

OFCOM BROADCAST AND ON DEMAND BULLETIN

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Introduction

Under the Communications Act 2003 ("the Act"), Ofcom has a duty to set standards for broadcast content to secure the standards objectives¹. Ofcom also has a duty to ensure that On Demand Programme Services ("ODPS") comply with certain standards requirements set out in the Act².

Ofcom reflects these requirements in its codes and rules. The Broadcast and On Demand Bulletin reports on the outcome of Ofcom's investigations into alleged breaches of its codes and rules, as well as conditions with which broadcasters licensed by Ofcom are required to comply. The codes and rules include:

- a) [Ofcom's Broadcasting Code](#) ("the Code") for content broadcast on television and radio services licensed by Ofcom, and for content on the BBC's licence fee funded television, radio and on demand services.
- b) the [Code on the Scheduling of Television Advertising](#) ("COSTA"), containing rules on how much advertising and teleshopping may be scheduled on commercial television, how many breaks are allowed and when they may be taken.
- c) certain sections of the [BCAP Code: the UK Code of Broadcast Advertising](#), for which Ofcom retains regulatory responsibility for television and radio services. These include:
 - the prohibition on 'political' advertising;
 - 'participation TV' advertising, e.g. long-form advertising predicated on premium rate telephone services – notably chat (including 'adult' chat), 'psychic' readings and dedicated quiz TV (Call TV quiz services); and
 - gambling, dating and 'message board' material where these are broadcast as advertising³.
- d) other conditions with which Ofcom licensed services must comply, such as requirements to pay fees and submit information required for Ofcom to carry out its statutory duties. Further information can be found on Ofcom's website for [television](#) and [radio](#) licences.
- e) Ofcom's [Statutory Rules and Non-Binding Guidance for Providers of On-Demand Programme Services](#) for editorial content on ODPS (apart from BBC ODPS). Ofcom considers sanctions for advertising content on ODPS referred to it by the Advertising Standards Authority ("ASA"), the co-regulator of ODPS for advertising, or may do so as a concurrent regulator.

[Other codes and requirements](#) may also apply to broadcasters, depending on their circumstances. These include the requirements in the BBC Agreement, the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code.

¹ The relevant legislation is set out in detail in Annex 1 of the Code.

² The relevant legislation can be found at Part 4A of the Act.

³ 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.

It is Ofcom's policy to describe fully television, radio and on demand content. Some of the language and descriptions used in Ofcom's Broadcast and On Demand Bulletin may therefore cause offence.

Broadcast Standards cases

In Breach

Steve Allen¹

LBC 97.3FM, 1 October 2018, 04:00

Introduction

Steve Allen presents the early weekday morning breakfast show between 04:00 and 07:00 on the speech-based radio station LBC 97.3FM. The licence for the service is held by LBC Radio Limited ("LBC Radio" or "the Licensee").

A listener complained that presenter Steve Allen made discriminatory comments about blind people during this programme.

During the programme, Mr Allen, commented on an article in The Times newspaper², which reported on a blind man who is scared of dogs and intends to use a guide horse rather than a guide dog. Mr Allen said:

"Also, the guide horse for the blind man who's afraid of dogs. Well if he's blind, tell him it's a rabbit or something. I've never heard of anything so stupid. This is the blind man scared of dogs hoping that a horse will guide him on his commute. Where are you going to take that for goodness sake? You can't take it on the train, can you? This is a – he's a BBC journalist. What do you mean he's allergic to dogs? Well don't give him a dog then. Not every blind person gets a dog. To give him a horse is quite ludicrous. He's afraid of dogs. Why? Why's he afraid of dogs? Well don't give him – don't give him anything at all then. Just give him a white stick. I've never seen anything so stu – what's he going to do, take it into work with him or something? A BBC journalist. I remember once the BBC took on a blind cameraman. Well I was sort of thinking to myself how does that work out? He's a blind – somebody's going to have to say to him 'little bit to the right, little bit to the left, little bit, oh, up, oh no missed it completely'. It just doesn't work. I can understand people going 'oh I want to be treated the same', but I mean, you know, a joke's a joke I think".

We considered that this content raised potential issues under the following Code rule:

Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include, but is not limited to...discriminatory treatment or language (for example on the grounds of...disability...)"

¹ This Decision, when published on 3 December 2018, included a reference to the Royal National Institute for Blind People ("RNIB") made by the Licensee in their representations to Ofcom and to which the RNIB objected on grounds of inaccuracy. At the RNIB's request, and with the Licensee's agreement, this reference has been removed as of 14 January 2019.

² See "[Guide horse for blind man afraid of dogs](#)", The Times, 1 October 2018. The article said that a "miniature horse...who is almost [3 feet] high..." was being trained to be "Britain's first guide horse".

We therefore asked the Licensee for comments on how the programme complied with this rule.

Response

The Licensee said that the programme is “centred around [Steve Allen’s] unique and acerbic take on the news of the day”. It added that “He provides fast-moving opinions on the headlines and rarely dwells on one topic for any significant amount of time...his very brief commentary on the story...had a total duration of less than a minute...”.

LBC Radio also said that Steve Allen was “expressing genuine surprise at the story [in the Times], and rhetorically questioned the practicality of using a guide horse for assistance within an office space or on public transport”. It said he “put across the valid point that not all blind people receive the aid of a guide dog [and he] was not aware that a similar [guide horse] scheme already exists in the United States”.

The Licensee said Steve Allen “...is aware that his comments may have had the capacity to offend”. However, it added that “his intention was not to treat the blind community with insensitivity... and [he] has agreed to treat such discussions with more consideration moving forward”.

In conclusion, LBC Radio outlined the following improvements to its compliance processes for the *Steve Allen* programme, as a result of this case:

- the presenter and producers had received “specialised compliance training, with an emphasis on sensitivity around material relating to minority communities protected under the Equality Act”;
- an additional producer is to be assigned to the show “with specific responsibility for compliance and control of the ‘dump button’”; and
- the Licensee’s compliance team would carry out additional sampling and monitoring of the programme and regularly review the results with the presenter and producers.

Decision

Reflecting our duties under the Communications Act 2003³, Section Two of the Code requires that generally accepted standards are applied to provide adequate protection for members of the public from the inclusion of offensive and harmful material in programmes.

Ofcom has taken account of the audience’s and the broadcaster’s right to freedom of expression set out in Article 10 of the European Convention on Human Rights.

Under the Equality Act 2010, Ofcom must also have due regard to the need to eliminate unlawful discrimination, to advance equality of opportunity and to foster good relations between persons who share a relevant protected characteristic, such as race or disability, and persons who do not share it.

³ See: [Communications Act 2003, c.21, Part 3, Chapter 4, Programme and fairness standards for television and radio, Section 319](#)

Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive material is justified by the context. Context includes for example: the service in which the programme is broadcast, its editorial content and the likely expectation of the audience.

Our guidance on offensive language in radio⁴ states:

"Ofcom recognises that a substantial amount of radio output is devoted to the live reporting, discussion and analysis of news and current affairs issues. We recognise that there is a rich and welcome tradition of live, hard-hitting, speech-based current affairs content, featuring presenters (e.g. 'shock jocks') or other contributors, which may present challenging listening to some audience members. Consistent with the right to freedom of expression, Ofcom recognises the importance of broadcast content of this type, provided that any potential offence is justified by the context".

We first considered whether Steve Allen's comments about a man who was reported to want a guide horse, rather than a guide dog, because he was afraid of dogs had the potential to cause offence. In our view, they did have the potential to cause offence.

When giving his view on the story of the man, Mr Allen said:

"I've never heard of anything so stupid".

He also said:

"Well if he's blind, tell him it's a rabbit or something".

Mr Allen seemed to be implying that people who are blind cannot differentiate between a rabbit and a dog. We considered that this remark could have been interpreted as belittling blind people and offering a highly pejorative view of them. Further, Mr Allen repeatedly questioned, in dismissive terms, the practicality of using a guide horse and emphatically dismissed what was an individual's choice to equip himself in this way as *"ludicrous"*. He also concluded that the man in question should be denied this choice (*"He's afraid of dogs. Why? Why's he afraid of dogs? Well don't give him – don't give him anything at all then. Just give him a white stick"*).

In our view the potential offence was exacerbated by Steve Allen mocking the idea that the BBC had employed a blind cameraman. We considered that this was likely to have been interpreted by listeners as a further example of the presenter using a pejorative and discriminatory attitude to blind people.

Ofcom then went on to consider whether the broadcast of these comments was justified by the context.

First, we considered the service in which the material was broadcast. Ofcom had regard to the right to freedom of expression of LBC Radio, Mr Allen and of the LBC audience, and balanced this carefully against our duty to provide adequate protection for members of the public from offensive material. Ofcom acknowledged that it is essential that broadcasters have the editorial freedom to debate topics of public interest and to be permitted to make provocative and offensive remarks. We considered that the LBC audience would expect such debate on this service. However, Mr Allen discussed the newspaper story in question in

⁴ [Ofcom Guidance: Offensive language on radio](#)

highly dismissive terms which, in our view, went beyond what LBC Radio argued to be Steve Allen “expressing genuine surprise at the story [in the Times], and rhetorically question[ing] the practicality of using a guide horse for assistance within an office space or on public transport”.

We also considered the editorial context. Ofcom acknowledged that Mr Allen has an “acerbic” presenting style, which is well known by listeners to be opinionated and robust. However, we did not consider that this justified the presenter belittling the abilities of blind people in general, or more specifically a blind person who had chosen to equip himself with a guide horse. The Licensee said that Mr Allen gives “...fast-moving opinions on the headlines and rarely dwells on one topic for any significant amount of time...”. However, the fact that the content lasted under a minute, as argued by LBC Radio, did not lessen the potential offence in this case.

The Licensee also argued that Steve Allen “put across the valid point that not all blind people receive the aid of a guide dog [and he] was not aware that a similar [guide horse] scheme already exists in the United States”. However, in his comments, Mr Allen stressed in a highly dismissive manner, what he viewed to be the impracticality of a blind person using a guide horse (“*Where are you going to take that for goodness sake? You can’t take it on the train, can you? ... what’s he going to do, take it into work with him or something?*”). Ofcom considered that the presenter’s clearly limited understanding of this topic, and the way he tackled it would have contributed to the potential offence caused to listeners. This was because the presenter appeared to suggest that a blind person should not have a choice in how they tackle their disability.

We also considered the presenter’s remarks could be construed as offering a pejorative view about a group protected under the Equality Act 2010 without sufficient context. In our view, this was likely to have exceeded audience expectations.

Ofcom took into account the Licensee’s statement that Steve Allen “...is aware that his comments may have had the capacity to offend, however his intention was not to treat the blind community with insensitivity...”. We also took into account the steps taken by LBC Radio to improve compliance. However, for all the reasons set out above, we did not consider that the inclusion of this offensive material was justified by the context. Our Decision is therefore that this was a breach of Rule 2.3.

We are concerned that this case follows a number of previous breaches⁵ of Rule 2.3 in relation to the Steve Allen programme, in which the presenter referred to different communities in highly offensive terms.

We are therefore putting the Licensee on notice that, should further breaches of this type occur, we may consider further regulatory action including the imposition of a statutory sanction.

Breach of Rule 2.3

⁵ In April 2018, Ofcom recorded a breach of Rule 2.3 for comments which Mr Allen had made on his programme on 28 December 2018. We considered they could be interpreted as offering a highly pejorative and generalised view about members of the traveller community. See [issue 351](#) of our Broadcast and On Demand Bulletin. In January 2017, Ofcom recorded a breach of Rule 2.3 for comments which Mr Allen had made on his programme on 17 October 2016. In these comments, Mr Allen linked his view of someone as *"stupid"* and *"simple"* to the fact they came from Portugal. Mr Allen then expressed his view that Portuguese people, generally, were also *"a bit thick"* and *"really thick"*. See [issue 321](#) of our Broadcast and On Demand Bulletin. In February 2016, Ofcom recorded two breaches of Rule 2.3 for comments which Mr Allen made in his programmes of 28 and 31 August 2015. In each programme Mr Allen appeared to condone vigilantism against someone he perceived as having received insufficient punishment by the courts. See [issue 298](#) of our Broadcast and On Demand Bulletin.

In Breach

Dog and Beth: On the Hunt ***CBS Reality+1, 16 August 2018, 05:40***

Introduction

CBS Reality+1 is the time shift television channel for CBS Reality, which broadcasts reality and factual programmes, predominantly from the United States. The licence for CBS Reality+1 is held by CBS AMC Networks UK Channels Partnership ("CBS" or "the Licensee").

Dog and Beth: On the Hunt is a documentary style series following two well-known bounty hunters, Duane "Dog" Chapman and Beth Chapman, around the United States as they assist in tracking down and arresting criminals.

A complaint alerted Ofcom to the use of offensive language in the above programme as broadcast on CBS Reality between 04:40 and 05:30. Although we did not consider this complaint raised issues which warranted investigation¹, we also assessed this content as broadcast on the time shift channel, CBS Reality+1.

The Code states that the watershed is at 21:00 and that material unsuitable for children should not, in general, be shown before 21:00 or after 05:30.

Ofcom identified multiple uses of offensive language in the programme, including: 60 uses of "fuck" or "fucking"; four uses of "motherfucker"; 19 uses of the word "shit"; and, one of the word "bitch".

We considered that this material raised potential issues under the following rules of the Code:

- Rule 1.14: "The most offensive language must not be broadcast before the watershed (in the case of television)...".
- 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...".

Ofcom requested comments from the Licensee on how the programme complied with these rules.

Response

CBS accepted that the content did not comply with Rules 1.14, 1.16 or 2.3, and said that it sincerely apologised for any offence caused to viewers. It also assured Ofcom that it took its responsibility as broadcasters very seriously.

¹ We also assessed the programme as broadcast on CBS Reality under Rule 1.6 but did not consider that it raised issues in the particular circumstances of this case.

The Licensee said that it holds two versions of every episode of *Dog and Beth: On the Hunt*. One of these is a daytime version, with all offensive language removed, and the second is a post-watershed version, which is unedited. The Licensee explained that the CBS Reality+1 channel is an independently transmitted feed, rather than a time shifted recording of the CBS Reality channel and its usual practice is to produce separate transmission schedules for CBS Reality and CBS Reality+1.

CBS informed Ofcom that due to an upgrade to its scheduling system it had been necessary to use a time shifted version of the CBS Reality schedule for CBS Reality+1. CBS said that programme schedulers had taken steps to ensure the daytime version of the programme was correctly scheduled at 04:40, to ensure compliance on the +1 channel. However, the scheduling system followed internal rules for the non-time shifted channel and, on both CBS Reality and CBS Reality+1, replaced the daytime version of the programme with the post-watershed version.

The Licensee said that having been alerted to the initial complaint by Ofcom, it had launched an internal investigation to identify the cause of the issue and made a number of improvements to its compliance processes as a result. These included making various changes to its scheduling system to prevent a recurrence of the technical issues it had experienced. The Licensee also said its scheduling staff had attended training sessions "highlighting the importance of adhering to approved practice...and the importance of manually checking schedules prior to sending them to transmission".

Decision

Reflecting our duties under the Communications Act 2003², Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes. Section Two of the Code requires that generally accepted standards are applied so as to provide adequate protection for members of the public from the inclusion of harmful or offensive material.

Rule 1.14

This rule states that the most offensive language must not be broadcast before the watershed on television.

The programme included 60 uses of the words "fuck" or "fucking" and four uses of the word "motherfucker". Ofcom's 2016 research on offensive language clearly indicates that the word "fuck" and variations of it are considered by audiences to be amongst the most offensive language.

The Code states that the watershed is at 21:00. Material unsuitable for children should not, in general, be shown before 21:00 or after 05:30. We therefore considered that the use of the words "fuck", "fucking" and "motherfucker" in a programme broadcast between 05:40 and 06:30 was an example of the most offensive language being broadcast before the watershed.

Ofcom's Decision is that the broadcast was in breach of Rule 1.14.

² <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

Rule 1.16

This rule states that offensive language must not be broadcast before the watershed unless it is justified by the context. In any event, frequent use of such language must be avoided. In addition to the repeated use of the most offensive language as set out above, this pre-watershed programme included a further 20 instances of other language, for example the words "shit" and "bitch", which Ofcom's research indicates audiences consider to be offensive. We went on to consider whether this use of offensive language was justified by the context.

We recognised that neither the programme, nor CBS Reality+1 are aimed at or likely to be of particular interest to children. However, CBS Reality+1 shows a variety of reality and factual content, and this programme was broadcast in the early morning on a Thursday. There was no warning to alert viewers, and so we do not consider that viewers were likely to have expected the use of this offensive language on this channel at this time. Therefore, we did not consider that the offensive language broadcast was justified by the context.

Further, we considered that 20 instances of medium strength offensive language broadcast between 05:40 and 06:30 constituted frequent use. Therefore, our Decision is that the broadcast of this programme was also in breach of Rule 1.16.

Rule 2.3

Rule 2.3 of the Code requires broadcasters to ensure that potentially offensive material is justified by the context.

In Ofcom's view, the 64 instances of the most offensive language and 20 instances of other offensive language before the watershed were clearly capable of causing offence to viewers.

Ofcom therefore considered whether the content was justified by the context. Context is assessed by reference to a range of factors including the editorial content of the programme, the service in which the material is broadcast, the time of broadcast and the likely expectation of the audience.

We recognised that because the programme follows Dog and Beth tracking and arresting criminals viewers are likely to expect the programme to feature some aggressive confrontations and language. We also recognised that the CBS Reality+1 service as a whole shows a variety of reality and factual content that in some programming is likely to reflect language used in everyday life. However, the programme was not preceded by a warning and started at 05:40 on a Thursday. We therefore considered that despite the established format and style of this programme, the nature and frequency of offensive language was likely to have far exceeded audience expectations for a programme broadcast at this time on this channel.

Ofcom took into account that the Licensee said that the programme was broadcast as a result of technical issue, and that it had said it had steps to improve its compliance processes. However, for the reasons set out above, our Decision is that the broadcast of the most offensive language in this case was not justified by the context, and also breached Rule 2.3.

Breaches of Rules 1.14, 1.16 and 2.3

In Breach

Lunch with Lewi

883 Centreforce, 30 August 2018, 12:00

Introduction

883 Centreforce is a DAB radio station broadcasting in East London, specialising in dance music. The licence for this service is held by Festiva Ltd ("Festiva" or "the Licensee").

Ofcom received a complaint about the broadcast of offensive language and "the sounds of a woman having an orgasm" in two music tracks between 12:00 and 13:00. We listened to the material and noted that:

- *French Kiss* by Lil Louis was broadcast at 12:28 and included prolonged sounds of sexual moaning (lasting approximately 3 minutes and 20 seconds); and
- *Baby Wants to Ride* by Frankie Knuckles was broadcast at 12:38 and included the lyric "fuck me", as well as some sexual moaning sounds.

At the end of the second track (*Baby Wants to Ride*), the presenter said:

"Do apologise about the last track. Thought I was playing the radio edit. Tut tut Lewi. Apologies to everyone on the last one".

Ofcom considered that the material raised issues warranting investigation under the following rules of the Code:

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

Rule 1.14: "The most offensive language must not be broadcast when children are particularly likely to be listening..."

Ofcom therefore requested comments from the Licensee on how the material complied with this rule.

Response

Festiva said that the second track, *Baby Wants to Ride*, had been incorrectly "labelled as a radio edit" (i.e. a version with potentially offensive content edited out) and had therefore been played in error. Festiva also stated that the presenter "apologised profusely" after the track was played. It said that it had addressed the matter with the presenter directly.

The Licensee also said that it now requires all presenters to supply a track list no later than 24 hours before their show. In addition, it reported that a notice had been issued to "each member of the team" listing certain "potentially risky tracks" which should not be played between 07:00 and 21:00. Festiva provided the text of this notice, which said that any presenter who played one of the "risky tracks" on the list would "receive a 28 day broadcasting ban".

In light of the above actions, Festiva stated that “the correct measures are now in place for this not to happen again”.

Decision

Reflecting our duties under the Communications Act 2003¹, Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes.

Ofcom has taken account of the audience's and the broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights.

Rule 1.3

Under Rule 1.3, broadcasters must ensure that children are protected from unsuitable content through appropriate scheduling.

First, we considered whether the content in the two tracks was unsuitable for children. The track *French Kiss* had no lyrics and instead featured a sustained period of sexual moaning sounds. The track *Baby Wants to Ride* also included some audible sexual moaning. It is Ofcom's view that both tracks clearly conveyed a sexualised theme which was not appropriate for children.

We then considered whether children had been protected from this content through appropriate scheduling. Ofcom's published guidance document for radio broadcasters, 'Offensive language on radio', states that:

“Radio broadcasters should take care when broadcasting songs which include clearly adult-oriented material...[and] avoid broadcasting lyrics that clearly focus on the taking of drugs, sexual acts or behaviour, or convey a clearly sexualised theme, when children are particularly likely to be listening”.²

The times when children are particularly likely to be listening are defined as:

- between 06:00 and 09:00 and 15:00 and 19:00 Monday to Friday during term-time; and
- between 06:00 and 19:00 at weekends all year around, and in addition, during the same times from Monday to Fridays during school holidays”.³

We took into account that, as a specialist dance music station, the audience of this broadcast was likely to comprise mostly adults. However, as this material was broadcast between 12:00 and 13:00 on a weekday during the school holidays, it was a time when children were particularly likely to be listening to the radio.

We were mindful of the apology given by the presenter during the programme (“*Do apologise about the last track. Thought I was playing the radio edit*”). However, this apology

¹ <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

² https://www.ofcom.org.uk/_data/assets/pdf_file/0014/40541/offensive-language.pdf, page 6.

³ https://www.ofcom.org.uk/_data/assets/pdf_file/0014/40541/offensive-language.pdf, page 3.

did not refer to the sexual content in the song *French Kiss*, only to the offensive language in the subsequent track *Baby Wants to Ride*. We also took into account the action taken by the Licensee following the complaint, including checking track lists before broadcast and providing additional guidance to its staff in a notice about “potentially risks tracks”.

We were concerned, however, that the notice included reference to the track *Baby Wants to Ride* and drew attention to the “explicit noises” in the song, but did not include any reference to *French Kiss*. Further, the Licensee made no reference to *French Kiss* in its response to Ofcom.

Our view is that the broadcast was in breach of Rule 1.3 of the Code.

Rule 1.14

Rule 1.14 states that the most offensive language must not be broadcast when children are particularly likely to be listening.

The broadcast of the song *Baby Wants to Ride* included one use of the phrase “*fuck me*”.

Ofcom's research on offensive language⁴ clearly states that the word “fuck” is considered by audiences to be an example of the most offensive language.

As set out above, this programme was broadcast in the daytime during the school summer holidays, when it is considered that children are particularly likely to be listening to the radio.

Ofcom took into account that: the track was broadcast in error; the presenter apologised on air immediately at the end of the track; and the Licensee said it had taken a series of steps to ensure that the broadcast of the most offensive language when children are particularly likely to be listening did not occur again.

We acknowledged the steps taken by the Licensee to improve its compliance. However, our view is that the broadcast was in breach of Rule 1.14.

Breaches of Rules 1.3 and 1.14

⁴ https://www.ofcom.org.uk/_data/assets/pdf_file/0023/91625/OfcomQRG-AOC.pdf

In Breach

Programming

Tudno FM, 21 August 2018, 14:08

Introduction

Tudno FM is a community radio station licensed to provide a service of music, community news and information in Llandudno. The licence for this service is held by Llandudno Community Radio Limited ("the Licensee").

Ofcom received a complaint about offensive language in the music track *I like It* by Cardi B. This track included one use of the word "niggers", one use of the word "shit" and a total of five uses of the words "bitch" and "bitches".

Ofcom considered that this material raised issues under Rules 1.16 and 2.3 of the Code:

Rule 1.16: "Offensive language must not be broadcast...when children are particularly likely to be listening (in the case of radio)...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..."

Ofcom requested comments from the Licensee about how this content complied with these rules.

Response

The Licensee conceded that the language used in the track was offensive and was not appropriate for broadcast during the day. It therefore accepted that it had breached Rules 1.16 and 2.3.

Following its own investigation, the Licensee said that the track "was not and is not part of Tudno FM's playlist" and told Ofcom that it had "come to the conclusion that the record was played out without [its] authorisation at a time when there was no presenter in the studio". It blamed this on an "ex-volunteer...who is determined to cause trouble for Tudno FM".

As a result of this incident, the Licensee told Ofcom it had improved the security of its studio by installing CCTV and implementing "limited access passwords and hardware security". It said that it had started "more stringent vetting" for volunteers and had "made other volunteers aware of the intentions" of the ex-volunteer. It also said it was planning to relocate its studio by the end of January 2019.

Decision

Reflecting our duties under the Communications Act 2003¹, Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes. Section Two of the Code requires that generally accepted standards are applied to provide adequate protection for members of the public from the inclusion of offensive and harmful material in programmes.

Rule 1.16

Rule 1.16 states that offensive language must not be broadcast on radio when children are particularly likely to be listening unless it is justified by the context and that in any event, frequent use of such language must be avoided at such times.

Ofcom's 2016 research on offensive language² indicates that the word "nigger" has the potential to be considered as the strongest language and can be highly unacceptable without strong contextualisation. Ofcom's research also showed that the words "shit" and "bitch" are considered to be potentially unacceptable at times that children are likely to be in the audience.

Ofcom's guidance on offensive language on the radio states that:

"For the purpose of determining when children are particularly likely to be listening, Ofcom will take account of all relevant information available to it. However, based on Ofcom's analysis of audience listening data, and previous Ofcom decisions, radio broadcasters should have particular regard to broadcast content...between 06:00 and 19:00 at weekends all year round and, in addition, during the same times from Monday to Fridays during school holidays".

In this case, the four-minute song included seven uses of offensive language broadcast at 14:08 on a Tuesday during the Summer school holidays. We considered this constituted frequent use of offensive language at a time when it was particularly likely that children would be listening. Therefore, our Decision is that Rule 1.16 was breached.

Rule 2.3

Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive material is justified by the context. Context is judged by a number of factors including, for example: the editorial content of the programme, the service on which it is broadcast, the time of broadcast, and the likely expectation of the audience.

As set out above, Ofcom's research on offensive language indicates that the word "nigger" is considered by audiences to be potentially highly offensive. This research showed that the words "shit" and "bitch" are considered by audiences as capable of causing a medium level of offence.

¹ <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

² https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf

Ofcom therefore considered whether the potentially offensive content was justified by the context.

Our guidance on offensive language in radio³ states that: "In reaching any decision about compliance with the Code, Ofcom will take into account the likely audience expectations of a particular radio station at the time of broadcast". In our view, the majority of listeners to this community radio station that provides music and local information would be unlikely to expect offensive language to be broadcast during the early afternoon. We recognised the steps that the Licensee told Ofcom that it is implementing to improve its compliance. However, for the reasons set out above, our Decision is that this broadcast was also in breach of Rule 2.3 of the Code.

Breaches of Rules 1.16 and 2.3

³ https://www.ofcom.org.uk/data/assets/pdf_file/0014/40541/offensive-language.pdf

In Breach

Steg G in the Morning

Sunny Govan Radio, 17, 20 and 25 September 2018, various times

Introduction

Sunny Govan Radio is a community radio station broadcasting a broad range of music and speech-based output to the local community in Glasgow. The licence for this service is held by Sunny Govan Community Media Group ("SGCMG" or "the Licensee").

