sky News             | 19/02/2015        | Due accuracy                              | 1                    |
| Sky News                               | Sky News             | 22/02/2015        | Generally accepted standards              | 1                    |
| Sky News Tonight with Adam Boulton     | Sky News             | 29/01/2015        | Due accuracy                              | 1                    |
| Sky News Tonight with Adam Boulton     | Sky News             | 26/02/2015        | Due impartiality/bias                     | 1                    |
| Sky News with Colin Brazier            | Sky News             | 02/02/2015        | Due impartiality/bias                     | 1                    |
| Sky News with Kay Burley               | Sky News             | 19/02/2015        | Due accuracy                              | 1                    |
| Sunrise                                | Sky News             | 18/02/2015        | Drugs, smoking, solvents or alcohol       | 1                    |
| Sunrise                                | Sky News             | 19/02/2015        | Fairness                                  | 1                    |
| Goals on Sunday                        | Sky Sports 1         | 22/02/2015        | Generally accepted standards              | 1                    |
| Sky Atlantic promotion                 | Sky Sports News HQ   | 04/01/2015        | Materially misleading                     | 1                    |
| Sun Perks' sponsorship of The Simpsons | Sky1                 | 25/02/2015        | Sponsorship                               | 1                    |
| Mid Mornings                           | Smooth East Midlands | 18/02/2015        | Competitions                              | 1                    |

| Programme        | Broadcaster          | Transmission Date | Categories                               | Number of complaints |
|------------------|----------------------|-------------------|--|----------------------|
| Programming      | Spirit FM            | n/a               | Outside of remit / other                 | 1                    |
| Scotland Tonight | STV                  | 02/02/2015        | Due impartiality/bias                    | 1                    |
| Tera Fam Show    | Swindon 105 FM       | 02/01/2015        | Offensive language                       | 1                    |
| Drivetime        | Talksport            | 19/01/2015        | Religious/Beliefs discrimination/offence | 1                    |
| Drivetime        | Talksport            | 28/01/2015        | Generally accepted standards             | 1                    |
| News             | The Breeze (Andover) | 24/02/2015        | Due impartiality/bias                    | 1                    |
| Programming      | Various              | n/a               | Advertising minutage                     | 1                    |
| Programming      | Various              | n/a               | Hypnotic and other techniques            | 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    | Licensed service                  | Categories                      |
|-------------|-----------------------------------|---------------------------------|
| Preston FM  | Preston FM Ltd                    | Key Commitments                 |
| RaW 1251 AM | Warwick University Students Union | Description of Licensed Service |



## 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 19 February and 4 March 2015.

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

| Programme                         | Broadcaster         | Transmission date |
|-----------------------------------|---------------------|-------------------|
| Mumbai Metro                      | Aaj Tak             | 6 January 2015    |
| News                              | ARY News            | 19 January 2015   |
| Live European Rugby Challenge Cup | BT Sport 1          | 17 January 2015   |
| Capital Breakfast with Rob Ellis  | Capital FM 102      | 16 February 2015  |
| Heart for the World               | Daystar (DTT)       | 5 February 2015   |
| Troy                              | E4                  | 7 February 2015   |
| Subh-e-Pakistan                   | Geo TV              | 29 December 2014  |
| The Jeremy Kyle Show              | ITV                 | 1 February 2015   |
| Air Crash Investigation           | National Geographic | 26 November 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 General Procedures for investigating breaches of broadcast licences

| Licensee            | Licensed Service |
|---------------------|------------------|
| Britasia TV Limited | Brit Asia TV     |

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