

# **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.**

## Standards cases

### In Breach

#### Get Lucky TV

*Get Lucky TV (channel 908), 9 October to 2 December 2013, various times between 21:00 and 05:30*

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#### Introduction

Get Lucky TV (channel 908) is an interactive daytime chat and ‘adult chat’ advertising service which is freely available without mandatory restricted access and is situated in the ‘adult’ section of the electronic programme guide of the Sky digital satellite platform (“EPG”). Viewers are invited to contact the on-screen presenters via premium-rate telephony services (“PRS”). The female presenters dress and act in a sexually provocative manner while encouraging viewers to contact the PRS numbers. The licence for this service is held by Grandiose Limited (“Grandiose” or “the Licensee”).

Ofcom received a complaint that the website [www.babestation.com](http://www.babestation.com) was being promoted “openly on-screen” on the service Get Lucky TV. This Ofcom licensed service broadcasts ‘adult chat’ content between 21:00 and 05:30 in addition to daytime chat content intermittently throughout the day. The complainant said that on accessing the Babestation website by means of this URL it was possible to view content which was “clearly R18 and beyond”.

Ofcom viewed the Get Lucky TV channel and noted that references were made to the website [www.babestation.com](http://www.babestation.com) by way of a graphic, positioned in the top left-hand corner of the screen, which showed the URL. Ofcom viewed the channel’s output between the hours of 21:00 and 05:30 at various times and on various dates. On all occasions when the presenters were on screen, the URL was visible.

After receiving the complaint Ofcom accessed the [www.babestation.com](http://www.babestation.com) website and noted and retained records, including video and screenshots, of the following:

- The homepage featuring a selection of thumbnail images of women. On clicking on the image of a woman, the user was taken to a second page with further images of the woman and the option to see her in what was described as a “live show” by selecting a choice of payment methods.
- Ofcom noted that when scrolling through the homepage, a small number of the thumbnail images of the women were explicit, for example showing some with their legs open and their genital area fully visible. In one instance, the image was more explicit, showing a woman masturbating with her fingers inserted inside her vagina. These images were available to view without any restrictions.
- Once a thumbnail image of a woman was selected and the user accessed the second page of images, the user was able to make payment to enable live webcam streaming and live interaction with the woman. The payment could be done through the use of a PRS number, which generated a PIN, which in turn could be entered into the website. This allowed full access to the website until the call was disconnected. Access could also be purchased by a credit card.

- Ofcom noted that when the PRS number was dialled and the PIN received (or payment was made using a credit card), users were able to view the live webcam feed and interact with the woman in the original thumbnail via a text chat window. To the right of the screen, a scrollable window displayed live images from other webcam feeds and, in many instances, these were images of women masturbating (equivalent to British Board of Film Classification (BBFC) R18-rated content<sup>1</sup>). On clicking on any one these live images, users were taken to their chosen live feed, and many of these feeds included R18 equivalent material, predominantly of close-up images of the women's genitals as they inserted items such as vibrators into their vaginas.
- When accessing these live webcam feeds via the PRS number the user was at no time asked to verify they were over the age of 18.

Since 1 September 2010, all PRS-based daytime and adult chat television services have been regulated by Ofcom as forms of long-form advertising i.e. teleshopping. From this date, the relevant standards code for services has been the UK Code of Broadcast Advertising (the "BCAP Code").

Ofcom was concerned that these promotional references to the [www.babestation.com](http://www.babestation.com) website were broadcast throughout the night on this 'adult chat' service (which is broadcast on a channel freely available without mandatory restricted access), and that these references led the user to images within the recognised character of pornography without a sufficient means of age verification. Ofcom considered issues were raised warranting investigation under BCAP Code Rule 30.3, which states:

"Advertisements for products coming within the recognised character of pornography are permitted behind mandatory restricted access<sup>2</sup> on adult entertainment channels only".

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

## Response

The Licensee accepted that there had been a "compliance failure" and apologised. It said it had taken immediate action following Ofcom contacting the broadcaster. This action included removing the Babestation URL from Get Lucky broadcasts and, as an additional measure, ensuring that anyone attempting to access the [www.babestation.com](http://www.babestation.com) site was redirected to [www.babestation.co.uk](http://www.babestation.co.uk) (which the Licensee said was managed by internal personnel and was wholly compliant with the BCAP Code).

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<sup>1</sup> The 'R18' category is a special and legally restricted classification primarily for explicit works of consenting sex or strong fetish material involving adults. Films may only be shown to adults in specially licensed cinemas, and video works may be supplied to adults only in licensed sex shops. 'R18' videos may not be supplied by mail order.

<sup>2</sup> "Behind mandatory restricted access on adult entertainment channels" is interpreted by reference to Rule 1.18 of the Ofcom Broadcasting Code. Rule 1.18 of the Code makes clear that "mandatory restricted access" means "a PIN protected system (or other equivalent protection) which cannot be removed by the user, that restricts access solely to those authorised to view".

The Licensee said that “a considerable degree of confusion has been apparent on the part of the third party website supplier and this has revealed the need for improved communication between internal personnel and third party suppliers as well as robust testing of all services”. Grandiose explained that it was a “huge disappointment” that this case had arisen as “it had felt that the importance of complying with BCAP Code Rule 30.3 was well understood by all key personnel”.

Grandiose told Ofcom that lines of communication between internal personnel and third party suppliers had been affected by a major studio move between August and November 2013 and that this had involved a number of technical and operational challenges. The Licensee said that during this period the URL, which was being broadcast on screen up until this point, became switched with the [www.babestation.com](http://www.babestation.com) URL. Grandiose explained that: “in the melee of the move, the significance of this change was not picked up”. Subsequent to Ofcom’s contact with the broadcaster, Grandiose said that additional training and new systems have been implemented in order to prevent any repetition of the circumstances of this case.

In relation to the content of the [www.babestation.com](http://www.babestation.com) website, the Licensee said that: “the website content is dynamic in nature and can change by the second. Neither the broadcaster nor the website operator monitor or are legally obliged to monitor and/or record the real time content.”

In relation to the issue of adequate age verification for access to website content, the Licensee said that: “the contractual arrangements behind the Babestation url specifically provided that all site functionality, graphics, content etc should, insofar as it affected UK broadcasts, be strictly compliant with the requirements of the BCAP Code and related guidelines. Furthermore, DNX Network SARL [the website operator] had been specifically asked to ensure that users could only access the webcam content by use of a credit card”. The Licensee added that the website operator believed that the manner in which the pay wall was configured was compliant in: “providing a method of access control which secured that persons under eighteen would not normally see or hear material that was unsuitable for persons under age 18”.

## **Decision**

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that “the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented”. This objective is reflected in the rules set out in the BCAP Code.

The BCAP Code contains rules which permit ‘adult chat’ services to be advertised within prescribed times and on free-to-air channels that are specifically licensed by Ofcom for that purpose, but which carefully circumscribe their content to exclude inappropriate material. These rules apply to both daytime and ‘adult chat’ services.

In particular Rule 30.3 of the BCAP Code states that:

“Advertisements for products coming within the recognised character of pornography are permitted behind mandatory restricted access on adult entertainment channels only.”

When setting and applying standards in the BCAP Code to provide adequate protection to members of the public from serious or widespread offence, Ofcom must

have regard to the need for standards to be applied in a manner that best guarantees an appropriate level of freedom of expression in accordance with Article 10 of the European Convention on Human Rights, as incorporated in the Human Rights Act 1998. However, the advertising content of ‘adult chat’ services has much less latitude than is typically available to editorial material in respect of context and narrative. The primary intent of advertising is to sell products and services, and consideration of acceptable standards will take that context into account.

On 27 July 2011 Ofcom published revised guidance on the advertising of telecommunications-based sexual entertainment services and PRS daytime chat services (the “Chat Service Guidance”)<sup>3</sup>. The Chat Service Guidance clearly sets out what Ofcom considers to be acceptable to broadcast on these services pre- and post-watershed. In particular, the Chat Service Guidance states under the heading “Website references” and under Rule 30.3 of the BCAP Code that:

“Ofcom licensed services that are broadcast without mandatory restricted access must not promote websites that contain material within the recognised character of pornography”.

Ofcom has also made it clear in previous sanction decisions under the BCAP Code<sup>4</sup> that it deems the promotion of websites featuring R18 material that is not protected by proper age verification to be of particular concern.

In its representations to Ofcom, Grandiose said that it had specifically asked the website operator to ensure that webcam content was only accessible through the use of a credit card. The Licensee also told Ofcom that the website operator believed that the manner in which the website was configured “secured that persons under eighteen would not normally see or hear material that was unsuitable for persons under age 18”.

While Ofcom accepts that the Licensee may have intended that the webcam material could only be accessed by use of a credit card it was the Licensee’s responsibility to ensure this was the case where it was promoting the URL on its licensed service. In this case, Ofcom accessed the pornographic content (as set out in detail below) by use of a PRS number alone (as one of the payment methods available on the website).

### Promotion of a website

Ofcom’s examination of material, across the free-to-air service Get Lucky TV, showed that between the hours of 21:00 and 05:30 the babestation.com website URL was present on-screen as described above throughout the broadcasts. As already indicated, Ofcom viewed the channel’s output between the hours of 21:00 and 05:30 at various times and on various dates. On all occasions when the presenters were on screen, the URL was visible. We were therefore satisfied that the URL was broadcast for extended periods between these dates and times. Grandiose did not provide any information or evidence of dates and times when they believed the URL was not displayed.

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<sup>3</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/bcap-guidance.pdf>.

<sup>4</sup> For example, see the £40,000 financial penalty imposed on Satellite Entertainment Limited on 5 August 2013: <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/satellite-ltd.pdf>.

In Ofcom's view, the continued on-screen references to the website URL, for at least the period 9 October until 2 December 2013, clearly amounted to promotions of the www.babestation.com website and its related live 'webcam' services. The on-screen references to the www.babestation.com URL were therefore advertising products.

In Ofcom's view, Grandiose promoted the www.babestation.com website within its licensed free-to-air television services to encourage, and as a means for, viewers to access the live webcam material available there.

#### Containing material within the recognised character of pornography

Ofcom then considered whether the on-screen promotion of the www.babestation.com website URL on services without any restricted access was an advertisement for a product "within the recognised character of pornography".

On reviewing the website, Ofcom found that access to the content on the www.babestation.com website was possible without age verification. The homepage featured a number of thumbnails, each showing a different woman available to view and interact with via live webcam feeds. Users were then able to click on the thumbnails to bring up additional pictures of the selected woman. In some instances these images featured women with their legs open and their genitals visible.

At this stage, users were then able to make payment to enable live webcam streaming. This could be done through the use of a PRS number. On dialling the telephone number on-screen, users were given a PIN and, having entered the PIN into the website, users were given continued access until the call was disconnected. At no time was the caller to this PRS number requested or required to provide age verification to prove they were over the age of 18.

Once connected, users were able to view the live webcam feed and also interact via a text chat window. To the right of the screen, a scrollable window displayed live images from other webcam feeds and in many instances, these included further R18 equivalent images of women masturbating. On clicking on any one these, users were taken to their chosen live feed, many of which also included R18 equivalent material, predominantly of close-up images of women masturbating. In Ofcom's view these images also were all within the recognised character of pornography.

In its representations to Ofcom, Grandiose said that "the website content is dynamic in nature and can change by the second. Neither the broadcaster nor the website operator monitor or are legally obliged to monitor and/or record the real time content." Ofcom's previous decisions and guidance have made it clear that Ofcom licensed services (subject to the BCAP Code and not behind mandatory restricted access) must not promote websites that fall within the character of pornography. If a broadcaster is unable or unwilling to monitor the contents of website it promotes on its licensed service, compliance with BCAP Code Rule 30.3 cannot be assured.

Ofcom considered that the illustrative video of the website content it provided to the Licensee (recorded on 19 November 2013) was sufficient evidence to demonstrate that the www.babestation.com website was a "product coming within the recognised character of pornography". Ofcom has no reason to believe that the material it accessed on this occasion was significantly more explicit than typically found on the website. We noted that the Licensee did not seek to argue that this video was an unfair representation of the type of content generally available on the www.babestation.com website at this time.

### Mandatory restricted access

Under Rule 30.3 advertisements for products within the recognised character of pornography are permitted behind mandatory restricted access on adult entertainment channels only. Section 30 of the BCAP Code states that:

“Behind mandatory restricted access on adult entertainment channels’ is interpreted with reference to Rule 1.18 of the Ofcom Broadcasting Code.”

Rule 1.18 of the Broadcasting Code makes clear that “mandatory restricted access” means “a PIN protected system (or other equivalent protection) which cannot be removed by the user, that restricts access solely to those authorised to view”.

Although the licensed service in this case is within the ‘adult’ section of the EPG, it is broadcast unencrypted and without mandatory restricted access. Ofcom therefore considered that these advertisements for products within the recognised character of pornography were shown on the service without mandatory restricted access as required by Rule 30.3 of the BCAP Code.

### Conclusion

Ofcom noted that the Licensee apologised for this compliance error and has introduced new training and procedures as a result of this incident. Nonetheless the broadcast of promotional references to the [www.babestation.com](http://www.babestation.com) website on Get Lucky TV for extended periods between 9 October and 2 December 2013 breached Rule 30.3 of the BCAP Code.

Ofcom was particularly concerned that in this case the advertising led to a website which contained R18 equivalent material without any appropriate age verification process.

### **Breaches of BCAP Code Rule 30.3**

## In Breach

### Lucky Star

*Lucky Star (channel 909), 9 October to 2 December 2013, various times between 21:00 and 05:30*

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#### Introduction

Lucky Star (channel 909) is an interactive daytime chat and 'adult chat' advertising service which is freely available without mandatory restricted access and is situated in the 'adult' section of the electronic programme guide of the Sky digital satellite platform ("EPG"). Viewers are invited to contact the on-screen presenters via premium-rate telephony services ("PRS"). The female presenters dress and act in a sexually provocative manner while encouraging viewers to contact the PRS numbers. The licence for this service is held by Escape Channel Limited ("Escape" or "the Licensee").

Ofcom received a complaint that the website [www.babestation.com](http://www.babestation.com) was being promoted "openly on-screen" on the service Lucky Star. This Ofcom licensed service broadcasts 'adult chat' content between 21:00 and 05:30 in addition to daytime chat content intermittently throughout the day. The complainant said that on accessing the Babestation website by means of this URL it was possible to view content which was "clearly R18 and beyond".

Ofcom viewed the Lucky Star channel and noted that references were made to the website [www.babestation.com](http://www.babestation.com) by way of a graphic, positioned in the top left-hand corner of the screen, which showed the URL. Ofcom viewed the channel's output between the hours of 21:00 and 05:30 at various times and on various dates. On all occasions when the presenters were on screen, the URL was visible.

After receiving the complaint Ofcom accessed the [www.babestation.com](http://www.babestation.com) website and noted and retained records, including video and screenshots, of the following:

- The homepage featuring a selection of thumbnail images of women. On clicking on the image of a woman, the user was taken to a second page with further images of the woman and the option to see her in what was described as a "live show" by selecting a choice of payment methods.
- Ofcom noted that when scrolling through the homepage, a small number of the thumbnail images of the women were explicit, for example showing some with their legs open and their genital area fully visible. In one instance, the image was more explicit, showing a woman masturbating with her fingers inserted inside her vagina. These images were available to view without any restrictions.
- Once a thumbnail image of a woman was selected and the user accessed the second page of images, the user was able to make payment to enable live webcam streaming and live interaction with the woman. The payment could be done through the use of a PRS number, which generated a PIN, which in turn could be entered into the website. This allowed full access to the website until the call was disconnected. Access could also be purchased by a credit card.
- Ofcom noted that when the PRS number was dialled and the PIN received (or payment was made using a credit card), users were able to view the live webcam

feed and interact with the woman in the original thumbnail via a text chat window. To the right of the screen, a scrollable window displayed live images from other webcam feeds and, in many instances, these were images of women masturbating (equivalent to British Board of Film Classification (BBFC) R18-rated content<sup>1</sup>). On clicking on any one these live images, users were taken to their chosen live feed, and many of these feeds included R18 equivalent material, predominantly of close-up images of the women's genitals as they inserted items such as vibrators into their vaginas.

- When accessing these live webcam feeds via the PRS number the user was at no time asked to verify they were over the age of 18.

Since 1 September 2010, all PRS-based daytime and adult chat television services have been regulated by Ofcom as forms of long-form advertising i.e. teleshopping. From this date, the relevant standards code for services has been the UK Code of Broadcast Advertising (the "BCAP Code").

Ofcom was concerned that these promotional references to the [www.babestation.com](http://www.babestation.com) website were broadcast throughout the night on this 'adult chat' service (which is broadcast on a channel freely available without mandatory restricted access), and that these references led the user to images within the recognised character of pornography without a sufficient means of age verification. Ofcom considered issues were raised warranting investigation under BCAP Code Rule 30.3, which states:

"Advertisements for products coming within the recognised character of pornography are permitted behind mandatory restricted access<sup>2</sup> on adult entertainment channels only".

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

## Response

The Licensee accepted that there had been a "compliance failure" and apologised. It said it had taken immediate action following Ofcom contacting the broadcaster. This action included removing the Babestation URL from Lucky Star broadcasts and, as an additional measure, ensuring that anyone attempting to access the [www.babestation.com](http://www.babestation.com) site was redirected to [www.babestation.co.uk](http://www.babestation.co.uk) (which the Licensee said was managed by internal personnel and was wholly compliant with the BCAP Code).

The Licensee said that "a considerable degree of confusion has been apparent on the part of the third party website supplier and this has revealed the need for

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<sup>2</sup> "Behind mandatory restricted access on adult entertainment channels" is interpreted by reference to Rule 1.18 of the Ofcom Broadcasting Code. Rule 1.18 of the Code makes clear that "mandatory restricted access" means "a PIN protected system (or other equivalent protection) which cannot be removed by the user, that restricts access solely to those authorised to view".

improved communication between internal personnel and third party suppliers as well as robust testing of all services". Escape explained that it was a "huge disappointment" that this case had arisen as "it had felt that the importance of complying with BCAP Code Rule 30.3 was well understood by all key personnel".