Ofcom received complaints about the broadcast of offensive language in three music tracks as follows:

- *Sandblasted Skin* by Pantera was broadcast at 11:19 on Monday 17 September 2018 and included the lyric *"it's on sale at the fucking dollar store"*;
- *Lucky You* by Eminem was broadcast at 11:55 on Thursday 20 September 2018 and included 12 instances of the word *"fuck"* or its variations, which appeared to be poorly masked; and
- *Monkey On My Back* by Aerosmith was broadcast at 11:45 on Tuesday 25 September and included the lyric *"Feedin' that fuckin' monkey on my back"*.

Ofcom considered that the material raised issues warranting investigation under Rule 2.3 of the Code, which states:

"In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include, but is not limited to, offensive language..."

Ofcom therefore requested comments from the Licensee on how the material complied with this rule.

Response

SGCMG apologised for any offence caused. It said it takes "due care and diligence when checking material for broadcast" and that song lyrics are checked online before a track is played. It added that the premise of the show was that listeners request tracks to be played, and that "none of the songs that have been complained about [were] chosen by the presenter".

SGCMG raised concerns about the "constant stream of complaints" against it and the impact of these on its presenter. It requested Ofcom to consider the potential for "victimisation of community radio presenters by...members of the public, ex volunteers or rival broadcasters and apply mechanisms to reduce this happening".

Decision

Reflecting our duties under the Communications Act 2003¹, Section Two of the Code requires that generally accepted standards are applied to the content of television and radio services to provide adequate protection for members of the public from the inclusion of offensive and harmful material in programmes.

Rule 2.3 requires licensees to ensure that the broadcast of potentially offensive material is justified by the context. Context includes for example: the editorial content of the programme, the service on which it is broadcast, the time of broadcast and the likely size and composition of the potential audience and the likely expectation of the audience.

These music tracks included uses of the word “*fuck*” or its variations. Ofcom’s 2016 research² on offensive language clearly indicates that this word is considered by audiences to be among the strongest examples of offensive language. The use of the words in this case clearly had the potential to cause offence to listeners.

Ofcom therefore considered whether the potentially offensive content was justified by the context.

Our guidance on offensive language in radio states that: “In reaching any decision about compliance with the Code, Ofcom will take into account the likely audience expectations of a particular radio station at the time of broadcast”. In our view, the majority of listeners to a local community radio station playing a broad range of music would be unlikely to expect programmes to contain the most offensive language at the time these songs were broadcast.

We took into account SGCMG’s comments that track lyrics are checked online before broadcast, and that “none of the songs...[were] chosen by the presenter”. It is the Licensee’s duty to ensure content is suitable for broadcast, particularly in the case of tracks requested by listeners. Broadcasters should also be wary of relying on online lyrics, as these do not always accurately reflect the different versions of a track which may exist.

SGCMG asked Ofcom to consider ways to reduce potential victimisation of community radio presenters through complaints. Ofcom considers complaints on a case by case basis taking into account all the relevant factors. On this occasion, for the reasons outlined above, we considered the complaints raised legitimate concerns about material broadcast on Sunny Govan Radio.

As each programme included a use of the most offensive language which was not justified by the context, Ofcom’s decision is that these broadcasts breached Rule 2.3.

These programmes followed a recent case published in August 2018³ when the Licensee breached the Code as a result of the broadcast of the most offensive language. In that case

¹ <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

² Attitudes to potentially offensive language and gestures on television and on radio – which is available at:

https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf

³ See: https://www.ofcom.org.uk/_data/assets/pdf_file/0020/119162/issue-360-ofcom-broadcast-on-demand-bulletin.pdf

an explicit version of a track was erroneously marked as “clean”, and the Licensee said it had taken steps to prevent such incidents from recurring, including “password protect[ing] the play out library” and ensuring that in future all music in the library must be imported by a member of staff.

Although the circumstances were different to the current case, taking account of Ofcom's previous decision and these latest incidents, we are inviting the Licensee to a meeting to discuss its compliance procedures.

Breaches of Rule 2.3

In Breach

Peter Popoff Ministries

BEN TV, 28 January 2018, 22:00

Introduction

BEN TV is a general entertainment channel which is available on satellite subscription services and online. The licence for BEN TV is held by Greener Technology Limited ("GTL" or "the Licensee").

Peter Popoff is a televangelist who presents the *Peter Popoff Ministries* series of programmes with his wife Elizabeth Popoff. These programmes include footage from Mr Popoff's religious services, held at various locations in the United States, and frequent invitations for viewers to join the ministry. The programmes also feature "miracle testimonials" both from members of Mr Popoff's congregation and viewers about their experiences when seeking his help.

A viewer complained to Ofcom about an episode which featured a series of verbal and visual invitations to viewers to order the ministry's "FREE MIRACLE SPRING WATER" by calling a UK-based telephone number.

These invitations comprised testimonies from attendees of Mr Popoff's services about the effect of this water and contained the heading "MIRACLE TESTIMONIES" at the top of the screen. For example:

Elizabeth Popoff: *"She [a woman in the congregation] was diagnosed with cervical cancer. She has a 19 year-old and a 16 year-old and they told her she would have no more children. What have you got?"*

Woman (1): *"Eight months ago after drinking the spring water that you gave me, I also took the handkerchief and put it in my pyjamas and went to sleep on it, and you told me I was going to get my miracle baby. Well, eight months and I gave birth to little Miss Ivory".*

This testimony included the banner "CANCER FREE BABY" suggesting that the spring water was responsible for curing the mother of cancer to facilitate the birth of her daughter.

Other examples of testimonies included:

Woman (2): *"I had a tumour, 9.5 centimetres. I drank the water. Nine days later I went to see the surgeon and it had disappeared".*

Peter Popoff: *"Did you hear that? She had a tumour, a nine centimetre tumour...After she drank the miracle spring water, it was gone".*

Woman (3): *"I started write you and you [Elizabeth Popoff] prayed with me. I put my hands on the TV with you and you sent me a spring water. I rubbed it all*

over my body. I don't have a blocked kidney and I don't have cancer in my stomach".

Elizabeth Popoff: *"She went to the hospital, she just got out of the hospital two days ago and they did all these researches on her and all these tests and she is cancer free and her kidney is unblocked".*

Peter Popoff: *"Praise God, after she used the miracle spring water!"*

These testimonies included the phrases *"9 CENTIMETER TUMOR DISAPPEARED"*, and *"KIDNEY HEALED NO MORE CANCER"* under the heading *"MIRACLE TESTIMONIES"*.

A banner appeared beneath the footage of the person who was giving the testimony, which said: *"Call now for your packet of miracle spring water"*, followed by a freephone number and the text *"Visit Us PeterPopoff.org"*.

The complainant believed these claims were unjustified and that the content was exploitative.

We considered the material raised potential issues under the following rules of the Code:

Rule 2.1: *"Generally accepted standards must be applied to the contents of television and radio services...to provide adequate protection for members of the public from the inclusion...of harmful and/or offensive material".*

Rule 4.6: *"Religious programmes must not improperly exploit any susceptibilities of the audience".*

Ofcom also requested information from the Licensee to establish whether the references to the offer of "miracle spring water" raised further issues under Section Nine of the Code (Commercial References in Television Programming). Based on the information provided, we considered that the references raised potential issues under Rule 9.4 of the Code.

Rule 9.4: *"Products, services and trade marks must not be promoted in programming".*

We therefore sought comments from the Licensee as to how the material complied with Rules 2.1, 4.6 and 9.4 of the Code.

Response

GTL said that, prior to receiving Ofcom's request for its comments, it had taken steps to ensure compliance with the rules set out in its Memorandum of Understanding with the relevant production company. The Licensee acknowledged, however, that these steps may not have been sufficient to "ensure the protection of viewers".

The Licensee said that upon receiving Ofcom's request for its comments, it ceased broadcasting *Peter Popoff Ministries*, put its contract with the production company on hold, and "requested a 'Disclaimer Notice' to be included in the programme informing viewers ...to exercise caution". It added that it had established a department specifically to ensure quality

control and compliance of religious programmes and trained the officer in charge of religious programming on GTL on the requirements of Ofcom's rules for religious programmes.

GTL said that its contract with Peter Popoff Ministries stated that the Ministry was "not allowed to sell, advertise or do anything that may suggest taking advantage of the viewers materially". However, it said that it presumed that giving away free items was permitted.

The Licensee said that the discussion between Peter Popoff and the church attendee who had reportedly had a 9.5 centimetre tumour (see above) was a "spiritual connection conversation of a spiritual healing after a physical examination of a surgeon" and pointed out that he did not say healed but "gone" to explain the result.

In response to Ofcom's Preliminary View that the programme was in breach of the Code and that Ofcom was considering the imposition of a statutory sanction, the Licensee reiterated that it took immediate steps to address the issue and that such regulatory action by Ofcom may affect the operations of the channel and morale of its staff. GTL added that it is a broadcaster with "little or no serious commercial interest value and it served the community by creating informative, educating and enlightening programmes". It believed that these programmes have helped its viewers take informed decisions that are "critical to both the state and the individual viewer".

Decision

Reflecting our duties under the Communications Act 2003¹, Section Two of the Code requires that generally accepted standards are applied to the content of television services to provide adequate protection for members of the public from the inclusion of harmful and/or offensive material. Section Four requires broadcasters to exercise a proper degree of responsibility when making and broadcasting religious programmes. Section Nine of the Code limits the extent to which commercial references can feature within editorial content to help ensure a distinction between advertising and programming is maintained.

In reaching this Decision, Ofcom took account of the right to freedom of expression, as set out in Article 10 of the European Convention on Human Rights ("ECHR"). Article 10 provides that everyone has the right to freedom of expression including the right to hold opinions and to receive and impart information and ideas without unnecessary interference.

Ofcom also had regard to Article 9 of the ECHR which states that everyone "has the right to freedom of thought, conscience and religion". This Article goes on to make clear that freedom to "manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of...health...or for the protection of the rights and freedoms of others". When considering this case, Ofcom had due regard to Article 9 and has taken into account that many people find comfort and solace from prayer or a belief in faith healing when ill or encountering personal difficulties. Prayer and faith have also been reported by some to be materially important factors when recovering from illnesses.

Our investigation under Rules 2.1 and 4.6 of the Code did not question the validity of religious belief. In accordance with our duties, we considered whether the Licensee provided

¹ <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

adequate protection for viewers from harm and whether the programme improperly exploited their susceptibilities.

Rule 2.1

Rule 2.1 of the Code requires that generally accepted standards must be applied to the contents of television and radio services to provide adequate protection for members of the public.

Context is an important factor when applying this rule. The extent of any protection required will depend on all the circumstances, including the service on which the material is broadcast, the degree of harm and/or offence likely to be caused, the likely expectations of the audience and the effect of the material on viewers who may come across it unawares.

Ofcom examined the programme to assess its potential for harm. The programme included testimonies which comprised people explaining how, by drinking the “miracle spring water” provided to them by Peter Popoff Ministries, they had been cured of various medical conditions including a large tumour, kidney blockage and two forms of cancer (cervical and stomach). In the first case, despite being told her cervical cancer would prevent her from having further children, Woman (1) testified to having given birth to a daughter after drinking the miracle spring water. The banner “*CANCER FREE BABY*” was included in this sequence. In the second case involving Woman (2), testimony was provided that, having drunk the “miracle water”, a 9.5 centimetre tumour disappeared, and this had been confirmed by a surgeon nine days later. In the third case, Woman (3) explained how, after “*rubb[ing] it [the miracle spring water] all over my body*”, her kidney blockage and stomach cancer had disappeared, and this had been confirmed in the subsequent tests that were carried out on her at the hospital.

In 2017, Ofcom commissioned a qualitative research report² into audience attitudes towards health and wealth claims in programmes, and the potential harms that may arise from them. The research indicated that there is a hierarchy of factors that affect the level of harm arising from such claims. Ofcom subsequently issued guidance³ (“the Guidance”) to broadcasters in this area which drew on the findings of the research. The Guidance highlights the severity of the situation (e.g. a life-threatening illness), the level of targeted exploitation (i.e. the vulnerability of the audience) and the authority of the speaker as primary factors that would influence the level of harm that could arise from health or wealth claims. The Guidance also highlights how the inclusion of an alternative perspective or a warning (e.g. one that advises audience members to consult a qualified doctor before making decisions based on a programme) can be used by broadcasters to protect viewers from potential harm.

In this case, the specific illnesses discussed in the programme, namely large tumours, kidney blockages and cancer are serious health conditions. In the case of cancer, this is reflected in section four of the Cancer Act 1939, where Parliament has considered it appropriate to prohibit advertising which offers to treat cancer. Audience members may be considered vulnerable when they are suffering from health issues and the severity of the condition may increase this vulnerability.

² <https://www.ofcom.org.uk/research-and-data/tv-radio-and-on-demand/attitudes-to-potential-harm>

³ https://www.ofcom.org.uk/_data/assets/pdf_file/0023/104657/Section-2-Guidance-Notes.pdf

In Ofcom's view, viewers were likely to have understood from the testimonies broadcast in the programme that serious medical conditions could be cured by drinking the "miracle spring water" provided by the Peter Popoff Ministries. Furthermore, the testimonials were provided in the context of a religious programme and presented by Peter and Elizabeth Popoff, religious preachers who were likely to be perceived by the audience as having authority.

Ofcom therefore considered that such claims had the potential to cause harm because members of the audience may have been led to believe that the "miracle spring water" alone was sufficient to cure their health conditions and that it was unnecessary to rely on, or continue receiving, conventional medical treatment. This could have a damaging effect on vulnerable viewers targeted by the presenter's offer of the "miracle spring water".

We took into account that all primary factors affecting the level of harm listed in the Guidance were present in this programme. As a result, Ofcom considered the risk of harm to viewers was high.

Ofcom examined whether the Licensee had taken any steps to provide adequate protection for viewers who could have understood the content to be demonstrating that faith healing alone can cure or treat serious health conditions. While the Licensee proposed to introduce a "disclaimer" for subsequent broadcasts, this programme contained no information to alert viewers to the importance of seeking conventional medical advice from qualified doctors about the health conditions mentioned in the programme. In addition, in our view the lack of ambiguity or challenge to the healing claims made in the programme was likely to have resulted in some viewers having a misleading impression of the spring water's effectiveness.

Taking into account the above factors, Ofcom did not consider that GTL had provided adequate protection from broadcast content that presented a material risk to viewers' health. Therefore, our Decision is that the material breached Rule 2.1 of the Code.

Rule 4.6

Rule 4.6 of the Code requires that religious programmes must not improperly exploit any susceptibilities of the audience. Ofcom's guidance⁴ to Rule 4.6 of the Code makes clear that when broadcasters are soliciting a response from their audience, they need to take care and recognise possible risks to audience members, particularly those who may be vulnerable.

We took into account the Licensee's representations that, in the case of Woman (2), the discussion was a "spiritual connection conversation of a spiritual healing", as Mr Popoff had not used the word "healed" but "gone". In Ofcom's view, however, there was no material distinction between the words "healed" and "gone" in this context, particularly as some of the testimonies included the word "healed" in on-screen text.

The programme contained repeated statements that healing had occurred, or would take place, directly as a result of ordering and using the miracle spring water without offering any objectively verifiable evidence. Viewers were constantly encouraged, both orally and by on-screen text, to obtain the spring water by phoning the number on screen.

⁴ https://www.ofcom.org.uk/data/assets/pdf_file/0023/24881/section4.pdf

Given the religious nature of the programme and the status of the presenters, Ofcom considered that viewers were less likely to question the content and, as such, were susceptible to claims made in the programme.

Taking into account the above, Ofcom concluded that there was a material risk that susceptible members of the audience may have been improperly exploited by the programme. Therefore, Ofcom's Decision is that the material breached Rule 4.6 of the Code.

Rule 9.4

Rule 9.4 of the Code requires that products, services and trade marks must not be promoted in programming. Ofcom's Guidance⁵ on Rule 9.4 explains: "where a reference to a product or service features in a programme...the extent to which a reference will be considered promotional will be judged by the context in which it appears".

Ofcom acknowledged the Licensee had an agreement in place with Peter Popoff Ministries that prohibited the sale of products in its programmes and that it had presumed that the offer of "miracle spring water" was acceptable because it was free of charge to viewers. However, Rule 9.4 prohibits the promotion of products, services and trade marks within programmes irrespective of whether they are offered in return for payment or not.

The "miracle spring water" featured in the programme appeared in the context of promoting Peter Popoff Ministries and its evangelical services, particularly with regard to miracle faith healing. The programme contained frequent on-screen and oral invitations to viewers to order "miracle spring water" from Peter Popoff Ministries. Additionally, the testimonials featured during the programme (as set out above) and the language used to describe the water's effectiveness (e.g. "*see the blessing of God on your life release*" and "*miracle health*") served to encourage viewers to place an order.

Ofcom's Decision is that the programme therefore promoted a product – the "miracle spring water" – in breach Rule 9.4 of the Code.

We acknowledged that GTL has ceased broadcasting *Peter Popoff Ministries* and established a dedicated team for ensuring compliance of religious programmes on the channel. We also took into account the Licensee's representations following Ofcom's Preliminary View. However, in view of the seriousness of these breaches, **Ofcom puts the Licensee on notice that it is considering this case for the imposition of a statutory sanction.**

Breaches of Rules 2.1, 4.6 and 9.4

⁵ https://www.ofcom.org.uk/_data/assets/pdf_file/0014/33611/section9_may16.pdf

In Breach

Roast Battle Week (trailer)

Comedy Central Extra +1, 14 September 2018, 18:25

Introduction

Comedy Central Extra +1 is a channel featuring comedy series and stand-up comedy aimed at a primarily adult audience. The licence for Comedy Central Extra + 1 is held by Paramount UK Partnership ("Paramount UK" or the "Licensee").

Ofcom received a complaint that during a trailer for *Roast Battle Week*, the comedian Jimmy Carr made a comment that the complainant considered was "clearly Anti-Semitic drawing on the racial stereotype of a 'Jewish look'".

Roast Battle is a comedy programme featuring two comedians telling jokes as they attempt to 'roast' each other. Their performances are then judged and analysed by a panel of celebrities. This trailer started with the following exchange between one of the panel judges, Jimmy Carr and Tom Rosenthal, taking part in a 'roast':

Jimmy Carr: *"You're not Jewish?"*

Tom Rosenthal: *"No"*.

Jimmy Carr: *"Someone needs to tell your face!"*

This was followed by laughter from the studio audience, and Tom Rosenthal was shown laughing while holding his nose.

There was then a separate clip of Jimmy Carr saying to camera:

"I'm Jimmy Carr. Welcome to Roast Battle".

A voiceover then said:

"The show that offends everybody in equal measure. With all new comedians!"

There was then a clip featuring Darren Harriott who said to Stephen Bailey:

"The last time I saw a Ginger punch above his weight on TV, I was watching the royal wedding!"

This was followed by laughter from the studio audience, and Stephen Bailey shaking his head.

The following was then said in voiceover:

"Joined by a brand-new judge!"

There was then a clip of the new judge, Jonathan Ross saying:

"That's a BAFTA moment right there, Ladies and Gentlemen!"

The other two judges then said:

Katherine Ryan: *"To watch you two was a massive privilege".*

Jimmy Carr: *"What a show we're making!"*

The trailer ended with a voiceover saying:

"Brand new Roast Battle: Coming soon on Comedy Central".

We considered that this material raised potential issues under Rule 2.3 of the Code:

Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context.... Such material may include, but is not limited to...discriminatory treatment or language (for example on the grounds of...race, religion...). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence".

We asked the Licensee for its comments on how the material complied with this rule.

Response

Paramount UK said that Comedy Roast is currently in its second series and is Comedy Central UK's highest rating show. It added that during the first series of *Comedy Roast*, the Licensee "was aware the series could be contentious in places so the advertising campaign was carefully considered to ensure it did not go beyond audience expectations". It added that: "With no complaints received for the first season or its campaign, Comedy Central felt it had found the right tone and was comfortable repeating the style for season two's trailers". It further added that the "campaign and the relevant trailer [for series two] was reviewed by the senior compliance team along with the channel's programming and PR teams before being passed for broadcast".

While Paramount UK understood that "it is not usually possible to comprehensively convey a programme's whole context in the short duration of a trailer", the Licensee said in its initial response that it felt "its approach matched the channel's irreverent style, which is part of the brand's on-air identity, and that *Roast Battle* is established enough that the tone of the trailer would not be beyond the expectations of our audience" and that the trailer was "in keeping with the brand and channel's style, and consistent with audience expectations". It added that the trailer did not appear on any other channel, "where those expectations may have been different".

In the Licensee's view, "the opening line about whether the comedian was Jewish was contextually qualified by the voice-over that followed: *'Roast Battle, the show that offends everybody, in equal measure'*". It also said that this statement "made it clear the trailer, and indeed the programme, was not solely aimed at the Jewish community, or any particular community, but simply gave an overall indication of the style and nature of the show". Paramount UK further added that: "The trailer then went on to show another comic putting

down his opponent in a playful way, along with a judge describing the 'privilege' of watching their performance. We felt all of this created a light-hearted teaser that focused on the wit on display, and the comic's reaction – of amusement rather than offence – and that the studio audience reacted similarly, underlined the playful tone of the show, and that it was just an example of a put-down”.

Taking into account the above, the Licensee said that the trailer was “in keeping with the brand and channel's style, and consistent with audience expectations”. However, it added that after the trailer had been broadcast over a period of two weeks, on 17 September 2018, it had a complaint from a viewer, who raised “a similar concern” as expressed by the complainant in this case. While Paramount UK said that “no offence was intended” by the trailer, it took “seriously any feedback we receive from audiences”. It said that it had therefore ceased broadcasting the trailer on 18 September 2018, prior to Ofcom contacting Paramount UK about this case.

The Licensee also provided representations in response to Ofcom's Preliminary View in this case, which was to record a breach of Rule 2.3. Paramount UK “fully accept[ed] that the trailer carried offence” but stressed the content “was not intended as a joke aimed at the Jewish Community”. It added that its initial representations to Ofcom “was intended as a defence of our processes and an explanation of our belief it was within the expectations of the channel”. However, Paramount UK said it “would never want to intentionally offend our viewers with a trailer”. It added that “despite the safeguards and processes we have in place, we simply missed the inappropriateness of this joke in the context of a trailer” and “completely accept this trailer was misjudged”. The Licensee therefore apologised “unreservedly”.

Paramount UK said that it had “issued additional advice on trailer approvals, to ensure comments such as this one are not used in isolation”. As a result of Ofcom's investigation, it said it “will instigate awareness training and group viewings” of content to “ensure wider representation” of views when making compliance decisions.

In conclusion, referring to Ofcom's previous breach Decisions¹ relating to trailers on Comedy Central, the Licensee said, “we have moved on from the 2015 investigations and would not want this to appear a return to that period, it was a completely isolated event which we take full responsibility for”.

Decision

Reflecting our duties under the Communications Act 2003², Section Two of the Code requires that generally accepted standards are applied to the content of television services to provide adequate protection for members of the public from the inclusion of harmful and/or offensive material.

¹ See Ofcom's Decisions about:

- *Comedy Central Trailers*, Issue 290 of Ofcom's Broadcast and On Demand Bulletin, published 12 October 2015, https://www.ofcom.org.uk/_data/assets/pdf_file/0024/50694/issue_290.pdf; and
- *Inside Amy Schumer (trailer)* and *South Park (trailer)*, both on Comedy Central, published 23 November 2015, https://www.ofcom.org.uk/_data/assets/pdf_file/0030/54849/issue_293.pdf

² <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

Ofcom has taken account of the audience's and the broadcaster's right to freedom of expression, as set out in Article 10 of the European Convention on Human Rights.

Ofcom has also had due regard³ in the exercise of its functions to the need to eliminate unlawful discrimination, to advance equality of opportunity and to foster good relations between those who share a relevant protected characteristic, such as race, religion or belief, and those who do not.

We also had regard to the International Holocaust Remembrance Alliance's working definition of anti-Semitism which states:

"Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities"⁴.

Under Rule 2.3, broadcasters must ensure that potentially offensive material is justified by the context. Context is assessed by reference to a range of factors including the editorial content of the programme, the service on which the material is broadcast, and the likely expectation of the audience.

Although the Code requires that potentially offensive material is justified by its context, there is significant room for innovation, creativity and challenging material within comedy programming. However, broadcasters do not have unlimited licence in terms of offensive material. There may be circumstances in which relevant contextual factors (such as whether the editorial content is programming or a trailer, audience expectations, or warnings given to the audience) are not sufficient to justify the broadcast of offensive material.

We first considered whether the material had the potential to cause offence. In this case, the comedian, Jimmy Carr, asked Tom Rosenthal whether he was Jewish. When Tom Rosenthal said he was not, Jimmy Carr responded: "*Someone needs to tell your face!*". Tom Rosenthal was then shown laughing while holding his nose. In Ofcom's view, Jimmy Carr was clearly trying to elicit humour from the size of Tom Rosenthal's nose, through the use of a well-known negative stereotype about Jewish people, i.e. that Jewish people have large noses, and therefore condoned discriminatory behaviour. Ofcom is aware of a significant rise in reported incidents of anti-Semitism across Europe and in particular in the UK in recent years⁵. This has manifested itself in many ways, but one significant recurring stereotype has been discriminatory references to Jewish people's physical appearance, which has been

³ Under section 149 of the Equality Act 2010.

⁴ In December 2016, the UK Government agreed to adopt the International Holocaust Remembrance Alliance's working definition of anti-Semitism (See https://www.holocaustremembrance.com/sites/default/files/press_release_document_antisemitism.pdf).

⁵ See, for example page 68 onwards of Antisemitism – Overview of data available in the European Union 2006-2016 published in November 2017 by The European Union Agency for Fundamental Rights.

recognised as being clearly anti-Semitic⁶. In our view the use of such a well-known anti-Semitic trope against this backdrop would have had the potential to cause considerable offence.

Ofcom therefore considered whether this offence was justified by the context.

We took into account the editorial context in this case. In particular, we recognised that viewers of specialist comedy channels, such as Comedy Central Extra +1, would have been likely to expect more challenging material. In its representations, Paramount UK set out the various factors it had taken into account when deciding to broadcast this trailer, including that it had received no complaints about the first series (and associated promotional campaign) of *Roast Battle* and "It felt it had found the right tone and was comfortable repeating the style for season two's trailers".

The Licensee initially argued that the statement in voice-over in this specific trailer ("*Roast Battle, the show that offends everybody, in equal measure*") provided context for Jimmy Carr's offensive statement, because it "made it clear the trailer, and indeed the programme, was not solely aimed at the Jewish community, or any particular community, but simply gave an overall indication of the style and nature of the show". Paramount UK also argued that the remainder of the trailer, and specifically Darren Harriott's joke about Stephen Bailey "created a light-hearted teaser that focused on the wit on display, and the comic's reaction – of amusement rather than offence – and that the studio audience reacted similarly, underlined the playful tone of the show, and that it was just an example of a put-down".

However, the content in this case was included within a trailer. The Licensee acknowledged that "it is not usually possible to comprehensively convey a programme's whole context in the short duration of a trailer". It initially argued that the approach adopted within this trailer "matched the channel's irreverent style, which is part of the brand's on-air identity, and that *Roast Battle* is established enough that the tone of the trailer would not be beyond the expectations of our audience". However, the Licensee subsequently acknowledged that the content in question was inappropriate and "misjudged". As Ofcom has made clear in previous published Decisions⁷ concerning the Licensee's use of offensive language in trailers, audiences consider offensive language less acceptable if it is included in trailers. This is because audiences do not choose to watch promotions for programmes. They come across them unawares. Viewers cannot therefore make informed choices to avoid offensive material in trailers compared to scheduled programmes. As stated in Ofcom's published guidance to Rule 2.3⁸, broadcasters should bear these factors in mind when scheduling trailers which include challenging material.

In this case we took into account that Jimmy Carr's joke was relatively brief and used as a comedic tool by a performer known for his for his edgy and controversial brand of humour. We also carefully took into consideration the Licensee's right to freedom to broadcast material which may offend viewers, and that viewers of Comedy Central +1 were more likely to expect to view more challenging programmes on this channel. However, because the offensive content was in a trailer, viewers would have come across it unawares. There was

⁶ <https://www.nybooks.com/daily/2014/11/14/invention-jewish-nose/>

⁷ See footnote 1.

⁸ See https://www.ofcom.org.uk/_data/assets/pdf_file/0023/104657/Section-2-Guidance-Notes.pdf

therefore no opportunity to place the trailer in context or give viewers any form of warning or information in advance.

Given all the above, we considered that the offensive content within this trailer was not justified by the context and exceeded generally accepted standards.

We took into account that, prior to Ofcom contacting the Licensee, Paramount UK had quickly ceased broadcasting this trailer as a result of a viewer complaint. We also acknowledged the Licensee's apology and the steps it had taken to improve compliance.

In its representations on Ofcom's Preliminary View, the Licensee did not seek to defend the trailer and said that its initial representations to Ofcom "was intended as a defence of our processes and an explanation of our belief it was within the expectations of the channel". It also referred to Ofcom's previous investigations into trailers on Comedy Central, saying it "would not want this to appear a return to that period", and the present case was a completely isolated event which we take full responsibility for". However, given previous Ofcom Decisions⁹ on its use of offensive content in trailers, we do not expect to see any future similar breaches in future.

Given all the above, our Decision is that the material included in the trailer breached Rule 2.3 of the Code.

Breach of Rule 2.3

⁹ See footnote 1.

In Breach

Ferne McCann: First Time Mum **ITVBe, 9 May 2018, 21:00**

Introduction

Ferne McCann: First Time Mum is a factual series broadcast on ITVBe, a portfolio channel of ITV. It features new mother Ferne McCann, a former cast member of *The Only Way is Essex*. The programme follows her as she adapts to motherhood, and tries to balance her new responsibilities with her career as a model and television personality.

Ofcom received a complaint that this episode of the programme included visual and verbal references to the infant formula (baby milk) brand Aptamil.

In the first part of the 60-minute programme, Ferne was in a hotel room, getting ready for a public appearance, when she had to change her baby Sunday, which caused her to be late. At one point, the camera zoomed in on a number of Aptamil products on a table. This close-up shot, during which the branding on the products was clearly visible, lasted around one second.

In the second part of the programme, Ferne was packing for a holiday, with the help of her mother Jill. During this sequence, Fern held up an Aptamil product, with its branding clearly visible:

Ferne: *"Right, I'm packing one of these".*

Jill: *"Yeah".*

Ferne: *"Or should I just buy it out there?"*

Jill: *"Can you buy it out there?"*

Ferne: *"God...I'm packing it".*

Ferne then set the Aptamil product down. Later in the same sequence, she was worried about fitting everything in her suitcase. There were a number of shots, including close-ups, of the half-packed suitcase, over a period of approximately a minute and a half. The contents of the suitcase included clothes, nappies and the Aptamil product. The branding on the product was either clearly or partially visible in these shots.

In the third part of the programme, Ferne was briefly shown preparing a formula milk feed, spooning powder into a bottle and mixing it, while worrying about getting to the airport on time. The branding on the product was not visible during this sequence, which lasted approximately five seconds.

In the fourth part of the programme, Ferne reflected on her first holiday with Sunday. There was another close-up shot of an Aptamil product, with the branding clearly visible. This shot lasted around three seconds.

ITV confirmed that there was no product placement arrangement in place which resulted in the inclusion of references to Aptamil in the programme.

We considered that this material raised potential issues under Rule 9.5 of the Code:

"No undue prominence may be given in programming to a product, service or trade mark. Undue prominence may result from:

- the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or
- the manner in which a product, service or trade mark appears or is referred to in programming".

We therefore sought ITV's comments on how the content complied with this rule.

Response

ITV said that in its view the visual and verbal references to Aptamil products were editorially justified, and none of the shots of these products included in the programme were unduly prominent.

According to ITV, Ferne McCann routinely uses branded products to care for her baby, including formula milk, but also other items such as nappies: "[T]herefore it is editorially justified for these products to appear in the programme when we see her performing routine childcare tasks, such as changing and feeding her baby". It emphasised that feeding is a prominent part of the experience of parenting, arguing that the references to Aptamil included in the programme were all editorially driven: "[T]he programme does therefore often show Ferne either breast feeding Sunday, or preparing formula milk for her".

Turning to the first of the sequences as set out above in the Introduction, ITV said that the close-up shot of Aptamil products on a table was editorially justified: "[T]his sequence...show[s] Ferne trying to get ready to leave, whilst dealing with her daughter Sunday's needs and packing the things she needed, and [...] this preparation includes changing Sunday's nappy, changing her clothes, and...breastfeeding Sunday. Therefore the single 'cutaway' shot of the Aptamil bottles was related to these preparations, just as a similar cutaway shot of Ferne's makeup bag indicated to viewers various items she had packed and that she required when preparing for a working engagement and caring for her child at the hotel room". ITV argued that this brief visual reference to the product was not unduly prominent in that context and it was clear from the entire hotel sequence that feeding Sunday (whether breastfeeding or bottle feeding) was an ongoing and routine part of caring for her.

On the extended sequence featuring Ferne packing for her holiday, ITV placed the verbal reference to an Aptamil product ("*Right, I'm packing one of these*") in the context of a wider discussion about her uncertainty over what to take with her on the trip. It added that this verbal reference, unlike the accompanying visual reference, did not include the brand name of the product. It observed that, while this sequence included a number of shots of the open suitcase containing an Aptamil product, this product only appeared in close-up "briefly on a couple of occasions", in its view none of the shots were "contrived" or "gratuitous", and further "there was a clear narrative context for their inclusion". It also said that other items, including (branded) nappies, clothes, shoes and a "sippy" cup, were visible during the same

sequence, in support of the argument that the Aptamil product was not given undue prominence, but was one of a number of items Ferne was packing for her holiday. According to ITV: "The visual emphasis on the case on the floor is editorially justified, given that Sunday's holiday luggage requirements are leaving no room in the case for Ferne's things, and this is stressing her out".

ITV said of the third sequence, during which Ferne prepared an Aptamil product, that it was brief, and no branding was visible. In addition: "[The] appearance [of an Aptamil product] is entirely justified in the context, given the core editorial subject matter of the programme is Ferne's daily life as a new mother with a baby".

In relation to the fourth sequence, in which Ferne reflected on her first holiday with Sunday, ITV said: "We suggest that the single cutaway shot of the Aptamil bottles was simply a brief illustration of the baby paraphernalia Ferne required for her holiday, and did therefore relate to her stated thoughts at this point that *"It's been a completely different type of holiday...It's been hard work, Sunday's all out of routine..."*

In response to Ofcom's Preliminary View, ITV said it was "not aware that Ofcom has ever previously stated...in formal guidance that any product 'barred' from product placement must be treated differently to other products, in relation to considerations of undue prominence". ITV maintained that, as this had not been explicitly set out in guidance or elsewhere, it was unreasonable of Ofcom to find this programme in breach although it would "certainly take on board Ofcom's statement as to the application of Rule 9.5".

Decision

Reflecting our duties under the Communications Act 2003¹ ("the Act"), Section Nine of the Code limits the extent to which commercial references can feature within television programming. This helps ensure that a distinction is maintained between editorial and advertising.

Section Nine does not prohibit all references to products and services in programmes. However, it requires that such references are not given undue prominence. Undue prominence is not solely a matter of the size or duration of a commercial reference. The nature of the programme, likely audience expectations and the suitability of the commercial reference are some of the other factors Ofcom will take into account when determining whether a reference is unduly prominent.

In all cases the degree of prominence given to a product, service or trade mark will be judged against the editorial context in which the reference appears. As made clear in Ofcom's guidance, the extent and nature of the exposure a commercial reference receives needs to be considered against the editorial requirements of the programme.

Ofcom accepted that this programme, about Ferne McCann adapting to being a mother, could justifiably feature products related to the care of her baby, including infant formula (baby milk). As argued by ITV, feeding is a prominent part of the experience of parenting, and it is therefore reasonable that this would be reflected in a programme dealing with this topic.

Although there was no product placement in this case, Ofcom was mindful of the established statutory and regulatory regime which restricts the inclusion in programmes of certain

¹ <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

products deemed to require a greater level of protection for viewers. For example, based on specific requirements set out in the Act², the Code prohibits the product placement of products including formula milk, as well as, among others, tobacco, alcohol and gambling products. Consistent with this, we would anticipate that broadcasters take particular care over commercial references for such products and the level of prominence given to them.

Against this context, we considered the specific sequences featuring references to Aptamil products, as summarised above in the Introduction.

In the first of these sequences, Ferne was running late for an appointment, as she had to change her baby. There was a close-up shot of Aptamil products on a table which in Ofcom's view did not have any obvious relationship to the narrative of this scene. ITV said that the shot of the Aptamil products was editorially justified because it reflected the fact that Ferne was caring for her baby while packing her things in preparation for her appointment. It also argued more generally that it was editorially justified for items related to childcare, including formula milk, to appear incidentally in this programme. However, we considered that the nature of the shot, a zoom into a close-up with the branding clearly visible, went beyond an incidental appearance, instead drawing attention to the brand.

The second sequence featured Ferne packing for her holiday. She first held up an Aptamil product, with its branding clearly visible, while discussing whether she should pack it or attempt to buy it while away. ITV argued that this visual and verbal reference was editorially justified, as it was integral to the narrative of the programme. Ofcom accepted that this reference more closely related to the immediate context within which it appeared, and that its inclusion was appropriately limited. In reaching this view we took into account that the brand Aptamil was not verbally identified, and that the product was not pictured in close-up.

Later in the same sequence, Ferne's open suitcase, containing an Aptamil product among other items, was shown in a number of shots, including some close-ups. Again, ITV argued that these visual references to Aptamil were editorially justified, because Ferne's difficulty in packing her suitcase was central to the sequence. It also pointed out that the Aptamil product was one of a number of items featured and was not given special emphasis, with only a few close-ups, none of which were "contrived" or "gratuitous". Although Ofcom accepted that these shots had some relevance to the context within which they were included, we considered that the number of shots featuring the Aptamil product, together with the additional focus provided by the use of close-ups, was excessive.

The third sequence, which lasted around five seconds, featured Ferne preparing an Aptamil product as she was getting ready to leave for her holiday. The visual reference appeared relevant and appropriately limited in this context, particularly as no branding was visible.

The fourth sequence was similar to the first, in that it included a close-up shot of an Aptamil product lasting approximately three seconds. The shot occurred as Ferne was reflecting on her first holiday with Sunday, and, according to ITV, illustrated the paraphernalia required for such a trip, as well as relating to Ferne's statement that it had been hard work. In Ofcom's view, this shot appeared to linger on the product, and had no obvious connection to the corresponding narrative of the programme, beyond the fact that it was related to caring for a baby.

² <https://www.legislation.gov.uk/ukpga/2003/21/schedule/11A>

In conclusion, Ofcom considered the first and fourth sequences lacked sufficient contextual justification. While the second and third sequences more closely corresponded with the narrative of their immediate context, the overall effect of all four sequences taken together was that the programme gave undue exposure to the Aptamil brand. Taking this into account, Ofcom considered that the visual and verbal references to Aptamil were unduly prominent. Accordingly, Ofcom's Decision is that the content was in breach of Rule 9.5.

Breach of Rule 9.5

Broadcast Licence Conditions cases

In Breach

Provision of information: Diversity in Broadcasting *ATN Bangla UK Limited*

Introduction

Ofcom has a statutory duty under the Communications Act 2003 to take all such steps, as we consider appropriate, for promoting equality of opportunity in relation to employment and training by broadcasters, in terms of three of the 'protected characteristics' in the Equality Act 2010: gender, racial group and disability.

In May 2018, Ofcom sent ATN Bangla UK Limited (or "the Licensee") a letter, requiring it to provide information on the number of people employed in connection with the provision of broadcast services and the number of days per year for which it is licensed to broadcast. The letter explained that if a Licensee (or any group companies together) employ more than 20 people in connection with the provision of its licensed broadcast service and it is authorised to broadcast for more than 31 days a year, it is required to answer further questions. The questions covered the Licensee's equal opportunities strategies, training arrangements and employees in terms of gender, racial group and disability. Ofcom requires this information to exercise its functions under section 27 of the Communications Act 2003.

We requested this information in accordance with the Licence condition 12(1) "General provision of information to Ofcom" which states:

"The Licensee shall furnish to Ofcom in such manner and at such times as Ofcom may reasonably require such documents, accounts, returns, estimates, reports, notices or other information as Ofcom may require for the purpose of exercising the functions assigned to it by or under the 1990 Act, the 1996 Act, or the Communications Act".

The Licensee failed to submit the required information.

Decision

Failure by a licensee to submit information when required represents a breach of a broadcast licence, as it means that Ofcom may be unable to carry out its regulatory duties.

As this Licensee did not provide the information requested, it has been found in breach of Licence Condition 12(1) of its Television Licensable Content Service licence number TLCS001029.

Breach of Licence Condition 12(1)

Broadcast Fairness and Privacy cases

Upheld

Complaint by Ms Y, made on her own behalf and on behalf of her daughter (a minor)

Can't Pay? We'll Take It Away!, Channel 5, 9 October 2016

Summary

Ofcom has upheld this complaint made by Ms Y on her own behalf and on behalf of her daughter (a minor) of unwarranted infringement of privacy.

The programme included footage of Ms Y and her young daughter, and both the exterior and interior of their home, as she spoke with two High Court Enforcement Agents ("HCEAs") who were there to enforce a Writ of Control ("Writ") against her for the repayment of a debt for nursery fees. Footage shown in the programme of the interior of Ms Y's home was recorded by the body cameras worn by the HCEAs, but belonging to the programme makers, and by the programme makers' main TV camera.

Ofcom considered that both Ms Y and her daughter had a legitimate expectation of privacy in relation to the filming and the subsequent broadcast of the footage of them. We considered that it was not reasonable in the particular circumstances of this case for the programme makers to conclude that they had obtained Ms Y's informed consent in relation to the footage of her and her daughter. We therefore considered their legitimate expectation of privacy, on balance, outweighed the broadcaster's right to freedom of expression and the public interest. Ofcom found that Ms Y's privacy and that of her daughter was unwarrantably infringed in both the obtaining and broadcast of the footage included in the programme.

Programme summary

On 9 October 2016, Channel 5 broadcast an episode of *Can't Pay? We'll Take It Away!*, a series which followed HCEAs as they attempted to resolve debt disputes through negotiated settlements and asset seizures. The programme's narrator introduced the programme:

"What happens when you get into debt...and you can't...or won't pay it back?...We meet the High Court Enforcement Agents who are pushed to their limits...dealing with desperate debtors...in dramatic situations...We meet the people who are losing their homes...and their possessions...Because whatever happens, if you can't pay...they'll take it away".

This edition included a segment about a single mother, Ms Y, who the narrator explained owed just over £2,000. The narrator introduced the segment:

"The annual cost of raising a child has risen 62 per cent in the last ten years. Single parents have been the hardest hit, spending over half their income on their children. They are twice as likely to live in poverty as two parent families".

The narrator then said:

"8 am, Coulsdon, Surrey. High Court Enforcement Agents Brian O'Shaughnessy and Delroy Anglin are on their way to collect a debt of just over £2,000".

The HCEAs discussed the case and said that Ms Y owed £2,266.51 for childcare.

The narrator said:

"[Ms Y's first name] originally owed just over £1,000 [for childcare] but the case was escalated to the High Court and now with costs the debt has almost doubled in size...If [Ms Y's first name] can't pay, Brian and Del are instructed by the High Court to seize goods to cover the debt today".

The HCEAs were shown arriving at the property. They knocked on the front door, but when no one answered they were shown letting themselves into the property. It was dark in the property and the complainant was shown entering the hallway and it appeared that she had just woken up. The HCEAs told her to turn a light on and explained who they were and why they were there. Ms Y said that she did not have the money.

Mr O'Shaughnessy asked Ms Y if she was working and she responded that she was receiving state benefits. Ms Y said:

"I stopped working and obviously I had to take her [her daughter] out of nursery and I said to them, 'as soon as I'm in a position to pay you back, I'll pay you back', but they never said anything about taking me to court. I haven't had a court letter or anything".

Mr O'Shaughnessy explained further why they were there and asked if Ms Y had anyone who could help her. Ms Y said that the only person who might be able to help was her mother. She then went through to the living room.

The HCEAs followed her and Mr Anglin asked Ms Y if the father of her daughter could help. She responded "No".

Mr Anglin then asked if she had any siblings who could help. Ms Y was shown sitting down and getting visibly upset (she was shown crying throughout the segment). Ms Y said that she had siblings, but that they would not be able to help her.

Mr O'Shaughnessy said:

"My intuition or experience say there might be underlying circumstances – single parent, it's eight o'clock in the morning, she's still asleep – you know, maybe she's burying her head a little bit".

The narrator then said:

"The agents look around the property for assets they can seize if [Ms Y's first name] can't pay. It becomes clear the flat is in disarray".

The programme included footage of the various rooms in the flat, including Ms Y's bedroom. It showed clothes and belongings scattered about and dirty dishes in the kitchen sink.

Mr O'Shaughnessy said:

"When entering a debtor's property, we initially walk in and we see the state of how some people are living. It sends little messages towards me, it tells me that this person may be having a difficult time. It's imperative that we take into consideration the whole circumstance that's in front of us".

The HCEAs spoke to Ms Y about how she got into difficulties. Ms Y explained:

"I was working Monday to Saturday, sometimes Sundays for nine months. And she's [Ms Y's daughter] got a health condition, so sometimes she can't walk, sometimes she can't use some of her limbs. It just depends. It varies".

Footage of Ms Y's four year-old daughter was shown. She was wearing a nappy and a top and was shown playing with a doll. Footage of her was shown throughout the segment. The narrator said:

"[Ms Y's] daughter has a chronic health condition which requires frequent hospital care. [Ms Y's first name] was forced out of work to look after her full time, almost 14 weeks ago".

Ms Y continued:

"So, she got put into hospital, so I had to call them [her employer]. I couldn't work. And then they sacked me because I was taking so much time off work. And then, I told the nursery that I couldn't continue because obviously I can't keep up with the payments. And then, I pulled her out and they said I owed £450, I didn't even know it was so much. And then, I said when I get the money, I'll pay you off, and I haven't had it".

The narrator said:

"It's clear to the agents, it's not that [Ms Y's first name] won't pay, it's that she can't pay...Despite the exceptional circumstances, Brian and Del are duty bound to enforce the writ".

Ms Y was shown phoning her daughter's father for help. Mr O'Shaughnessy then spoke to him about the debt owed and he offered to pay £400 towards it. The HCEA accepted the £400 and arranged a payment plan with Ms Y for the outstanding balance. The narrator stated:

"[Ms Y's daughter's father] has come up with less than a quarter of the debt, but it's enough to satisfy the agents today...[Ms Y's first name] may have resolved the situation for now, but the debt will hang over her for the next year and a half".

The HCEAs were then shown leaving the property. Mr Anglin said:

"I think three quarters of the country would accept the reasoning for her not working, because of her child. And, most parents would probably do the same".

After the HCEAs had left the property, Ms Y said:

"I'll just have to do more with my less, just make sure I've got the basics until I get a job. But she's [her daughter] good, I don't really care about anything else".

The part of the programme featuring Ms Y and her daughter ended. At the end of the programme, Ms Y and her daughter were shown again briefly with the accompanying caption:

"[Ms Y's first name] missed her first payment. The claimant is still pursuing the debt".

The programme concluded.

Summary of the complaint and broadcaster's response

The complaint

- a) Ms Y complained that her and her daughter's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because she did not give consent for them to be filmed for the programme.
- b) Ms Y also complained that her and her daughter's privacy was unwarrantably infringed in the programme as broadcast because she did not give consent for the footage of them to be broadcast.

Ms Y said that she had been in bed asleep with her daughter, who was four years old at the time, when the programme makers and HCEAs let themselves into her house. She said that she had "put her hand and arm up" to say that she did not want to be on television. Mrs Y said that the programme makers left the property and the HCEAs told her that they were filming for "training and development". She therefore said "okay" to the filming. Ms Y said that she had thought that the filming was for "internal use and not for broadcast". She said that she was never told that she was being filmed for the programme *Can't Pay? We'll Take It Away!*

Ms Y also said that the programme makers later re-entered her property and filmed around her flat, and that after speaking with the HCEAs, the programme makers interviewed her. She said that she still thought that the footage was being filmed for "internal use and not for broadcast".

The broadcaster's response

Channel 5 said that it is not the law in the United Kingdom that people have a right not to be on television. Nor is it the law that footage or photographs of persons cannot be taken and then broadcast without their consent. What matters in every case is whether or not *rights* are being infringed, and, if they are, whether there are good reasons for those rights to be infringed. In a general sense, this requires the balancing of the rights of privacy (Article 8 of the European Convention of Human Rights, "ECHR") against the right to freely broadcast matters of public interest (Article 10 of the ECHR).

The broadcaster said that in this case, the sequence in the programme which featured Ms Y concerned the activities of the HCEAs conducting official court business, specifically

executing a Writ of Control, permitting the seizure of goods, chattels and other property of Ms Y in order to satisfy a judgment debt concerning unpaid childcare fees.

Channel 5 said that there can be no doubt that the activities of HCEAs are matters of intense public interest. The manner in which the law is utilised or ignored is a matter of acute public interest. The kinds of difficulties the HCEAs face when executing their duties is a matter of acute public interest. The impact of the activities of HCEAs performing their duties on the lives of those who are affected by those duties is also a matter of acute public interest.

Therefore, for all of these reasons, Channel 5 took the view that, generally speaking, it was appropriate and reasonable to include footage of persons interacting with the HCEAs in the programme. Each case will turn on its own facts, of course, and matters such as the unusual vulnerability of a particular person or situation could impact on decisions to include particular footage in particular programmes.

The broadcaster said that in the case of *Can't Pay? We'll Take It Away!*, each story, in each programme, is considered by the external legal adviser for the programme maker and at the highest levels within Channel 5. No legitimate right of privacy is ever intentionally infringed.

- a) In specific response to the complaint about filming Ms Y and her daughter, Channel 5 said that the execution of a Writ issued by the High Court is a public matter, not a private matter. Particularly, the execution of the Writ in this case was not a matter connected with Ms Y's private life; it was a public matter that involved Ms Y.

It said that the interactions between the HCEAs and Ms Y were not a part of any private life protected by Article 8. However, communications about those interactions were protected by Article 10. Further, the principle of open justice, a fundamental principle in modern UK law, applies to all aspects of the administration of justice, including execution of court orders.

Channel 5 said that it was not the case that Ms Y did not consent to being filmed for inclusion in a broadcast. It said that she had specifically permitted filming to occur, had agreed to be interviewed, and specifically approved images of her daughter being included in the broadcast. She was also specifically advised that the broadcast would be part of the series, *Can't Pay? We'll Take It Away!*

It said that the unedited footage revealed the following exchange between Ms Y and Mr O'Shaughnessy:

Mr O'Shaughnessy: *"Good morning. My name's Brian, I'm here from the High Court. I'm here with the High Court, [Ms Y's first name]."*

Ms Y: *Do you have to take the camera with you?*¹

Mr O'Shaughnessy: *They're following us, they're doing a documentary".*

Channel 5 said that Mr Shaughnessy did not tell Ms Y that the crew were filming for "training and development". As Mr Shaughnessy introduced himself, Ms Y switched on the hall light and then shaded her eyes with her hand. She stretched out her hand to

¹ Listening carefully to the audio of the footage, Ofcom considered that Ms Y actually said: *"Can you take the camera off me...what's all that about?"*.

indicate the programme makers when she said: *"Do you have to take the camera with you?"*.

The broadcaster said that Ms Y and the HCEAs then moved into the living room of the flat. A few minutes later, one of the programme makers, the programme's director, put down the main television camera outside the flat, stepped inside and went into the living room. The following conversation took place:

- Programme maker: *"Can I have a word without the camera?"*
- Ms Y: *Yeah. I don't want a camera in here because that's embarrassing.*
- Programme maker: *We're filming for Channel 5. It's Can't Pay? We'll Take It Away! So ...film everything, every job...*
- Ms Y: *So, I'm going to be on TV?*
- Programme maker: *Not every job goes out, love, so don't worry straight away, okay? But we're here to obviously follow the process and follow how they deal with it and how it affects you because, I mean, it's obvious that, um ... is there any way that we can come in and follow what happens?*
- Ms Y: *What, afterwards?*
- Programme maker: *Well, right now, really, because, you know, it's happening now, isn't it? And it's your situation we're interested in, as well. And how this affects you.*
- Ms Y: *Yeah, I suppose.*
- Programme maker: *Is that OK?*
- Ms Y: *Mmm, hmmm [she nods].*
- Programme maker: *Ok, thanks [Ms Y's first name]"*.

Channel 5 said that Ms Y was told that the crew were filming for *Can't Pay? We'll Take It Away!* for Channel 5. So, it said, Ms Y was mistaken when she asserted in her complaint that she was not told what the filming was for, or that she was misled into believing it was for "training and development". It said that once Ms Y gave her consent, the programme makers entered the property with the main TV camera and continued filming. Channel 5 said that without her consent, the programme makers would not have filmed as they did.

The programme makers interviewed Ms Y twice, once when the HCEAs went to arrange the payment towards the debt, and then later when the situation was calmer. It said that Ms Y did not object to answering the director's questions and she permitted the filming without complaint or comment.

Channel 5 said that after the second interview, the programme makers were aware that they had filmed some shots of Ms Y's daughter. The following conversation took place between one of the programme makers and Ms Y:

- Programme maker: *"Yeah. Could we, can ummmm...[Ms Y's first name] cause obviously, you know, we were talking to you and the agents mainly, but is it [child's first name]?"*
- Ms Y: *[child's first name].*
- Programme maker: *[child's first name] – sorry. Ummm, she kept running in shot and she's sat there now, do you, are you happy for her to be featured as well?*
- Ms Y: *Yeah, she's fine.*
- Programme maker: *Are you sure?*
- Ms Y: *[Laughing] I need to cut [inaudible]...her hair.*
- Programme maker: *I think [laughing – words inaudible] Okay, well that's great. Thank you so much for that".*

The broadcaster said that the programme makers obtained free and fully informed consent from Ms Y to film and broadcast images of her and her daughter.

Channel 5 said that the HCEAs did arrive at Ms Y's home without warning. It said that no warning is required to be given prior to the execution of a High Court Writ; self-evidently, warnings might lead to the frustration of the court order. Equally, the HCEAs (and the programme makers) had no idea how Ms Y, or anyone else at the premises, would react to the visit by the HCEAs. The broadcaster said that the programme makers did not let themselves into Ms Y's home. When the HCEAs arrived, the HCEAs made peaceful entry through the unlocked door of Ms Y's flat (as they are entitled to do). The programme makers remained outside the front door at that time.