Escape told Ofcom that lines of communication between internal personnel and third party suppliers had been affected by a major studio move between August and November 2013 and that this had involved a number of technical and operational challenges. The Licensee said that during this period the URL, which was being broadcast on screen up until this point, became switched with the [www.babestation.com](http://www.babestation.com) URL. Escape explained that: "in the melee of the move, the significance of this change was not picked up". Subsequent to Ofcom's contact with the broadcaster, Escape said that additional training and new systems have been implemented in order to prevent any repetition of the circumstances of this case.

In relation to the content of the [www.babestation.com](http://www.babestation.com) website, the Licensee said that: "the website content is dynamic in nature and can change by the second. Neither the broadcaster nor the website operator monitor or are legally obliged to monitor and/or record the real time content."

In relation to the issue of adequate age verification for access to website content, the Licensee said that: "the contractual arrangements behind the Babestation url specifically provided that all site functionality, graphics, content etc should, insofar as it affected UK broadcasts, be strictly compliant with the requirements of the BCAP Code and related guidelines. Furthermore, DNX Network SARL [the website operator] had been specifically asked to ensure that users could only access the webcam content by use of a credit card". The Licensee added that the website operator believed that the manner in which the pay wall was configured was compliant in: "providing a method of access control which secured that persons under eighteen would not normally see or hear material that was unsuitable for persons under age 18".

## **Decision**

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that "the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented". This objective is reflected in the rules set out in the BCAP Code.

The BCAP Code contains rules which permit 'adult chat' services to be advertised within prescribed times and on free-to-air channels that are specifically licensed by Ofcom for that purpose, but which carefully circumscribe their content to exclude inappropriate material. These rules apply to both daytime and 'adult chat' services.

In particular Rule 30.3 of the BCAP Code states that:

"Advertisements for products coming within the recognised character of pornography are permitted behind mandatory restricted access on adult entertainment channels only."

When setting and applying standards in the BCAP Code to provide adequate protection to members of the public from serious or widespread offence, Ofcom must have regard to the need for standards to be applied in a manner that best guarantees an appropriate level of freedom of expression in accordance with Article 10 of the

European Convention on Human Rights, as incorporated in the Human Rights Act 1998. However, the advertising content of ‘adult chat’ services has much less latitude than is typically available to editorial material in respect of context and narrative. The primary intent of advertising is to sell products and services, and consideration of acceptable standards will take that context into account.

On 27 July 2011 Ofcom published revised guidance on the advertising of telecommunications-based sexual entertainment services and PRS daytime chat services (the “Chat Service Guidance”)<sup>3</sup>. The Chat Service Guidance clearly sets out what Ofcom considers to be acceptable to broadcast on these services pre- and post-watershed. In particular, the Chat Service Guidance states under the heading “Website references” and under Rule 30.3 of the BCAP Code that:

“Ofcom licensed services that are broadcast without mandatory restricted access must not promote websites that contain material within the recognised character of pornography”.

Ofcom has also made it clear in previous sanction decisions under the BCAP Code<sup>4</sup> that it deems the promotion of websites featuring R18 material that is not protected by proper age verification to be of particular concern.

In its representations to Ofcom, Escape said that it had specifically asked the website operator to ensure that webcam content was only accessible through the use of a credit card. The Licensee also told Ofcom that the website operator believed that the manner in which the website was configured “secured that persons under eighteen would not normally see or hear material that was unsuitable for persons under age 18”.

While Ofcom accepts that the Licensee may have intended that the webcam material could only be accessed by use of a credit card it was the Licensee’s responsibility to ensure this was the case where it was promoting the URL on its licensed service. In this case, Ofcom accessed the pornographic content (as set out in detail below) by use of a PRS number alone (as one of the payment methods available on the website).

### Promotion of a website

Ofcom’s examination of material, across the free-to-air service Lucky Star, showed that between the hours of 21:00 and 05:30 the babestation.com website URL was present on-screen as described above throughout the broadcasts. As already indicated, Ofcom viewed the channel’s output between the hours of 21:00 and 05:30 at various times and on various dates. On all occasions when the presenters were on screen, the URL was visible. We were therefore satisfied that the URL was broadcast for extended periods between these dates and times. Escape did not provide any information or evidence of dates and times when they believed the URL was not displayed.

In Ofcom’s view, the continued on-screen references to the website URL, for at least the period 9 October until 2 December 2013, clearly amounted to promotions of the

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<sup>3</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/bcap-guidance.pdf>.

<sup>4</sup> For example, see the £40,000 financial penalty imposed on Satellite Entertainment Limited on 5 August 2013: <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/satellite-ltd.pdf>.

www.babestation.com website and its related live 'webcam' services. The on-screen references to the www.babestation.com URL were therefore advertising products. In Ofcom's view, Escape promoted the www.babestation.com website within its licensed free-to-air television services to encourage, and as a means for, viewers to access the live webcam material available there.

#### Containing material within the recognised character of pornography

Ofcom then considered whether the on-screen promotion of the www.babestation.com website URL on services without any restricted access was an advertisement for a product "within the recognised character of pornography".

On reviewing the website, Ofcom found that access to the content on the www.babestation.com website was possible without age verification. The homepage featured a number of thumbnails, each showing a different woman available to view and interact with via live webcam feeds. Users were then able to click on the thumbnails to bring up additional pictures of the selected woman. In some instances these images featured women with their legs open and their genitals visible.

At this stage, users were then able to make payment to enable live webcam streaming. This could be done through the use of a PRS number. On dialling the telephone number on-screen, users were given a PIN and, having entered the PIN into the website, users were given continued access until the call was disconnected. At no time was the caller to this PRS number requested or required to provide age verification to prove they were over the age of 18.

Once connected, users were able to view the live webcam feed and also interact via a text chat window. To the right of the screen, a scrollable window displayed live images from other webcam feeds and in many instances, these included further R18 equivalent images of women masturbating. On clicking on any one these, users were taken to their chosen live feed, many of which also included R18 equivalent material, predominantly of close-up images of women masturbating. In Ofcom's view these images also were all within the recognised character of pornography.

In its representations to Ofcom, Escape said that "the website content is dynamic in nature and can change by the second. Neither the broadcaster nor the website operator monitor or are legally obliged to monitor and/or record the real time content." Ofcom's previous decisions and guidance have made it clear that Ofcom licensed services (subject to the BCAP Code and not behind mandatory restricted access) must not promote websites that fall within the character of pornography. If a broadcaster is unable or unwilling to monitor the contents of website it promotes on its licensed service, compliance with BCAP Code Rule 30.3 cannot be assured.

Ofcom considered that the illustrative video of the website content it provided to the Licensee (recorded on 19 November 2013) was sufficient evidence to demonstrate that the www.babestation.com website was a "product coming within the recognised character of pornography". Ofcom has no reason to believe that the material it accessed on this occasion was significantly more explicit than typically found on the website. We noted that the Licensee did not seek to argue that this video was an unfair representation of the type of content generally available on the www.babestation.com website at this time.

### Mandatory restricted access

Under Rule 30.3 advertisements for products within the recognised character of pornography are permitted behind mandatory restricted access on adult entertainment channels only. Section 30 of the BCAP Code states that:

“Behind mandatory restricted access on adult entertainment channels’ is interpreted with reference to Rule 1.18 of the Ofcom Broadcasting Code.”

Rule 1.18 of the Broadcasting Code makes clear that “mandatory restricted access” means “a PIN protected system (or other equivalent protection) which cannot be removed by the user, that restricts access solely to those authorised to view”.

Although the licensed service in this case is within the ‘adult’ section of the EPG, it is broadcast unencrypted and without mandatory restricted access. Ofcom therefore considered that these advertisements for products within the recognised character of pornography were shown on the service without mandatory restricted access as required by Rule 30.3 of the BCAP Code.

### Conclusion

Ofcom noted that the Licensee apologised for this compliance error and has introduced new training and procedures as a result of this incident. Nonetheless the broadcast of promotional references to the [www.babestation.com](http://www.babestation.com) website on Lucky Star for extended periods between 9 October and 2 December 2013 breached Rule 30.3 of the BCAP Code.

Ofcom was particularly concerned that in this case the advertising led to a website which contained R18 equivalent material without any appropriate age verification process.

### **Breaches of BCAP Code Rule 30.3**

## In Breach

### Party

*Party (channel 175), 9 October to 20 December 2013, various times between 00:00 and 05:30*

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#### Introduction

Party (channel 175) is an interactive daytime chat and 'adult chat' advertising service which is freely available without mandatory restricted access and is situated in the 'adult' section of the electronic programme guide of the Freeview digital terrestrial platform. Viewers are invited to contact the on-screen presenters via premium-rate telephony services ("PRS"). The female presenters dress and act in a sexually provocative manner while encouraging viewers to contact the PRS numbers. The licence for this service is held by Square 1 Management Limited ("Square 1" or "the Licensee").

Ofcom received a complaint that the website [www.babestation.com](http://www.babestation.com) was being promoted "openly on-screen" on the service Party. This Ofcom licensed service broadcasts 'adult chat' content between 00:00 and 05:30. The complainant said that on accessing the Babestation website by means of this URL it was possible to view content which was "clearly R18 and beyond".

Ofcom viewed the Party channel and noted that references were made to the website [www.babestation.com](http://www.babestation.com) by way of a graphic, positioned in the top left-hand corner of the screen, which showed the URL. Ofcom viewed the channel's output between the hours of 00:00 and 05:30 at various times and on various dates. On all occasions when the presenters were on screen, the URL was visible.

After receiving the complaint Ofcom accessed the [www.babestation.com](http://www.babestation.com) website and noted and retained records, including video and screenshots, of the following:

- The homepage featuring a selection of thumbnail images of women. On clicking on the image of a woman, the user was taken to a second page with further images of the woman and the option to see her in what was described as a "live show" by selecting a choice of payment methods.
- Ofcom noted that when scrolling through the homepage, a small number of the thumbnail images of the women were explicit, for example showing some with their legs open and their genital area fully visible. In one instance, the image was more explicit, showing a woman masturbating with her fingers inserted inside her vagina. These images were available to view without any restrictions.
- Once a thumbnail image of a woman was selected and the user accessed the second page of images, the user was able to make payment to enable live webcam streaming and live interaction with the woman. The payment could be done through the use of a PRS number, which generated a PIN, which in turn could be entered into the website. This allowed full access to the website until the call was disconnected. Access could also be purchased by a credit card.
- Ofcom noted that when the PRS number was dialled and the PIN received (or payment was made using a credit card), users were able to view the live webcam feed and interact with the woman in the original thumbnail via a text chat window.

To the right of the screen, a scrollable window displayed live images from other webcam feeds and, in many instances, these were images of women masturbating (equivalent to British Board of Film Classification (BBFC) R18-rated content<sup>1</sup>). On clicking on any one these live images, users were taken to their chosen live feed, and many of these feeds included R18 equivalent material, predominantly of close-up images of the women's genitals as they inserted items such as vibrators into their vaginas.

- When accessing these live webcam feeds via the PRS number the user was at no time asked to verify they were over the age of 18.

Since 1 September 2010, all PRS-based daytime and adult chat television services have been regulated by Ofcom as forms of long-form advertising i.e. teleshopping. From this date, the relevant standards code for services has been the UK Code of Broadcast Advertising (the "BCAP Code").

Ofcom was concerned that these promotional references to the [www.babestation.com](http://www.babestation.com) website were broadcast throughout the night on this 'adult chat' service (which is broadcast on a channel freely available without mandatory restricted access), and that these references led the user to images within the recognised character of pornography without a sufficient means of age verification. Ofcom considered issues were raised warranting investigation under BCAP Code Rule 30.3, which states:

"Advertisements for products coming within the recognised character of pornography are permitted behind mandatory restricted access<sup>2</sup> on adult entertainment channels only".

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

## Response

The Licensee accepted that there had been a "compliance failure" and apologised. It said it had taken immediate action following Ofcom contacting the broadcaster. This action included removing the Babestation URL from Party broadcasts and, as an additional measure, ensuring that anyone attempting to access the [www.babestation.com](http://www.babestation.com) site was redirected to [www.babestation.co.uk](http://www.babestation.co.uk) (which the Licensee said was managed by internal personnel and was wholly compliant with the BCAP Code).

The Licensee said that "a considerable degree of confusion has been apparent on the part of the third party website supplier and this has revealed the need for improved communication between internal personnel and third party suppliers as well

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<sup>1</sup> The 'R18' category is a special and legally restricted classification primarily for explicit works of consenting sex or strong fetish material involving adults. Films may only be shown to adults in specially licensed cinemas, and video works may be supplied to adults only in licensed sex shops. 'R18' videos may not be supplied by mail order.

<sup>2</sup> "Behind mandatory restricted access on adult entertainment channels" is interpreted by reference to Rule 1.18 of the Ofcom Broadcasting Code. Rule 1.18 of the Code makes clear that "mandatory restricted access" means "a PIN protected system (or other equivalent protection) which cannot be removed by the user, that restricts access solely to those authorised to view".

as robust testing of all services”. Square 1 explained that it was a “huge disappointment” that this case had arisen as “it had felt that the importance of complying with BCAP Code Rule 30.3 was well understood by all key personnel”.

Square 1 told Ofcom that lines of communication between internal personnel and third party suppliers had been affected by a major studio move between August and November 2013 and that this had involved a number of technical and operational challenges. The Licensee said that during this period the URL, which was being broadcast on screen up until this point, became switched with the [www.babestation.com](http://www.babestation.com) URL. Square 1 explained that: “in the melee of the move, the significance of this change was not picked up”. Subsequent to Ofcom’s contact with the broadcaster, Square 1 said that additional training and new systems have been implemented in order to prevent any repetition of the circumstances of this case.

In relation to the content of the [www.babestation.com](http://www.babestation.com) website, the Licensee said that: “the website content is dynamic in nature and can change by the second. Neither the broadcaster nor the website operator monitor or are legally obliged to monitor and/or record the real time content.”

In relation to the issue of adequate age verification for access to website content, the Licensee said that: “the contractual arrangements behind the Babestation url specifically provided that all site functionality, graphics, content etc should, insofar as it affected UK broadcasts, be strictly compliant with the requirements of the BCAP Code and related guidelines. Furthermore, DNX Network SARL [the website operator] had been specifically asked to ensure that users could only access the webcam content by use of a credit card”. The Licensee added that the website operator believed that the manner in which the pay wall was configured was compliant in: “providing a method of access control which secured that persons under eighteen would not normally see or hear material that was unsuitable for persons under age 18”.

## **Decision**

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that “the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented”. This objective is reflected in the rules set out in the BCAP Code.

The BCAP Code contains rules which permit ‘adult chat’ services to be advertised within prescribed times and on free-to-air channels that are specifically licensed by Ofcom for that purpose, but which carefully circumscribe their content to exclude inappropriate material. These rules apply to both daytime and ‘adult chat’ services.

In particular Rule 30.3 of the BCAP Code states that:

“Advertisements for products coming within the recognised character of pornography are permitted behind mandatory restricted access on adult entertainment channels only.”

When setting and applying standards in the BCAP Code to provide adequate protection to members of the public from serious or widespread offence, Ofcom must have regard to the need for standards to be applied in a manner that best guarantees an appropriate level of freedom of expression in accordance with Article 10 of the European Convention on Human Rights, as incorporated in the Human Rights Act

1998. However, the advertising content of ‘adult chat’ services has much less latitude than is typically available to editorial material in respect of context and narrative. The primary intent of advertising is to sell products and services, and consideration of acceptable standards will take that context into account.

On 27 July 2011 Ofcom published revised guidance on the advertising of telecommunications-based sexual entertainment services and PRS daytime chat services (the “Chat Service Guidance”)<sup>3</sup>. The Chat Service Guidance clearly sets out what Ofcom considers to be acceptable to broadcast on these services pre- and post-watershed. In particular, the Chat Service Guidance states under the heading “Website references” and under Rule 30.3 of the BCAP Code that:

“Ofcom licensed services that are broadcast without mandatory restricted access must not promote websites that contain material within the recognised character of pornography”.

Ofcom has also made it clear in previous sanction decisions under the BCAP Code<sup>4</sup> that it deems the promotion of websites featuring R18 material that is not protected by proper age verification to be of particular concern.

In its representations to Ofcom, Square 1 said that it had specifically asked the website operator to ensure that webcam content was only accessible through the use of a credit card. The Licensee also told Ofcom that the website operator believed that the manner in which the website was configured “secured that persons under eighteen would not normally see or hear material that was unsuitable for persons under age 18”.

While Ofcom accepts that the Licensee may have intended that the webcam material could only be accessed by use of a credit card it was the Licensee’s responsibility to ensure this was the case where it was promoting the URL on its licensed service. In this case, Ofcom accessed the pornographic content (as set out in detail below) by use of a PRS number alone (as one of the payment methods available on the website).

### Promotion of a website

Ofcom’s examination of material, across the free-to-air service Party, showed that between the hours of 00:00 and 05:30 the babestation.com website URL was present on-screen as described above throughout the broadcasts. As already indicated, Ofcom viewed the channel’s output between the hours of 00:00 and 05:30 at various times and on various dates. On all occasions when the presenters were on screen, the URL was visible. We were therefore satisfied that the URL was broadcast for extended periods between these dates and times. Square 1 did not provide any information or evidence of dates and times when they believed the URL was not displayed.

In Ofcom’s view, the continued on-screen references to the website URL, for at least the period 9 October until 20 December 2013, clearly amounted to promotions of the

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<sup>3</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/bcap-guidance.pdf>.

<sup>4</sup> For example, see the £40,000 financial penalty imposed on Satellite Entertainment Limited on 5 August 2013: <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/satellite-ltd.pdf>.

www.babestation.com website and its related live 'webcam' services. The on-screen references to the www.babestation.com URL were therefore advertising products.

In Ofcom's view, Square 1 promoted the www.babestation.com website within its licensed free-to-air television services to encourage, and as a means for, viewers to access the live webcam material available there.