Channel 5 said that the Writ of Control authorised the HCEAs to enter the premises and seize any goods which could not be proven to be the property of a person other than the debtor. If the debt was not settled or an appropriate arrangement made, the HCEAs could have legally removed goods and chattels from the premises, put them in storage and allowed the rightful owners seven days to prove their ownership. Failing such proof, anything seized could be sold to reduce or satisfy the debt.

The broadcaster said that as a matter of usual policy, HCEAs wear body cameras which record their interactions with members of the public while they are carrying out their official court duties. This was for the safety of the HCEAs as well as providing a record of their activities in case of complaint or inquiry. Channel 5 said that there was no breach of any of Ms Y's privacy rights, or those of her daughter, in the HCEAs recording their activities by using body cameras especially as at no time were the cameras hidden or concealed.

Channel 5 said that, leaving aside the question of consent, any right to privacy claimed by Ms Y in relation to the execution of the Writ would be outweighed by Channel 5's Article 10 right to communicate, and the public's right to receive, information concerning matters of public interest including, without doubt, the activities of HCEAs carrying out official court duties.

- b) In specific response to the complaint relating to the broadcast of the footage, Channel 5 repeated and relied upon its submissions set out above and said that Ms Y freely consented to the footage filmed being included in the broadcast.

It said that in any event, the execution of a Writ, wherever it occurred, was a public act the HCEAs, in accordance with the law, were obliged to carry out. For the reasons already given, Channel 5 said that there was a clear public interest in seeing the activities of the HCEAs in the course of executing their official duties. The principles of open justice underpinned this clear public interest.

The broadcaster said that in this case, the sequence in question made several things clear to the public, all of which it was in the public interest for the public to know:

- High Court Writs can be executed at any time, without notice;
- when a Writ of Control has been issued, goods and chattels which belong to anyone at the place where the debtor resides can be taken into possession by the HCEAs unless proof of ownership of those goods or chattels can be immediately produced;
- significant costs can be incurred if the various stages of the execution of the Writ of Control are reached; and,
- judgment debts cannot and should not be ignored.

Channel 5 said that the broadcast was entirely in the public interest and by including the footage that was shown, the broadcast did not exceed what was necessary and appropriate to make viewers understand the situation and the ramifications of what the HCEAs were doing.

In conclusion, Channel 5 said that it did not believe that Ms Y's privacy or that of her daughter was infringed by either the making of the programme or the broadcast. Her consent, freely given, was relied upon by the programme makers when compiling the broadcast.

Supplementary material

Ofcom's consideration of Ms Y's complaint was put on hold pending the conclusion of our investigation into a complaint made by Miss F about a separate edition of *Can't Pay? We'll Take It Away!*² During the course of our investigation into Miss F's complaint, Channel 5 provided Ofcom with supplementary material that included details of arrangements between the HCEA company and the programme makers for the provision and use of the body cameras worn by the HCEAs and the subsequent use of the material recorded (both visual and audio) on those body cameras. Channel 5 confirmed to Ofcom that these arrangements

² Complaint by Miss F, made on her own behalf and on behalf of her uncle, and her parents about *Can't Pay? We'll Take It Away!*, Channel 5, 20 April 2016.
https://www.ofcom.org.uk/_data/assets/pdf_file/0018/107433/issue-340-broadcast-on-demand-bulletin.pdf

were also in place at the time that Ms Y and her daughter were filmed and the programme broadcast.

In a document entitled "Main Contributor Release Form" ("Release Form") it was agreed between the programme makers and the HCEA company that:

- the body cameras would be provided to the HCEAs by the programme makers and that the HCEAs would film in the way that they would do normally (i.e. with their own cameras when not engaged in activities with the programme makers);
- the entire copyright in the material recorded by the body cameras belonged to the programme makers for the purposes of the programme; and,
- reasonable access to view the body camera material would be given to the HCEA company upon request, but that material remained the property of the programme makers.

Included with the supplementary material, Channel 5 also provided Ofcom with the programme production "bible" which provided further detail about the relevant practices and procedures governing the activities of the production team in making *Can't Pay? We'll Take It Away!*. In particular, the document stated that:

- each HCEA wore a body camera and a microphone with sound fed to a central recorder unit. Both the camera and the microphone recorded continuously while they dealt with a case;
- while HCEAs routinely wear body cameras, they are of low quality. Therefore, the programme makers replace them with their own, better quality body cameras and ensure that there is always a sound recordist on the shoots;
- the production team maintain the body cameras while filming and ensure that replacement batteries are carried, and the data backed up;
- if a "debtor" queries the use of the body cameras, the programme makers should respond that they are worn for the HCEAs' security, but that the material may be made available to the programme makers if it is in the public interest to show it; and,
- Ofcom does not view the filming by the HCEAs on the body cameras or the subsequent broadcast of the filmed footage as being surreptitious filming and so it can "be treated for all intent and purpose as being the same as your (i.e. camera crew) filming in most cases".

Further submission by Channel 5

In addition to its response above, Channel 5 made the following, further submissions:

The Balancing Question

Channel 5 said that it considered that, in its decision in the case of Miss F, Ofcom did not follow the well-established methodology of the Strasbourg case law in relation to the balancing of Article 8 and Article 10 rights. It referred particularly to the Grand Chamber cases of *Von Hannover v Germany (No 2)*³, *Axel Springer v Germany*⁴, and *Couderc v France*⁵.

³ [2012] ECHR 228.

⁴ [2012] EMLR 15.

⁵ [2015] ECHR 992.

It said that these cases identify the factors which must be considered when conducting the balancing exercise between the competing Article 8 and Article 10 rights. The first issue, to which the case law attributes particular importance, is whether the information is capable of contributing to a debate of general interest, there being little scope under Article 10 for restrictions on freedom of expression when a matter of public interest is at stake. Channel 5 said that the decisive question is whether the broadcast is capable of contributing to a debate of public interest.

Channel 5 said that the broadcast of the section of the programme featuring Ms Y and her daughter was clearly capable of contributing to a debate of public interest, namely the manner in which civil judgments are enforced, the powers granted to HCEAs, and the consequences of not paying proper attention to personal debts. The broadcaster said that where, as in this case, the subject matter of a broadcast contains information which is of public interest, and the broadcast of the material is capable of contributing to a debate of general interest, then this should be accorded significant weight when conducting the balancing exercise.

Channel 5 said that the form of the expression, i.e. broadcasting the unobscured footage of the interactions with the HCEAs, was also protected under Article 10. It said that *Jersild v Denmark*⁶ emphasised that it is not for the national authorities to:

“...substitute their own views for those of the press as to what technique of reporting should be adopted by journalists. In this context the Court recalls that Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed”.

This principle, according to Channel 5, was recently reaffirmed in *Khuja v Times Newspapers Ltd and others*⁷:

“...Does the public interest extend to PNM’s identity? This case differs from earlier cases in which the same question has arisen because the order sought by PNM would not prevent the identification of a party to the criminal proceedings or even of a witness. To my mind that makes it even more difficult to justify an injunction, for reasons which I have given. But in any event, I do not think it can be a relevant distinction. The policy which permits media reporting of judicial proceedings does not depend on the person adversely affected by the publicity being a participant in the proceedings. It depends on (i) the right of the public to be informed about a significant public act of the state, and (ii) the law’s recognition that, within the limits imposed by the law of defamation, **the way in which the story is presented is a matter of editorial judgment, in which the desire to increase the interest of the story by giving it a human face is a legitimate consideration. PNM’s identity is not a peripheral or irrelevant feature of this particular story**” [emphasis added by Channel 5].

The broadcaster said that the Article 10 rights of it and the programme makers to impart, and the audience to receive, the information in *Can’t Pay? We’ll Take It Away!* must weigh heavily in the balancing exercise. It said that there must be “very weighty” privacy interests at stake if any restriction is to be placed on those Article 10 rights.

⁶ [1994] 19 EHRR 1.

⁷ [2017] UKSC 49.

Channel 5 said that this should not be taken as suggesting that its Article 10 rights (and those of the audience) automatically take priority over any Article 8 right enjoyed by the complainant and her daughter – neither right trumps the other. However, it said that, in the particular circumstances of this case, and the fact that the broadcast was capable of contributing to a debate of general interest, as opposed to other broadcasts where, say, the purpose of the broadcast is light entertainment or popular comedy, the case law establishes that “very weighty” privacy interests must be at stake if the intense focus on the interaction of the rights will swing against the Article 10 considerations.

Channel 5 submitted that when properly considered, the balancing equation must be between the heavily weighted public interest in broadcasting the programme, including the margin of appreciation to include footage of Ms Y and her daughter unobscured, and “such Article 8 rights as might arise in relation to the footage”.

Filming Ms Y and her daughter

Channel 5 said that the footage contained in the broadcast was a combination of footage filmed by the body cameras worn by the HCEAs and the footage filmed openly by the programme makers who were permitted to film in the property by Ms Y. Ms Y was aware that she and her child were being filmed for the purposes of a documentary. Ms Y was also aware that she and her child were being filmed by the body cameras. The details of Ms Y's consent are set out in Channel 5's earlier representations. The broadcaster said that no question of surreptitious filming arose in this case.

While the body cameras worn by the HCEAs were owned by the programme makers, they were not imposed on the HCEAs who would have worn body cameras when attending the enforcement whether the production team were present or not. In other words, whether or not the programme was in production, the interaction between Ms Y and the HCEAs would have been filmed by the HCEAs.

Channel 5 said that all the footage filmed, whether on the programme makers' cameras or the HCEAs' body cameras, was thoroughly reviewed by the programme makers to determine whether or not there was sufficient public interest in the filmed material, given the editorial context of *Can't Pay? We'll Take It Away!*, to consider including the footage in a broadcast. It said that after that initial review, the footage was reviewed at least two more times by senior members of the production team to consider the content, the context and the relevant public interest. The footage was then cut for the purposes of broadcast and reviewed by the production company's independent lawyer, to ensure the cut complied with the Ofcom Broadcasting Code (“the Code”) and the general law. Finally, the cut was reviewed by a senior member of the Channel 5 commissioning team as well as a senior member of the Channel 5 Content Legal Advice team. The broadcaster said that it was only after all those separate considerations had occurred that the decision to broadcast was made.

Channel 5 said that this process was identical to that which would be undertaken if the programme makers were obtaining access to footage filmed by the HCEAs before the programme makers became aware of the existence of the footage. It said that the footage of Ms Y was scrutinised and considered in exactly the same way as it would have been had the programme makers not been present and the HCEAs had been wearing their own body cameras.

Warranted filming

Channel 5 said that Ms Y's consent in the circumstances permitted and warranted the filming.

Information disclosed

Channel 5 said that the fact that Ms Y had been ordered to pay a debt in relation to unpaid child care fees was not a matter private to her. The fact that HCEAs sought to execute a Writ of Control against her, and the results of that attempt, were not private matters either. It said that none of the matters disclosed in the programme were particularly private, but, in any event, Ms Y had consented to the filming and to being interviewed for the possible purposes of broadcast. The most private matters, concerning her child's health and her finances, were captured as part of the interview Ms Y gave voluntarily to the programme makers.

The broadcaster said that in these circumstances, it was difficult to see that any reasonable expectation of privacy could be said to arise in relation to anything filmed. If, contrary to that submission, such a right did arise it would not be a right to which any particular weight ought to be attached. Channel 5 said that if Ms Y did enjoy any Article 8 rights in relation to the filming of the enforcement action, it would be outweighed by the genuine public interest in seeing the lawful activities of the HCEAs in performing their duties.

Channel 5 said that the Strasbourg case law to which previous reference has been made was clear authority for the proposition that, in the circumstances of this case, the broadcast was capable of, and did, contribute to a matter of public debate. It said that the rights of Ms Y, if any, were insufficient to outweigh that Article 10 right.

Channel 5 said in conclusion that, for these reasons, and those in Channel 5's earlier submissions, it did not believe that there had been any unwarranted invasion of the privacy of either Ms Y or her daughter. Nor did Channel 5 believe that any of the considerations which led Ofcom to reach the conclusion it did in *Miss F* were analogous to the circumstances of this case.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View on this case that the complaint should be upheld. Both the complainant and the broadcaster were given the opportunity to make representations on the Preliminary View. The complainant did not make any representations. Channel 5 submitted representations which are summarised below.

Broadcaster's representations

Channel 5 said that it repeated and relied upon its earlier submissions. It also added the following representations.

The Articles 8 and 10 Balancing Exercise

Channel 5 said that its initial response had already set out its view of the appropriate legal analysis to be applied regarding the required balancing exercise for the programme series *Can't Pay? We'll Take It Away!*

It said that a number of legal principles come into play where a programme is “capable of contributing to a debate of public interest”. One of these principles is that Article 10(2) scarcely leaves any room for restrictions on freedom of expression.⁸

Very weighty privacy interests must be at stake for Article 8 to prevail over Article 10, as has been established by “the highest judicial authority” and this leaves very little scope for restrictions on the Article 10 rights where matters of public interest are involved.

Another important principle that must be applied in the balancing test where the public interest is engaged, is that the publisher is allowed an editorial margin or latitude to choose the content which it considers will engage and interest viewers and so help get the message across. This had been recognised by the court in *Guardian News and Media*, and in other cases such as *O (a child) v Rhodes*⁹ and *Khuja v Times Newspaper Limited*¹⁰, as well as by the European Courts, for example *Jersild v Denmark*¹¹, where the court said:

“...it is not for the national authorities to substitute their own views for those of the press as to what technique of reporting should be adopted by journalists. In this context the Court recalls that Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed”.

Channel 5 said that Ofcom had not applied the correct test because matters of public interest were engaged, as Ofcom had recognised in its Preliminary View. It also said that the judge in the *Ali* case recognised that the programme series does engage matters of public interest¹². Specifically, he acknowledged that Channel 5 had a margin of editorial discretion in relation to the contents of the programme, including the way in which the story was told, its tone, and any decision to how to use private information¹³. Channel 5 said that the judge held that the margin of editorial discretion was exceeded in that particular case [Channel 5's emphasis] because the programme contained “the drama of the conflict between [the landlord's son and the claimant] which had been encouraged by [the HCEA] to make good television”¹⁴. The “obvious rationale” of the decision was that the claim would have failed in its entirety if it had not been for the inclusion of that particular drama, said to have been deliberately created by the HCEA to make good television.

Channel 5 said that the claimants in the *Ali* case had also complained about a number of other items of private information in the broadcast including:

⁸ *Petrina v Romania* (Application No 78060/01), and also confirmed by a seven judge Supreme Court in *Guardian News and Media and Others* [2010] 2 AC 697 (at para 51).

⁹ [2016] AC 219.

¹⁰ [2017] 3 WLR 351.

¹¹ [1994] 19 EHRR 1.

¹² *Ali v Channel 5* [2018] EWHC 298.

¹³ *Ibid*, para 206.

¹⁴ *Ibid*, para 210.

- the filming (by body cameras) of the claimants' vulnerable state and distress at being forced to confront the eviction process;
- the effect on their children of them being filmed;
- the fact that no permission had been given to film the claimants or to film inside their house; and,
- the filming of the claimants' personal possessions and the contents to the rooms in their house.

In Channel 5's view, this list closely resembled the list of private information that Ofcom said had been misused in this programme. While the judge in *Ali* held that those items of private information engaged Article 8, none of that information was held to have been misused. Accordingly, Ofcom's Preliminary View would appear to be inconsistent with the *Ali* case, which Channel 5 said followed "the highest judicial authorities". The judge clearly accepted that where the public interest was engaged, only the most weighty of private information was capable of prevailing over the rights in Article 10 and the editorial margin afforded to the broadcaster.

Surreptitious filming

As it had submitted in relation to previous Ofcom decisions, Channel 5 said that neither the question of the ownership of the body cameras, nor the fact that the body cameras were worn by the HCEAs under a prior arrangement could make the footage surreptitious in circumstances where Ofcom would otherwise not have deemed it to be surreptitious.¹⁵

The determination as to whether the filming and broadcast of the body camera footage amounted to an "unwarranted infringement of privacy" necessitates an intense focus on the competing Article 8 and 10 rights in the context of a programme which engages matters of public interest and where the broadcaster has an editorial discretion as to how best to tell the story. While Channel 5 accepted that Article 10 does not automatically "trump" Article 8, it can only be displaced by very weighty privacy interests because Channel 5 "should be accorded a reasonable margin of appreciation in taking decisions as to what details needed to be included...to give...credibility".

The fact the body camera footage was filmed without the knowledge of Ms Y (assuming that was the case) was not relevant to determining whether the filming and broadcast of the footage was warranted or amounted to an unwarranted infringement of privacy.

Channel 5 said that the test was set out in Practice 8.13 of the Code, according to which:

- There was *prima facie* evidence of a story in the public interest. The story and the underlying issues it addresses is in the public interest, as has been accepted by Ofcom and determined by the judge in *Ali*.
- There were reasonable grounds to suspect that further material evidence could be obtained. It said that those filmed in this programme series were often unwilling to allow the camera crew to film them (although, it said, this was not the case here). The broadcaster said that this was not known before the eviction or debt collection begins entering her home and it was by use of the body cameras that the footage was obtained.

¹⁵ Complaints by Miss F (see footnote 2) and Mr K made on his own behalf and on behalf of Mr L about *Can't Pay? We'll Take it Away!*, Spike, 13 September 2016
https://www.ofcom.org.uk/_data/assets/pdf_file/0027/117468/broadcast-on-demand-bulletin-issue-359.pdf

- The footage was necessary to give credibility and authenticity to the programme. It said that the programme is a “fly on the wall documentary” depicting the day to day interactions between the HCEAs and the debtors, as officers of the Court seeking to undertake their official functions. In particular, the problems that debt causes for people in difficult times, and their individual personal reactions to being confronted with the harsh realities and real emotional and personal crises that debt brings with it, is a fundamental aspect of the programme and the public interest element in it. It added that this evidence is what the body camera footage provided, therefore lending credibility and authenticity to the programme and its overall public interest objective.

According to Channel 5, the inclusion of the footage, particularly in the context of the programme and its stated aims, was very much within the margin of editorial discretion allowed to Channel 5 when making a programme in the public interest. This was consistent with the *Ali* case in which the broadcast of the body camera footage taken within the home and recording the distress of the debtors, was held not to infringe the claimants’ Article 8 rights.

Consent

Channel 5 said that Ofcom's finding that Ms Y did not give informed consent to being filmed for broadcast in the programme was surprising when taking into account the relevant facts.

Channel 5 said that the steps that were taken “on the ground” during the filming process were ample (or at least adequate) to comply with the Code, and to ensure that Ms Y knew what was happening and the purpose for the filming. Ofcom’s view appeared to be that the programme makers should have obtained such consent not once, but at least twice. It said that there was no obvious basis why this should have been done (albeit see below). It was understandable that Ms Y was upset and distressed, at least for part of the time the HCEAs were present but people who are upset are nevertheless able to give informed consent and the available evidence all points to such consent having been given by Ms Y.

The HCEAs themselves had taken the view that it was not necessary to obtain consent twice when they first engaged with Ms Y and explained the reason for their presence. This of course was at a time when Ms Y appeared somewhat drowsy as she had literally just woken up. In contrast, the programme’s director delayed speaking to Ms Y for some minutes afterwards until she had had time to wake up. While the HCEAs were not required to comply with the Code their actions on the day formed a reasonable comparator, in Channel 5’s view, against which to judge the actions of the programme makers.

Ofcom also appeared to take the view that Ms Y's depression was something that was relevant, and required consent to be obtained on more than one occasion. This was difficult to understand. Ofcom itself had accepted that it was unable “to determine as fact whether or not Ms Y depression and her anti-depressant medication had an effect on her ability to comprehend the presence of the programme makers in her home and the purpose of the filming”. Channel 5 said that if Ofcom felt unable to determine this question it was difficult to see why or how her depression should be factored into the issue at all. Even if the programme makers had (contrary to industry practice and a common-sense approach), obtained Ms Y's consent on more than one occasion during the filming process, on every such occasion Ms Y would still have been depressed and on medication. It was unclear, therefore, what difference this would have made. Accordingly, the fact of her medical

condition had no bearing on Ms Y's ability to give informed consent and should be discounted entirely.

In the face of Ms Y's distress, it was clear from the exchanges between her and the film crew that the programme makers were sympathetic and polite, as well as being clear as to what was happening, and why. There was no shirking away from the message that needed to be given, no disguising it, or using unclear, vague language; she was specifically told that the film crew were there because they were filming for Channel 5 and its programme *Can't Pay? We'll Take It Away!* The fact that Ms Y fully understood what was being said to her, and the ramifications of it, was evident from her response to that point. Ms Y herself was not unclear, or vague, in her understanding; she had stated: "*So, I am going to be on TV?*". The fact that she was looking down and reading paperwork did not seem to be relevant – there was nothing uncertain or distracted that appeared from the answer that Ms Y made to the point put to her. The footage showed that even whilst reviewing some paperwork, Ms Y was well able to understand what was being said to her and the ramifications of it.

Channel 5 said that the explanation from the programme's director then continued, with Ms Y continuing to ask questions about it. Having agreed with him that the crew are able to film her for the programme, the director asked her specifically "is that okay?" to which Ms Y plainly responded in the affirmative. In response, the director thanked her. Again, there was no vagueness in the director's approach or comments — he explained what the film crew were wanting to do, obtained Ms Y's consent to that filming, and confirmed his understanding of her consent with her. Likewise, there was no uncertainty in her response. Channel 5 said that it was not clear what else the director should have done in the circumstances.

The broadcaster added that there were a number a number of subsequent developments during the visit that made it clear that Ms Y had given her informed consent, and that obtaining that consent again was neither necessary nor reasonable to require. The first was that Ms Y continued to engage and interact not just with the HCEAs, but also with the camera crew. She did so in the knowledge that she was being filmed, and having been told (in answer to her own question on the point) that she may appear on television. Ms Y did not have to engage; she could have proceeded either to ignore the camera crew or she could have changed her mind and requested the camera crew to leave. Had she done so, they would have not have remained in her home and continued to interact with Ms Y, asking her questions about her situation and filming her throughout. The fact that she made no objection to the continued presence of the camera crew after giving her consent to be filmed for the programme all suggested that she was content for the filming to continue, and that the consent she had already given was informed consent which she did not wish to seek to withdraw.

Ofcom acknowledged in its Preliminary View that the programme makers thought they had obtained informed consent from Ms Y. The reason they believed this to be the case was because consent had clearly been given, in response to very clear and specific information from the director about the purpose of the filming, and because Ms Y had subsequently done nothing to suggest that she was uncomfortable with her decision, was having second thoughts, or was not clear what she had agreed to.

In any event, the question of consent was brought up again towards the end of the enforcement when Ms Y was asked specifically whether she was happy for her daughter to be featured. As was clear from the transcript, Ms Y answered "*yeah, she's fine*".

Nevertheless, the programme maker asked again "*are you sure?*", to which, Ms Y gave a light-hearted response in which she was seen and heard to be laughing regarding the need to cut her daughter's hair. On any reasonable interpretation, therefore, this could only be taken to be a reference to Ms Y knowing that her daughter was being filmed for a potential broadcast, particularly taking into account the context of what had gone on before. This was the second affirmative response on the particular issue that the programme makers obtained from her, and the third affirmative response to the issue overall (taking into account Ms Y's earlier exchanges with the programme's director).

If Ms Y had been unclear about the consent she had previously given, or had been having any second thoughts about it, she would not have responded in this light-hearted way about her own daughter. This would have been the obvious point at which any uncertainty, concern or anxiety on her part about what was happening and what she had discussed with the programme's director would have been raised by her. Instead she again freely gave her consent (for her young daughter) and joked with the programme makers.

There was no viable basis for suggesting that Ms Y did not properly consent to either her, or her daughter, appearing in the television programme, in circumstances where she was specifically told what the programme makers were doing and which specific programme they were making. She engaged with the director as a result of his comments in a way that made it clear that she had understood them, she freely gave her consent to the filming for the programme taking place, she made no subsequent objection to being filmed and asked questions by the crew, and then subsequently gave her specific consent – not once, but twice – to her child appearing as well.

In conclusion, Channel 5 said that it was therefore difficult for it to understand the basis upon which Ofcom had taken the view that the consent Ms Y gave was not informed consent for the purposes of the Code.

Decision

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

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

In reaching this decision, we carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast, and both parties' written submissions and supporting material, including email correspondence between the complainant and the broadcaster post broadcast. We also examined the unedited footage of the HCEAs' visit to Ms Y's home as well as the unedited footage filmed by the programme makers. We also took account of the supplementary material relating to the body camera arrangements between the HCEA company and the programme makers, and Channel 5's further submissions. Ofcom also took careful account of the representations made by the broadcaster in response to being given the opportunity to comment on Ofcom's

Preliminary View on this complaint. After careful consideration of these representations, we considered the points raised did not materially affect the outcome of Ofcom's decision to uphold the complaint.

In Ofcom's view, the individual's right to privacy under Article 8 of the ECHR has to be balanced against the competing rights of the broadcaster's right to freedom of expression and the audience's right to receive information under Article 10. Neither right has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

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

In addition to this rule, Section Eight (Privacy) of the Code contains "practices to be followed" by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 8.1 and failure to follow these practices will only constitute a breach where it results in an unwarranted infringement of privacy.

- a) Ofcom considered Ms Y's complaint that her and her daughter's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme because she did not give consent for them to be filmed for the programme.

Ofcom had regard to Practices 8.5 and 8.9 of the Code. Practice 8.5 states that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted. Practice 8.9 states that the means of obtaining material must be proportionate in all the circumstances, and in particular to the subject matter of the programme. We also had regard to Practice 8.13 which states that surreptitious filming or recording should only be used where it is warranted.

Ofcom also regarded Practices 8.20 and 8.21 of the Code to be relevant in this case. Practice 8.20 states that broadcasters should pay particular attention to the privacy of people under sixteen, and Practice 8.21 states that where a programme features an individual under sixteen or a vulnerable person in a way that infringes privacy, consent must be obtained from: a parent, guardian or other person of eighteen or over in loco parentis; and wherever possible, the individual concerned; unless the subject matter is trivial or uncontroversial and the participation minor, or it is warranted to proceed without consent.

We first assessed the extent to which Ms Y and her daughter had legitimate expectations of privacy in the particular circumstances in which the relevant material was obtained. The test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact-sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself.

We recognise that children do not have a legitimate expectation of privacy merely because they are children. However, there are relevant considerations that may result in a child having a legitimate expectation of privacy where an adult might not. For instance, the age of the child; the nature of what was filmed; where the filming took place; the purpose of the filming and the broadcast; whether appropriate consent was obtained; and the effect on the child, are all relevant factors. We consider that all these factors must be taken into account along with all the other circumstances of the case, in determining whether or not a child has a legitimate expectation of privacy.

The unedited footage showed that Ms Y and her daughter were filmed in their home by both the body cameras worn by the HCEAs and the main camera used by the programme makers. Ms Y was filmed by these cameras in her private home discussing her financial and personal circumstances and her daughter's medical condition with the HCEAs and the programme makers. In particular, Ms Y was filmed as she had just woken up to find up to five men (two HCEAs and three programme makers) in, or on the doorstep of, her home. She was subsequently filmed as she explained the circumstances behind her debt; that she could not afford to pay the debt; that she had lost her job because she was unable to work due to having to look after her daughter. Ms Y was filmed talking to the programme makers about how she was struggling to cope with her situation and disclosing to the HCEAs that she was suffering from depression and that she was taking medication for it. She was also filmed calling the father of her daughter for help in paying the debt. During the filming, Ms Y was visibly upset and crying.

It was evident from the unedited footage that Ms Y was filmed inside her house by both the body cameras worn by the HCEAs and the programme makers' main TV camera. The initial footage was filmed almost exclusively from the body cameras worn by the HCEAs and we observed that the unedited footage showed the HCEAs walking up to the property and knocking on the front door. When there was no answer, one of the HCEAs tried the door handle and, finding it was unlocked, opened the door. The HCEAs then went inside, announcing their presence while the programme makers remained on the doorstep filming. After the HCEAs announced their presence, Ms Y was filmed coming out of her bedroom having just woken up. The following exchange, filmed on the body cameras worn by the HCEAs, took place between Ms Y and the HCEAs:

Mr O'Shaughnessy: *"Hello? Hello? High Court Enforcement."*

Ms Y: *Hello.*

Mr O'Shaughnessy: *Hello. Good morning, how are you? Are you [Ms Y's first name]?*

Ms Y: *Yeah.*

Mr O'Shaughnessy: *How are you [Ms Y's first name]?*

Ms Y: *I'm fine thank you.*

Mr O'Shaughnessy: *Can you switch the light on please? I'm from the High Court. I've got ID for you.*

Ms Y: *Yeah. [Switches light on]*

- Mr O'Shaughnessy: *Good morning. My name's Mr O'Shaughnessy, I'm here from the High Court. I'm here with the High Court, [Ms Y's first name].*
- Ms Y: *Can you take the camera off me...what's all that about?*¹⁶
[she gestures with a wave of her hand signalling 'go away' – Ofcom's description of the footage]
- Mr O'Shaughnessy: *They're following us, they're doing a documentary. Here [Ms Y's first name], have some paper there. I'm here with the High Court [Ms Y's first name], regarding some unpaid [claimant's name]. Unpaid childcare? Monies?*
- Ms Y: *Childcare?*
- Mr O'Shaughnessy: [Claimant's name]. *Do you have children here?*
- Ms Y: *Yeah, she's in there.*
- Mr O'Shaughnessy: *You've just one yeah?*
- Ms Y: *Yeah, just the one.*
- Mr O'Shaughnessy: *There's an outstanding balance of £2,266.51. We've been asked to come and see you and collect it.*
- Ms Y: *I don't have £2,000.*
- Mr O'Shaughnessy: *Okay, alright.*
- Ms Y: *£2,266?*
- Mr O'Shaughnessy: *Okay".*

The footage from the body cameras showed that this exchange between Ms Y and the HCEA continued as she spoke more about her personal circumstances, including how the debt had been incurred, that she was out of work, and that she was struggling financially on benefits. Throughout her interaction with the HCEAs, which was captured solely by the body cameras worn by the HCEAs, Ms Y appeared drowsy, confused, and not fully engaged with what was happening. It was at this point (approximately four minutes after the HCEAs encountered Ms Y coming out of her bedroom) that the programme makers entered her flat and spoke to her about filming (see below under "Informed consent" for this exchange). Again, this interaction between Ms Y and the programme makers was filmed solely on the body cameras worn by the HCEAs (as the programme makers left the camera on the doorstep outside).

In considering the way this material was obtained, we took account of Practice 8.13 which states that "surreptitious filming or recording should only be used where it is warranted". It goes on to explain that "Normally, any infringement will only be

¹⁶ From the unedited footage itself, Ofcom considered that this was what Ms Y actually said. The transcript of the unedited footage provided by the broadcaster quoted Ms Y saying: "Do you have to take the camera with you?".

warranted if: there is a *prima facie* evidence of a story in the public interest; there are reasonable grounds to suspect that further material evidence could be obtained; and, it is necessary to the credibility and authenticity of the programme”.

The Code defines “surreptitious filming and recording” as including “the use of long lenses or recording devices, as well as leaving an unattended camera or recording device on private property without the full and informed consent of the occupiers or their agent. It may also include recording telephone conversations without the knowledge of the other party, or deliberately continuing with a recording when the other party thinks that it has come to an end”.

In its submission, Channel 5 said that the HCEAs routinely wore body cameras to record their interaction with members of the public while they are carrying out their official duties. Channel 5 said this was for personal safety reasons and in case of a complaint or inquiry. Ofcom had understood from this statement that these cameras belonged to the HCEAs and were used by them primarily for that purpose. However, the “Supplementary material” relating to the body cameras revealed that the body cameras were, in fact, the property of the programme makers who owned the entire copyright in the material recorded by the body cameras and had control of access to the footage by the HCEA company.

Ofcom considered that it was apparent from these arrangements that the body cameras were not being worn by the HCEAs solely for their own benefit. Rather, the provision of the cameras by the programme makers and their ownership of the footage unequivocally showed the existence of an advance arrangement between the programme makers and the HCEA company which provided the programme makers with unfettered access to the footage recorded by the body cameras. A fundamental purpose of the cameras, therefore, was for the programme makers to obtain and retain footage for potential broadcast. The ownership and operation of the cameras guaranteed them exclusivity to the material recorded and enabled free, uninhibited access to Ms Y's home as she interacted with the HCEAs. This afforded the programme makers a level of access that exceeded substantially any exposure which anyone in Ms Y's position could possibly have expected at the time. As a consequence, the programme makers acquired access to unguarded interactions and disclosures within the confines of the domestic home and were able to observe and record sensitive exchanges between Ms Y and the HCEAs in the initial and early part of the enforcement, which was clearly a stressful and emotional event for her.

Channel 5 told Ofcom that it considered that surreptitious filming was not an issue in this case. However, we observed from the unedited footage that at no point during the enforcement or the filming was Ms Y told about the ownership and use of the footage or was it made clear to her that the body camera footage could be broadcast. The fact that the footage could subsequently be used in the television programme was not something that Ms Y could reasonably have foreseen or appreciated. In fact, the actions of the programme makers standing on the threshold of the property while the HCEAs spoke to her at the beginning of the enforcement gave every indication that this was not the case. We recognised that broadcasters often obtain material for broadcast from third parties, but in this case a camera crew was visibly present and had remained outside the property during the initial exchange between Ms Y and the HCEAs.

In these circumstances, we considered it was significant that no attempt was made to ensure that Ms Y was made aware at the time of filming of the programme makers' use of the body cameras, or the potential consequences of that filming.

Taking all the above factors into account, Ofcom considered that the footage filmed of Ms Y, her daughter, and the interior of their home by the body cameras had been obtained by the programme makers surreptitiously, notwithstanding the fact that the body cameras themselves were worn openly. An intrinsic purpose of the filming from these cameras was to obtain footage for potential broadcast. As a result, Ms Y would not have understood the full significance of the body cameras at the time of the filming, particularly as the main camera being used by the programme makers had initially remained outside the property. In these circumstances, we considered that the actions of the programme makers were akin to deliberately continuing with a recording when the other party thinks that it has come to an end. Similarly, by not making Ms Y aware of the full significance of the body cameras, the method by which this footage and the accompanying audio was obtained was akin to the programme makers leaving an unattended camera or recording device on private property without the consent of the occupiers. For all these reasons, we took the view that Ms Y had not been aware that the body cameras were recording material for possible inclusion in a television programme.

Channel 5 submitted that the execution of a writ issued by the High Court is a public matter and that in this case, the execution of the writ was not a matter connected with Ms Y's (and, by implication, her daughter's) private lives. It also said that the activities of HCEAs, the kinds of difficulties they face when executing their duties, and the impact on the lives of those affected by the activities of HCEAs are all matters of public interest. However, in Ofcom's view, none of these arguments pointed to a *prima facie* story in the public interest of a type or order which would ordinarily warrant the use of surreptitious filming (as envisaged by Practice 8.13), particularly as the filming itself took place in a private home and concerned not simply the fact of the Writ or its enforcement, but Ms Y's personal reaction to that event and her interactions with the HCEAs.

Ofcom took into account Channel 5's representations that it considered that it had satisfied the test as set out in Practice 8.13 to justify the use of secret filming in this case. However, Ofcom did not accept that the public interest arguments submitted by Channel 5 were of sufficient order and weight to warrant filming of this nature in the circumstances, particularly given that the filming took place within the confines of a domestic home and it therefore recorded sensitive interactions between the complainant and the HCEAs in that context. In Ofcom's view, although Ms Y was the subject of the High Court enforcement process, neither that fact, nor the public interest in programming which seeks to shed light on the issues and difficulties encountered by HCEAs, warranted the decision of the programme makers and Channel 5 to obtain footage of these particular events inside the property in this manner. Therefore, Ofcom considered that this was a case in which the programme makers acted in the speculative hope of gathering material for potential broadcast.

It is also important to emphasise that a failure to follow any of the practices in Section Eight of the Code will only constitute a breach of the Code where it results in an unwarranted infringement of privacy. In other words, a finding that a broadcaster has failed to follow Practice 8.13 (in relation to surreptitious filming) does not, in and of itself, automatically lead to an unwarranted infringement of privacy. Ofcom therefore

proceeded to consider whether the complainant and her daughter each held a legitimate expectation of privacy in relation to the obtaining of the footage.

Ofcom considers that, ordinarily, personal and financial conversations and negotiations in which the people concerned felt that they could speak openly and where they understood that the matter they were talking about would be treated in confidence, could reasonably be regarded as sensitive and attract an expectation of privacy, particularly where they take place within the confines of a person's home and concern the person's inability to settle the debt themselves. We consider such circumstances could reasonably be characterised as distressing and sensitive for those involved, especially if they are already in a vulnerable position as in this case where the complainant was suffering from depression while also struggling to care for her daughter who had a chronic illness. We recognised too that the execution of the Writ may have been a matter of public record, however, we do not consider that this fact, of itself, prevents a person subject to those proceedings from having an expectation of privacy in relation to the matter.

Factors specific to Ms Y

In this case, Ms Y first encountered the HCEAs in her hallway after they had let themselves into her flat through the unlocked front door. The HCEAs had arrived without prior warning that they would be accompanied by a camera crew and immediately questioned her about her identity and informed her that there was a Writ against her. Ms Y was therefore obliged to respond to the HCEAs' enquiries irrespective of the presence of the cameras.

As already referred to above, Ms Y's first encounter with the HCEAs was solely filmed by the body cameras worn by the HCEAs. During this exchange, Ms Y spoke about her personal circumstances and the reasons she was in debt. She also appeared drowsy and confused having just woken up on encountering the HCEAs in her home. Ms Y was also filmed by the body cameras as the programme makers spoke to her about filming the enforcement. At no point did it appear that Ms Y was aware that this footage was being filmed by the body cameras for potential broadcast, nor was she ever informed of this by either the HCEAs or the programme makers.

The filming that followed was captured by the main camera operated by the programme makers as well as by the body cameras worn by the HCEAs. The HCEAs engaged in conversation with Ms Y about the debt and how she would pay it. She was also questioned directly by the programme makers about her personal situation and her feelings and reactions to her circumstances. During the course of these various conversations with the HCEAs and the programme makers, Ms Y was filmed being asked and speaking about highly personal matters, including her mental health and the medication she was taking, the situation with her income and losing her job due to being a single parent caring for a child with a chronic medical condition, and her relationship with her daughter's father. We considered that while Ms Y had been aware of the presence of the camera crew inside her flat and had spoken to them during and after the enforcement, it was important to take into account the wider circumstances of the filming inside her home. This included the private and personal environment in which Ms Y was filmed by the programme makers' camera, the sensitive and personal nature of the information that was captured and her reaction to, and exchanges with, the HCEAs concerning the enforcement of the debt. Also, we took into account that the interior of

Ms Y's home and some personal belongings were filmed, as was the general condition of her flat and its untidy and unkempt state, as well as other details, such as the amount of credit showing on her electricity meter (Programme maker 1: *"And we'll leave... I just, do you mind if I take a shot of your [electricity] meter, because that's very telling as well?"*). Ms Y was visibly upset and crying for most of the filming as she tried to deal with the situation.

Factors specific to Ms Y's daughter

From both the unedited and the broadcast footage, we observed that Ms Y's daughter was filmed solely by the programme makers' main camera as her mother interacted with the HCEAs and the programme makers inside the house. The filming captured intimate exchanges and close-up shots of her playing on the floor and playing with a doll and a mobile phone. Initially, she was filmed wearing only a nappy and a long-sleeved top but in later shots she also wore pyjama bottoms. Information about her medical condition was recorded as Ms Y was filmed responding to questions about her situation. This included revealing to the programme makers that her daughter suffered from sickle cell anaemia and that she went through periods of being unable to walk and needed hospital treatment.

The legitimate expectations of privacy of the complainant and her daughter

Ofcom took into account Channel 5's assertion that the execution of a Writ is a public matter, not a private one, and that the execution of the Writ was not a matter connected with the complainant's private life or that of her daughter, but a public matter. We considered that the existence of a county court judgment may be considered a matter of public record and may not, therefore, be information in relation to which the complainant had a legitimate expectation of privacy. However, the information captured by the filming of Ms Y and her daughter went beyond the fact of the debt, which in this case related to unpaid childcare fees and the personal consequences and impact of the enforcement process on them. Ofcom did not accept that the events surrounding the enforcement of a debt were necessarily a matter of public record, or that there can be no legitimate expectation of privacy in relation to those events and especially not where those events take place within the confines of a private, family home. In this instance, Ofcom took the view that much of the information contained in the obtained footage was sensitive and constituted a significant intrusion into the complainant's and her daughter's private and family life. Ofcom considered that this went beyond the information which might otherwise have been in the public domain as a consequence of the court enforcement process.

As mentioned previously, the test as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself¹⁷. The location of the filming was one of several factors that were relevant to Ofcom's consideration.

¹⁷ See, for example, Anthony Clarke MR in *Murray v Express Newspapers Ltd* [2009] CH 481, at para 36: "the question whether there is a reasonable expectation of privacy is a broad one, which takes account of all the circumstances of the case. They include the attributes of the claimant, the nature of the activity in which the claimant was engaged, the place at which it was happening, the nature and purpose of the intrusion, the absence of consent and whether it was known or could be inferred, the effect on the claimant and the circumstances in which and the purposes for which the information came into the hands of the publisher".

Taking into account all the circumstances in this case, in our view the events involving Ms Y and her daughter which the footage captured could reasonably be characterised as being highly sensitive to them, taking into account their family situation and their health, and plainly came within the scope of “private and family life”, and thus engaged Article 8. Therefore, we considered that the situation of the complainant and her daughter attracted legitimate expectations of privacy.

Given all the factors above, and notwithstanding the Writ, Ofcom considered that Ms Y and her daughter had legitimate expectations of privacy in relation to the filming of this material with a view to its being broadcast, and that in each case this expectation was very significant.

Consent

Having considered that Ms Y and her daughter each had a legitimate expectation of privacy in relation to the filming of them in the circumstances set out above, Ofcom assessed whether the programme makers had secured consent from Ms Y to film her and her daughter in their home and whether that consent could reasonably be considered as being ‘informed consent’.

The Foreword to Section Eight (Privacy) of the Code sets out that where consent is referred to in Section Eight, it refers to ‘informed consent’. Practice 7.3 of the Code indicates the sort of information which should normally be given to a person who has been invited to contribute to a programme (unless the subject-matter is trivial, or their participation is minor) in order to ensure that the consent which they give for their participation is “informed”. This includes, for example, sufficient information about the nature and purpose of the programme and the kind of contribution the individual is expected to make. Practice 7.3 sets out that, in order to obtain informed consent, broadcasters should normally provide this information at an appropriate stage.

Ofcom first considered the issue of consent in relation to the surreptitious filming that took place at the beginning of the enforcement which was filmed solely on the body cameras worn by the HCEAs.

Ms Y asserted in her complaint that when she became aware of the HCEAs and the programme makers she had “lifted her arm up as if to say that she did not want to be on television”. While Ms Y may have been aware of the TV camera outside her property, as explained previously we did not consider that she was aware that she was being filmed by the body cameras worn by the HCEAs: she did not ask about them, nor was she ever told by the HCEAs or by the programme makers that the body cameras were filming her, that the filming was subject to an arrangement between the programme makers and the HCEAs, and the footage was being captured for potential broadcast. In these circumstances, we considered that the surreptitious filming of Ms Y was obtained without her knowledge or consent.

Ofcom then considered the filming by the programme makers’ camera and whether the programme makers had obtained ‘informed consent’ for this filming of Ms Y and her daughter.

Ms Y said in her complaint that the HCEAs had told her when they were leaving that the filming was for “training and development” and that this was the reason why she had

said “okay” to the filming. Ms Y said that she had thought that the filming was for “internal use and not for broadcast” and that she was never told she was being filmed for the programme. This reflected what she had said in an email to the programme makers following the broadcast of the programme: “I’m confused where you got the permission from as I didn’t sign any releases... I’ll never get that private moment back”¹⁸, and her comment to the programme makers in a further email: “I did not give consent for you to show it on tv... they said we have cameras as protocol not for TV purposes. Research and development. So, on two occasions never. I would never agree to have that on tv”¹⁹.

Channel 5 said in its submissions that Ms Y had “specifically permitted filming to occur and that she had agreed to be interviewed, and specifically approved images of her daughter being included in the broadcast”. Channel 5 told Ofcom she was also specifically advised that the broadcast would be part of the series, *Can’t Pay? We’ll Take It Away!*.

Ofcom recognised that there was a disparity between the recollections of Ms Y and what the programme makers believed she had been told, or understood, about the nature and purpose of the filming. We therefore looked closely at the unedited footage to understand the circumstances in which the programme makers obtained footage of her and her daughter.

As set out in detail above, the unedited footage showed the HCEAs entering the property and talking to Ms Y who had come out of her bedroom having just woken up. It was clear from her reaction that she objected to the filming as soon as she saw the camera crew – gesturing to the HCEAs as she came out of the bedroom and saying: “*can you take the camera off me... what’s all that about?*”. We observed that the purpose of the filming by the crew was explained to Ms Y at this point by the HCEAs (one of whom responded to her question to explain: “*They’re following us, they’re doing a documentary*”). It was further explained to her by the programme makers when they entered her flat and spoke to her about the filming approximately four minutes after the HCEAs first encountered Ms Y:

Director: *“Can I have a word without the camera?”*

Ms Y: *Yeah. I don’t want a camera in here because that’s embarrassing.*

Director: *We’re filming for Channel 5. It’s Can’t Pay? We’ll Take It Away! So ...film everything, every job...*

Ms Y: *So, I’m going to be on TV?*
[Ms Y was looking down and reading paperwork]

¹⁸ Email from Ms Y to the programme makers dated 17 May 2016.

¹⁹ Email of 18 May 2016, sent in response to an email from the programme makers on the same day, in which they explained: “you were asked very specifically on two occasions about permission for us to film and to show you and your daughter. You made clear your consent on both occasions. This is always recorded as part of the protocols we have so that we have a clear understanding of the consent”.

Director: *Not every job goes out, love, so don't worry straight away, okay? But we're here to obviously follow the process and follow how they deal with it and how it affects you because, I mean, it's obvious that, [at this point, Ms Y stood up and walked out of the living room into the adjacent kitchen]...is there any way that we can come in and follow what happens?*

Ms Y: *What, afterwards?*
[Ms Y walked back into the living room rubbing her eyes and sat down, again with her head down looking at the paperwork]

Director: *Well, right now, really, because, you know, it's happening now, isn't it? And it's your situation we're interested in, as well. And how this affects you.*

Ms Y: *Yeah, I suppose [said quietly].*

Director: *Is that OK?*

Ms Y: *Mmm, hmmm [she nods].*

Director: *Ok, thanks [Ms Y's first name]".*

We acknowledged there was a short gap between the time Ms Y first emerged from her bedroom and this exchange with the programme director in which he explained the purpose of the filming (*"We're filming for Channel 5. It's Can't Pay? We'll Take It Away!"*). We also acknowledged that Ms Y's response suggested she understood the implications of this (*"So, I'm going to be on TV?"*), although she was also told not to worry as not every job goes out and that the film crew were there to *"follow the process"*. Notwithstanding her initial objection to the filming, we noted that she also appeared to agree to the programme makers' presence in her home and for them to film what was happening to her. When asked by the Director: *"Is that OK?"*, which we took to be a reference to the presence of the programme makers and the TV camera, she indicated: *"Mmm, hmmm"* and nodded in response.

Further, Ms Y later appeared to agree to her daughter being filmed when she was asked towards the end of the enforcement. Ms Y's daughter was playing with a doll and with a phone at the time and a number of close-up shots of her were captured by the filming. We observed the following exchange from the unedited footage:

Programme maker 1: *"Consents, mate?*

Programme maker 2: *Pardon?*

Programme maker 1: *Consents.*

Programme maker 2: *Yeah. Could we, can ummmm...[Ms Y's first name] cause obviously, you know, we were talking to you and the agents mainly, but is it [Child's first name]?*

Ms Y: *[child's first name].*

Programme maker 2: [child's first name] – sorry. *Ummm, she kept running in shot and she's sat there now, do you, are you happy for her to be featured as well?*

Ms Y: *Yeah, she's fine.*

Programme maker 2: *Are you sure?*

Ms Y: [Laughing] *I need to cut [inaudible]...her hair.*

Programme maker 2: *I think [laughing – words inaudible] Okay, well that's great. Thank you so much for that. Have you got that [programme maker 1's name]?*

Programme maker 1: *On there. OK.*

Programme maker 2: [to Ms Y] *Have a good one. Have a nice Christmas if you can.*

Ms Y: *Thank you".*

Ofcom recognises that it is a matter of judgment as to whether an individual who is capable in principle of giving informed consent did, in fact, do so. It was important, therefore, to consider the full context in which Ms Y appeared to agree to the filming (and the subsequent broadcast of the footage), and to consider whether in the specific circumstances the programme makers had rightfully obtained her informed consent to film her and her daughter, as they thought they had.

Ms Y appeared drowsy and disconcerted when she encountered the two HCEAs outside her bedroom with a number of programme makers standing on the threshold of her home filming with a camera. We took into account that Ms Y's first interaction with the programme makers took place just after she had woken up, approximately four minutes after hearing the sound of the HCEAs letting themselves into her flat. In our view it was clear that the manner in which Ms Y presented herself to the HCEAs and to the programme director was such that the HCEAs recognised that she had been asleep and was still drowsy, and that she still may not have been in a sufficient state to fully comprehend what was happening at the time. The following exchange took place very shortly after the programme makers had first spoken to Ms Y:

Mr O'Shaughnessy: *"All right? We know you're having a difficult time, yeah? I'm not here to judge you. We're here to help you, all right? Yeah? Go and take five or ten minutes out, yeah. Have a cup of tea, do what you want to do. If you want to make some phone calls and let us know, alright? We know you're having a tough time. But we need to get it resolved...We need to get...you know, try and get it resolved today if we can and then take it from there, alright?"*

Ms Y: *Hmm.*

Mr O'Shaughnessy: *Yeah? ... we've come in and we're here and you've just woken up and, you know, get your thoughts together, all right? Yeah?"*

This showed that the HCEAs clearly understood that Ms Y was “having a difficult time” and that she might want the opportunity to take stock of the situation before they continued with the enforcement. In our view the footage also showed that she was distracted, withdrawn, and not fully engaged with what the programme makers were saying to her.

Shortly after this exchange, the unedited footage showed that Ms Y left the room to go into the bedroom where she and her daughter had been sleeping, in order to try to contact someone to help her. During this time the following conversation took place between the HCEAs and the programme makers:

Mr Anglin: *“I mean there’s no excuse to live like this, there’s none, none that I can think of. There are lots of people out there struggling and I’m sure if you go into their properties, at least it’s hoovered and cleaned, there’s no excuse for this. But it tells me, it’s also a reflection of her state of her mind.”*

Programme maker: *Correct, depression.*

Mr Anglin: *So, I have to be mindful of that and it might be issues that we’re unaware of which I’m sure Brian will explore once she’s... once she’s done what she can.*

Mr O’Shaughnessy: *[to the programme makers] I think it’s really key what Del has mentioned here, there might be underlying circumstances, depression and other bits and bobs going on here with her. She’s a single parent, I think it’s... my intuition, experience say, you know she’s depressed, she’s a bit down, you know she’s got herself into a situation, she’s on benefits, she can’t work, 08:00 in the morning she’s still asleep, you know... Maybe she’s...little bit, but you know we’ll see what’s going on, try and help her. Hello”.*

Again, we considered this exchange demonstrated that the HCEAs and the programme makers were fully aware and cognisant at this point of Ms Y’s fragile and vulnerable condition.

Following this, Ms Y came back into the room and told the HCEAs that she had been able to contact the father of Ms Y’s daughter, and that he might be able to help her. Ms Y was crying. One of the HCEAs was then shown talking to the man on the phone: *“you know, [Ms Y’s first name] had a bit of a shock, we’re here today and you know she is being great considering”.*

Later, after talking to the father of Ms Y’s daughter, one of the HCEAs acknowledged: *“I know you are upset”*, as he spoke to Ms Y about how the debt came about and why she had not been able to keep up with the child care payments. Ms Y was sobbing during the following short exchange which then took place with the HCEAs [Ofcom’s description in bold]:

- Mr Anglin: *"So where are we now? Are you on benefits, what benefits are you on then?"*
- Ms Y: *Income support and just child benefit.*
- Mr O'Shaughnessy: *Is it easier for you to be on that to help your situation?*
- Ms Y: *Only because I need to sort out some things with her [Ms Y's daughter] where I'm not at work, otherwise I don't not work, I can't cope.*
- Mr O'Shaughnessy: *Have you been to your doctor about how you're coping at the moment? Are you on any medication? You are, yeah. What are you on at the moment [Ms Y's first name]? [Ms Y began to cry]*
- Ms Y: *[inaudible]*
- Mr O'Shaughnessy: *Is that anti-depressants? Yeah. Okay. The reason...the reason we ask this is to look at your whole situation okay, you may feel that we're delving, okay, but we need to get the whole picture yeah, yeah, so we understand the best way to deal with you okay. How long have you been on that?*
- Ms Y: *Four weeks now.*
- Mr O'Shaughnessy: *Okay".*

Following this, the HCEAs talked to Ms Y about how she might repay the debt in instalments. While this conversation was taking place, the programme makers filmed items around the living room, including close-ups of a pile of clothes lying on the floor, an ashtray and tobacco, and a clothes dryer in the kitchen. This filming supported the HCEAs' earlier comment about the state of the flat and that it reflected Ms Y's state of mind and the fact she was struggling.

The HCEAs then left, leaving Ms Y alone with the programme makers. One of the HCEAs said: *"...we'll leave you with these gentlemen, he'll have a chat with you, and give him opportunities [inaudible]"*. At this point, one of the programme makers began to talk to Ms Y about the enforcement and how she felt about it. Ms Y was sitting on the sofa, sobbing with her head resting on one of her hands. This was approximately 19 minutes after the programme makers had first spoken to her:

- Programme maker: *"Do you feel a little bit better about it?"*
- Ms Y: *No.*
- Programme maker: *With your work, tell me again about your little girl's condition and what actually happens?*
- Ms Y: *Sometimes she can't walk, sometimes she can't use some of her legs, it just depends, it varies. Obviously, when she's off, I'm not going to go to work with my child in hospital".*

The conversation continued, and Ms Y spoke in some detail to the programme makers about her personal circumstances, and about her daughter and the debt. The programme makers also asked Ms Y what had gone through her mind when she *"opened the door"* to the HCEAs, to which she replied: *"I didn't have a clue what was bloody going on, I didn't have a clue. I thought it was something to do with her [the daughter's] dad to be fair"*.