#### Containing material within the recognised character of pornography

Ofcom then considered whether the on-screen promotion of the www.babestation.com website URL on services without any restricted access was an advertisement for a product "within the recognised character of pornography".

On reviewing the website, Ofcom found that access to the content on the www.babestation.com website was possible without age verification. The homepage featured a number of thumbnails, each showing a different woman available to view and interact with via live webcam feeds. Users were then able to click on the thumbnails to bring up additional pictures of the selected woman. In some instances these images featured women with their legs open and their genitals visible.

At this stage, users were then able to make payment to enable live webcam streaming. This could be done through the use of a PRS number. On dialling the telephone number on-screen, users were given a PIN and, having entered the PIN into the website, users were given continued access until the call was disconnected. At no time was the caller to this PRS number requested or required to provide age verification to prove they were over the age of 18.

Once connected, users were able to view the live webcam feed and also interact via a text chat window. To the right of the screen, a scrollable window displayed live images from other webcam feeds and in many instances, these included further R18 equivalent images of women masturbating. On clicking on any one these, users were taken to their chosen live feed, many of which also included R18 equivalent material, predominantly of close-up images of women masturbating. In Ofcom's view these images also were all within the recognised character of pornography.

In its representations to Ofcom, Square 1 said that "the website content is dynamic in nature and can change by the second. Neither the broadcaster nor the website operator monitor or are legally obliged to monitor and/or record the real time content." Ofcom's previous decisions and guidance have made it clear that Ofcom licensed services (subject to the BCAP Code and not behind mandatory restricted access) must not promote websites that fall within the character of pornography. If a broadcaster is unable or unwilling to monitor the contents of website it promotes on its licensed service, compliance with BCAP Code Rule 30.3 cannot be assured.

Ofcom considered that the illustrative video of the website content it provided to the Licensee (recorded on 19 November 2013) was sufficient evidence to demonstrate that the www.babestation.com website was a "product coming within the recognised character of pornography". Ofcom has no reason to believe that the material it accessed on this occasion was significantly more explicit than typically found on the website. We noted that the Licensee did not seek to argue that this video was an unfair representation of the type of content generally available on the www.babestation.com website at this time.

### Mandatory restricted access

Under Rule 30.3 advertisements for products within the recognised character of pornography are permitted behind mandatory restricted access on adult entertainment channels only. Section 30 of the BCAP Code states that:

“Behind mandatory restricted access on adult entertainment channels’ is interpreted with reference to Rule 1.18 of the Ofcom Broadcasting Code.”

Rule 1.18 of the Broadcasting Code makes clear that “mandatory restricted access” means “a PIN protected system (or other equivalent protection) which cannot be removed by the user, that restricts access solely to those authorised to view”.

Although the licensed service in this case is within the ‘adult’ section of the EPG, it is broadcast unencrypted and without mandatory restricted access. Ofcom therefore considered that these advertisements for products within the recognised character of pornography were shown on the service without mandatory restricted access as required by Rule 30.3 of the BCAP Code.

### Conclusion

Ofcom noted that the Licensee apologised for this compliance error and has introduced new training and procedures as a result of this incident. Nonetheless the broadcast of promotional references to the [www.babestation.com](http://www.babestation.com) website on Party for extended periods between 9 October and 20 December 2013 breached Rule 30.3 of the BCAP Code.

Ofcom was particularly concerned that in this case the advertising led to a website which contained R18 equivalent material without any appropriate age verification process.

### **Breaches of BCAP Code Rule 30.3**

## In Breach

### Battlecam Comedy

FilmOn.TV, 15 November 2013, 15:30

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#### Introduction

FilmOn.TV is an entertainment channel broadcasting on digital satellite platforms. The licence for FilmOn.TV is held by Filmon TV Limited (“Filmon” or “the Licensee”). The programme *Battlecam Comedy* was a recording of highlights of a stand-up comedy competition compèred by Alki David, the owner of FilmOn.TV.

A complainant alerted Ofcom to adult material contained within the stand-up routines, that they considered inappropriate to be broadcast at 15:30.

Ofcom assessed the episode. Although all instances of offensive language had been ‘bleeped’, much of the comedy was adult in nature. By way of example, we noted the following:

The first comic, while discussing what it would be like if he were a gynaecologist, mimed inserting his fingers into an imaginary woman’s vagina. He then tasted his fingers and said “*syphilis?*”

Later, he said:

*“Men, we love you ladies, but we just love your [bleep] a little bit more...if we could remove the [bleep] from the chick and just take it to work and just pull it out and use it during the day in our 15 minute break...we would”.*

He later joked:

*“Where did that myth come from that sperm is supposed to be good for the skin. If that’s true then why do all thirty year old porn stars look beat to [bleep]. I’m just saying they all have faces like Gucci handbags left out in the sun too long”.*

The second comic featured said the following:

*“I finally found out why my [bleep] curves to the left. I think it’s afraid of my right hand”.*

*“One time we were in bed and my last girlfriend noticed that my hair down here was thinning, right? So she says why don’t you get some of that Rogaine and rub it on and I did. Didn’t do a damn thing for me – but she grew one hell of a moustache”.*

The final comic said:

*“...Maxim magazine...I’ve never had a need for it because it’s like women in bikinis posing on a beach and in my apartment I have an elaborate library of real pornography. It’s like, so you’re standing on a beach whilst this chick’s naked on all fours with a bottle in her [bleep]...you invested well...I guess your uncle didn’t [bleep] you”.*

Ofcom also noted there were 48 occasions where offensive language had been 'bleeped' over the course of the programme's 16-minute duration.

Ofcom considered the programme raised potential issues under the following rules of the Code.

Rule 1.3: "Children must...be protected by appropriate scheduling from material that is unsuitable for them".

Rule 1.16: "Offensive language must not be broadcast before the watershed (in the case of television)..., unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed".

Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context (see meaning of "context" below). Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence".

We therefore requested comments from Filmon as to how this material complied with these rules.

## **Response**

FilmOn said it was "truly sorry" and explained that an internal compliance request had been made before the broadcast "to make sure that any offensive words are bleeped out when a show is shown outside of the watershed". The Licensee said that "the problem is our compliance team have taken that literally and instead of taking into account the tone and suitability of a program they have just gone by our instruction and not used common sense".

The Licensee said that since being alerted to the issue by Ofcom, the compliance and scheduling team have been instructed "to remove any programming that might cause similar offence and we have banned the use of this type of content until after 11.00pm at night" where it will be preceded by a warning.

## **Decision**

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appears to it best calculated to secure the standards objectives, including that "persons under the age of eighteen are protected" and "generally accepted standards" are applied so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material.

These duties are reflected in Sections One and Two of the Code respectively. Broadcasters are required to comply with the rules in Section One of the Code to ensure that children are protected. Broadcasters are also required under Rule 2.3 of the Code to ensure that material which may cause offence is justified by the context.

In reaching a Decision in this case, Ofcom has taken into account the right to freedom of expression which gives broadcasters a right to transmit and the audience to receive creative material, information and ideas without interference from a public

body, subject to restrictions prescribed by law and necessary in a democratic society. This is set out in Article 10 of the European Convention of Human Rights. However, although broadcasters and viewers have this right, it is the responsibility of the broadcasters to ensure that the material they transmit is in accordance with the general law and the Code.

### Rule 1.3

Rule 1.3 requires that children are protected by appropriate scheduling from material that is unsuitable for them. Appropriate scheduling is judged by a number of factors including: the nature of the content; the likely number and age range of the audience; the start and finish time of the programme; and likely audience expectations.

Ofcom first considered whether the programme was suitable for children. We noted that the programme featured a series of stand-up comedy routines which made references to subjects of an adult nature frequently and throughout (see examples listed above). In Ofcom's opinion, broadcast material dealing so clearly, graphically and unambiguously in the context of comedy entertainment with adult subjects such as pornography, masturbation, sexual acts, and incest was clearly not suitable for children.

Ofcom then considered whether the material was appropriately scheduled. In the context of the Code, "appropriate scheduling" is judged by a number of factors including: the nature of the content; the likely number and age range of children in the audience; the start and finish time of the programme; the nature of the channel and the particular programme; and, the likely expectations of the audience for a particular channel or station at a particular time and on a particular day.

This programme was broadcast at 15:30 on a weekday during term time. Ofcom noted that FilmOn.TV is a specialist channel unlikely to attract a significant child audience. However, we were concerned that this programme was broadcast at a time when some children were returning home from school and were available to view, in some cases potentially unaccompanied.

Ofcom understands that FilmOn.TV had only begun broadcasting a few days before 15 November 2013. There had therefore been little opportunity for the expectations of the potential audience for this new service to have developed. Nonetheless in Ofcom's view (as was acknowledged by the Licensee), the audience for freely available television channels broadcast pre-watershed would not expect material of this nature, clearly aimed at an adult audience, to be broadcast before the watershed.

In its representations to Ofcom, FilmOn did not seek to justify the broadcast of this material at 15:30 on a Friday and explained that "this type of content" will no longer be shown until after 23:00. Although Ofcom noted this move, the broadcast nonetheless clearly breached Rule 1.3.

### Rule 1.16

Rule 1.16 states that "[o]ffensive language must not be broadcast before the watershed (in the case of television)...unless it is justified by the context" and that "[i]n any event, frequent use of such language must be avoided before the watershed".

Ofcom noted the offensive language contained within the programme had been 'bleeped'. Over the course of the programme's 16-minute duration there were 48 examples of such bleeping.

When offensive language is bleeped in this way, viewers cannot identify what expletives have been used but can of course guess. In its guidance "Protecting the Under-Eighteens: Observing the watershed on television and music videos"<sup>1</sup>, Ofcom noted that: "If the use of the masked offensive language in a programme is frequent, such that the programme requires multiple instances of bleeping, there can be a cumulative effect on viewers similar to that of the offence caused by repeated broadcast of the unedited offensive language."

Taking this into account, Ofcom considered that the 48 instances of bleeped language in this case did amount to frequent use of offensive language. The content was therefore in breach of Rule 1.16.

### Rule 2.3

Rule 2.3 requires that broadcasters apply generally accepted standards to ensure that material which may cause offence is justified by the context. Ofcom first considered whether the programme was capable of causing offence.

Ofcom noted that the stand-up comedy routines in the programme dealt in a graphic and unambiguous way with a variety of adult subjects such as pornography, masturbation, sexual acts, and incest. In Ofcom's opinion, the manner in which these matters were discussed, combined with the very high frequency of offensive language, albeit bleeped, had the potential to cause offence.

Taking account in particular of the right of freedom of expression, it is of course possible for programmes broadcast before the watershed to deal with adult subjects such as pornography, masturbation, sexual acts, and incest while meeting generally accepted standards. It is important to note that the Code does not prohibit the broadcast of offensive or potentially offensive material, but requires that it is justified by the context. Therefore, Ofcom then turned to consider whether, in seeking to apply generally accepted standards so as to provide adequate protection to viewers, FilmOn had ensured that this potentially offensive material was justified by the context.

Ofcom noted first that particular elements of the material, such as the references to syphilis, women's sexual organs, oral sex and incest had the potential to cause considerable offence, especially when broadcast during the afternoon (as in the current case) and in particular to viewers who might have come across the material unawares. We also took into account this was a comedy programme. The purpose was therefore entertainment rather than educational. Ofcom's view (shared by the Licensee in this case) is that audiences for comedy programmes broadcast during the afternoon on freely available channels like FilmOn.TV do not expect them to contain material about such adult subjects and to treat them in a way so clearly aimed at an adult and post-watershed audience.

We also took into account that no pre-broadcast warning was given, alerting viewers to the potentially offensive nature of the content within the programme.

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>

For all these reasons, Ofcom concluded that the material was not justified by the context and the broadcast breached Rule 2.3.

Ofcom noted the Licensee's representations that its compliance team had not taken into account "the tone and suitability of [the] programme" and had "not used common sense".

Although Ofcom acknowledges that FilmOn.TV was a new service at the time of the broadcast of this programme in this case, we were concerned that the Licensee's comments reflected a lack of understanding by its compliance team of the requirements of the Code. Licensees must ensure that they have compliance arrangements in place from the moment they start broadcasting to ensure compliance with the Code.

### **Breaches of Rules 1.3, 1.16 and 2.3**

## In Breach

### Cruising With The Stars

*Holiday and Cruise Channel, 16 December 2013, 16:00*

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#### Introduction

Holiday and Cruise Channel broadcasts on digital satellite platforms. It offers a variety of programming related to holidays. The licence for this channel is held by JAN Media Limited (“JAN Media” or “the Licensee”).

Each episode of the series *Cruising With The Stars* features an interview with a celebrity or an individual involved with the world of cruising. In the episode broadcast on 16 December 2013, host Debi Jones interviewed actress Anne Marie Davies.

A complainant alerted Ofcom to the use of the word “fuck” during a clip of a performance of a play in which Ms Davies appeared (included in the programme to illustrate Ms Davis’ work as an actress).

Ofcom assessed the episode and noted the clip featured a male character saying the following line of dialogue: “*Thank fuck for that!*”

Ofcom considered that the 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 sought comments from the Licensee as to how the material complied with this rule.

#### Response

JAN Media apologised for any distress caused by this broadcast of offensive language and underlined that it was not done deliberately. The Licensee said it resulted from human error and that JAN Media has put “further checks in place” to ensure compliance with the Code in future.

#### 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”.

Rule 1.14 states that the most offensive language must not be broadcast before the watershed. Ofcom research on offensive language<sup>1</sup> clearly notes that the word “fuck” and its derivatives are considered by audiences to be among the most offensive language. Ofcom therefore considered that the broadcast of the most offensive language, at 16:00, was a clear breach of Rule 1.14.

#### Breach 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>)

## Advertising Scheduling Findings

### 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
Community Channel	7 October 2013, various times	COSTA Rule 4	Ofcom noted, during monitoring that the Community Channel exceeded the permitted advertising allowance by a total of one minute and 15 seconds across three clock hours.  <b>Finding: Breach</b>
Vintage TV	18 October 2013, 22:00 19 October 2013, 21:00	COSTA Rule 4	Ofcom noted, during monitoring that Vintage TV exceeded the permitted advertising allowance in a clock hour on 18 and 19 October by 16 seconds and 51 seconds respectively.  Finding: Breach

## Fairness and Privacy cases

### Upheld in Part

#### Complaint by Ms A

*Scott & Bailey, ITV, 22 May 2013*

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#### Summary

Ofcom has upheld in part this complaint of unwarranted infringement of privacy made by Ms A.

The programme complained of was an episode of the fictional crime drama *Scott & Bailey* which focussed on an investigation into the death of a character, 'Kenneth Valentine'. Ms A complained that details surrounding the 2007 murder of her father, Mr A, were included in the programme. Ms A said that this resulted in her privacy being unwarrantably infringed in the programme as broadcast because details of her personal life were disclosed without her consent, in that the nature of the information broadcast (about the murder of her father) was private and personal to her. She also complained that she was not informed about the plans for the making of the programme or its intended broadcast, despite the circumstances of her father's death, and that the programme had caused her and her son distress.

Ofcom found that Ms A's privacy was unwarrantably infringed in the programme as broadcast. This is because, although Ofcom considered that Practice 8.6 of the Code was followed and the infringement of Ms A's privacy was warranted in this respect, Ofcom was not satisfied that ITV had taken all reasonably practicable steps to ensure that any potential distress to Ms A was minimised. Therefore her privacy was, on balance, unwarrantably infringed in this latter respect.

#### Guidance

The circumstances of Ms A's complaint were very exceptional. In adjudicating on this complaint, Ofcom was acutely aware that it must not unfairly and disproportionately infringe the editorial freedom of broadcasters and their creative teams. Ofcom recognises the importance of makers and writers of broadcast drama being able to draw inspiration freely from real life events. In the particular circumstances of this case, Ofcom did not consider that Ms A's consent was required to broadcast the material complained of, but Ofcom was not satisfied that ITV had taken appropriate steps to reduce the potential distress to the immediate family of a murder victim.

#### Introduction and programme summary

On 22 May 2013, ITV broadcast an episode of *Scott & Bailey*, a fictional crime drama. This series followed the criminal investigations of two female detective constables, 'DC Rachel Bailey' and 'DC Janet Scott', who were members of the Greater Manchester Police Major Incident Team. In this episode, the two detectives investigated the murder of a 61 year old character, 'Kenneth Valentine', who was found dead in a courtyard area at the back of a shop in [redacted] town centre. The son of 'Kenneth Valentine', '[redacted]', had reported his father missing after they had had a fight the night before and his father had not come home.

As the storyline developed, 'Kenneth Valentine's' murder was discussed by the detectives and photographs of the crime scene were shown being examined. One

photograph showed the body of 'Kenneth Valentine' lying at the bottom of some steps. One of the detectives explained that:

*"The way Kenneth Valentine's body was positioned is not consistent with a fall down these steps. He's just a bit too far from them and he's got no dirt or abrasions on his hands and knees to suggest he crawled following a fall. He's got a boot mark, a partial boot mark on his head. And the pathologist is saying that the way the ribs are broken, three of them, is consistent with an attack. The cause of death is an acute subdural haematoma on the brain following injuries to the skull".*

The detectives were asked whether the family were possible suspects. 'DC Scott' responded:

"[redacted]". [The quote contained information that reflected the personal and private circumstances of Ms A's close relatives]

Later in the programme, 'Kenneth Valentine's' death was linked to several other robberies that had been committed in [redacted] on the same evening the character 'Kenneth Valentine' had been killed. The robberies, which had taken place at or near ATM machines, were depicted in the programme as having been conducted by two men who were suspected of robbing up to five people at knifepoint that day on "[redacted] Street" (four out of the five victims of similar crimes committed that day positively identified the two suspects in the drama). CCTV footage of the assailants at an ATM machine was shown in the programme. Their identities were discovered when a mobile telephone SIM card, which had belonged to one of the victims, was found in one of the robber's clothing.

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

Ms A complained that her privacy was unwarrantably infringed in the programme as broadcast because details surrounding the murder of her father in 2007 were included in the programme, a fictional drama. She said that she was not informed about the plans for the making of the programme or its intended broadcast, despite the circumstances of her father's death. Ms A said that details included in the programme rendered her father (Mr A) identifiable (notwithstanding the fact that the murder victim in the drama was called 'Kenneth Valentine'). As a result, she said her privacy was unwarrantably infringed in the programme as broadcast because details of her personal life were disclosed without her consent, in that the nature of the information broadcast (about the murder of her father) was private and personal to her.

Ms A said that during and after the programme was broadcast, 25 people had identified the character of 'Kenneth Valentine' as being a fictional representation of her father and had called her to alert her to the programme. Ms A said that she had also been stopped in the street by people who had seen the programme and who had wanted to discuss it. She said that the broadcast of the programme had led to her feeling like she was reliving the past. She said that the programme had caused distress to her and her son.

In support of her complaint, Ms A provided Ofcom with the following list of similarities between the circumstances surrounding her father's murder in 2007 and the fictional murder of 'Kenneth Valentine' in the programme:

- The character '[redacted] Valentine', the son of 'Kenneth Valentine', shared the same first name of Ms A's brother, [redacted].
- The programme showed [redacted]. [Information about the personal and private circumstances of Ms A's close relatives] Ms A said that these details reflected the real life events surrounding her father's murder which were not in the public domain.
- The events in the programme took place in [redacted], which was the same town in which Ms A's father lived and was murdered. While the fictitious housing estate where 'Kenneth Valentine's' flat was located was different to that where Ms A's father lived, it was "only down the road".
- The circumstances of 'Kenneth Valentine's' death were the same as that of Ms A's father, including the description of where the body was found and the injuries 'Kenneth Valentine' had sustained. A photograph of the steps where Ms A's father was found was also included in the programme.
- The circumstances of 'Kenneth Valentine's' murder mirrored that of Ms A's father in that the programme depicted the two men who robbed at least four other people at knifepoint the same night 'Kenneth Valentine' was murdered. On the night Ms A's father was murdered, two men took their victims to an ATM machine where they demanded they withdraw cash. In the programme, the victims who were attacked before 'Kenneth Valentine' were robbed of their belongings "*...at or near ATM machines on [redacted] Street*". Ms A said that footage of the same ATM machine, where the victims were robbed on the night her father was murdered, was included in the programme.
- In the programme, when the police conducted a search of the clothes of one of the assailants, they found a SIM card which linked them to one of the victims. This was similar to the way in which Ms A's father's attackers had been traced.
- In the programme, one of the robbers had only recently been released from prison. This was similar to the facts in Ms A's father's case.
- The detectives in the programme had deduced that 'Kenneth Valentine' had been urinating behind a shop at the time he had been attacked. Ms A said that this possibility had also been raised in the court hearing about her father.
- In the programme, the characters '[redacted]' and 'Abigail' were under suspicion for the murder of 'Kenneth Valentine' for a time and were investigated by the police. This was also the case with Ms A's brother and his partner.

In response, ITV acknowledged that there were some similarities between the events in the fictional programme and the real life circumstances of the murder of Mr A. It did not, however, consider that the similarities themselves represented an unwarranted infringement of Ms A's privacy.

ITV stated that the majority of the details complained of in the fictional murder case that were similar to the details of the circumstances of Mr A's murder were in the public domain. The murder of Mr A was widely reported in the press as well as on the internet. The large amount of information about the manner of Mr A's death following a street robbery, the actions of the perpetrators, and the discovery of his body, were not in any sense private information. ITV explained that a police consultant, who provided insights into the details of real crimes including the murder of Mr A, assisted with the production process. In particular, the scriptwriter of the programme had sought this insight to be able "to portray the consequences of a violent street robbery as truthfully as possible".

ITV stated that some of the similarities highlighted by Ms A in her complaint were entirely unintentional and purely coincidental. For example, the fictional murder of the character 'Kenneth Valentine' took place in [redacted], the same town in which Mr A lived

and was murdered. ITV said that *Scott & Bailey* was set in Greater Manchester and therefore the crimes depicted take place in that area. It explained that the character of '[X] Valentine', the son of 'Kenneth Valentine', was originally intended to be named 'Liam Valentine'. It said that the name 'Liam Valentine' had not cleared the standard checking process, whereby the names of fictional characters in dramas are checked to ensure that they are not unintentionally associated with real life individuals, because it was found that there was a real life individual with the name 'Liam Valentine' living in the Manchester area. An alternative name of '[X] Valentine' was therefore chosen and the members of ITV's compliance department responsible for doing the routine checks were unaware of the real life murder of Mr A, and the name of his son (the complainant's brother), [X]. ITV therefore said that the final choice of character name '[X] Valentine' was coincidental.

ITV considered that many of the details referred to in Ms A's complaint echoed those in the real life murder of Mr A simply because the programme reflected standard police procedures and circumstances common in many murder investigations. For instance: many crimes are committed by repeat offenders, often by those who have only recently been released from prison; relatives of the victim are often under suspicion until the real perpetrator of the crime is identified; and it is standard procedure to search suspects for items which may link them to the crime, such as stolen SIM cards.

ITV said that, while it recognised that there were similarities between the fictional drama and the murder of Mr A, there were a number of marked differences in the *Scott & Bailey* storyline. By way of example, it said that: 'Kenneth Valentine's' body was found the day after the attack, whereas Mr A's body was not found for more than two weeks; Mr A's attackers were both white and both played an equal part in the crime, whereas one of the fictional attackers was Asian and was a more reluctant participant; the names of the attackers were different; the number of robberies committed by the attackers was different (Mr A had been the fifth robbery victim whereas in the programme the number of previous victims was not clear: the programme stated "*Four out of five robbery victims identified Crossland and Deepak on the video identity parade*"); and the 'Kenneth Valentine' character was seen to walk into a side street of his own accord, whereas Mr A was dragged into a yard behind a shop.

ITV argued that the fact that the drama employed some details which were reminiscent of a real life crime did not constitute an infringement of privacy of Ms A (as a close relative of the real life murder victim Mr A) in the absence of any details directly related to the complainant herself or depiction of any character who could possibly be identified as representing the complainant. ITV also said that the detail concerning other characters in the drama related to 'Kenneth Valentine', such as the detail which Ms A associated with her brother, were not sufficiently connected to Ms A herself to represent personal information about her.

ITV acknowledged that Ms A had not been informed of the content of the programme prior to its broadcast and explained that this was due to a misunderstanding on the part of the production team. ITV said that, although the fictional story had been inspired by real life events, the production team had believed that sufficient changes had been made to ensure that it was not identified with any real life story. The production team did not inform ITV of any similarity between the fictional storyline and Mr A's murder. ITV was therefore unaware that there were any similarities with real life events or people that needed consideration. Had it been aware of the similarities that existed between the murder of Mr A and the fictional murder in the programme, ITV said that steps would have been taken to seek to reduce the

potential for distress to the relatives of Mr A, by either ensuring that close relatives of Mr A were advised about the broadcast, or taking steps to make the fictional murder less similar to the murder of Mr A.

ITV highlighted the fact that the programme was not seeking to reconstruct the murder of Mr A, nor was it a factual drama where the subject was a real life case. The complainant was therefore not informed about the programme before its broadcast because, in good faith, the production company had failed to appreciate the potential distress to her, having taken what it thought were adequate steps to alter the details in the fictional story so that it did not bear many similarities to Mr A's murder.

Nevertheless, ITV apologised to Ms A for any distress caused by the fact that she was not informed about the programme prior to it being broadcast. It also offered to undertake to ensure that Ms A and her family were notified in advance of any proposed repeat of the programme on ITV channels in future. Given Ms A's complaint, ITV said that it had taken on board the importance of communication between production companies and ITV regarding any real life inspiration used for fictional storylines.

### **Representations on Ofcom's Initial Preliminary View**

Ofcom's initial Preliminary View in this case was that Ms A's complaint of unwarranted infringement of privacy should be upheld. In summary, Ofcom provisionally concluded that:

- Practice 8.6 of the Code was followed (ITV did not obtain Ms A's consent but the infringement of her privacy was warranted as far as this Practice was concerned).
- However, Ofcom was not satisfied that ITV had taken all reasonably practicable steps to ensure that any potential distress to Ms A was minimised. Therefore, her privacy was, on balance, unwarrantably infringed in this respect.

Both parties were given the opportunity to make representations on the initial Preliminary View. While Ms A did not submit any representations, ITV made points relating to the initial Preliminary View that were directly relevant to the complaint responded to by the broadcaster and considered by Ofcom. These are summarised below.

#### **ITV's representations**

ITV did not seek to contest Ofcom's initial Preliminary View that the failure to inform Ms A prior to broadcast meant that in this respect alone the privacy of Ms A was unwarrantably infringed in breach of Rule 8.1 of the Code. However it did not accept that Practice 8.19 of the Code was engaged, or that it was a requirement that should have been followed in this instance, as was suggested by Ofcom in the initial Preliminary View. ITV said that Ofcom's initial Preliminary View acknowledged that the programme was not "intended to examine past events involving trauma to individuals" and that the wording of Practice 8.19 was clear. ITV believed that this Practice should not be extended to fictional dramas that draw on real life stories for inspiration. The broadcaster commented that it did not agree with Ofcom's view that the programme was "though unintentionally, more akin to a dramatic reconstruction than a purely fictional drama" and suggested that this could be seen as Ofcom seeking to extend and redraw the terms of this part of the Code.

ITV also raised concern about comments made in the initial Preliminary View suggesting that there was “something innately private about the death and murder of a family member...” and questioned whether the murder of a family member would, by definition, “always be innately private”. ITV recognised that any bereavement in these circumstances and the details of the manner in which the crime was carried out would be a matter of great distress for close relatives of the victim. However, it stated that all murders and their eventual prosecution are, by their very nature, matters of great public interest and where information relating to a murder has been widely disseminated in the public domain, this could be a determining factor in whether an individual only has a very limited expectation of privacy in respect of that information. ITV said that the degree of similarity of this fictional storyline to the details of the murder of Mr A gave rise to a limited expectation of privacy, such that Ms A should have been informed about the programme prior to its broadcast in order to reduce the potential for distress being caused to her.

ITV further noted that Ofcom’s initial Preliminary View only upheld one element of the complaint, namely the failure to notify the complainant about the programme prior to broadcast. ITV therefore suggested that the complaint should be treated as being upheld in part.

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

Having carefully considered ITV’s representations on the initial Preliminary View (which was to uphold the complaint), Ofcom concluded that some points raised by the broadcaster merited that Ofcom reconsider its initial Preliminary View. After considering all the factors, Ofcom came to the revised Preliminary View that the complaint should not be upheld but upheld in part. Ofcom provided Ms A and ITV with the opportunity to make representations on Ofcom’s revised Preliminary View (to uphold the complaint in part). Neither Ms A nor ITV made any representations on the revised Preliminary View that materially affected the outcome of the complaint.

### **Decision**

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

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

In reaching this decision, we have carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast, a transcript of it, and both parties’ written submissions and supporting documents, including a letter from ITV to the complainant dated 26 July 2013. We also considered the representations made by ITV on the initial Preliminary View as summarised above. Neither party made any representations on the revised Preliminary View that materially affected the outcome of the complaint.

In Ofcom’s view, the individual’s right to privacy has to be balanced against the competing rights of the broadcaster to freedom of expression. Neither right as such

has precedence over the other, and, where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate. 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.

Section Eight (Privacy) of the Code provides a series of “Practices to be followed” by broadcasters. But, as the “Foreword” to Section Eight makes clear, a “failure to follow these practices will only constitute a breach [of Rule 8.1] where [it] results in an unwarranted infringement of privacy.” In that context, Ofcom has set out below what it considers are the potentially relevant “Practices” of Section Eight to address in relation to Ms A’s complaint that her privacy was unwarrantably infringed in the programme as broadcast because details surrounding the murder of her father in 2007 were included in the fictional drama.

### Relevant Practices of the Code

In considering this complaint, Ofcom had regard to Practices 8.6 and 8.19.

Practice 8.6 is the applicable provision to consider because Ms A complained that she did not provide her permission for the broadcast of a programme about the murder of her father. The Code states:

“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”.

Ms A also complained that she was not informed about the plans for the making of the programme or its intended broadcast, despite the circumstances of her father’s death, and that the programme had caused her and her son distress. Ofcom therefore took into account Practice 8.19 which states:

“Broadcasters should try to reduce the potential distress to victims and/or relatives when making or broadcasting programmes intended to examine past events that involve trauma to individuals (including crime) unless it is warranted to do otherwise. This applies to dramatic reconstructions and factual dramas, as well as factual programmes.

In particular, so far as is reasonably practicable, surviving victims and/or the immediate families of those whose experience is to feature in a programme, should be informed of the plans for the programme and its intended broadcast, even if the events or material to be broadcast have been in the public domain in the past”.

### Legitimate expectation of privacy

To establish in the first instance whether ITV was required to comply with these Practices, Ofcom assessed whether the complainant had a “legitimate expectation of privacy” under the Code in respect of the particular material broadcast in this fictional drama that related to her father’s murder.

We began by considering whether the programme as broadcast contained material which was of a private and personal nature to Ms A.

The programme complained of was a fictional drama and neither Ms A herself nor any fictional character intended to represent her appeared in it. Ofcom acknowledged, however, that there were several material similarities between the real life circumstances surrounding the murder of Ms A's father and the fictional murder of 'Kenneth Valentine' in the programme. These were highlighted by the complainant and summarised in the "Summary of the complaint and the broadcaster's response" section above. In particular, certain aspects of the lives of the fictional characters 'Kenneth Valentine', '[redacted] Valentine' and 'Abigail Burtis' resembled those of real life individuals known to the complainant, namely her father Mr A, her brother Mr [redacted] and his girlfriend. For example, the fictional character '[redacted] Valentine' shared the same Christian name as Ms A's brother, [redacted].

Ms A said that during and after the broadcast 25 people had identified 'Kenneth Valentine' as being a fictional representation of her father and had called her to alert her to the programme. Ms A said that she had also been stopped in the street by people who had seen the programme and who had wanted to discuss it.

While a character based on Ms A herself was not identifiable in the programme as broadcast, these similarities had the potential, in our view, in the particular facts of this case, to link the fictional story presented in the programme with the real life circumstances of the murder of Mr A and to his daughter, the complainant.

Having considered that Ms A was linked to the programme in this way, Ofcom went on to consider whether she had a legitimate expectation of privacy in the broadcast of details of the murder as presented in this programme.

Much of the detail surrounding the real life murder of Mr A (as summarised in the "Summary of the complaint and the broadcaster's response" section above), which Ms A identified as being similar to that included in the fictional storyline, was already widely available in the public domain. For instance, Mr A's attackers stood trial in court and the circumstances of Mr A's murder were reported in the media. We also took into account that many details referred to by Ms A in her complaint echoed those in the real life murder of her father because the programme reflected standard police procedures and circumstances common to many murder investigations.

The Code's statement on the meaning of "legitimate expectation of privacy" makes clear that such expectations "will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye. There may be circumstances where people can reasonably expect privacy even in a public place...People under investigation or in the public eye, and their immediate family and friends, retain a right to a private life, although private behaviour can raise issues of legitimate public interest". In Ofcom's view, the Code makes clear that persons are not necessarily deprived of privacy under Section Eight of the Code if information in respect of which they claim a right to privacy has been put into the public domain in the past.

In that context, Ofcom accepts that much of the information about the circumstances surrounding the murder of Ms A's father was in the public domain to the extent that – as ITV explained – "The murder of Mr [A], and the subsequent conviction of his assailants, was widely reported in the local and national press, as well as on the internet". Nevertheless, considering the particular circumstances of this case by reference to the specific material which was broadcast in the programme, we considered that the complainant did retain a legitimate expectation of privacy for the reasons below.

In reaching a view on whether Ms A had an expectation of privacy in this case, we took account of ITV's representations on the initial Preliminary View (see above). In our opinion, although the details surrounding a murder may be in the public domain, all the personal circumstances of close relatives of the victim may not necessarily be in the public domain. Especially at a time of bereavement, and depending on the individual facts of any case, the relatives may expect some of those circumstances to remain private. Ofcom considers that certain information about the personal circumstances of Ms A's close relatives, in relation to the murder of Mr A, the complainant's father, was personal and private to Ms A to some extent, and related to traumatic events which self-evidently would have caused her substantial grief. Were it not for the media attention surrounding the murder of her father, it appeared that Ms A was an otherwise private individual who could not be said to be in the public eye.

While information on the murder of Mr A may have remained retrievable (for example, on the internet) for the public to seek out, the effect of the broadcast of the programme – about six years after the event – was to resurrect the case for the audience in a new way (in an intended fictional form) which could (and appears did) have a significant effect on Ms A (see below in relation to Practice 8.19).

Taken together, Ofcom was satisfied that the above circumstances mean that the complainant retained a limited legitimate expectation of privacy under the Code in respect of the particular material broadcast in the programme.

It was therefore necessary to go on to consider the application of the above Practices in this case: whether ITV failed to comply with them, and whether the infringement of the complainant's privacy was warranted under those Practices (and under Rule 8.1).

#### Practice 8.6

ITV did not dispute that it did not seek permission or consent from the complainant to broadcast information relating to the circumstances of the murder of her father. ITV argued that the fact that the drama employed some details which were reminiscent of a real life crime did not constitute an infringement of privacy of Ms A (as a close relative of the real life murder victim Mr A) in the absence of any details directly related to the complainant herself or depiction of any character who could possibly be identified as representing the complainant. ITV also said that the information concerning other characters in the drama related to 'Kenneth Valentine' (such as the details which Ms A associated with her brother) were not sufficiently connected to Ms A herself to represent personal information about her.