The programme makers then questioned Ms Y about her and her daughter's relationship with her daughter's father and asked about the last time she had worked and the benefits she had claimed. During the course of this interview, Ms Y spoke briefly to her daughter's father on the phone. The programme makers then asked Ms Y how she felt about the way the HCEAs had dealt with her, to which she said: *"They was quite nice [sic], I've never been in this situation before, so I don't know how they deal with other people"*. The programme makers continued to question Ms Y about her daughter, how she was home-teaching her, and what her plans were for Christmas.

After the interview, the programme makers interviewed one of the HCEAs (and later the other HCEA) about the enforcement and Ms Y's situation. The HCEAs referred again to Ms Y's current situation and her state of mind:

"When I first went in, you know, the house was unkempt, it's quite messy, you know it told me that the person living here was struggling..."

"So, you know, I think she's...she's in a bad way...it's an explanation to why she was living the way she is. She's depressed, and we came to that kind of conclusion...when we asked her, it kind of unfolded in front of us and we could see she broke down straight away and our experience told us that she was struggling, you know, she was struggling".

"She's having a really bad time and she's a single parent, she hasn't got much, she hasn't got anything. Her house is unkempt, but that's due to depression...".

During this interview with the HCEAs, one of the programme makers said of Ms Y: *"She's in a rut, ain't she"*, and said to the HCEAs: *"You're right, she's depressed. You can see it, you know"*.

Towards the end of the enforcement, approximately 55 minutes after the programme makers and Ms Y had last spoken, a further conversation took place. The programme-makers asked Ms Y how she now felt, and she responded that she felt *"a little better"*, because the HCEAs had not *"...taken any of my stuff"*. As mentioned previously, some close-up shots were filmed at this point of Ms Y's daughter playing with a doll and with a phone. After some further questions about how Ms Y felt about the repayment plan and her personal circumstances, the programme makers raised the issue of *"consents"* with her and about filming her daughter (as set out previously).

Although Ms Y was told about the purpose of the filming and appeared to agree to the programme makers' coming into her home, she had only just woken up and was

struggling to make sense of the situation. We acknowledged that she seemed to understand the potential consequences of the filming, asking if that meant she was going to be on TV, but it was also evident that the HCEAs and the programme makers could see the position she was in and appreciated her situation. They quickly realised that she was suffering from depression, as she later confirmed to them, and they subsequently learned that she was on anti-depressants and that she had been taking them for four weeks. We acknowledged Channel 5's comments in response to Ofcom's Preliminary View that she had done nothing to suggest that she was uncomfortable with her decision, was having second thoughts, or was not clear what she had agreed to. However, as set out above, in our view she was clearly distracted and not fully engaged with what the programme makers were saying to her.

Given all this, we considered it significant that the unedited footage showed that no further attempt was ever made by the programme makers to ensure that they really had obtained Ms Y's informed consent. We took into account that in both of their later conversations with Ms Y the programme makers made no effort to introduce themselves again or explain their presence or make sure that she understood that the footage being filmed could potentially be broadcast in a television programme. Rather, both of the later interviews appeared to take place on the basis that Ms Y had given her informed consent at the outset when she was first told about the filming. Similarly, although Ms Y appeared to agree to her daughter being filmed when the programme makers asked her, it was evident that at no time was the reason for the request for that consent explained clearly to her; indeed, the question about her daughter being featured appeared to have been asked as an afterthought since her daughter had already been filmed quite extensively by that point.

As set out in detail above, Ms Y was visibly upset throughout the enforcement. She also appeared to us to be distracted and her manner withdrawn. This did not materially alter as the enforcement and the filming went on. Ofcom is not in a position to determine as fact whether or not Ms Y's depression and her anti-depressant medication had an effect on her ability to comprehend fully the presence of the programme makers in her home and the purpose of the filming. However, her mental health is nevertheless a significant factor in considering her general demeanour and it is significant, in our view, to note in this context that she was clearly very upset and in a fragile state of mind, and that she was struggling to make sense of the situation.

Ofcom accepted that Ms Y could quite easily have been confused about what she had been told, particularly as she was told *"don't worry straight away"* and could have misunderstood what was meant when the programme makers explained that they were there to *"follow the process and follow how they deal with it and how it affects you"*.

Taking all of the above into account, and after considering Channel 5's representations on Ofcom's Preliminary View, we did not consider that Ms Y was in a position to give her informed consent to the filming (and subsequent broadcast) when she was first approached by the programme makers. We also did not consider that her informed consent was obtained later during the two separate interviews. Given that the programme makers were clearly aware of Ms Y's state of mind and her depression and the medication she was taking, we considered that it was incumbent on them in their later conversations with her to ensure that she was made fully aware of who they were and that she properly understood the nature and purpose of the filming. This did not happen.

Having carefully considered all the specific factors set out above, and considered Channel 5's representations on the Preliminary View, Ofcom did not consider that the programme makers could reasonably rely on the agreement given by Ms Y in their first encounter as informed consent. We also did not consider that it was reasonable for them to have concluded that they had gained her informed consent when they later asked her about filming her daughter. Accordingly, Ofcom considered that the programme makers had not secured informed consent from Ms Y for the filming of her and her daughter.

Was the filming warranted without consent?

Having reached the view that the filming of Ms Y and her daughter was undertaken without informed consent, we went on to consider whether the infringement of their legitimate expectation of privacy was warranted on the particular facts of this case.

The Code states that "warranted" has a particular meaning. This is that, where broadcasters wish to justify an infringement of privacy, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. Examples of public interest could include revealing or detecting crime, protecting public health and safety, exposing misleading claims by individuals or organisations or disclosing incompetence that affects the public.

We took into account Channel 5's argument that there was a public interest in the filming of the footage in that it showed the activities of the HCEAs while executing their official duties. We also considered Channel 5's submission that the enforcement of the debt was a public matter and that there is a clear public interest in seeing the activities of the HCEAs, the kinds of difficulties they face and the impact of their activities on the lives of those who are affected in the course of executing their official duties. We also considered Channel 5's submission that any right to privacy claimed by Ms Y was outweighed by Channel 5's Article 10 right to communicate, and the public's right to receive, information concerning matters of public interest such as the activities of HCEAs carrying out their official duties. We also took into account Channel 5's submission that "only the most weighty of private information" was capable of restricting its Article 10 rights.

Ofcom did not agree with Channel 5's interpretation of the decision in *Ali v Channel 5* in its representations on Ofcom's Preliminary View. Weighing up the respective ECHR rights of the parties, the court decided that the balance came down in favour of the claimants' Article 8 privacy rights. While the court accepted that Channel 5 had editorial discretion in the tone and way it told the story it did not accept that Channel 5's editorial discretion extended to the decision to include the private information, unless it was in the public interest to do so. On the facts in *Ali* the court considered that overall the programme did contribute to a debate of general interest, but that the inclusion of the claimants' private information went beyond what was justified for that purpose. The court went on to say that the focus of the programme was upon the drama of the conflict which had been encouraged by the HCEA to make "good television".

Applying the same approach as the court in *Ali*, Ofcom accepted that the public interest was engaged in making this programme in that it illustrated the type of interaction HCEAs routinely engage in and the difficulties experienced by people in the position of

Ms Y. Ofcom also accepted that Channel 5 had editorial discretion in the tone and way it told the story and that its editorial discretion extended to the decision to include the private information, but only if the inclusion of the private information at issue was justified in the public interest. Therefore, having satisfied itself that Ms Y and her daughter had a legitimate expectation of privacy, Ofcom intensely focussed on the weight of the comparative rights under Articles 8 and 10 that are in issue in order to decide where the balance lies in these particular circumstances.

On the facts of this case, we considered that the interference with Ms Y's right to privacy and that of her daughter was particularly serious, particularly in light of the manner in which the footage was obtained within the family home and Ms Y's state of mind and general well-being. We considered that the level of interference with the legitimate expectation of privacy of Ms Y and her daughter was significant and of such a nature and gravity as to outweigh the public interest in programming of this nature and the wider Article 10 rights of the broadcaster and programme makers.

Ofcom also considered whether, in accordance with Practice 8.9, the material had been obtained proportionately in all the circumstances. The footage was obtained while the programme makers accompanied the HCEAs in carrying out their duties. The filming by the programme makers' main camera was not concealed, but took place without, in our view, Ms Y's informed consent. The filming by the body cameras worn by the HCEAs was not disclosed to the complainant who was unaware that they were filming the enforcement and, as set out already above in relation to Practice 8.13, we considered this had been obtained surreptitiously. In Ofcom's view, the filming, both by the body cameras and the main camera was not warranted in these circumstances, particularly as it took place in a private home and, therefore, allowed the programme makers unfettered access to very sensitive and personal matters. As mentioned above, although the fact of the enforcement of a Writ may be a matter of public record, it does not follow that its consequences and impact for a debtor are also necessarily public matters in respect of which no legitimate expectation of privacy arises. Nor does it follow that intrusive footage capturing the debtor's reaction and intimate exchanges between the debtor, the HCEAs, and in this case the programme makers, in a family home is justified by the public interest in learning about the HCEAs' work and the enforcement process. While we took into account Channel 5's representations on this point, Ofcom considered therefore that the means of obtaining the material had not, in all the circumstances, been proportionate for the purpose of Practice 8.9.

Having taken all the above factors into account, including Channel 5's submission, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the public interest in the obtaining the footage of Ms Y and her daughter in this instance did not outweigh their legitimate expectation of privacy in relation to the filming of them, or justify the very significant intrusion which the obtaining of the footage caused to their rights in this regard.

Therefore, Ofcom considered that the complainant's privacy and that of her daughter in connection with the obtaining of material included in the programme was unwarrantably infringed.

- b) Ofcom considered Ms Y's complaint that her and her daughter's privacy was unwarrantably infringed in the programme as broadcast because she did not give consent for the footage of them to be broadcast.

We had regard to Practice 8.6 of the Code which states that if the broadcast of the programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. We also took into account Practices 8.20 and 8.21 in relation to Ms Y's daughter.

The complainant's and her daughter's legitimate expectations of privacy

We assessed whether Ms Y and her daughter each had a legitimate expectation of privacy regarding the broadcast of footage of them included in the programme. We applied the same objective test as set out in head a) above. We also took into account the considerations relating to children as set out in head a) that may result in a child having a greater legitimate expectation of privacy or in having an expectation of privacy in circumstances where an adult might not.

As set out in the "Programme summary" above, we took account of the material shown in the programme. In particular, Ms Y was shown not only discussing matters relating to the debt with the HCEAs, but also expressing her feelings about the presence of the HCEAs in the house and explaining her personal circumstances, including the health of her daughter. The programme also showed Ms Y visibly upset, her daughter playing on the floor, and revealed the unkempt state of their home. Neither Ms Y's face, nor her daughter's face, were obscured in the programme, nor were their voices obscured or disguised. Ms Y was referred to by name in the programme, and while her daughter was not named, she was referred to as being Ms Y's daughter. Therefore, we considered that both were identifiable in the programme.

Practice 8.14 states that "Material gained by surreptitious filming and recording should only be broadcast when it is warranted". As explained in detail at head a) above, Ofcom considered that some of the footage filmed of Ms Y had been obtained surreptitiously by the body camera worn by the HCEAs.

For the reasons set out in head a) above, Ofcom considered that the all the footage included in the programme, (i.e. the footage solely captured on the HCEAs' body cameras and the footage filmed on the main TV camera by the programme makers) was highly sensitive and private in nature. We also considered that the intrusion was particularly acute as a result of the subsequent disclosure of that footage in a nationally televised programme (with attendant exposure that substantially exceeded anything which someone in the complainant's position could possibly have expected at the time)²⁰. In these circumstances, we considered that the inclusion of this material in the programme as broadcast constituted a very significant interference with Ms Y's and her daughter's privacy rights.

Consent

For all the same reasons as set out in head a) above, and after taking into account Channel 5's representations on the issue of consent, we did not consider that the broadcaster or the programme makers had, in fact, secured Ms Y's informed consent for the footage of her and her daughter to be broadcast. Given this conclusion, we therefore considered that Ms Y had not given her informed consent for the footage of her and her daughter to be subsequently broadcast in a television programme. We therefore went

²⁰ *Peck v United Kingdom* [2003] ECHR 44.

on to consider whether the broadcast of this material without consent was warranted under the Code.

Whether the infringement was warranted

We again carefully balanced Ms Y's and her daughter's rights to privacy regarding the inclusion of the relevant footage in the programme with the broadcaster's right to freedom of expression and the audience's right to receive the information broadcast without unnecessary interference. We also took into account that the footage depicted both Ms Y and her daughter in their home as Ms Y interacted with the HCEAs in dealing with her debt. Footage of her home was shown, with some focus on its unkempt appearance. She was visibly upset throughout the footage shown in the programme.

We considered that the programme involved a very significant intrusion into the complainant's privacy and that of her daughter, as a consequence of including their exchanges within the confines of the domestic home, the interior of that home, and how they lived and interacted with others in that environment, including the HCEAs and the programme makers. This went substantially beyond the fact of the outstanding debt itself. Additionally, the material filmed and subsequently broadcast included footage of Ms Y as she was visibly upset in circumstances where it was known at the time of filming, and acknowledged by the HCEAs and the programme makers, that Ms Y was "struggling" and that she suffered from depression and had been taking anti-depressant medication for four weeks.

As above in head a) we took into account Channel 5's argument and its representations on the Preliminary View that there was a public interest in broadcasting the footage in that it showed the activities of the HCEAs while executing their official duties.

As previously, we acknowledged that the public interest was engaged in broadcasting programmes that highlight the serious issue of debt and the issues which the HCEAs encounter when seeking to enforce court orders made in that regard. For example, the programme showed how significant costs can be incurred during the debt recovery process and how HCEAs operate, arriving unannounced and entering a debtor's property. We also recognised that the inclusion of named or identifiable individuals may enhance that public interest by making the broadcast footage more accessible or engaging to the watching audience²¹. However, in weighing up the competing rights of the parties, Ofcom took particular account of the serious nature of the interference with the complainant's and her daughter's rights to privacy, particularly in light of the circumstances in which the footage was obtained within the family home, and the sensitive and intimate matters which were recorded about Ms Y's and her daughter's private and family life. Ofcom considered that Ms Y's legitimate expectation of privacy and that of her daughter was a significant factor in weighing up the competing rights of the parties, together with the fact that Ms Y did not give her informed consent to the broadcast of this material.

Having taken all the factors above into account Ofcom considered that, on balance, the interference with the rights to privacy of the complainant and her daughter in this case was significant and of such a nature and gravity as to outweigh the public interest in programming of this nature and the wider Article 10 rights of the broadcaster and

²¹ *In re S (identification: Restrictions on Publication)* [2005] 1 AC 593 (at para 604); *In re Guardian News & Media Ltd* (at para 63).

programme makers. Ofcom also took the view that the broadcast of the footage of Ms Y obtained by the surreptitious filming was not warranted for the purpose of Practice 8.14 in these circumstances.

For all the reasons set out above, Ofcom considered that the complainant's privacy and the privacy of her daughter were unwarrantably infringed in the programme as broadcast.

Ofcom has upheld Ms Y's complaint, made on her own behalf and on behalf of her daughter, of unwarranted infringement of privacy in connection with the obtaining of material included in the programme, and in the programme as broadcast.

Upheld

Complaint by Mrs R on her own behalf and on behalf of her two children (minors)

Can't Pay? We'll Take It Away!, Channel 5, 3 May 2017

Summary

Ofcom has upheld this complaint made by Mrs R made on her own behalf and on behalf of her two children (minors) of unwarranted infringement of privacy.

The programme included footage of Mrs R and her children, and both the exterior and the interior of their home, as Mrs R spoke with two High Court Enforcement Agents ("HCEAs") who were there to enforce a Writ of Control ("Writ") against her estranged husband for the repayment of a debt to a shipping company. The HCEAs visited Mrs R's house on two separate occasions to enforce the debt which had accrued. On the first visit, the filming took place on the doorstep of her home and then, inside her home. On the second visit, the filming took place predominately on the doorstep and driveway, and towards the end of the enforcement process there was filming inside her home. All of the footage shown in the programme of the interior of Mrs R's home was recorded by the body cameras worn by the HCEAs but belonging to the programme makers.

Ofcom found that Mrs R and her children had legitimate expectations of privacy in relation to the filming and the subsequent broadcast of the footage of them without their consent. We considered their legitimate expectations of privacy, on balance, outweighed the broadcaster's right to freedom of expression and the public interest in the particular circumstances of the case. Therefore, Mrs R's and her two children's privacy was unwarrantably infringed in both the obtaining and broadcast of the footage included in the programme.

Programme summary

On 3 May 2017, Channel 5 broadcast an edition of *Can't Pay? We'll Take It Away!*, a series which follows HCEAs as they attempt to resolve debt disputes through negotiated settlements and asset seizures. The programme's narrator introduced the programme:

"Threats...Anger...Desperation [footage of the complainant, Mrs R, outside her home was shown in which she said: "I've lost everything, I've no house, I've no nothing"] What happens when debt...tracks you down...up and down the UK...we see Britain's most resilient High Court Enforcement Agents...dealing with every debtor's worst nightmare...because if you can't pay, they'll take it away".

This particular edition included a story about the complainant's estranged husband, Mr R who owed £4,651 to a shipping company. The programme's narrator introduced the relevant section of the programme:

"Recent research shows that low wages coupled with rising prices could leave more families struggling with debt this year than at any other point over the last decade. With households now borrowing more and saving less, debt levels are reaching new highs".

A caption was also shown: *"Over 600,000 families in England and Wales spend more on repaying debts than on food"*.

The narrator explained that the HCEAs, Mr Stewart McCracken and Mr Elmor Victor, were in Rossendale, Lancashire, to recover the money owed by Mr R.

Footage was shown of the HCEAs as they arrived at the location, approached the complainant's house and knocked on the front door. The narrator explained that if Mr R was unable to pay the debt, then the agents *"can seize goods including vehicles to cover the debt"*. The complainant, Mrs R, was shown as she opened the door. Her eldest child, whose face was obscured, was also present. The following conversation took place:

Mr Victor: *"Hi, my name is Mr Victor, I'm a High Court Enforcement Agent. We're after [Mr [Mr R]."*

Mrs R: *I'm sorry, he doesn't live here.*

Mr Victor: *He doesn't live here?*

Mrs R: *No.*

Mr Victor: *Are you related to him?*

Mrs R: *I'm his ex-wife, yeah.* [Mrs R told her eldest child to come away from the door]

Mr Victor: *Ok, we've got it down that he does live here, have you got any documentation to prove otherwise?*

Mrs R: *No, 'cause he's not been not living here that long.*

Mr Victor: *Is this rented accommodation?*

Mrs R: *Yeah.*

Mr Victor: *Have you got a rental agreement?*

Mrs R: *I have somewhere, yeah, but I'm not sure where".*

The HCEAs asked whether Mrs R would be able to contact Mr R and she agreed and closed the front door on the HCEAs. The narrator said that *"while the woman, [Mrs R], goes to call [Mr R], the agents take a look around the property"*. One of the HCEAs indicated to his colleague to go towards the back of the property and footage was shown of the back garden, which had several large packages in it. The narrator said: *"As well as several packages which could be connected to [the]...business, there's a work van parked on the street. Stewart takes a closer look"*.

The HCEA was shown as he opened the back door to the van and looked through the items in it. The other HCEA explained that he had found a receipt inside the van with Mr R's name on it. The narrator said:

"The car parts and the receipt indicate that [Mr R] owns the van. With evidence mounting that he does in fact live here, Stewart talks to [Mrs R] again".

Both HCEAs were shown as they approached the front door again and they asked Mrs R about the ownership of the van. Mrs R said that Mr R had borrowed the van and she again told the HCEAs that he did not live at the house.

The narrator said:

"Despite her claims, [Mrs R] hasn't provided any proof that [Mr R] has moved out. The van won't cover the four and a half thousand pound debt, but as the agents have a duty to enforce the debt, they turn their attention to the Fiat on the driveway".

The HCEAs explained to Mrs R that unless payment was made, they would take the car. Mrs R said that the car was hers and the agents asked her to provide some documentation as proof. Mrs R went to retrieve the documentation from her house and as she did this, one of the HCEAs phoned the office to check whether the vehicles were subject to finance arrangements. The office confirmed that both vehicles could be seized. Mrs R returned to the door with a receipt and one of the HCEAs told her that the car was not in her name and had been sold to Mr R's business. Mrs R took the car receipt from the agent and closed the front door. Mrs R then returned to the front door holding her youngest child, whose face was obscured, and repeated her assertion that the agents could not take the car. The HCEAs explained the reason they were able to take it and placed a clamp on the vehicle. The HCEAs told Mrs R that if she tried to remove the clamp she would be arrested for criminal damage. She also told the HCEAs that they had *"no right"* to be on her property and repeated her claim that Mr R did not live there.

Mrs R closed the front door on the HCEAs and the narrator explained that the agents had been there for 20 minutes. Mrs R then returned to the front door and was upset. The following conversation took place:

Mrs R: *"I just don't know what to do...I'm really not well myself.*

Mr Victor: *I appreciate that.*

Mrs R: *I don't know what he'd want me to do, he's on his way.*

Mr Victor: *He's on his way. Well when he comes here, we'll have a chat.*

Mrs R: *I didn't expect this to happen, we've had to shut the business because it's not...we've tried to sell some parts to get some money in for Christmas for the kids. You know, we've two kids. We've split up because of it all. Because of the stress of everything. He's temporarily living at his mum's, we are married but we've had to split because times haven't been really kind to us at the moment, that's all".*

In a separate interview to camera, the HCEA spoke about the *"different emotional stages"* debtors go through and said: *"People go through so many different emotions to try to stop us doing our duty".*

Footage of Mr R was shown as he arrived and entered the house with the HCEAs who told him the total amount due and the consequences of not paying the debt. Mr R explained what had happened to the business and that he had £100,000 worth of stock which the HCEAs could remove. At various points during this exchange, Mrs R was shown, and her two children, with their faces obscured, were also shown in the background.

The HCEAs told Mr R that they needed to resolve the matter by taking payment in full or by removing goods to cover the debt. The following conversation then took place between Mrs R, Mr R and the HCEAs:

Mrs R: *"Can you just go back outside, give me ten minutes and let me make another phone call?"*

Mr McCracken: *If you need to make a phone call.*

Mrs R: *Yeah, I want you to leave the property because it's.*

Mr McCracken: *We won't be leaving the property.*

Mrs R: *I told you this, they're not going to leave.*

Mr R: *Step outside.*

Mr McCracken: *No, we won't be leaving the property.*

Mr R: *You either leave the property or I'm going to take your fucking head off".*

The narrator explained:

"The family has reached crisis point, with tempers rising, Stewart and Vic will have to get this volatile situation under control, before it turns ugly".

Following a commercial break, there was a recap of what had occurred previously in the programme. This included footage of Mrs R and her eldest child when she first opened the front door to the HCEAs and explained that she was Mr R's "ex-wife".

Footage was shown of the HCEAs, Mr R, Mrs R and their youngest child in the lounge. The narrator explained that while standing in the hall near the front door, one of the HCEAs had found the car key. Mr R asked why he had taken the key and the HCEA explained that this was to enable him to inspect the vehicle. Mrs R protested that she had not given permission for him to take the key, to which he said: *"it's been seized"*.

In a separate interview, the HCEA explained that it was *"about finding a trigger point with the defendant"* which *"makes people change their mind and actually take it seriously when we've taken control of something they don't want to lose"*.

The HCEA was shown as he re-entered the house after inspecting the vehicle. The narrator said that Mr R had spoken to his family and had some *"promising news"*. Mr R explained to the HCEAs the various sources he would use to part-pay the debt. The HCEAs told Mr R that it was not enough money to cover the balance and the vehicle would still be removed. During this time Mrs R could be seen with her youngest child in the background.

Mrs R, who was still with her youngest child, then asked: *"What about if I can get another £1,000 together?"*. Her eldest child could be seen in the background as one of the HCEAs said *"the more you can raise the better"*. Becoming upset, Mrs R replied:

"We will pay. We're ringing people up we wouldn't even normally ask...ringing my landlady. I'm ringing everybody. You can see what sort of family we are. This is a complete and utter accident... We've never had anything like this before. We've never been in bother with anything. We don't even know what to do. You know, Christmas in this house isn't even happening this year. How do you tell two children that they're getting no Christmas presents because everything's gone wrong?".

Mrs R was then shown on the telephone as she spoke with her grandfather while the narrator explained: *"If she's unsuccessful, she stands to lose what little she has"*. In a separate interview one of the HCEAs said:

"It's heartbreaking in a way, that other family members are dragged into, into the situation but that's what debt does. Debt follows you around, it drags family members in. They have to get involved to try and resolve the situation".

Mrs R's grandfather and another family member arrived at the house and Mrs R's grandfather agreed to pay £1,000. The narrator said:

"With the help of [Mrs R's] grandad, the couple can pay £3,000 today, with a promise to pay the balance, which has now increased with fees, in a week's time. But the vehicles will be held as collateral under what's known as a Controlled Goods Agreement, if [Mr and Mrs R] don't pay".

The HCEA was shown outside Mrs R's house as he phoned the office to see if the claimant would accept the offer. The narrator explained that the claimant had accepted the offer and the HCEA re-entered Mrs R's property to inform her that if they paid £3,000, they would not remove the car. Mrs R's two children could be seen in the background as the HCEAs spoke to her. The HCEAs explained that the balance would need to be paid within seven days. The narrator then said: *"With the help of [Mr and Mrs R's] families, the case is resolved for now"*. Mrs R was shown crying and hugging her grandad before he left the property with the other family member and Mrs R's eldest child.

Mr R was shown as he signed the paperwork. As the HCEAs left Mrs R's house the narrator said: *"but if [Mr R] doesn't pay £2,500 in seven days, the agents will be back"*. One of the HCEAs then commented: *"family life's hard, isn't it? Especially for any young couple but, I just hope they can get it sorted"*.

Later in the programme, the narrator said:

"High Court Enforcement Agents are trained to deal with aggression in a controlled way, but in Stewart and Vic's next case... the agents are back to see [Mr and Mrs R]... and have to get tough...".

Following a commercial break, the narrator said:

"A recent report from a leading financial institution has shown that nearly 30% of Britain's are struggling to pay off their debts. One in five have reported having trouble

sleeping at night due to debt worries. While nearly a sixth are afraid to answer the door or the phone because of their creditors”.

A caption was also shown:

“21% of people who sought debt advice from a leading financial advisory body have fallen behind on existing debt”.

The programme explained that the two HCEAs were on their way back to Rossendale because Mr R had broken his payment plan. The HCEAs were shown arriving at the house and knocking at the front door before approaching the ground floor window. The narrator explained that the car, which had been listed for removal if the agreement was broken, was parked outside.

One of the HCEAs offered Mrs R his business card through the ground floor window so that she could phone him on his mobile. He explained to her that they would seize the vehicle, to which she responded: *“you can’t, it doesn’t even belong to me, it’s my grandad that’s paid for it”.*

The narrator said:

“The last time the agents were here, [Mrs R] produced a receipt for the car which stated it belonged to the debtor’s business, but now [footage of Mrs R shown as she handed a document through the window to the agent] she appears to have a receipt to show it belongs to her grandad”.