Having fully considered ITV's submissions, we acknowledged that the programme complained of was part of a fictional drama series which was not intended to present factual accounts of real life events. Ofcom recognises the importance of makers and writers of broadcast drama being able to draw inspiration freely from real life events. This can both foster creative ideas and make programmes more realistic and credible for viewers. As a result, many drama programmes will feature characters, plots and situations which have certain similarities to real events and individuals. Consistent with the editorial freedom of broadcasters and the proper exercise of the right to freedom of expression, broadcasters and script writers should be able to use real individuals and events as inspiration for fictional programming – provided that in doing so the broadcaster avoids unjust or unfair treatment, or the unwarranted infringement of privacy, of real individuals or organisations in broadcast programmes.

In our view it is very exceptional for purely fictional drama programmes (as opposed to dramatic reconstructions of real events or factual dramas) to raise issues of unjust or unfair treatment, or of unwarranted infringements of privacy, involving real individuals and organisations. However, such issues might arise in circumstances where, for instance, an ordinary viewer would reasonably draw the inference that:

- a particular fictional character was clearly intended to depict, or was very closely based on, a real person, and that character was portrayed in such a way that an ordinary viewer would draw material, adverse and unfair inferences about that real person; and/or
- a particular character was clearly intended to depict, or was very closely based on, a real person, and, for example, that character was shown or heard behaving in a manner that could reasonably be regarded as revealing something private or sensitive about a real person.

As noted above, in Ofcom's view, although the details surrounding a murder may be in the public domain, all the personal circumstances of close relatives of the victim may not necessarily be in the public domain, and especially at a time of bereavement, and depending on the individual facts, the relatives may expect some of those circumstances to remain private. As such, the nature of some of the information broadcast about Mr A's murder, with regards in particular to the circumstances of Ms A's close relatives, was private to her. However, the fact that much of the detail surrounding the real life murder of Mr A was and had been in the public domain for some time gave the complainant a lower expectation of privacy in respect of it. We also recognised that broadcasters should have the right to have freedom of expression to create fictional dramas drawing upon real life events. The production team had undertaken research for the programme and sought the assistance of a police consultant who provided insights into the details of real crimes in order to "portray the terrible consequences of a violent street robbery as truthfully as possible". In light of the above, Ofcom therefore considered that the infringement of the complainant's limited expectation of privacy in the broadcasting of the programme was warranted under Practice 8.6.

We went on to consider the content of the programme and the distress it caused the complainant under the terms of Practice 8.19.

#### Practice 8.19

Practice 8.19 is different from Practices in other parts of Section Eight, and from Practice 8.6 in particular, because it addresses the potential suffering and distress which might be caused to "victims and/or relatives when [broadcasters make or broadcast] programmes intended to examine past events that involve trauma to individuals (including crime)...".

For that reason, Practice 8.19 requires that "Broadcasters should try to reduce the potential distress" to such victims and/or relatives "...unless it is warranted to do otherwise". The Practice then goes on to provide what steps are contemplated in this respect, and states that (emphasis added):

"In particular, so far as is reasonably practicable, surviving victims and/or the immediate families of those whose experience is to feature in a programme, should be informed of the plans for the programme and its intended broadcast, even if the events or material to be broadcast have been in the public domain in the past".

It is clear that it does not (by contrast with Practice 8.6) guide or require broadcasters to obtain (prior) consent or permission from relevant surviving victims and/or immediate relatives to broadcast material: it simply contemplates broadcasters seeking to reduce potential distress to victims and/or relatives by, “so far as is reasonably practicable”, informing them of the “plans for the programme and its intended broadcast”. The Practice is expressed to apply “even if the events or material to be broadcast have been in the public domain in the past”, which was the case to some extent in the circumstances of this complaint.

In its response, ITV explained that *Scott & Bailey* was a fictional drama series and that this particular episode was not intended to be a reconstruction of the murder of Mr A, nor was it a factual drama depicting the events of a real life murder case. It was for this reason (that the programme was fictional, though see further below) that ITV said that Ms A was not informed about the programme before it was broadcast.

We also noted from ITV’s submissions that there had been a misunderstanding between the production team and ITV, and ITV explained in a letter to the complainant dated 26 July 2013 that:

“The reason your family was not contacted about this particular storyline was due to an unfortunate misunderstanding on the part of the production team. Although elements of the fictional story in this episode were inspired by investigations of real life murders, including that of your father, the production team believed in good faith that sufficient changes had been made to names and events to ensure that it was not identifiable with any real life story. Unfortunately, they did not inform ITV of the specific real life inspiration of the storyline in this case. ITV was therefore unaware, when researching the fictional names in the script in a process known as ‘negative checking’, that there were any similarities with any real life case that we needed to consider”.

ITV said that had it been aware of these similarities it would have taken steps to either take all reasonable measures to inform the close relatives of Mr A about the broadcast or, alternatively, it would have taken steps to make the details of the fictional murder less similar to those of the real life murder of Mr A. ITV apologised to Ms A for any distress caused by the fact that she was not informed about the programme prior to it being broadcast and offered to undertake to ensure that Ms A and her family were notified in advance of any proposed repeat of the programme on ITV’s channels in future.

In reaching a view on the applicability of Practice 8.19 to this case, we took account of ITV’s representations on the initial Preliminary View (see above). Ofcom understood that *Scott & Bailey* was intended to be a fictional drama programme and not explicitly intended to examine or reconstruct the events surrounding Mr A’s murder. Ofcom acknowledged that Practice 8.19 applies to “dramatic reconstructions and factual dramas, as well as factual programmes”. However, because of the many close similarities between Ms A’s father’s real life murder and the murder depicted in the programme, our view was that the programme had on this particular occasion become, though unintentionally, in certain respects more akin to a dramatic reconstruction than a purely fictional drama. We noted that, in ITV’s response, it had explained that a police consultant, who provided insights into the details of real crimes including the murder of Mr A, assisted with the production process for this broadcast. The scriptwriter of the programme had sought this assistance because they had wanted “to portray the terrible consequences of a violent street robbery as truthfully as possible”. It was therefore clear to us that the programme had the potential to cause some distress to Ms A and her immediate family members. We

noted that the broadcast of the programme had led to the complainant feeling like she was reliving the past and had caused distress to her and her son.

In the very particular circumstances of this case, Ofcom considered that ITV, so far as was reasonably practicable, should have informed Ms A (as an immediate relative of the murder victim) of the plans for the programme and intended broadcast of the programme. For these reasons, we did not consider that ITV had acted in accordance with Practice 8.19. We did not consider that the wider freedom of expression considerations, which (in relation to Practice 8.6) warranted the inclusion in the programme of information about the murder of Mr A without the complainant's consent, also provided a sufficient justification for not having taken the sort of steps envisaged by Practice 8.19 in this particular case, especially when taking into account the potential effect of the programme on the complainant. Indeed, ITV acknowledged that had it been aware of these similarities it would have taken steps to notify her or, alternatively, taken steps to make the details of the fictional murder less similar to those of the real life murder of Mr A.

### Conclusion

The circumstances of Ms A's complaint were very exceptional. In adjudicating on this complaint, Ofcom was acutely aware that it must not unfairly and disproportionately infringe the editorial freedom of broadcasters and their creative teams and we recognise the importance of makers and writers of broadcast drama being able to draw inspiration freely from real life events. In the particular circumstances of this case, Ofcom did not consider that Ms A's consent was required to broadcast the material complained of, but we were not satisfied that ITV had taken appropriate steps to reduce the potential distress to the immediate family of a murder victim. In this respect, the privacy of the complainant (the daughter of the victim) was unwarrantably infringed.

Ofcom noted ITV's point raised in its representations on Ofcom's initial Preliminary View that the complaint should be more properly treated as being upheld in part. We acknowledged ITV's point that there were two distinct elements to this complaint and concluded that while ITV had not complied with the Code with regards to only one of these elements (ensuring that it had taken all reasonably practicable steps to ensure that any potential distress to Ms A was minimised), we were satisfied that Practice 8.6 was followed and that the infringement of Ms A's privacy was warranted in this respect. Therefore, after careful consideration, Ofcom came to the final decision that the complaint should be upheld in part.

**Accordingly, Ofcom has upheld in part Ms A's complaint of unwarranted infringement of privacy in the programme as broadcast.**

## Not Upheld

### Complaint by Carter-Ruck Solicitors on behalf of The Church of Scientology International

*Scientologists at War, Channel 4, 17 June 2013*

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#### Summary

Ofcom has not upheld this complaint made by Carter-Ruck Solicitors (“Carter-Ruck”) on behalf of The Church of Scientology International (the “Church”) of unjust or unfair treatment in the programme as broadcast.

The programme examined the views of contributors who were critical of some practices claimed to be sanctioned by the Church. A number of those contributors interviewed for the programme were former members of the Church, including Mr Marty Rathbun, who the programme said would expose some of “*the inner secrets of Scientology*”.

Ofcom found that the broadcaster:

- Took reasonable care to satisfy itself that the programme did not present, disregard or omit material facts, in particular with regards to Mr Rathbun’s background, in a way that resulted in unfairness to the Church.
- Reflected the position of the Church in a fair manner.

#### Introduction and programme summary

On 17 June 2013, Channel 4 broadcast *Scientologists at War*, a documentary which examined the views of contributors who were critical of some practices claimed to be sanctioned by the Church. A number of those contributors interviewed were former members of the organisation. The documentary was 55 minutes long.

The programme explained that the Church was established in the 1950s by Mr L. Ron Hubbard, a science fiction writer, who developed the self help philosophy “dianetics” as an alternative to psychotherapy. One of the principal contributors interviewed in the programme was Mr Marty Rathbun who, the introduction to the programme said, would expose “*the inner secrets of Scientology, as the tactics he once devised are used against him*”.

The documentary said that in 1977 Mr Rathbun had become interested in the Church and had signed “*a billion year contract*” with the organisation to make Scientology his life’s work and went on to spend 27 years within the Church’s “*elite Sea Organisation*”. Mr Rathbun worked in Mr Hubbard’s “*personal service*” and worked closely with Mr David Miscavige, who took control of the Church after Mr Hubbard’s death in 1984.

The programme said that Mr Rathbun was promoted to “*one of the most powerful positions in Scientology...keeping Scientology free from subversion*”. He was put in charge of “*punishing*” anyone who questioned either Mr Hubbard or Mr Miscavige. Mr Rathbun said in the programme that, while in the Church, he did this by putting any dissenters in a “*prison camp essentially, a behaviour modification camp*” and that he

was also a key architect of the Church's "Office of Special Affairs", which is "the legal and public affairs arm of the Church, who take an active interest in defectors".

The programme explained that Mr Rathbun fell out with Mr Miscavige over his friendship with, and influence over, the actor and Scientologist Mr Tom Cruise. As a result, Mr Rathbun fell "out of favour and in February 2004 found himself in a behaviour modification facility he knows as 'the hole'". The programme stated that:

*"The Church denies the existence of any such place, but confirms at the end of 2003 he [Mr Rathbun] was assigned for correction and repositing".*

Mr Rathbun said that at this facility people were interrogated, punched, kicked and had "water balls" thrown at them until they confessed to "nefarious intentions against David Miscavige". The programme said that the biggest fear of those at the facility was being expelled from the Church, which had become their "family". Mr Rathbun said that on one occasion, Mr Miscavige had instigated a game of "musical chairs" at the facility in which the loser would be sent off the base and barred from the Church. Mr Rathbun said that the participants in the game fought strenuously to avoid losing, throwing people against walls and that Mr Miscavige encouraged this behaviour. Mr Rathbun said that he concluded that Mr Miscavige was "stark staring mad" as a result of this event. The programme illustrated Mr Rathbun's description of the musical chairs incident with a dramatic reconstruction. The programme stated:

*"The Church described the game [musical chairs] as an educational exercise and say that Marty's version of events is exaggerated and that there was no violence then, or in confessionals".*

Mr Rathbun explained that "I'm not the type to be in prison and I am not going to be in prison" and that immediately after this incident of "musical chairs" he slipped away from the group as they walked through the grounds and found his motorbike. He explained that members had to have permission to leave through the security gate and so therefore he waited for a delivery truck to pass through before following it out riding his motorbike. The programme explained that, not long after this, Mr Rathbun was "persuaded" to return and was put to work in a Scientology carpentry mill and stripped of his status and standing. However, soon after Mr Rathbun left the Church for good and went into hiding in Texas.

The programme said that after a period of time Mr Rathbun began practising Scientology "independently" and blogging his views on the Church. The broadcast commented that his blog became a rallying point for disaffected Scientologists all over the world, and Mr Rathbun was shown in the programme discussing his views with other "independent" Scientologists.

At the end of the programme, it was explained that Mr Rathbun had "rejected the label of Scientology", but that the Independent Scientology movement continued. The documentary also included a statement from the Church which said:

*"The Church of Scientology states that Marty Rathbun has never been a part of its ecclesiastical management and although he has been publicly attacking the Church for four years, his claims have had no discernible effect whatsoever".*

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

- a) Carter-Ruck complained on behalf of the Church that it was unjustly or unfairly treated in the programme as broadcast because the material facts were presented, disregarded or omitted in a way that was unfair to the Church.

In particular, it said that the programme contained no warning to viewers about Mr Rathbun's alleged unreliability and credibility when it came to his views on the Church, despite information about this being provided to the programme makers in advance of the programme's broadcast. Carter-Ruck also said that the programme should have informed viewers of Mr Rathbun's background so that they could take this into account when considering the veracity of his claims and the Church's denial of those claims. Carter-Ruck said that the programme failed to inform viewers that Mr Rathbun:

- had previously admitted lying to the media;
- had previously admitted destroying Church documents in relation to a court case;
- had been accused of making false claims, in an affidavit by a US court judge;
- had made previously inconsistent statements concerning matters raised in the programme, specifically the events surrounding his decision to leave the Church; and
- had been arrested in New Orleans for public intoxication and disturbing the peace; and in a separate incident, arrested in San Patricio County, Texas for assault causing bodily injury to a Scientologist.

In response, Channel 4 said the documentary was fair and that no material facts either included in or omitted from the programme caused unfairness to the Church. Channel 4 stated that it sought the Church's response to significant allegations in the programme in an appropriate and timely manner and reflected its position fairly in the programme. It said too that the Church had had every opportunity to provide a spokesperson for interview, however, declined to do so.

Channel 4 pointed out the importance of broadcasters and programme makers being able to make editorial choices regarding what to include in a programme and what not to include and about how that material should be presented. It said that the "right of reply" process was the proper means by which an individual or organisation should be given the opportunity to respond to significant allegations, and that it was then incumbent upon the programme maker and broadcaster to consider any response (and other relevant material) received and decide what material facts needed to be reflected in the programme in the interests of fairness and accuracy. It said that not every assertion put forward by the subject of a broadcast must be included in a programme and only material facts must be reflected where not to do so would be unfair, when judged in the context of the programme as a whole.

Channel 4 said that it considered that all proper steps were taken to assess the credibility of Mr Rathbun and that due regard was paid to the material provided by Carter-Ruck on behalf of the Church in preparing the programme.

Channel 4 added that the programme makers had fully complied with the requirements under Ofcom's Broadcasting Code in relation to providing the Church with an opportunity to respond to the allegations to be made in the programme. It provided Ofcom with copies of the substantial correspondence

between the programme makers and Carter-Ruck and the Church. Channel 4 argued that the Church's position was reflected fairly in the programme. It said that the Church had had every opportunity to provide a spokesperson for interview, however, declined to do so.

Channel 4 set out how Mr Rathbun was portrayed in the programme. It said that, since leaving the Church, Mr Rathbun had claimed consistently that his former role was as an "enforcer" which, he claimed, involved him in tactics and "dirty tricks" that involved elements of dishonesty and violence. It said that the programme makers had taken great care to show the audience the kind of man Mr Rathbun once was. It pointed out that the programme's pre-titles showed Mr Rathbun being arrested, handcuffed and put into a police car after he was also shown telling the "Squirrel Busters"<sup>1</sup> to "shut the fuck up". The programme's voiceover stated that Mr Rathbun: "...lifts the lid on the inner secrets of Scientology, as the tactics he once helped devise are used against him". Channel 4 said viewers were told in the opening sequence of the programme about Mr Rathbun's former role:

*"As this Church publication reveals, his role was tasked with 'keeping Scientology free from subversion'. He ruthlessly defended Miscavige's regime and protected its innermost secrets".*

Channel 4 provided examples of scenes in the programme which it said repeatedly made it clear to viewers the type of aggressive behaviour Mr Rathbun admitted that he had previously engaged in. The programme detailed Mr Rathbun's acknowledgement of his past transgressions. For example, Mr Rathbun was asked: "In some ways are they [the "Squirrel Busters"] using your own tactics back on you?" He answered: "Yeah, it's my own tactics back on me, in terms of surveillance. In a way it's my karma, you know. I've done it to others, and so in a way it's – you reap what you sow". Channel 4 said that the programme makers also put forward criticisms made of Mr Rathbun for him to answer. For example, the programme's voiceover stated: "With Marty seemingly under attack from the Church, for many of his readers there was an obvious question". The presenter then asked Mr Rathbun: "How do you feel now that you had those tricks used against you?" Mr Rathbun answered: "Well you see, I don't...the question doesn't. I don't get the question. It's not like I went out and then it happened to me and then I went 'Oh! Jeez, that's not alright'. I mean, I knew it wasn't alright. That's why I left". Channel 4 also pointed out that the programme makers had, for example, asked Mr Rathbun's wife, "Mosey", for her opinion of what Mr Rathbun "...would have been like in the Church".

*"He would be someone, you know, if something was happening, you'd say to him 'get it done' and he'd get it done. And you know, if that included slamming someone against a fricking case, a bookcase, yeah that's what happened".*

Channel 4 remarked that extracts such as the above demonstrated that viewers were reminded throughout the programme of Mr Rathbun's background, so enabling them to come to their own view about Mr Rathbun's character. Channel 4 said that viewers therefore had the opportunity to give due weight to Mr

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<sup>1</sup> Mr Rathbun explained in the programme that "Squirrel Busters" were "...trusted, high level Scientology members, organised by the Office of Special Affairs, the propaganda and dirty tricks arm of the Church of Scientology. Sent down to get in my face and to make my life a living hell".

Rathbun's past when considering the veracity of claims he had made since leaving the Church.

Channel 4 pointed out that the programme also showed footage of an incident when Mr Rathbun was arrested by the police and of the arresting officer telling Mr Rathbun what the arrest warrant was for. The programme showed an extract of a video called "*Marty Rathbun: Violent Psychopath, Cult Militia Leader*", credited to "*Squirrel Buster Productions*", in which the voiceover stated:

*"...even when he [Mr Rathbun]'s being arrested, handcuffed and booked for assault with bodily harm, there's king pin Rathbun sticking to that well worn story that, no, he wouldn't even hurt a fly".*

Given the above, Channel 4 said that it did not agree with Carter-Ruck's assertion that the programme contained "...no warnings whatsoever to viewers of the programme about Mr Rathbun's background".

Channel 4 also commented in turn on each of the examples listed by Carter-Ruck of information about Mr Rathbun which it considered should have been included in the programme. Channel 4's response to each is summarised below:

- *Mr Rathbun had previously admitted lying to the media.*

In support of this complaint, Carter-Ruck provided an extract from an interview with Mr Rathbun on the USA's ABC's *Nightline*, a late night news programme broadcast on 22 October 2009. Part of this exchange was as follows:

Interviewer: "Why did you speak to newspaper reporters and lie so blatantly?"

Mr Rathbun: "Because at the time I perceived that this guy [Mr Miscavige] was of the importance that we had to do it. [laughs] If I told the truth to a newspaper reporter about something like that, I would have been expelled from Scientology".

Channel 4 said that this excerpt helped to explain Mr Rathbun's motivation for lying to the press while he was a member of the Church. It pointed out that Mr Rathbun had raised two issues here: the importance of Mr Miscavige to the Church's members and Mr Rathbun's fear of being expelled from the Church, both of which were central issues explored in the programme. Channel 4 said that the fact that Mr Rathbun admitted in this interview to having lied was not a "material fact" and not a matter that the interests of fairness required to be included in the programme. Channel 4 said that, in any event, the programme repeatedly referred to Mr Rathbun (when he was a Church member) using dubious tactics to counter media criticism and dissenters, including, in his own words "*quelling opposition or silencing critics*" and how he would "*shudder [journalists] into silence*". Channel 4 said that there was therefore no unfairness in this regard.

- *Mr Rathbun had previously admitted destroying Church documents in relation to a court case.*

In response, Channel 4 said that this related to the case of Ms Lisa McPherson, a mentally ill member of the Church who died under its care in

December 1995. In 2009, the press had reported that Mr Rathbun, who had for years insisted that the Church had done nothing wrong with regards to the death of Ms McPherson, had come forward and said that he and others in the Church had destroyed incriminating evidence. Channel 4 referred to an article in *The Guardian*<sup>2</sup> newspaper which stated that Mr Rathbun had “recently told the St Petersburg Times the Church botched the woman’s case from the start” and reported that:

“Rathbun said he initially wanted to go to the state attorney’s office after the 36-year-old’s death, but instead followed the Church’s culture to never admit fault. He and others removed papers from McPherson’s files, including a caretaker’s opinion that the situation was out of control and the patient needed a doctor. ‘I said, ‘Lose ‘em,’ and walked out of the room,’ Rathbun told the newspaper”.

The programme did not mention the McPherson case. However, Channel 4 said that the above was an example of how Mr Rathbun claimed he “*ruthlessly defended Miscavige’s regime and protected its innermost secrets*”, as illustrated in the programme. In this case Mr Rathbun admitted of his own accord to destroying evidence, having previously maintained for many years that the Church had done nothing wrong. Channel 4 said that this was entirely consistent with the picture of Mr Rathbun presented in the programme – “as someone who now regretted past tactics he had employed by his own admission on behalf, he claims, of the Church of Scientology”. Channel 4 stated that the admission by Mr Rathbun that he had previously destroyed potentially incriminating evidence in the McPherson case was not a “material fact” that the programme should have included. It said that there was no unfairness in not referring to this specific admission in the documentary.

- *Mr Rathbun had been accused of making false claims, in an affidavit by a US court judge.*

Channel 4 said that, in relation to the above case, Carter-Ruck had drawn its attention to an affidavit dated 4 December 2012 of The Honorable Judge Robert E Beach, who was a senior circuit judge in Pinellas County, Florida, at the time of the case. Carter-Ruck stated:

“This [affidavit] concerns false testimony of Mr Rathbun about the Lisa McPherson case which involved our client. We observe that if Mr Rathbun is prepared to make up false claims in a court of law as set out by Judge Beach, plainly he will be prepared to do likewise for the purposes of your planned programme”.

In the affidavit itself, Judge Beach said that:

“Mr Rathbun has testified that the Church of Scientology hired a local attorney named Lee Fugate to influence the Judges of Pinellas County in the Lisa McPherson case. Mr Rathbun testified that Mr Fugate influenced the judges to have me appointed as a Master to supervise the taking of deposition and later to take over the McPherson case upon Judge Susan Schaeffer’s self recusal from the case. Mr Rathbun further testified that Mr Fugate told him we were ‘old buds – going way back.’ Further, Mr

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<sup>2</sup> <http://www.theguardian.com/world/feedarticle/8571173>.

Rathbun testified Mr Fugate 'was in very tight communication with Beach'. Mr Rathbun went on to say Mr Fugate said I was meeting Mr Fugate 'at a bar down, um, um, down in St Petersburg and uh, and uh, you know, extensive contacts.'

Judge Beach refuted this, stating:

"...I have never socialised with him [Mr Fugate], had meals with him, travelled with him, never met him in bars (I do not drink) and we are not 'old buds'".

Channel 4 stated that the analysis of this information, at the time of making the programme and now, led it to conclude that it was not relevant to the programme. It explained that Mr Rathbun provided a deposition in legal proceedings arising out of the McPherson case, brought by another Florida attorney, Mr Kennan Dandar. It said that Mr Dandar had made claims regarding the alleged bias of Judge Beach towards and in collusion with the Church. Channel 4 said that it was its understanding that these allegations made by Mr Dandar about Judge Beach were ultimately rejected and the claim dismissed by a higher court.

Channel 4 added that, importantly, the testimony of Mr Rathbun in his deposition in the McPherson case was evidently based on what he claimed he was told by Mr Fugate about Mr Fugate's alleged relationship with Judge Beach. In his affidavit Judge Beach denied having a relationship with Mr Fugate or of any impropriety, as above. Channel 4 pointed to the fact that there was no mention in Judge Beach's affidavit that Mr Rathbun was "prepared to make up false claims", knew his testimony was false or that he colluded with Mr Fugate to give false testimony.

Channel 4 said that "whatever the rights and wrongs, it [the allegation that Mr Rathbun made up false claims] is entirely irrelevant to the programme".

Channel 4 said that including discussion about a very complicated piece of litigation did not fit in with the purpose of the programme and that "any such discussion would not have served either the interests of fairness to the CSI [the Church] or the interests of viewers". It said that a reference to the affidavit was not a "material fact" and to omit a reference to it did not cause unfairness to the Church.

Channel 4 commented that the programme did not present Mr Rathbun as someone who always told the truth and did the right thing, but repeatedly pointed out that, by his own admission, Mr Rathbun had done what he needed to in order to defend the Church's interests and that this involved the use of questionable techniques. Channel 4 said that this allowed the audience to draw its own conclusions about Mr Rathbun's credibility and the veracity of his claims.

- *Mr Rathbun had made previously inconsistent statements concerning matters raised in the programme, specifically the events surrounding his decision to leave the Church.*

In its response, Channel 4 sought to clarify the situation with regards to the allegedly inconsistent versions Mr Rathbun gave of his departure from the Church. It said that the two different versions of events which Carter-Ruck

had identified related in fact to two different incidents. The first (as detailed in the “Introduction and programme summary” section above) occurred in February 2004 was set out in the documentary. The second (as detailed in the St Petersburg Times’ interview, in which Mr Rathbun stated that he packed a bag and “just decided to keep walking”) happened later in December 2004. Channel 4 said that the fact that the “*musical chairs*” incident and “*the hole*” were not referred to in the St Petersburg Times’ interview therefore did not make the accounts inconsistent. In any case, again, Channel 4 said that these were not “material facts” and there was no unfairness in not referring to them.

- *Mr Rathbun had been arrested in New Orleans for public intoxication and disturbing the peace; and in a separate incident arrested in San Patricio County, Texas for assault causing bodily injury to a Scientologist.*

In response, Channel 4 said that, with regards to the arrest in New Orleans, the incident had occurred during Mr Rathbun’s honeymoon and that he had been arrested for “disturbing the peace” and “public drunkenness”. Channel 4 said that it was considered that this incident was not relevant to Mr Rathbun’s credibility or to the programme.

In relation to Mr Rathbun’s arrest in San Patricio County, Channel 4 said that mention of this incident was included in the programme. It said that on 8 September 2011, Mr Rathbun had been arrested for allegedly scratching a Scientologist. It said that the charges against him were subsequently dropped. Therefore, Channel 4 said it did not see the relevance of this, particularly as the arrest itself was reflected in the programme.

- b) Carter-Ruck complained that the response of the Church (included in the broadcast) to the claims made in the programme was “wholly inadequate to inform and warn viewers of the unreliability of Mr Rathbun” and that its views were not presented in a fair manner.

In response, Channel 4 said that the programme included the Church’s position, as stated in the formal response sent to the programme makers by Carter-Ruck on 29 May 2013, at various points during the programme where the interests of fairness warranted it. For instance, Channel 4 said that the programme contained:

- an interview with Ms Karen de la Carrier, a former member of the Church who explained what had happened to her when she had made the decision to leave the Church:

*“The vengeance was incredible. Within one week of me stepping out, the FBI were called anonymously to say I was trafficking underage children for sex. 35 years in the Church and one week out of the Church, I’ve become a child trafficker. Just like that, bam”.*

Channel 4 pointed out that a statement from the Church was included in the programme in response to Ms de la Carrier’s claims which said:

*“The Church has denied having anything to do with the FBI’s investigation of Karen, or any suggestion of OSA [the Office of Special Affairs] forcibly disconnecting families”.*

- a response from the Church in relation to Mr Rathbun's claims about the existence of the "behavioural modification facility" – "the hole", that:

*"The Church denies the existence of any such place, but confirms at the end of 2003, he [Mr Rathbun] was assigned for correction and re-posting".*

- a response from the Church in relation to Mr Rathbun's description of "musical chairs" at "the hole", that:

*"The Church described the game as an educational exercise and say that Marty's version of events is exaggerated, and there was no violence then or in confessionals".*

Channel 4 said that, in addition, the programme included a lengthy statement at the end of the programme to reflect the Church's position and that this was included as a voiceover accompanied by on-screen text which stated:

*"The Church of Scientology states that Marty Rathbun has never been a part of its ecclesiastical management and although he has been publicly attacking the Church for four years, his claims have had no discernible effect whatsoever.*

*It says there is no evidence of a global independent movement and the Israeli mission in Haifa only ever numbered a few people and that some have since rejoined the Church.*

*The Church of Scientology states that there is nothing inappropriate about using sustained legal pressure to obtain legal redress and that the idea harassment was used to achieve tax-exempt status is 'obvious nonsense'.*

*It also denies sending the Squirrel Busters. While acknowledging that some were Scientologists, Squirrel Buster Productions is a wholly separate organisation.*

*The Church of Scientology denies putting Marty under surveillance but admits conducting a legal investigation into him 'in furtherance of potential litigation'".*

Channel 4 said that the programme had reflected the position of the Church in a fair and proper way including its response to all significant allegations made in the programme.

### **Representations on Ofcom's Preliminary View**

Ofcom prepared a Preliminary View on this complaint of unjust or unfair treatment made by Carter-Ruck on behalf of the Church (that the complaint should not be upheld). Both parties were given the opportunity to comment on the Preliminary View.

In commenting, Carter-Ruck submitted detailed representations to Ofcom. We considered all this material carefully, but noted that many of its further representations were either not directly relevant to the complaint as entertained, or repeated arguments already made and addressed in the Preliminary View. Therefore, Ofcom has set out below only the main points made by Carter-Ruck in its submissions made on behalf of the Church on the Preliminary View that were directly relevant to the complaint responded to by the broadcaster and considered by Ofcom.

### Carter-Ruck's representations

In summary, Carter-Ruck said that it did not agree that the Church had not been treated unjustly and unfairly in the programme as broadcast. It said that:

- The specific examples listed by Carter-Ruck of information about Mr Rathbun's previous dishonest behaviour should have been included in the programme, and that the examples cited in the Preliminary View of Mr Rathbun's violent behaviour did not address the complaint made. Carter-Ruck stated:

"It is contended that Ofcom failed properly to take account of the deficiencies in the responses from CSI [the Church] that Channel 4 broadcast and, in doing so, also failed to give proper weight to the importance of the matters that are not dispute[d] by Channel 4 with regard to Mr Rathbun's history and conduct of dishonesty".

- In its view the Church's response to the claims made, as included in the programme, was inadequate and therefore the programme failed to inform viewers "...that they needed to be very cautious indeed about accepting Mr Rathbun's claims against the Church and/or any member of it...".

### Channel 4's representations

Channel 4 did not submit any representations on the Preliminary View. However, in response to receiving a copy of Carter-Ruck's representations on Ofcom's Preliminary View, Channel 4 commented that in its view Carter-Ruck's letter only served to restate the Church's original complaints and refute Channel 4's arguments (as made in its representations). The broadcaster said that Carter-Ruck did not set out any inaccuracies or flaws of substance or procedure in the Preliminary View. In particular, Channel 4 said that:

"Carter-Ruck, in effect, challenges and disputes the right of a broadcaster's freedom to make editorial choices and seeks to substitute not only [the Church's] version of the facts, but [the Church's] version of the programme. In doing so, it repeats [the Church's] claims about Marty Rathbun".

## **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, both parties' written submissions and supporting documentation. We also took account of the representations made by Carter-Ruck in response to Ofcom's Preliminary View on this complaint (which was not to uphold). We concluded

that Carter-Ruck had not raised any issues to persuade Ofcom to alter its decision not to uphold the complaint.

When considering complaints of unfair treatment, Ofcom assesses 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 Preliminary View.

- a) Ofcom first considered the complaint that material facts were presented, disregarded or omitted in a way that was unfair to the Church because the programme contained no warning to viewers about Mr Rathbun's alleged unreliability and credibility when it came to his views on the Church, despite information about this being provided to the programme makers in advance of the broadcast.

When assessing this complaint, Ofcom took particular account of Practice 7.9 of the Code which states 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 an individual or organisation.

The Code recognises the importance of freedom of expression and the need to allow broadcasters the freedom to broadcast matters of genuine public interest. However, in presenting material facts, broadcasters must ensure that it is done in a manner that does not cause unfairness to individuals or organisations. In this particular case, we considered that it was in the public interest for the programme to report the criticisms of some of the practices alleged to be sanctioned by the Church and to include contributions from former members of the Church, such as Mr Rathbun. This, however, needed to be done in a way consistent with the requirements of the Code.

Ofcom also acknowledges that selecting and editing material for inclusion in a programme is an editorial decision for the programme makers and the broadcaster, and that such editing and selection should be done in a fair manner. In our view, it was made sufficiently clear to viewers at the outset of the programme that Mr Rathbun had admitted, at least in his past, to having used aggressive intimidation tactics, which involved behaviour of a dishonest and violent nature. For instance, Ofcom noted in the opening minutes of the programme that viewers were told about Mr Rathbun's former role at the Church as an "enforcer".

*"As this Church publication reveals, Marty was tasked with keeping Scientology free from subversion. He ruthlessly defended Miscavige's regime, and protected its innermost secrets".*

Later in the programme, "Mosey", Mr Rathbun's wife (when asked by the presenter what Mr Rathbun would have been like carrying out his duties as an "enforcer" in the Church) explained:

*"He would be someone, you know, if something was happening, you'd say to him 'get it done' and he'd get it done. And you know, if that included slamming someone against a fucking case, a bookcase, yeah that's what happened".*

In addition, Ofcom noted the opening scenes showing Mr Rathbun being arrested, handcuffed and put into a police car, after he was also shown telling the

*“Squirrel Busters”* to *“...shut the fuck up”*. Also, the type of aggressive behaviour, Mr Rathbun admitted it was his role to engage in, was repeatedly made clear in the broadcast. For example, the programme explained:

*“In Church pictures, Miscavige is positioned at the very heart of operations, with the spirit of L. Ron Hubbard in the background. Marty was in charge of punishing anyone who questioned either of them”.*

Mr Rathbun further explained:

*“Well you put them [those who questioned L. Ron Hubbard or Mr Miscavige] on the RPF [Rehabilitation Project Force], which is a prison camp essentially; it’s a behaviour modification camp. I didn’t think twice about quelling opposition or silencing critics, or punishing somebody who had an errant thought about David Miscavige or L. Ron Hubbard”.*

We noted that the programme detailed Mr Rathbun’s acknowledgements of his past behaviour and that the programme put criticisms to him in an interview for a response. For example, when Mr Rathbun and his wife were shown in the programme explaining that they were under surveillance and being intimidated by the Church, the programme’s reporter asked Mr Rathbun:

*“In some ways are they using your own tactics back on you?”*

to which Mr Rathbun responded:

*“Yeah, it’s my own tactics back on me in terms of the surveillance. In a way it’s my karma, you know. I’ve done it to others, and so in a way it’s – you reap what you sow”.*

The programme also included footage of Mr Rathbun being arrested for assault. Frustrated with the *“Squirrel Busters”* being outside his home, the programme explained that Mr Rathbun acted aggressively when one of the *“Squirrel Busters”* allegedly would not stop staring inappropriately at his wife. Mr Rathbun’s wife *“Mosey”* explained:

*“So Marty goes and knocks his glasses off and says, ‘Did you hear her? She [Mosey] told you to stop’. So apparently when he did that, he got scratched”.*

At this point in the programme, Ofcom noted that footage of a film credited to *“Squirrel Busters Productions”*, and entitled *“Marty Rathbun: Violent Psychopath, Cult Militia Leader”*, was shown. Footage of Mr Rathbun being arrested was shown again later in the programme accompanied by the following commentary from the *“Marty Rathbun: Violent Psychopath”* film:

*“Even when he’s being arrested, handcuffed and booked for assault with bodily harm, there’s king pin Rathbun sticking to that well worn story that, no, he wouldn’t even hurt a fly”.*

Footage from the same film shown in the programme also showed Mr Rathbun breaking one of the film makers’ camera microphones, accompanied by this commentary:

*“Rathbun likes to think of himself as a good man. A kind man, a tolerant man, who grants the freedom of speech to all. Unless of course it’s the free speech of a documentary crew covering him”.*

Ofcom had particular regard, when reaching its view on this head of complaint, to the various pieces of information about Mr Rathbun’s background that Carter-Ruck identified in setting out the complaint on behalf of the Church (as set out above in the “Summary of the complaint and the broadcaster’s response” section). Having watched the programme and having considered the above examples and the manner in which they were presented in the programme, both separately and in the context of the programme as a whole, we took the view that these examples demonstrated that viewers were adequately informed and reminded throughout the programme of Mr Rathbun’s background, and his admissions of questionable conduct in the past. The inclusion of this material in the programme would have, in our view, played an important role in enabling viewers to reach their own opinion about Mr Rathbun’s character. Viewers therefore had the opportunity to give due weight to Mr Rathbun’s past when considering the credibility, or otherwise, of his claims made in the programme about the Church. On this basis, we considered that it was not incumbent on the broadcaster to have made specific reference in the programme to the various pieces of information about Mr Rathbun set out by Carter-Ruck in its complaint on behalf of the Church.