Footage was shown of the HCEAs as they spoke to Mrs R through the front window about the document she had provided and why she had not provided it to them previously. The HCEAs told Mrs R that the document did not prove the vehicle was hers and that the car was under a Controlled Goods Agreement and could be seized. Mrs R was then shown as she held her youngest child, whose face was obscured. She continued to disagree with the HCEAs and told them that she would contact the police. She also confirmed that Mr R was on his way to the property and that they would have to *“wait for him before you remove anything”*. One of the HCEAs responded *“I’m not waiting for anyone”* and he was shown placing a clamp on the car.

Mrs R continued to speak to the HCEAs through the open window, telling them that the car did not belong to Mr R. In a separate interview, the HCEA said:

“When somebody tells a lie they’ve then got to remember what they’ve lied about and it’s us remembering that they’ve lied to us in the first place. So, it’s picking apart a puzzle that they’ve created, and they want us to believe”.

The narrator explained that the HCEAs would wait until Mr R arrived at the house before they removed the car in the *“hope he will make a payment and get the matter resolved”*.

This was followed by footage of Mr R walking along the street towards the HCEAs’ van. He was asked by the HCEAs why he had broken the payment plan and told them it was because he was unable to pay. Mr R discussed setting up a new payment plan with the HCEAs, but he was told that the claimant would not accept that proposal and the narrator explained *“Vic*

and Stewart's only option is to call recovery to come and get the car". Mr R continued to tell the HCEAs that they were not entitled to take the car.

Later, Mrs R was shown as she walked out of her house towards the HCEAs by the car. She informed the HCEAs that she had spoken to the police and that they had told her that the HCEAs were not allowed to take the car and that it belonged to her grandfather. When the HCEAs challenged her about this she explained to the HCEAs that he had not said anything about this to them previously when he came to the house *"because he didn't know what was going on, because he was frightened"*. She also said: *"he didn't come here for the car, he came here to take the children, to sort us out"*.

The HCEAs continued to question Mrs R about the ownership of the vehicle and why she was unable to provide the *"registration papers"*. Mrs R gave conflicting responses, explaining at first that she *"hadn't sent it off yet"* and, when questioned further by the HCEAs, saying that she had sent off the relevant documentation. This was followed by an interview with one of the HCEAs, in which he explained:

"At the end of the day, whatever you throw at us, we'll take it. Because, at some point you're going to overstep the mark and your lies are going to backfire, because that's the difficult thing about lying, is really to stick to the story".

The narrator then said: *"The agents have been trying to reason with [Mr and Mrs R] for a quarter of an hour but then [Mrs R] drops a bombshell"*. Mrs R explained to the HCEAs that her landlord had evicted her from the property and that she had ten days to leave the house and find somewhere else to live. She added:

"...Now I'm homeless, with two children before Christmas, with no money because last time you came I gave you everything I had...I gave you everything I had. I've nothing, I have nothing...He's trying to work his hardest to try and earn a bit of money to put together for Christmas. We're trying here. Can you please just work with us and try and do something? Please, I'm begging you. I've lost everything. I've no house, I've no nothing for my children. You know I don't even have a fridge freezer? I'm having to try and beg and borrow money now".

In a separate interview, one of the HCEAs explained that it was *"heart-breaking"* but they had to *"try and execute the Writ in the most professional way as possible"*. The narrator then said: *"It's clear that the family has hit rock-bottom, so Stewart calls the office with an update"*. Footage was shown of the HCEA as he made the call and explained that Mrs R was being evicted. He detailed the various options which would be available to the claimant, which included: removing the vehicle, *"calling it quits"*, or setting up a payment plan of £200 a month until the balance was paid. He explained to Mr R that it was up to the claimant to advise the HCEAs about how to proceed. His colleague was shown on the telephone before informing Mr R that the complainant had accepted Mr R's offer to pay £100 on the day and then £200 per month to settle the balance.

Footage was shown of Mr R and the HCEAs as they entered the conservatory of the house to sign the paperwork. Mrs R's children could be heard in the background and Mrs R was also shown as she held her youngest child.

The part of the programme featuring Mrs R and her children ended. At the end of the programme, Mr R was shown briefly with the accompanying caption:

"[Mr R] has not kept up with his payment plan. The case is ongoing".

The programme concluded.

There was no further reference to, or footage of, Mrs R, or her children in the programme.

Summary of the complaint and broadcaster's response

The complaint

- a) Mrs R complained that her privacy and that of her two children was unwarrantably infringed in connection with the obtaining of material included in the programme because she and her children, and the inside of their home, were filmed without her consent. Mrs R said that she was not aware that the body cameras worn by the HCEAs were being used to film for a television programme.
- b) Mrs R also complained that her privacy and that of her two children was unwarrantably infringed in the programme as broadcast because the footage of her and her children was included in the programme without her consent.

By way of background, Mrs R said that she had mental health issues which were made worse by the broadcast of the programme. Mrs R added that the programme had upset her children and her eldest child was unable to sleep "out of fear".

The broadcaster's response

Channel 5 said that it is not the law in the United Kingdom that people have a right not to be on television. Nor is it the law that footage or photographs of persons cannot be taken and then broadcast without their consent. The broadcaster said that what matters in each case is whether or not rights are being infringed, and, if they are, whether there are good reasons for those rights to be infringed. Channel 5 said that this requires the balancing of the rights of privacy against the right to freely broadcast matters of public interest.

Channel 5 referred to the well-established methodology discernible from the Strasbourg case-law in relation to the balancing of Article 8 of the European Convention on Human Rights ("ECHR") i.e. the right to respect for private and family life and Article 10 of the ECHR, i.e. the right of freedom of expression. It referred particularly to the Grand Chamber cases of *Von Hannover v Germany (No 2)*¹, *Axel Springer v Germany*², and *Couderc v France*³. It said that these cases identify the factors which must be considered when conducting the balancing exercise between the competing Article 8 and Article 10 rights. The first issue, to which the case law attributes particular importance, is whether the information is capable of contributing to a debate of general interest, there being little scope under Article 10 for restrictions on freedom of expression when a matter of public interest is at stake. It said that

¹ [2012] ECHR 228.

² [2012] EMLR 15.

³ [2015] ECHR 992.

in *Re Guardian News and Media Ltd*⁴ Lord Rodgers observed that the weight to be attached to the competing interest would depend on the facts of the particular case and that:

“...in this connexion it should be borne in mind that – picking up the terminology used in the Von Hannover case 40 EHRR 1 – the European court has suggested that, where the publication concerns a question “of general interest”, article 10(2) scarcely leaves any room for restrictions on freedom of expression: *Petrina v Romania*...”

Channel 5 said that the decisive question is whether the broadcast is capable of contributing to a debate of public interest.

It said that the broadcast of the section of the programme concerning Mrs R was clearly capable of contributing to a debate of public interest, namely the manner in which civil judgments are enforced, the powers granted to HCEAs, the consequences of not paying proper attention to personal debts, and the way in which particular personal circumstances can, or should, play a part in the enforcement process. Where, as in this case, the subject matter of a broadcast contains information which is of public interest, and the broadcast of the material is capable of contributing to a debate of general interest, then this should be accorded significant weight when conducting the balancing exercise.

Channel 5 said that the form of the expression, i.e. broadcasting the unobscured footage of the interactions with the HCEAs, was also protected under Article 10. It said that *Jersild v Denmark*⁵ emphasised that it is not for the national authorities to:

“...substitute their own views for those of the press as to what technique of reporting should be adopted by journalists. In this context the Court recalls that Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed”.

This principle, according to Channel 5, was recently reaffirmed in *Khuja v Times Newspapers Ltd and others*⁶:

“...Does the public interest extend to PNM’s identity? This case differs from earlier cases in which the same question has arisen because the order sought by PNM would not prevent the identification of a party to the criminal proceedings or even of a witness. To my mind that makes it even more difficult to justify an injunction, for reasons which I have given. But in any event, I do not think it can be a relevant distinction. The policy which permits media reporting of judicial proceedings does not depend on the person adversely affected by the publicity being a participant in the proceedings. It depends on (i) the right of the public to be informed about a significant public act of the state, and (ii) the law’s recognition that, within the limits imposed by the law of defamation, **the way in which the story is presented is a matter of editorial judgment, in which the desire to increase the interest of the story by giving it a human face is a legitimate consideration. PNM’s identity is not a peripheral or irrelevant feature of this particular story**” (emphasis added by Channel 5).

⁴ [2012] 2 AC 697 (at paras 48-51).

⁵ [1994] 19 EHRR 1.

⁶ [2017] UKSC 49.

The broadcaster said that the Article 10 rights of it and the programme makers to impart, and the audience to receive, the information in *Can't Pay? We'll Take It Away* must weigh heavily in the balancing exercise. It said that there must be "very weighty" privacy interests at stake if any restriction is to be placed on those Article 10 rights.

Channel 5 said that this should not be taken as suggesting that its Article 10 rights (and those of the audience) automatically take priority over any Article 8 right enjoyed by Mrs R – neither right trumps the other. However, it said that, in the particular circumstances of this case, and the fact that the broadcast was capable of contributing to a debate of general interest, as opposed to other broadcasts where, say, the purpose of the broadcast is light entertainment or popular comedy, the case law establishes that "very weighty" privacy interests must be at stake if the intense focus on the interaction of the rights will swing against the Article 10 considerations.

It submitted that when properly considered, the balancing equation must be between the heavily weighted public interest in broadcasting the programme, including the margin of appreciation to include footage of Mrs R unobscured, and "such Article 8 rights as might arise in relation to the footage".

*Campbell v MGN Ltd*⁷ provided clear authority for this. In that case, the photographing of Ms Campbell, by a camera of which she was unaware, was not, of itself, a breach of her privacy. This was because she was not engaged in any private activity when the photos were taken: she was walking along a public road⁸. Channel 5 noted Lord Hope and Lady Hale both observed that the activity photographed must be private⁹.

Channel 5 said that Article 8 did not confer an unqualified right of privacy. What it conferred was a right to "respect" for privacy rather than an absolute right: *M v Secretary of State for Work and Pensions*¹⁰. It said that it was neither possible, nor desirable, to seek to give individuals complete autonomous control over information that relates to them: *O'Halloran v UK*¹¹. In addition, sub-article (2) provided that the right conferred by (1) should not be interfered with by a public authority unless such interference is lawful and necessary in a democratic society in the interests of, inter-alia, the economic well-being of the country, the prevention of disorder, and for the protection of the rights and freedoms of others. Only if the claimant establishes that his or her Article 8 rights are engaged, is it necessary for the Court to perform a balancing exercise and weigh the claimant's Article 8 rights against the

⁷ [2004] 2 AC 457.

⁸ Ibid, Lord Nicholls, para 73: "In the present case, the pictures were taken without Ms Campbell's consent. That in my opinion is not enough to amount to a wrongful invasion of privacy. The famous and even the not so famous who go out in public must accept that they may be photographed without their consent, just as they may be observed by others without their consent. As Glesson CJ said in *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* (2001) 185 ALR 1, 13, para 41: '**Part of the price we pay for living in an organised society is that we are exposed to observation in a variety of ways by other people.**'" Emphasis added by Channel 5.

⁹ Ibid. Lord Hope, para 93 and 94; Lady Hale, (at para 154).

¹⁰ [2006] 2 AC 91 (at para 83).

¹¹ [2008] 46 EHRR 21.

defendant's rights under Article 10¹². If the claimants had no reasonable expectation of privacy, Article 8 is not engaged, and the claim fails at the outset.

Channel 5 said that in this case the sequence in the programme which featured Mrs R concerned the activities of HCEAs conducting official Court business, specifically executing a Writ permitting the seizure of goods, chattels and other property of Mr R, who made no complaint about the filming or the broadcast, in order to satisfy a judgment debt.

It added that: the activities of HCEAs; the manner in which the law is utilised or ignored; the kinds of difficulties the HCEAs face when executing their duties; and the impact of the activities of HCEAs performing their duties on the lives of those who are affected by those duties, are all matters of public interest.

For all these reasons Channel 5 said it was appropriate and reasonable for it to include footage of people interacting with the HCEAs in the programme. Channel 5 added, however, that each case is assessed on its own facts, and matters such as the unusual vulnerability of a particular person or situation could impact on decisions to include particular footage in particular programmes. Channel 5 said that it never intentionally infringed any legitimate right to privacy.

Channel 5 said that the execution of a Writ issued by the High Court is a public matter, it is not a private matter. The interactions involving HCEAs at Mrs R's home were not a part of any private life protected by Article 8 of the ECHR. However, communications about those interactions are protected by Article 10 of the ECHR.

The Writ authorised the HCEAs to enter the complainant's house and seize any goods in the premises which could not be proven to be the property of a person other than Mr R. In this case, as the programme demonstrated, the HCEAs were only partially successful in executing the Writ, and it took two separate attendances to achieve that.

Channel 5 said that there was no breach of any privacy rights of Mrs R involved in the HCEAs recording their activities by using body cameras, especially as at no time were the cameras hidden or concealed. It said that even if it were otherwise, *Campbell*¹³ is clear authority for the proposition that covert filming does not, of itself, breach Article 8.

The programme involved two segments concerning Mrs R and her children. In the first segment, the interactions between the HCEAs and Mrs R were filmed mainly from the exterior of her home. Channel 5 said that Mrs R would have been aware that she was being filmed openly by the camera crew with their large cameras, as well as by the body camera worn by the HCEAs. When Mr R arrived at the property he invited the HCEAs inside but Mrs R had kept them outside. None of the footage filmed on the body cameras with Mr R present involved Mrs R doing or saying anything particularly private. Further, Channel 5 said that Mr R volunteered information which might be considered private, but he had not complained about the filming or the broadcast and, the debt was his.

¹² *Murray v Express Newspapers plc* [2009] Ch 481 at (para 27); *Associated Newspapers Ltd v HRH the Prince of Wales* [2008] Ch 57; *McKennitt v Ash* [2008] QB 73 at (Para 11).

¹³ [2004] 2 AC 457.

Channel 5 said that Mrs R's children were wholly obscured and unidentifiable in the broadcast and that care was taken to obscure photographs and other private items in the home.

It said that, unusually, the programme contained a second segment featuring Mrs R. This segment was filmed entirely outside Mrs R's home, openly, by the camera crew with their large cameras, as well as by the body cameras worn by the HCEAs. While the body cameras were owned by the production company, they were not imposed on the HCEAs who would have worn body cameras when attending the enforcement whether the production team were present or not. Therefore, whether or not the programme was in production, the interaction between Mrs R and the HCEAs would have been filmed by the HCEAs.

All footage filmed, whether by the camera crew or body cameras, was thoroughly reviewed by the programme makers to determine whether or not there was sufficient public interest in the filmed material, given the editorial context of *Can't Pay? We'll Take It Away!*, to consider including the footage in a broadcast. After that initial review, Channel 5 said that the footage was reviewed at least twice more by senior members of the production team to consider the content, the context and the relevant public interest. The footage was then cut for the purposes of broadcast and reviewed by the programme makers' independent lawyer to ensure the cut complied with Ofcom's Broadcasting Code ("the Code") and the "general law". The cut was then reviewed by a senior member of the Channel 5 Commissioning team as well as a senior member of the Channel 5 Content Legal Advice team. It was only after all those separate considerations had occurred that the decision to broadcast was made.

This was the identical process that would be undertaken if a production company were obtaining access to footage filmed by the HCEAs before the production company became aware of the existence of the footage. Channel 5 said that the footage of Mrs R had been scrutinised and considered in exactly the same way as it would have been had the production company not been present and the HCEAs were wearing their own body cameras.

Although Mrs R was unhappy about the presence of the cameras on the first occasion, this was insufficient to render the filming objectionable. Mrs R was told soon after the HCEAs arrived at her property that the programme makers were filming for broadcast on Channel 5. When she asked the programme makers to "go away" she was told that they would retreat to the high street and continue filming. Accordingly, she would have been well aware that all filming of the interactions between her and the HCEAs (given that most of those interactions were in the open, outside the home) was possibly going to be broadcast.

The broadcaster said that when Mr R arrived, he was told that the programme makers were filming a documentary. He invited the HCEAs inside the house because he did not want to talk in front of the programme makers' cameras and when Mrs R's grandfather arrived he acknowledged the presence of the programme makers and later joked about being "a TV star now". Channel 5 said that it was clear that everyone filmed was aware of the open filming of the enforcement action and the possibility of the broadcast of that footage.

On the second occasion, all of the filming occurred in the open, outside the house. Channel 5 added that both Mr and Mrs R were aware of the filming; Mr R asked the crew to film the neighbours because he regarded them as curtain-twitching, "wanna-be" celebrities. Further, Mrs R's uncle recognised one of the HCEAs and a conversation ensued in which he mentioned that he may have recognised the HCEA from the television. Channel 5 said that

there was also a conversation in which Mr R was specifically told by one of the HCEAs that he was being filmed by the body cameras worn by the HCEAs and that what he said on the first occasion about ownership of a car could be compared with what he was saying on that occasion.

Channel 5 said that on both visits, it would have been apparent that the HCEAs were wearing body cameras, with their blinking lights visible. Mrs R was well aware that she was being filmed and that the footage might be broadcast.

Importantly, the first images of Mrs R which appeared in the programme, and therefore identified her as the person with whom the HCEAs dealt with initially, were filmed openly on the main production crew cameras before any objection to the filming was made by Mrs R. Channel 5 said that those images were not obtained in a covert way and that anyone present could have seen those images.

According to Channel 5, if Mr R had kept to the agreement struck with the HCEAs in the first segment of the broadcast which featured Mrs R, Mrs R may not have been identified in the broadcast. While she involved herself in the proceedings and appeared to be obstructive, the real issues concerning the debt arose when Mr R arrived. But, Mr R did not keep to the original agreement and both he and Mrs R knew that one result of that default was that the HCEAs would return and take control of the car which had been made the subject of a controlled goods order. They would also have been likely to expect that the programme makers, and their cameras, would return with them.

Channel 5 said that when the HCEAs arrived to take the car, and Mrs R sought to deceive them about the ownership of the car, she did that knowing that she was being openly filmed. Mrs R told the HCEAs a story completely different to the one she had told them on the occasion of their first visit. Channel 5 said that, because this deliberate obstruction of the duties of the HCEAs was carried out in front of the programme makers who were filming the second segment openly, outside Mrs R's home, it was appropriate to identify Mrs R in the second segment. It added that it was clearly a matter of public interest when justice is sought to be obstructed.

In Channel 5's view, her role in the deception about the ownership of the car on the occasion of the first visit became critical to an understanding of the entirety of the enforcement action. Identifying her in that first segment therefore became an important part of the "editorial goals" of the broadcast; it would have been pointless to obscure Mrs R's identity in the first segment but reveal it in the second segment. Channel 5 submitted that on any view of it, what happened in the second segment warranted the filming and broadcast of the first segment with Mrs R identified in it.

Channel 5 said that, while Mrs R may have preferred that she was not included in the broadcast programme, embarrassment and distress about that was insufficient to create enforceable privacy rights under Article 8.

Channel 5 also noted that after the first enforcement action concluded, the programme makers approached Mr and Mrs R (off camera) and gave them the opportunity to speak on camera about their situation and the enforcement process. It said that they declined because they thought it would be too embarrassing. The programme makers again approached Mr and Mrs R (off camera) after the conclusion of the second enforcement action and offered them the chance to speak on camera, but both declined.

Channel 5 said that Mr and Mrs R were assured that their children would be blurred if the footage was included in any broadcast programme and it was confirmed to them that the body camera footage was available for inclusion in any broadcast programme.

Channel 5 did not accept that Mrs R had any right of privacy infringed by the broadcast. It said that although Mrs R's image was included in the broadcast without her consent, "nothing flows from that"; the law in the United Kingdom does not provide that individuals have a right to prevent their appearance in television broadcasts. Where, as in this case, the broadcast of an image of a person is part of the actual circumstances which are legitimately the subject of the broadcast, there is no violation of any Article 8 right. Channel 5 said that Mrs R may feel embarrassment or distress as a result of being included in the broadcast, but that this was insufficient to create any privacy right enforceable by Mrs R. Lord Hope in *Campbell v MGN Ltd* confirmed that the law of Privacy was not designed to protect the unduly sensitive. If it were otherwise the law of Privacy would become an unacceptable chilling effect on free speech. Channel 5 also referred to an earlier Ofcom decision¹⁴. However keenly felt, Mrs R's reaction was insufficient to establish a breach of her Article 8 rights.

Channel 5 said that execution of a Writ, wherever it occurs, is a public act the HCEAs, in accordance with the law, are obliged to carry out.

For the reasons already given, Channel 5 said there is a clear public interest in seeing the activities of the HCEAs in executing their official duties. The public interest extends to including shots of Mrs R in the broadcast where their inclusion demonstrates the difficulties the HCEAs face on a daily basis and, in particular, how the particular individual's attitude and circumstances can affect the way in which the HCEAs seek the most apt resolution of their responsibilities.

Again, Channel 5 said that Mrs R was actively engaged in trying to obstruct the activities of the HCEAs in relation to the ownership of the car which became the subject of the control order. Channel 5 said that this made identifying her a matter of real public interest.

The part of the programme which featured the complainants made several issues clear to the public, all of which Channel 5 felt it was in the public interest for the public to know:

- High Court Writs can be executed at any time, without notice;
- when a Writ has been issued, goods and chattels which belong to anyone at the place where the debtor resides can be taken into possession by the HCEAs unless proof of ownership of those goods or chattels can be immediately produced or controlled goods orders can be placed over property as a surety for repayment agreements;
- significant costs can be incurred if the various stages of the execution of the Writ are breached;
- failure to pay judgment debts, or failure to respond to calls from those collecting judgment debts, or failure to adhere to repayment agreements made, can lead to the property of the people other than the judgment debtor being seized, disrupting home life;

¹⁴ Complaint by Mrs B and Mr C (Ofcom Broadcast Bulletin, Issue 284, 27 July 2015). This decision was published on our website:

https://www.ofcom.org.uk/_data/assets/pdf_file/0018/50436/issue_284.pdf

- being honest and co-operative with the HCEAs can lead to officially sanctioned arrangements being made which see the Debtor and Creditor at least partially satisfied with the resolution; and
- judgment debts cannot and should not be ignored.

The broadcaster said that the broadcast of the programme was entirely in the public interest and by including the footage that was shown, the programme did not exceed what was necessary and appropriate to make viewers understand the situation and the ramifications of what the HCEAs were doing. Channel 5 said that the law affords a margin of appreciation to the broadcast: once the public interest is engaged what elements should be included in a broadcast, including the identification of individuals is a matter for the programme makers and the broadcaster.

It submitted that in *O (A Child) v Rhodes (English PEN ors intervening)*¹⁵ the Supreme Court set aside an injunction granted by the Court of Appeal restraining the publication in an autobiographical book of "graphic accounts" of certain events likely to cause distress to the author's infant son. In the judgment delivered by Lord Toulson and Lady Hale it was observed that this was contrary to principle¹⁶. Channel 5 also referred to Lord Neuberger's concurring judgment in which he agreed with the view of Lord Toulson and Lady Hale¹⁷.

In this case, the manner in which the story of the enforcement of the Writ issued against Mr R was within the editorial control of the programme makers and Channel 5 and the Article 10 right to convey that story to viewers, who had their own Article 10 rights to see the story, which included the right to choose which images to use and whether or not to identify the individuals involved.

In conclusion, Channel 5 said that it did not believe that Mrs R's privacy, or that of her two children, was infringed by either the making of the programme or its broadcast.

Supplementary material

Ofcom's consideration of Mrs R's complaint was put on hold pending the conclusion of our investigation into a complaint made by Miss F about a separate edition of *Can't Pay? We'll Take It Away!*¹⁸. During the course of our investigation into Miss F's complaint, Channel 5 provided Ofcom with supplementary material that included details of arrangements between the HCEA company and the programme makers for the provision and use of the body cameras worn by the HCEAs and the subsequent use of the material recorded (both visual and audio) on those body cameras. Channel 5 confirmed to Ofcom that these arrangements

¹⁵ [2016] AC 219.

¹⁶ Ibid, para 78 "...The court has taken editorial control over the manner in which the father's story is expressed. A right to convey information to the public carries with it a right to choose the language in which it is expressed in order to convey the information most effectively: see *Campbell v MGN Ltd* [2004] 2 AC 457, and *In re Guardian News and Media Ltd* ..." (emphasis added by Channel 5).

¹⁷ Ibid, para 99.

¹⁸ Complaint by Miss F, made on her own behalf and on behalf of her uncle, and her parents about *Can't Pay? We'll Take it Away!*, Channel 5, 20 April 2016.
https://www.ofcom.org.uk/_data/assets/pdf_file/0018/107433/issue-340-broadcast-on-demand-bulletin.pdf

were also in place at the time that Mrs R and her children were filmed and the programme broadcast.

In a document entitled "Main Contributor Release Form" ("Release Form") it was agreed between the programme makers and the HCEA company that:

- the body cameras would be provided to the HCEAs by the programme makers and that the HCEAs would film in the way that they would do normally (i.e. with their own cameras when not engaged in activities with the programme makers);
- the entire copyright in the material recorded by the body cameras belonged to the programme makers for the purposes of the programme; and,
- reasonable access to view the body camera material would be given to the HCEA company upon request, but that material remained the property of the programme makers.

Channel 5 also provided Ofcom with the programme production "bible" which provided further detail about the relevant practices and procedures governing the activities of the production team in making *Can't Pay? We'll Take It Away*. In particular, the document stated that:

- each HCEA wore a body camera and a microphone with sound fed to a central recorder unit with an additional boom microphone. Both the camera and the microphone recorded continuously while they dealt with a case;
- while HCEAs routinely wear body cameras, they are of low quality. Therefore, the programme makers replace them with their own, better quality body cameras and ensure that there is always a sound recordist on the shoots;
- the production team maintain the body cameras while filming and ensure that replacement batteries are carried, and the data backed up;
- if a "debtor" queries the use of the body cameras, the programme makers should respond that they are worn for the HCEAs' security, but that the material may be made available to the programme makers if it is in the public interest to show it; and,
- Ofcom does not view the filming by the HCEAs on the body cameras or the subsequent broadcast of the filmed footage as being surreptitious filming and so it can "be treated for all intent and purpose as being the same as your (i.e. camera crew) filming in most cases".

Ofcom's Preliminary View

Ofcom prepared a Preliminary View on this case that the complaint should be upheld. Both the complainant and the broadcaster were given the opportunity to make representations on the Preliminary View. The complainant chose not to make any representations. Channel 5 submitted representations which are summarised below.

Broadcaster's representations

Channel 5 said that it repeated and relied upon its earlier submissions. It also added the following representations.

The Articles 8 and 10 Balancing Exercise

Channel 5 said that its initial response had already set out its view of the appropriate legal analysis to be applied regarding the required balancing exercise for the programme series *Can't Pay? We'll Take It Away!*

It said that a number of legal principles come into play where a programme is “capable of contributing to a debate of public interest”. One of these is that Article 10(2) scarcely leaves any room for restrictions on freedom of expression¹⁹. Very weighty privacy interests must be at stake for Article 8 to prevail over Article 10, as has been established by “the highest judicial authority” and this leaves very little scope for restrictions on the Article 10 rights where matters of public interest are involved.