Given this conclusion, we therefore did not consider that the omission of any or all of the examples Carter-Ruck had highlighted in the complaint, as incidents it considered demonstrated Mr Rathbun’s dishonest and violent background, resulted in unfairness to the Church.

Ofcom’s decision is therefore that Channel 4 took reasonable care to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to the Church.

- b) Ofcom then considered the complaint that the response of the Church (included in the broadcast) to the claims made in the programme was “wholly inadequate to inform and warn viewers of the unreliability of Mr Rathbun” and that its views were not presented in a fair manner.

In assessing this head of complaint, we had particular regard to Practice 7.13 of the Code which states: “Where it is appropriate to represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner”.

Ofcom’s view is that the programme included, where appropriate and where the interests of fairness warranted it, the Church’s position, as stated in the formal response provided to the programme makers from Carter-Ruck on 29 May 2013, in response to the allegations to be made in the programme. For example, in relation to Mr Rathbun’s claims about the existence of the “*behavioural modification facility*”, “*the hole*”, the following response from the Church was included in the programme:

*“The Church denies the existence of any such place, but confirms at the end of 2003, he [Mr Rathbun] was assigned for correction and re-posting”.*

The programme also included a substantial statement from the Church, which was read out as well as appearing as on-screen text, at the end of the

programme (as already set out in Channel 4's response above). This reflected the Church's position overall and rebutted the allegations made in the programme against the Church, including comments made by Mr Rathbun.

Given the above factors, we considered that viewers would have been left in no doubt as to the Church's position on the matters raised in the programme, and in particular that it disputed claims made by Mr Rathbun. Ofcom was therefore of the view that Channel 4 had reflected the position of the Church in a fair manner.

Ofcom's decision is therefore that there was no unjust or unfair treatment in this respect.

**Accordingly, Ofcom has not upheld this complaint of unjust or unfair treatment made by Carter-Ruck on behalf of the Church.**

## Not Upheld

### Complaint by Mr John Lewis

*Sky News, 26 and 27 September 2013*

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#### Summary

Ofcom has not upheld Mr John Lewis' complaint of unwarranted infringement of privacy in the programmes as broadcast.

*Sky News* reported on the investigation into the Kenya shopping mall siege<sup>1</sup> and the issue of a worldwide arrest warrant for Ms Samantha Lewthwaite, a British woman who was wanted by Kenyan authorities for her alleged involvement in terrorist activities. The news item included footage of Mr Lewis' house in Buckinghamshire, which was referred to in the reports as the former home of Ms Lewthwaite. The location of the property, its house number and street name were disclosed. No connection was made in the reports between Mr Lewis and the property shown.

Ofcom found that in the circumstances of this case Mr Lewis did not have a legitimate expectation of privacy in relation to the broadcast of footage of his house and the disclosure of his address. Therefore, Mr Lewis' privacy was not unwarrantably infringed in the programmes as broadcast.

#### Introduction and programme summary

On 26 and 27 September 2013, *Sky News* broadcast news coverage of the investigation into the Kenya shopping mall siege and the issue of a worldwide arrest warrant for Ms Lewthwaite for her alleged involvement. During the broadcasts, two rolling news reports included footage of Mr Lewis' house in Aylesbury in Buckinghamshire, referring to it as where Ms Lewthwaite had once lived. The reports were repeated hourly from 17:00 on 26 September 2013 until the final broadcast at 05:12 on 27 September 2013. There were two versions of the report, each one showing slightly different footage of the property and its surrounding area.

The footage in the first version of the report showed the front exterior of a house in which the house number was clearly visible. This was shown on-screen for approximately five seconds and was followed by close-up footage of a first floor window for a further four seconds. The footage was accompanied with the following commentary:

*"This is where she [Ms Lewthwaite] lived with Germaine Lindsay<sup>2</sup> [Ms Lewthwaite's late husband]. Back then she was not known for having strong religious beliefs".*

The footage featured in the second version of the report showed the street name in which Mr Lewis' house is located, for approximately four seconds. A clip from an

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<sup>1</sup> On 21 September 2013, al-Shabab Islamist militants seized the Westgate shopping mall in Nairobi for a period of four days. Many civilians were killed before the siege was brought to an end by Kenyan security forces.

<sup>2</sup> Ms Lewthwaite, referred to in numerous media reports as the "White Widow", is the widow of Mr Germaine Lindsay, one of the four bombers responsible for the London Bombings on 7 July 2005.

interview with a former friend of Ms Lewthwaite, Mr Niknam Hussain, was then included followed by a wide view of the street shown for approximately six seconds. This was followed by footage of the front exterior of the house again in which the house number was clearly visible. This was accompanied by the following commentary:

*“The attack on Kenya is a million miles away from the back streets of Buckinghamshire, Aylesbury, where Samantha Lewthwaite grew up”.*

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

Mr Lewis complained that his privacy was unwarrantably infringed in the programmes as broadcast because, during *Sky News*’ coverage of the Kenya shopping mall terrorist siege, footage of his house in Buckinghamshire was shown in relation to the fact that Ms Lewthwaite had lived there.

By way of background, Mr Lewis said that Ms Lewthwaite had resided at the property for a period of two months nine years ago. He said that the property had been identified to some extent in 2005 as the place where she had lived and had been targeted by “extremists” who had poured petrol through the letter box. Mr Lewis said that he was concerned that his family and property may be attacked as a result of the *Sky News* broadcasts.

In response, British Sky Broadcasting Limited, (“BSkyB”, the Ofcom licence holder for the Sky News Channel), said that although it accepted that Mr Lewis’ property may have been identifiable to some viewers, it did not accept that the way in which it featured in the programmes as broadcast amounted to an unwarranted infringement of privacy. The broadcaster added that viewers would have been unlikely to piece together the full address given that in the second version of the report the road sign was only shown in conjunction with commentary discussing Ms Lewthwaite having grown up in the Aylesbury area. There was then a wide shot of a residential street and an interview with Mr Hussain which lasted for approximately 24 seconds. BSkyB accepted that the footage before and after the interview was of the road, however, it did not believe that a viewer would necessarily draw the conclusion that Mr Lewis’ house was on that particular road, because it was separated by the interview.

The broadcaster added that there was no suggestion in the reports that Ms Lewthwaite had continued to have links with the Aylesbury area generally, or with the property featured. The reports made it clear that Ms Lewthwaite had lived at the property with her late husband at a point in the past, but that any links to the property were historical. BSkyB said that by reporting that the property was shared with her husband, Ms Lewthwaite’s occupancy of the property could be dated as being almost eight years in the past, i.e. 2005.

BSkyB said that the reports also emphasised just how distant Ms Lewthwaite’s present life was from her past in Aylesbury. During the coverage of the events in Kenya, viewers would have been aware that Ms Lewthwaite was no longer connected to Aylesbury and that in recent times she had lived in Kenya and was now wanted by the Kenyan authorities for her suspected involvement in the attack on the mall. *Sky News* had reported from two different addresses where she once lived in Nairobi, Kenya.

The broadcaster recognised that Mr Lewis was concerned about his and his family’s personal safety following the broadcast of the reports. While it did not believe that the inclusion of the property would give rise to a risk to Mr Lewis or his family, BSkyB

agreed, nevertheless, not to feature the footage of the house already broadcast or any similar footage of the property in any future report.

## **Decision**

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

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

In reaching this decision, we carefully considered all the relevant material provided by both parties. This included a recording and a transcript of the programmes as broadcast, along with both parties' written submissions and supporting material. Ofcom provided the parties with the opportunity to make representations on the Preliminary View in this case (which was not to uphold the complaint). Neither party made any representations on the Preliminary View.

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 we apply Rule 8.1 of the Code which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

In assessing Mr Lewis' complaint that his privacy was unwarrantably infringed in the programmes as broadcast because footage of his house was shown and information relating to his location was disclosed, Ofcom 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 8.2 which states that information which discloses the location of a person's home should not be revealed without permission, unless it is warranted.

Ofcom first considered the extent to which Mr Lewis had a legitimate expectation of privacy in relation to footage of his house being shown and information relating to its location being disclosed in the programmes as broadcast.

We examined the footage of Mr Lewis' house in the reports broadcast and the context in which the footage appeared (as set out in detail in the "Introduction and programme summary" section). It was Ofcom's view that it was quite likely that some viewers could have worked out the address of Mr Lewis' house from the information given in the reports because they revealed the town where it was located, the road name and the house number of his property. In our view, the brief clip of the interview with Mr Hussain, a former friend of Ms Lewthwaite, in the second version of the report would not have made this task materially more difficult.

We noted, however, that the footage of the property that was broadcast appeared to have been filmed openly and in a public place, i.e. the side of a public highway. Ofcom also took account of the fact that it was reported back in 2005 that Ms Lewthwaite had lived at the property with her late husband and that this information remained in the public domain and was publicly accessible.

Ofcom recognised that the broadcast of footage of an individual's home and information that discloses its address may give rise to an expectation of privacy and noted that the subject matter of the *Sky News* report related to serious matters which Mr Lewis said raised concerns for his and his family's personal safety. However, in the programmes as broadcast neither Mr Lewis nor his family was identified as being connected in any way to the property shown, and from the language used in the reports (e.g. "*lived*", "*Back then*", and "*grew up*") it was repeatedly made clear that the references to Aylesbury and the house where Mr Lewis now lives were concerned with events in the past. In our view, given the language in the reports, it was highly unlikely that viewers would have interpreted the news items as stating or suggesting that Ms Lewthwaite still had connections with the property or with those now living in it.

Taking all the above factors into account, Ofcom found that on balance Mr Lewis did not have a legitimate expectation of privacy in relation to the broadcast of the footage of his property in the news reports. Therefore it was not necessary for Ofcom to consider whether any infringement into the privacy of Mr Lewis was warranted.

**Accordingly, Ofcom has not upheld Mr Lewis' complaint of unwarranted infringement of privacy in the programmes as broadcast.**

## Other Programmes Not in Breach

Up to 3 February 2014

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>
Keiser Report	RT	30/03/2013	Due impartiality/bias
News	Russia Today	18/09/2013	Due accuracy
Jack FM Ale promotion	Jack FM (Southampton)	13/11/2013	Commercial communications on radio

## Complaints Assessed, not Investigated

### Between 21 January and 3 February 2014

This is a list of complaints that, after careful assessment, Ofcom has decided not to pursue because they did not raise issues warranting investigation.

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
118 118's sponsorship of Channel 4 Movies	Channel 4	Various	Sponsorship credits	1
118 118's sponsorship of ITV Movies	ITV3 +1	19/01/2014	Sponsorship credits	1
4 O'Clock Club	CBBC	15/01/2014	Scheduling	1
A Great Welsh Adventure with Griff Rhys Jones	ITV	20/01/2014	Violence and dangerous behaviour	1
Advertisements	Channel 4	Various	Advertising minutage	1
Advertisements	Zing	29/11/2013	Advertising minutage	1
Afternoon Drama: Paradigm	BBC Radio 4	21/01/2014	Offensive language	1
All Star Family Fortunes	ITV	26/01/2014	Outside of remit / other	2
Along Came Polly	Channel 5	05/01/2014	Scheduling	2
Assignment: Homeless in Hungary	BBC World Service	23/01/2014	Outside of remit / other	1
BBC Impact	BBC World News	29/01/2014	Outside of remit / other	1
BBC News	BBC News	27/01/2014	Outside of remit / other	1
BBC News	BBC News Channel	27/01/2014	Offensive language	1
BBC News	BBC Radio 2	20/01/2014	Scheduling	1
BBC News at Six	BBC 1	17/01/2014	Outside of remit / other	1
BBC News at Six	BBC 1	21/01/2014	Scheduling	1
BBC News at Ten	BBC 1	20/01/2014	Product placement	1
BBC News at Ten	BBC 1	23/01/2014	Outside of remit / other	1
BBC News at Ten	BBC 1	31/01/2014	Outside of remit / other	1
Benidorm	STV	16/01/2014	Generally accepted standards	1
Bigg Boss 7	Colors	30/10/2013	Generally accepted standards	1
Bigg Boss 7	Colors	05/12/2013	Violence and dangerous behaviour	3
Bodysockers: My Tattoo Hell (trailer)	More4	28/01/2014	Scheduling	1
Braveheart	Film4	25/01/2014	Race discrimination/offence	1
British Comedy Awards 2013	Channel 4	12/12/2013	Generally accepted standards	5
Capital One Cup	Sky Sports 1	22/01/2014	Generally accepted standards	1
Celebrity Big Brother	Channel 5	03/01/2014	Generally accepted standards	1

Celebrity Big Brother	Channel 5	04/01/2014	Sexual material	6
Celebrity Big Brother	Channel 5	05/01/2014	Generally accepted standards	32
Celebrity Big Brother	Channel 5	05/01/2014	Outside of remit / other	13
Celebrity Big Brother	Channel 5	05/01/2014	Sexual orientation discrimination/offence	100
Celebrity Big Brother	Channel 5	06/01/2014	Religious/Beliefs discrimination/offence	2
Celebrity Big Brother	Channel 5	06/01/2014	Sexual material	40
Celebrity Big Brother	Channel 5	07/01/2014	Generally accepted standards	4
Celebrity Big Brother	Channel 5	08/01/2014	Advertising minutage	1
Celebrity Big Brother	Channel 5	08/01/2014	Generally accepted standards	1
Celebrity Big Brother	Channel 5	08/01/2014	Materially misleading	1
Celebrity Big Brother	Channel 5	09/01/2014	Crime	1
Celebrity Big Brother	Channel 5	10/01/2014	Animal welfare	16
Celebrity Big Brother	Channel 5	10/01/2014	Voting	5
Celebrity Big Brother	Channel 5	11/01/2014	Age discrimination/offence	1
Celebrity Big Brother	Channel 5	11/01/2014	Gender discrimination/offence	58
Celebrity Big Brother	Channel 5	11/01/2014	Scheduling	1
Celebrity Big Brother	Channel 5	12/01/2014	Gender discrimination/offence	2
Celebrity Big Brother	Channel 5	12/01/2014	Generally accepted standards	59
Celebrity Big Brother	Channel 5	12/01/2014	Scheduling	1
Celebrity Big Brother	Channel 5	13/01/2014	Animal welfare	2
Celebrity Big Brother	Channel 5	13/01/2014	Race discrimination/offence	2
Celebrity Big Brother	Channel 5	13/01/2014	Scheduling	3
Celebrity Big Brother	Channel 5	14/01/2014	Animal welfare	1
Celebrity Big Brother	Channel 5	14/01/2014	Generally accepted standards	1
Celebrity Big Brother	Channel 5	14/01/2014	Offensive language	3
Celebrity Big Brother	Channel 5	14/01/2014	Sexual material	2
Celebrity Big Brother	Channel 5	15/01/2014	Gender discrimination/offence	1
Celebrity Big Brother	Channel 5	15/01/2014	Generally accepted standards	16
Celebrity Big Brother	Channel 5	16/01/2014	Generally accepted standards	5
Celebrity Big Brother	Channel 5	16/01/2014	Generally accepted standards	1
Celebrity Big Brother	Channel 5	17/01/2014	Disability discrimination/offence	10
Celebrity Big Brother	Channel 5	17/01/2014	Gender discrimination/offence	1
Celebrity Big Brother	Channel 5	17/01/2014	Generally accepted standards	6
Celebrity Big Brother	Channel 5	17/01/2014	Religious/Beliefs discrimination/offence	1

Celebrity Big Brother	Channel 5	18/01/2014	Generally accepted standards	9
Celebrity Big Brother	Channel 5	18/01/2014	Scheduling	1
Celebrity Big Brother	Channel 5	18/01/2014	Sexual material	1
Celebrity Big Brother	Channel 5	19/01/2014	Generally accepted standards	54
Celebrity Big Brother	Channel 5	20/01/2014	Generally accepted standards	21
Celebrity Big Brother	Channel 5	21/01/2014	Gender discrimination/offence	1
Celebrity Big Brother	Channel 5	21/01/2014	Generally accepted standards	7
Celebrity Big Brother	Channel 5	22/01/2014	Generally accepted standards	3
Celebrity Big Brother	Channel 5	23/01/2014	Gender discrimination/offence	1
Celebrity Big Brother	Channel 5	23/01/2014	Generally accepted standards	30
Celebrity Big Brother	Channel 5	23/01/2014	Offensive language	3
Celebrity Big Brother	Channel 5	24/01/2014	Gender discrimination/offence	1
Celebrity Big Brother	Channel 5	24/01/2014	Generally accepted standards	4
Celebrity Big Brother	Channel 5	24/01/2014	Generally accepted standards	1
Celebrity Big Brother	Channel 5	24/01/2014	Voting	1
Celebrity Big Brother	Channel 5	26/01/2014	Generally accepted standards	2
Celebrity Big Brother	Channel 5	27/01/2014	Generally accepted standards	12
Celebrity Big Brother	Channel 5	Various	Generally accepted standards	2
Celebrity Big Brother	Channel 5	Various	Outside of remit / other	3
Celebrity Big Brother's Bit on the Psych	Channel 5	11/01/2014	Animal welfare	7
Celebrity Big Brother's Bit on the Psych	Channel 5	11/01/2014	Gender discrimination/offence	1
Celebrity Big Brother's Bit on the Psych	Channel 5	11/01/2014	Sexual orientation discrimination/offence	1
Celebrity Big Brother's Bit on the Psych	Channel 5	18/01/2014	Generally accepted standards	1
Celebrity Big Brother's Bit on the Psych	Channel 5	25/01/2014	Generally accepted standards	27
Celebrity Big Brother's Bit on the Side	Channel 5	03/01/2014	Offensive language	4
Celebrity Big Brother's Bit on the Side	Channel 5	07/01/2014	Generally accepted standards	2
Celebrity Big Brother's Bit on the Side	Channel 5	10/01/2014	Gender discrimination/offence	2

Celebrity Big Brother's Bit on the Side	Channel 5	20/01/2014	Generally accepted standards	2
Celebrity Big Brother's Bit on the Side	Channel 5	22/01/2014	Generally accepted standards	1
Celebrity Big Brother's Bit on the Side	Channel 5	23/01/2014	Generally accepted standards	1
Celebrity Big Brother's Bit on the Side	Channel 5	24/01/2014	Generally accepted standards	1
Celebrity Big Brother's Bit on the Side	Channel 5	27/01/2014	Generally accepted standards	3
Celebrity Big Brother's Bit on the Side	Channel 5	29/01/2014	Animal welfare	1
Channel 4 News	Channel 4	03/12/2013	Due impartiality/bias	1
Channel 4 News	Channel 4	08/01/2014	Due impartiality/bias	6
Channel 4 News	Channel 4	08/01/2014	Offensive language	1
Channel 4 News	Channel 4	15/01/2014	Due impartiality/bias	1
Channel 4 News	Channel 4	20/01/2014	Scheduling	1
Channel 4 News	Channel 4	21/01/2014	Generally accepted standards	1
Channel 4 News	Channel 4	23/01/2014	Scheduling	1
Channel 4 News	Channel 4	25/01/2014	Due impartiality/bias	1
Channel 4 News	Channel 4	26/01/2014	Due impartiality/bias	1
Channel 4 News	Channel 4	28/01/2014	Outside of remit / other	5
Channel 4 Racing	Channel 4	04/01/2014	Promotion of products/services	1
Charity appeal	Ummah Channel	01/11/2013	Due impartiality/bias	2
Citroen Van's sponsorship of documentaries on Quest	Quest	19/01/2014	Sponsorship credits	1
Competition	Heart FM	07/01/2014	Competitions	1
Coronation Street	ITV	13/01/2014	Generally accepted standards	1
Coronation Street	ITV	13/01/2014	Scheduling	3
Coronation Street	ITV	15/01/2014	Harm	1
Coronation Street	ITV	17/01/2014	Generally accepted standards	2
Coronation Street	ITV	17/01/2014	Scheduling	1
Coronation Street	ITV	20/01/2014	Generally accepted standards	25
Coronation Street	ITV	20/01/2014	Promotion of products/services	1
Coronation Street	ITV	22/01/2014	Scheduling	1
Coronation Street	ITV	29/01/2014	Sexual orientation discrimination/offence	1
Coronation Street	ITV	Various	Generally accepted standards	1

Coronation Street Omnibus	ITV2	25/01/2014	Television Access Services	1
Countryfile Winter Special	BBC 1	19/01/2014	Violence and dangerous behaviour	1
Dancing on Ice	ITV	19/01/2014	Gender discrimination/offence	1
Dancing on Ice	ITV	26/01/2014	Undue prominence	1
Dave Allen: the Immaculate Selection	BBC 2	04/01/2014	Race discrimination/offence	1
Dead Man's Shoes / Tyrannosaur	Channel 4	Various	Generally accepted standards	1
Deal or No Deal	Channel 4	24/01/2014	Generally accepted standards	1
Dispatches	Channel 4	20/01/2014	Materially misleading	1
Don't Look Down	Channel 4	19/01/2014	Violence and dangerous behaviour	4
Don't Tell the Bride	BBC 3	06/01/2014	Offensive language	1
Dragons' Den	BBC 2	26/01/2014	Materially misleading	1
Dragons' Den	BBC 2	02/02/2014	Gender discrimination/offence	1
Drugs Inc	National Geographic	10/01/2014	Violence and dangerous behaviour	1
Drugs Inc	National Geographic	13/01/2014	Violence and dangerous behaviour	1
EastEnders	BBC 1	01/01/2014	Scheduling	21
EastEnders	BBC 1	15/01/2014	Race discrimination/offence	2
EastEnders	BBC 1	16/01/2014	Disability discrimination/offence	1
EastEnders	BBC 1	20/01/2014	Violence and dangerous behaviour	1
EastEnders	BBC 1	23/01/2014	Animal welfare	1
EastEnders	BBC 1	23/01/2014	Generally accepted standards	1
EastEnders	BBC 1	23/01/2014	Race discrimination/offence	1
EastEnders	BBC 1	27/01/2014	Harm	9
Emmerdale	ITV	14/01/2014	Disability discrimination/offence	1
Emmerdale	ITV	16/01/2014	Generally accepted standards	1
Emmerdale	ITV	24/01/2014	Violence and dangerous behaviour	4
Falling Skies (trailer)	5*	19/01/2014	Scheduling	1
Fearne Cotton	BBC Radio 1	28/01/2014	Scheduling	1
Finding Mum and Dad	Channel 4	15/01/2014	Generally accepted standards	1
Finding Mum and Dad	Channel 4	15/01/2014	Under 18s in programmes	1
Fleming (trailer)	Sky News	02/02/2014	Scheduling	1
Flog It	BBC 1	Various	Outside of remit / other	1
Freak Show (trailer)	Sky Sports News	29/11/2013	Generally accepted standards	1
Galaxy 102.5	Galaxy 102.5	14/01/2014	Generally accepted standards	1

General programming	AXN White (Central Europe)	24/12/2013	Outside of remit / other	1
Geordie Shore	MTV	08/01/2014	Generally accepted standards	1
Gerodie Shore	MTV	10/01/2014	Drugs, smoking, solvents or alcohol	1
Gillette Soccer Saturday	Sky Sports News	25/01/2014	Gender discrimination/offence	2
Halfords' sponsorship of Happy Motoring on Dave	Dave	24/01/2014	Sponsorship credits	1
Halfords' sponsorship of Happy Motoring on Dave	Dave	Various	Sponsorship credits	2
Hawksbee and Jacobs	Talksport	21/01/2014	Race discrimination/offence	1
Highlander	5USA	03/01/2014	Information/warnings	1
Hollyoaks	Channel 4	22/01/2014	Violence and dangerous behaviour	1
Hollyoaks	E4	21/01/2014	Violence and dangerous behaviour	1
Inside Out	BBC 1	06/01/2014	Outside of remit / other	1
Inside the National Trust	ITV	12/01/2014	Animal welfare	1
Interview with Dr Whittaker	Unity 101	12/08/2013	Outside of remit / other	1
ITV News	Channel TV	24/01/2014	Due impartiality/bias	1
ITV News and Weather	ITV	08/01/2014	Due impartiality/bias	8
ITV News at Ten	ITV	28/01/2014	Outside of remit / other	1
ITV News London	ITV (London)	08/01/2014	Due impartiality/bias	1
James O'Brien	LBC 97.3FM	24/01/2014	Race discrimination/offence	1
Jamie and Jimmy's Friday Night Feast	Channel 4	10/01/2014	Violence and dangerous behaviour	1
Jamie and Jimmy's Friday Night Feast	Channel 4	17/01/2014	Sexual material	1
Jeremy Vine	BBC Radio 2	23/01/2014	Violence and dangerous behaviour	1
Julia Hartley-Brewer	LBC 97.3FM	16/01/2014	Race discrimination/offence	1
Karaoke Nights	Channel 4	19/12/2013	Offensive language	1
Kjells smakresa	TV3	07/10/2013	Generally accepted standards	1
Ian Robson Nightowls	Metro Radio	06/01/2014	Commercial communications on radio	1
Lawyers Behaving Badly	BBC 1 Scotland	15/01/2014	Outside of remit / other	1
Live protest from Parliament	Noor TV / Takbeer TV / Ummah Channel	Various	Violence and dangerous behaviour	1
Looking (trailer)	Pick TV	Various	Sexual orientation discrimination/offence	1

Looking (trailer)	Sky1	20/01/2014	Scheduling	4
Lorraine	ITV	22/01/2014	Generally accepted standards	1
Lorraine	ITV	28/01/2014	Competitions	1
Mad Men (trailer)	Sky News	22/01/2014	Generally accepted standards	1
Man About the House	ITV3	13/01/2014	Race discrimination/offence	1
Masters Snooker	BBC 2	19/01/2014	Nudity	1
Mermaids	Disney Channel	14/12/2013	Outside of remit / other	1
Mom	ITV2	27/01/2014	Generally accepted standards	1
My Kitchen Rules	Sky Living	23/01/2014	Offensive language	1
Nashville (trailer)	Channel 4	03/02/2014	Scheduling	1
National Television Awards	ITV	20/01/2010	Race discrimination/offence	1
News	BBC and ITV	23/01/2014	Outside of remit / other	1
News	RT	09/01/2014	Due accuracy	1
News	Tay FM	23/01/2014	Due impartiality/bias	1
News	Various	Various	Outside of remit / other	1
News Update	BBC 1	23/01/2014	Scheduling	1
News Update	BBC1	20/01/2014	Scheduling	1
Newstalk Live	Channel 5	08/01/2014	Due impartiality/bias	1
Nick Ferrari	LBC 97.3FM	07/01/2014	Commercial communications on radio	1
Nick Ferrari	LBC 97.3FM	15/01/2014	Race discrimination/offence	1
Night Debate	Ummah Channel	18/12/2013	Generally accepted standards	1
Nixon's The One (trailer)	Sky News	20/01/2014	Generally accepted standards	1
Outnumbered	BBC 1	29/01/2014	Disability discrimination/offence	15
Outnumbered	BBC 1	29/01/2014	Materially misleading	1
PM	BBC Radio 4	28/01/2014	Outside of remit / other	1
Programming	BT Sport	Various	Outside of remit / other	1
Programming	Jack FM (Southampton)	29/01/2014	Offensive language	1
Programming	Pakistan FM	08/09/2013	Generally accepted standards	1
Programming	Unity 101	02/01/2014	Generally accepted standards	1
Programming	Various	n/a	Outside of remit / other	1
Programming	Various	Various	Generally accepted standards	1
Regional News and Weather	BBC 1	20/01/2014	Outside of remit / other	1
RMG: Past, Present & Future	NTV	02/01/2014	Promotion of products/services	1
Robson's Extreme Fishing Challenge	Channel 5	17/01/2014	Scheduling	1

Robson's Extreme Fishing Challenge	Channel 5	20/01/2014	Animal welfare	1
Royal Rumble Wrestling (trailer)	Sky Sports News	27/01/2014	Materially misleading	1
Savage Family Diggers	Quest	12/01/2014	Scheduling	1
Scotland's Smoking Gun	BBC 2 Scotland	28/01/2014	Outside of remit / other	1
Scottish Political Broadcast	BBC 1 Scotland	30/01/2014	Outside of remit / other	1
Silent Witness	BBC 1	16/01/2014	Offensive language	1
Sky News	Sky News	26/01/2014	Due impartiality/bias	6
Sky News at 5 with Andrew Wilson	Sky News	11/01/2014	Race discrimination/offence	1
Sky News at Nine	Sky News	22/01/2014	Due impartiality/bias	1
Sky World News	Sky News	08/01/2014	Materially misleading	1
Soccer A.M.	Sky1	11/01/2014	Scheduling	1
Soccer A.M.	Sky1	01/02/2014	Generally accepted standards	1
Soda Stream's sponsorship of The Jump	Channel 4	Various	Sponsorship	4
Splash!	ITV	18/01/2014	Voting	1
Splash!	ITV	25/01/2014	Disability discrimination/offence	1
Splash!	ITV	25/01/2014	Generally accepted standards	4
Stella	Sky1	24/01/2014	Disability discrimination/offence	9
Strictly Baby Disco	Channel 4	29/01/2014	Under 18s in programmes	2
Suits	Dave	22/01/2014	Scheduling	1
Super Scoreboard Live	Clyde 1	13/01/2014	Religious/Beliefs discrimination/offence	1
Supersize v Superskinny	Channel 4	09/01/2014	Generally accepted standards	1
The A to Z of TV Cooking	BBC 2	25/01/2014	Generally accepted standards	2
The Andrew Marr Show	BBC 1	19/01/2014	Outside of remit / other	1
The Daily Politics	BBC 2	23/01/2014	Outside of remit / other	1
The Dumping Ground	CBBC	12/01/2014	Offensive language	1
The Great Sport Relief Bake Off	BBC 2	16/01/2014	Offensive language	1
The Jeremy Kyle Show	ITV	24/01/2014	Generally accepted standards	1
The Jump	Channel 4	27/01/2014	Outside of remit / other	1
The Jump	Channel 4	29/01/2014	Offensive language	1
The Jump	Channel 4	30/01/2014	Outside of remit / other	1
The Jump	Channel 4	31/01/2014	Generally accepted standards	1
The JVS Show	BBC Three Counties Radio	28/01/2014	Outside of remit / other	1
The Last Leg (trailer)	Channel 4	28/01/2014	Scheduling	1

The Matt Edmondson Show	BBC Radio 1	18/01/2014	Scheduling	1
The Naked Rambler	BBC 1	21/01/2014	Nudity	1
The National Lottery: Who Dares Wins	BBC 1	25/01/2014	Outside of remit / other	1
The National Television Awards 2014	ITV	22/01/2014	Generally accepted standards	1
The National Television Awards 2014	ITV	22/01/2014	Offensive language	9
The Simpsons	Channel 4	17/01/2014	Offensive language	1
The Simpsons	Channel 4	21/01/2014	Offensive language	1
The Simpsons	Channel 4	22/01/2014	Sexual material	3
The Simpsons	Sky1	20/01/2014	Scheduling	1
The Taste	Channel 4	07/01/2014	Offensive language	1
The Taste	Channel 4	14/01/2014	Generally accepted standards	1
The Taste	Channel 4	28/01/2014	Race discrimination/offence	1
The Undateables (trailer)	Channel 4	23/01/2014	Generally accepted standards	1
The Valleys	MTV	08/01/2014	Drugs, smoking, solvents or alcohol	1
The Voice UK	BBC 1	11/01/2014	Scheduling	1
The Voice UK	BBC 1	18/01/2014	Animal welfare	1
The Voice UK	BBC 3	19/01/2014	Gender discrimination/offence	1
The Wright Stuff	Channel 5	14/01/2014	Due accuracy	2
The Wright Stuff	Channel 5	21/01/2014	Offensive language	1
This Morning	ITV	09/01/2014	Due impartiality/bias	2
This Morning	ITV	15/01/2014	Competitions	1
This Morning	ITV	27/01/2014	Generally accepted standards	4
This Morning	ITV	29/01/2014	Generally accepted standards	2
This Week	BBC 1	16/01/2014	Generally accepted standards	1
This Week	BBC 1	16/01/2014	Offensive language	1
This Week's Viva Top 20	Viva	21/01/2014	Scheduling	1
Three Wives, One Husband: Married to the Mormons	Channel 4	27/01/2014	Materially misleading	1
Today	BBC Radio 4	20/12/2013	Violence and dangerous behaviour	1
Today	BBC Radio 4	13/01/2014	Outside of remit / other	1
Tonight: The Rise of the E-Cigarette	ITV	23/01/2014	Due impartiality/bias	4
Top 40	MTV	13/01/2014	Scheduling	1
Top Gear	Dave	28/01/2014	Offensive language	1
Tough Young Teachers	BBC 3	28/01/2014	Animal welfare	3
Two Doors Down	BBC1	31/12/2013	Gender	1

			discrimination/offence	
UTV advertisement	ITV	31/01/2014	Outside of remit / other	1
UTV promotion	UTV	31/01/2014	Outside of remit / other	1
Vernon Harwood and Brian Bailey	BBC Radio Somerset	02/02/2014	Outside of remit / other	1
Vicious	ITV	27/12/2013	Generally accepted standards	1
Visit Scotland advertisement	ITV Border (English)	21/01/2014	Political advertising	1
Waterloo Road	BBC 1	15/01/2014	Outside of remit / other	1
What Happens in Sunny Beach...	Channel 4	09/01/2014	Generally accepted standards	1
Who's On Heart	Heart Radio (Bournemouth)	n/a	Competitions	1
Woolwich: The Untold Story	BBC 1	19/12/2013	Generally accepted standards	1
Workaholics	Comedy Central	24/01/2014	Materially misleading	1

## 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 23 January and 5 February 2014.

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

Programme	Broadcaster	Transmission date
1920 Evil Returns (trailer)	Sony Max	26 December 2013
Celebrity Big Brother	Channel 5	7 January 2014
Celebrity Big Brother	Channel 5	19 January 2014
Emmerdale	ITV	28 January 2014
Face to Face	CHS TV	20 November 2013
Haat Bazar sponsorship credit	CHSTV	18 December 2013
My Super Ex-Girlfriend	Channel 5	12 January 2014
Remembering Martyrs	International Live Channel (ILC)	Various
Sonia Poulton Live	The People's Voice	29 November 2013

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
Blast 106 Limited	Blast FM
People's Voice Broadcasting Limited	The People's Voice
Virgin Media Limited	Virgin Media EPG

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