Another important principle that must be applied in the balancing test where the public interest is engaged is that the publisher is allowed an editorial margin or latitude to choose the content which it considers will engage and interest viewers and so help get the message across. This had been recognised by the court in *Guardian News and Media*, and other cases such as *O (a child) v Rhodes*²⁰ and *Khuja v Times Newspaper Limited*²¹, as well as by the European Courts, for example *Jersild v Denmark*²², where the court said:

“...it is not for the national authorities to substitute their own views for those of the press as to what technique of reporting should be adopted by journalists. In this context the Court recalls that Article 10 protects not only the substance of the ideas and information expressed, but also the form in which they are conveyed”.

Channel 5 said that Ofcom had not applied the correct test because matters of public interest were engaged, as Ofcom had recognised in its Preliminary View. It also said that the judge in the *Ali* case recognised that the programme series does engage matters of public interest²³. Specifically, he acknowledged that Channel 5 had a margin of editorial discretion in relation to the contents of the programme, including the way in which the story was told, its tone, and any decision to how to use private information²⁴. Channel 5 said that the judge held that the margin of editorial discretion was exceeded in that particular case [Channel 5's emphasis] because the programme contained “the drama of the conflict between [the landlord's son and the claimant] which had been encouraged by [the HCEA] to make good television”²⁵. However, the “obvious rationale” of the decision was that the claim would have failed in its entirety if it had not been for the inclusion of that particular drama, said to have been deliberately created by the HCEA to make good television.

¹⁹ *Petrina v Romania* (Application No 78060/01), and also confirmed by a seven judge Supreme Court in *Guardian News and Media and Others* [2010] 2 AC 697 (at para 51).

²⁰ [2016] AC 219.

²¹ [2017] 3 WLR 351.

²² [1994] 19 EHRR 1.

²³ *Ali v Channel 5* [2018] EWHC 298.

²⁴ *Ibid*, para 206.

²⁵ *Ibid*, para 210.

Channel 5 said that the claimants in the *Ali* case had also complained about a number of other items of private information in the broadcast, including:

- the filming (by body cameras) of the claimants' vulnerable state and distress at being forced to confront the eviction process;
- the effect on their children of them being filmed;
- the fact that no permission had been given to film the claimants or to film inside their house; and,
- the filming of the claimants' personal possessions and the contents to the rooms in their house.

In Channel 5's view, this list closely resembled the list of private information that Ofcom said had been misused in this programme. While the judge in *Ali* held that those items of private information engaged Article 8, none of that information was held to have been misused. Accordingly, Ofcom's Preliminary View would appear to be inconsistent with the *Ali* case, which Channel 5 said followed "the highest judicial authorities". The judge clearly accepted that where the public interest was engaged, only the most weighty of private information was capable of prevailing over the rights in Article 10 and the editorial margin afforded to the broadcaster.

Surreptitious filming

As it had submitted in relation to previous Ofcom decisions, Channel 5 said that neither the question of the ownership of the body cameras, nor the fact that the body cameras were worn by the HCEAs under a prior arrangement, could make the footage surreptitious in circumstances where Ofcom would otherwise not have deemed it to be surreptitious²⁶.

The determination as to whether the filming and broadcast of the body camera footage amounted to an "unwarranted infringement of privacy" necessitates an intense focus on the competing Article 8 and 10 rights in the context of a programme which engages matters of public interest and where the broadcaster has an editorial discretion as to how best to tell the story. While Channel 5 accepted that Article 10 does not automatically "trump" Article 8, it can only be displaced by very weighty privacy interests because Channel 5 "should be accorded a reasonable margin of appreciation in taking decisions as to what details needed to be included...to give...credibility".

The fact the body camera footage was filmed without the knowledge of Mrs R (assuming that was the case) was not relevant to determining whether the filming and broadcast of the footage was warranted or amounted to an unwarranted infringement of privacy.

Channel 5 said that the test was set out in Practice 8.13 of the Code, according to which:

- There was *prima facie* evidence of a story in the public interest. The story and the underlying issues it addresses is in the public interest, as has been accepted by Ofcom and determined by the judge in *Ali*.

²⁶ Complaints by Miss F (see footnote 18) and Mr K made on his own behalf and on behalf of Mr L about *Can't Pay? We'll Take It Away!*, Spike, 13 September 2016
https://www.ofcom.org.uk/_data/assets/pdf_file/0027/117468/broadcast-on-demand-bulletin-issue-359.pdf

- There were reasonable grounds to suspect that further material evidence could be obtained. It said that Mrs R refused to allow the camera crew to enter her home and it was by use of the body cameras that the footage was obtained.
- The footage was necessary to give credibility and authenticity to the programme. It said that the programme is a “fly on the wall documentary” depicting the day to day interactions between the HCEAs and the debtors, as officers of the Court seeking to undertake their official functions. In particular, the problems that debt causes for people in difficult times, and their individual personal reactions to being confronted with the harsh realities and real emotional and personal crises that debt brings with it, is a fundamental aspect of the programme and the public interest element in it. It added that this evidence is what the body camera footage provided, therefore lending credibility and authenticity to the programme and its overall public interest objective.

According to Channel 5, the inclusion of the footage, particularly in the context of the programme and its stated aims, was very much within the margin of editorial discretion allowed to it when making a programme in the public interest. This was consistent with the *Ali* case in which the broadcast of the body camera footage taken within the home and recording the distress of the debtors was held not to infringe the claimants’ Article 8 rights.

Footage filmed in public

Channel 5 said that in both Mrs R’s two complaints, Ofcom had determined that the filming of her by the camera crew from the public highway could not be “meaningfully separated from the parts which were filmed [by the HCEA’s body cameras] in Mrs R’s private home”. It said that it was not entirely clear whether that finding goes on to “infect” the publicly filmed footage either with the label of being “surreptitious” or as amounting to an unwarranted infringement of Mrs R’s right to privacy. Channel 5 challenged the assertion that Mrs R had a reasonable expectation of privacy in the first place in relation to this footage.

The cameras used by the camera crew were standard equipment and their nature and intended purpose would have been obvious to everyone, including Mrs R. Further, Mrs R was specifically told, on each visit, what the camera crew were there for. Therefore, Mrs R knew that she was being filmed by the camera crew and she knew this was for a documentary to be shown on Channel 5. Accordingly, she knew that her actions and comments were being filmed for television when she decided to engage with the HCEAs outside her property, or through the open window.

Channel 5 said that case law had been clear that where individuals go out in public, they “take a risk”. This was confirmed in *Weller v MGN Limited*²⁷, where the Court of Appeal held that although there were different considerations where children were concerned (because it is usually their parents and not they who make the decision to go out in public) the ordinary individual assumes a degree of risk, when venturing out in public, that his actions and conduct may be recorded in some way. It said that Mrs R had made this decision. It added that it was unclear how, in circumstances where Mrs R had been told that the camera crew were going to be filming her for a television series, she had a “legitimate expectation of privacy in relation to this part of the filming”, because it could not be “meaningfully separated from the footage filmed in the property”.

²⁷ [2015] EWCA Civ 1176.

Unlike the filming by the body cameras, the camera crew footage was obtained from a public highway after Mrs R had been told, and clearly appreciated, what its purpose was. She made a decision, and "took a risk". Therefore, it was hard to see in such circumstances how it could be said that she had any degree of privacy in what she publicly said and did. To the extent that she did enjoy any expectation of privacy in relation to the footage, it would have been only "at a very low level" and not of the "considerable weight" needed to displace the very strong Article 10 right that is engaged in matters of public interest, and in respect of which the broadcaster has an editorial margin of discretion.

Decision

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

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

In reaching this decision, we carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast, and both parties' written submissions and supporting material. We also examined the unedited footage of the HCEAs' visit to the complainants' home as well as the unedited footage filmed by the programme makers. We also took account of the supplementary material relating to the body camera arrangements between the HCEA company and the programme makers. Ofcom also took careful account of the representations made by the broadcaster in response to being given the opportunity to comment on Ofcom's Preliminary View on this complaint. After careful consideration of these representations, we considered the points raised did not materially affect the outcome of Ofcom's decision to uphold the complaint.

In Ofcom's view, the individual's right to privacy under Article 8 of the ECHR has to be balanced against the competing rights of the broadcaster's right to freedom of expression and the audience's right to receive information under Article 10. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

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

In addition to this rule, Section Eight (Privacy) of the Code contains "practices to be followed" by broadcasters when dealing with individuals or organisations participating in, or otherwise directly affected by, programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of Rule 8.1 and failure to follow these practices will only constitute a breach where it results in an unwarranted infringement of privacy.

- a) Ofcom considered Mrs R's complaint that her privacy and that of her two children was unwarrantably infringed in connection with the obtaining of material included in the programme because she and her children, and the inside of their home, were filmed without her consent. Mrs R said that she was not aware that the body cameras worn by the HCEAs were being used to film for a television programme.

By way of background, Mrs R said that she had mental health problems which were made worse by the broadcast of the programme. Mrs R added that the programme had upset her children and her eldest child was unable to sleep "out of fear".

Ofcom had regard to Practices 8.5, 8.7 and 8.9 of the Code. Practice 8.5 states that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted. Practice 8.7 states that if an individual or organisation's privacy is being infringed, and they ask that the filming, recording or live broadcast be stopped, the broadcaster should do so, unless it is warranted to continue. Practice 8.9 states that the means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme. Ofcom also had regard to Practice 8.13 which states that surreptitious filming or recording should only be used where it is warranted.

Ofcom also regarded Practices 8.20 and 8.21 of the Code to be relevant in this case. Practice 8.20 states that broadcasters should pay particular attention to the privacy of people under sixteen, and Practice 8.21 states that where a programme features an individual under sixteen or a vulnerable person in a way that infringes privacy, consent must be obtained from: a parent, guardian or other person of eighteen or over in loco parentis; and wherever possible, the individual concerned; unless the subject matter is trivial or uncontroversial and the participation minor, or it is warranted to proceed without consent.

We assessed the extent to which Mrs R and her two children had legitimate expectations of privacy in the particular circumstances in which the relevant material was obtained. The test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact-sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself.

We recognise that children do not have a legitimate expectation of privacy merely because they are children. However, there are relevant considerations that may result in a child having a legitimate expectation of privacy where an adult might not. For instance, the age of the child, the nature of what was filmed and where the filming took place, the purpose of the filming and the broadcast, consent, and the effect on the child are all relevant factors. These must be taken into account along with all the other circumstances of the case in determining whether or not a child has a legitimate expectation of privacy.

The HCEAs visited Mrs R on two occasions and filming took place on both visits. The unedited footage showed that filming was carried out by both the main TV camera used by the programme makers and the body cameras worn by the HCEAs. All the footage which was filmed inside Mrs R's private home was obtained solely by the body cameras worn by the HCEAs.

First visit to the property

On the first visit, the unedited footage showed that Mrs R and her two children were filmed on the doorstep of her house by both the body cameras worn by the HCEAs and the TV cameras used by the programme makers and that she and her two children were filmed inside her private home solely by the HCEAs body cameras.

In both instances, Mrs R was filmed as she discussed her financial and personal circumstances with the HCEAs. In particular, while she spoke to the HCEAs on the doorstep of her house Mrs R explained that she had no money and was unable to settle the debt, that she and her two children were poorly and that she was suffering from health issues < [REDACTED]²⁸. She also gave details about her marital situation, including the fact that she and her husband had split up because of the stress they were under. After going inside the house Mrs R was filmed as she spoke further about the financial difficulties that she and Mr R were facing and the effect these had had on their marriage. She also disclosed more information about her personal situation. In particular, she disclosed very personal details about her health, wellbeing, personal relationships and upbringing < [REDACTED]²⁹. We also observed that Mrs R disclosed personal and financial information about various other family members. < [REDACTED]³⁰. The hallway, living room, kitchen and conservatory of Mrs R's home were also filmed, together with personal belongings and a number of family photographs. Footage was captured of Mrs R becoming upset and distressed about the presence of the HCEAs in her home and the potential impact it was having on her children. She was also filmed as she interacted with her children. Further, she was filmed as she discussed with Mr R and the HCEAs how best to resolve the matter and explained that she and Mr R could not afford to repay the debt and needed to rely on their family and friends to help them. Filming then took place as her grandfather came to the house to pay the debt on behalf of her grandmother, and captured her emotional reaction as she thanked him for his help.

Ofcom considered that from the outset of filming, Mrs R had been aware of the presence of the main camera used by the camera crew to film the HCEAs. Initially, the camera crew accompanied the HCEAs at Mrs R's front door, but she made it clear that she did not want them to be present while she spoke to the HCEAs. We considered that this was illustrated by the following conversation, filmed by both the TV camera and the body cameras worn by the HCEAs, when Mrs R first opened her front door to the HCEAs and they explained that they were there to speak with Mr R (Ofcom's emphasis):

Mrs R: [In response to being asked whether she had any documentation to prove that Mr R did not live at the property] *"No, because he's been not living here that long. **Can you get these cameras away please?**"*

Crew member: *We're filming a documentary for Channel 5.*

Mrs R: ***No you're not, you can go away.***

²⁸ Text redacted for legal reasons.

²⁹ Text redacted for legal reasons.

³⁰ Text redacted for legal reasons.

Crew member: *What we'll do is we'll go to the high street and carry on filming and talk to you afterwards if that's alright?"*

Shortly afterwards Mrs R had the following conversation with one of the HCEAs:

Mrs R: ***"Can you ask these [the cameras] to go away?"***

Mr McCracken: *They're allowed to be on the public highway I'm afraid. So, who is that owns the van?"*

Second visit to the property

As during the first visit, Mrs R was filmed as she discussed her financial and personal circumstances with the HCEAs. The unedited footage showed that Mrs R was filmed outside her house by both the body cameras worn by the HCEAs and by the crew filming from across the street. Towards the end of the enforcement process, Mrs R and her youngest child were also filmed inside the house solely by the body cameras worn by the HCEAs.

Initially, Mrs R was filmed mainly by the body cameras, speaking with the HCEAs through the window of her property about the ownership of the car. At one point, Mrs R was filmed as she held her youngest child. This conversation continued subsequently, when she came out of the house on her own to speak further with the HCEAs and Mr R on the driveway about the debt and the circumstances surrounding the enforcement. The footage of her at this point was captured both by the body cameras worn by the HCEAs and by the camera crew filming away from the house. Mrs R was filmed as she became increasingly agitated and distressed about the HCEAs' threat to remove the car. Mrs R revealed personal details about her health and wellbeing and the health of her children. ✂ [REDACTED]³¹. She was also filmed as she disclosed that, since the HCEAs' last visit, her landlord had given her ten days to leave the house and she told them "I've lost everything, I've no house. I've nothing for my children".

Towards the end of the enforcement process, after a payment plan had been agreed between Mr R and the HCEAs, Mrs R was filmed by the body cameras worn by the HCEAs as Mr R signed the paperwork in the conservatory at the back of her house. This footage showed Mrs R as she held her youngest child. It was evident she was still agitated, and she spoke about the good relationship she and Mr R had previously had with the claimant and the difficult time they had been going through on account of their financial problems. Although Mrs R's eldest child was not filmed inside the home by the HCEAs' body cameras, a conversation between him and one of the HCEAs, Mr McCracken, about a game he was playing was captured by a microphone being worn by the other HCEA, Mr Victor.

As with the first visit, we considered that, from the outset of the filming, Mrs R had been aware of the presence of the main TV camera used by the camera crew to film. When she spoke to the HCEAs through the window shortly after they arrived at the property she made it clear that she did not want the main TV camera to be present. We considered that the following conversation from the unedited footage filmed on both the main camera used by the programme makers and the body cameras worn by the HCEAs illustrated this (Ofcom's emphasis):

³¹ Text redacted for legal reasons.

Mr McCracken: *"I'll put my card through the door. Alright here you go. [Mrs R opened the window]*

Mrs R: *What?*

Mr McCracken: *Right. We are here to remove the vehicle.*

Mrs R: *You can't it's...I've got receipts to prove it's not.*

Mr McCracken: *Right okay, have you got those receipts?*

Mrs R: ***Can you get these of my property. I want you off please.***

Crew member: ***Alright, we'll carry on recording but no worries.***

Mrs R: *Thank you".*

We also considered that when Mrs R came outside and stood on the doorstep of her house she made it clear to the camera crew that she did not want her children to be filmed (Ofcom's emphasis):

Mrs R: *"Please come in baby, I don't want. **My children aren't going to be on this camera are they?***

Crew member: ***Unless we have your permission they'll be blurred.***

Mrs R: ***No, you've not got my permission whatsoever.***

Crew Member: [To Mr R who was stood on the driveway of the house] *Do you want to talk to us? You've told your story anyway, we've got it all on camera, you may as well.*

Mr R: *Whatever, we'll see where we get to. See what happens first.*

Mrs R: ***I just don't want my children on camera...***

Mr R: ***I know, you can't have kids on camera unless you give them your permission anyway..."***

Ofcom was told by Channel 5 that the HCEAs routinely wore body cameras during their work for personal safety reasons and in case of complaint or inquiry. However, in this instance, the body cameras worn were provided to the HCEAs by the programme makers with a view to potentially including all or part of the HCEAs' interactions with the complainants in the programme as broadcast.

In considering the way this material was obtained, we took account of Practice 8.13 which states: "surreptitious filming or recording should only be used where it is warranted. Normally, any infringement will only be warranted if: there is a *prima facie* evidence of a story in the public interest; there are reasonable grounds to suspect that further material evidence could be obtained; and, it is necessary to the credibility and authenticity of the programme".

The Code defines “surreptitious filming and recording” as including “the use of long lenses or recording devices, as well as leaving an unattended camera or recording device on private property without the full and informed consent of the occupiers or their agent. It may also include recording telephone conversations without the knowledge of the other party, or deliberately continuing with a recording when the other party thinks that it has come to an end”.

Ofcom took into account the “Supplementary material” about the body cameras which revealed that they were the property of the programme makers who owned the entire copyright in the material recorded by the body cameras and other equipment worn by the HCEAs and had control of access to the footage by the HCEA company. In its statement Channel 5 said that the body cameras were not imposed on the HCEAs who would have worn them when attending the enforcement whether the production team were present or not. Therefore, whether or not the programme was in production, the interaction between Mrs R and the HCEAs would have been filmed by the HCEAs.

However, we considered that the provision of the cameras by the programme makers and their ownership of the footage unequivocally showed the existence of an advance arrangement between the programme makers and the HCEA company which provided the programme makers with unfettered access to the material recorded by the equipment worn by the HCEAs. A fundamental purpose of the cameras, therefore, was for the programme makers to obtain and retain footage for potential broadcast. The ownership and operation of the cameras guaranteed them exclusivity to the material recorded and enabled free, uninhibited access to Mrs R's home as she interacted with the HCEAs. This, particularly with regards to the first visit to the property, afforded the programme makers a level of access to the property that exceeded substantially any exposure which anyone in Mrs R's position could possibly have expected at the time. As a consequence, the programme makers acquired access to unguarded interactions and disclosures, both within the confines of the domestic home and immediately outside, and they were able to observe and record sensitive personal exchanges between Mrs R and the HCEAs, and other family members, during a stressful and emotional event.

Channel 5 submitted that Mrs R was aware that her interactions were being filmed by both the main camera crew and the body cameras and that it was confirmed to her and Mr R that the body camera footage was available for inclusion in any broadcast programme. We understood from Channel 5 that this information was provided to her after the second visit to her property had taken place. However, from the complaint made to Ofcom and the unedited footage provided by Channel 5, we were unable to find any evidence that Mrs R was made aware at any time during the filming that the body cameras and the material recorded by them belonged to the programme makers and could subsequently be used in the television programme. In our view, this was not something that she could have reasonably foreseen or appreciated. We took into account the exchange (quoted previously above) between Mrs R and the programme makers when the HCEAs first arrived at Mrs R's house. In particular, that they said to Mrs R: *“What we'll do is we'll go to the high street and carry on filming and talk to you afterwards if that's alright?”*.

We also took the following exchange into account which took place when Mr R first arrived at Mrs R's house: (Ofcom's emphasis):

Mr R: *“Take the camera off me please [to crew members].*

Crew member: *We're filming a documentary.*

Mr R: *I don't care what you're filming, just get the camera away from my wife's house.*

Crew member: *Alright, well I can't, I've got to carry on filming.*

Mr R: *Well you're not filming me, I don't give you permission to film me so.*

Crew member: ***We'll talk to you afterwards*** [inaudible]

Mr Victor: ***Do you want to go inside? I'll come inside with you***".

Mrs R then opened the front door to Mr R and the following exchange took place:

Mrs R: *"...Why is he coming in?*

Mr R: *He's coming in to speak to me.*

Mr Victor: ***He didn't want to speak outside.***

Mr R: ***I didn't want to speak in front of the fucking cameras.***

Mrs R: ***No***".

We considered that when Mrs R was first told that the camera crew would carry on filming from the main public highway away from the house she would not have appreciated that her conversation on the front doorstep was continuing to be recorded for potential broadcast by the equipment worn by the HCEAs. We considered that the HCEAs later suggested that they should carry on the conversation inside the house gave the clear impression that any further conversations and interactions would take place away from the main TV camera. This understanding was subsequently relayed to Mrs R when Mr R told her that the HCEA was coming inside the house because Mr R did not want to discuss matters in front of the cameras. This, in Ofcom's view, indicated that Mrs R had not understood that the interactions which took place inside her house were being filmed by the body cameras.

Channel 5 submitted that on the second visit Mr R was specifically informed that his interactions were being filmed by the body cameras worn by the HCEAs. From our review of the unedited footage we understood this to refer to the following exchange between Mr R and one of the HCEAs on the driveway of the property while Mrs R was inside her home:

Mr Victor: ***"I'm just saying, it's not looking good mate. Everything we do gets recorded for that reason because this, this will go to court, when you try and prove ownership.***

Mr R: *I've been trying to take it back to court, I want to go back to court because I've already paid the debt like I told you last time you know.*

Mr Victor: ***I'm just saying the footage will go to court to prove the ownership of this vehicle".***

The unedited footage also showed that Mr R had referred to the HCEA's microphone while he stood outside the property:

Mr R: *"Is that a mic? [Pointing to Mr Victor's chest]*

Mr Victor: *Yeah. All the little gadgets, eh".*

Ofcom acknowledged that the above exchanges indicated that Mr R was aware he was being filmed by the body cameras and that the interactions were being recorded. However, we recognised that Mrs R was not present at the time of either conversation. It was also significant that Mr R was only told that the filming by the body cameras was for use in case of dispute. As previously, Ofcom was not able to find any evidence that either he, or Mrs R, were told at any point during the filming on this second visit that the body cameras and the material recorded by them belonged to the programme makers and could subsequently be used in a television programme. Further, when the HCEAs came to enter the property during the second visit, Mr R told Mrs R that it was *"just Vic coming in"* and no reference was made to his body camera.

We recognise that broadcasters often obtain material for broadcast from third parties, but these conversations and the fact that the camera crew withdrew to the public highway outside the boundary of the house would have sent a clear message to Mrs R that any interactions with the HCEAs inside the house would not be filmed by the programme makers for potential use in a television programme. This was misleading as it was in direct contrast to the actual position in light of the programme makers' access to the material recorded by the body cameras. In addition, it was clear from the unedited footage that the conversations between the HCEAs, Mrs R and other family members both inside and outside the house were being relayed live via an audio feed to the programme makers, thereby enabling the programme makers to listen to the interactions inside the house, at the window, and immediately outside her front door. Neither the programme makers nor the HCEAs informed Mrs R of this fact at any time during the filming.

In these circumstances, it was significant that Mrs R was not made aware of the programme makers' use of the body cameras, or the potential consequences of being filmed and recorded by them.

Taking all these factors into account, Ofcom considered that the material recorded by the HCEAs of Mrs R and her children and the interior of her home that she shared with her family had been obtained surreptitiously, notwithstanding the fact that the body cameras themselves were worn openly. An intrinsic purpose of the filming from the body cameras was to obtain material for potential broadcast. As a result, Mrs R would not have understood the full significance of the body cameras, particularly as she understood that the cameras belonging to the programme makers had remained outside the boundary line of her house. In these circumstances we considered the actions of the programme makers, were akin to deliberately continuing with a recording when the other party thinks that it has come to an end. Similarly, by not making Mrs R aware of the full significance of the body cameras, the method by which this footage and the accompanying audio were obtained, even while Mrs R was outside the property and was

aware that the main camera crew continued to film, was akin to the programme makers leaving an unattended camera or recording device on private property without the consent of the occupiers.

Channel 5 submitted that the execution of a writ issued by the High Court is a public matter and that in this case, the interactions involving the HCEAs at Mrs R's home were not part of her private life. It also said that the activities of HCEAs in executing their duties, including the kind of difficulties the HCEAs faced on a daily basis and how the particular individual's attitude and circumstances can affect the way in which the HCEAs seek the most apt resolution of their responsibilities are all matters of public interest. However, in Ofcom's view, none of these arguments pointed to a *prima facie* story in the public interest of a type or order which would ordinarily warrant the use of surreptitious filming (as envisaged by Practice 8.13), particularly as the filming itself took place inside and on the threshold of a private home and concerned not simply the fact of the Writ or its enforcement against Mr R, but Mrs R's personal reaction to that event and her interaction with her family and the HCEAs in light of the situation which confronted her at the property. This was despite Mrs R not being named on the Writ nor personally liable for the payment of the debt.

Ofcom decision on the issue of surreptitious filming has regard to the fact that an advance arrangement was in place between the programme makers and the HCEA company. This arrangement provided the programme makers with unfettered access to the material recorded by the body cameras for the purposes of broadcast before any footage had been captured and in the absence of any *prima facie* evidence of a sufficient public interest which would justify any privacy intrusion.

For the sake of clarity, while the ownership of the body cameras and the copyright in the footage were notable features of the arrangement, it was the fact that the body cameras were worn with the prior objective of obtaining footage for the purpose of broadcast, rather than the fact of the ownership itself, which was the material consideration in this part of Ofcom's analysis (not least as it served to define the purpose for which the footage was obtained in the first place and allowed the programme makers unfettered access to, and use of, the footage which was recorded as a consequence).

It is important to stress that the Code does not prohibit the use of surreptitious filming. Indeed, it can be an important means of enabling broadcasters to obtain material evidence where, as envisaged by Practice 8.13, there is a *prima facie* evidence of a story in the public interest; there are reasonable grounds to suspect that further material evidence could be obtained; and, it is necessary to the credibility and authenticity of the programme. These important prior considerations, which arise because of the potentially significant privacy consequences which surreptitious filming may cause are designed to ensure that broadcasters do not use such methods indiscriminately, or without due cause in the speculative hope of gathering material for potential broadcast.

Ofcom took into account Channel 5 representations that it considered that it had satisfied the test as set out in Practice 8.13 to justify the use of secret filming in this case. However, Ofcom did not accept that the public interest arguments submitted by Channel 5 were of sufficient order and weight to warrant filming of this nature in the circumstances, particularly given that the filming took place at and within the confines of a domestic home and recorded intimate and sensitive interactions between Mrs R and her family members and the HCEAs in that context. Further, Mrs R herself was not the

subject of the High Court enforcement process and although she involved herself in the situation and may have tried to obstruct the HCEAs from carrying out their official duties, neither this fact, nor the public interest in programming which seeks to shed light on the issues and difficulties encountered by HCEAs, warranted the decision of the programme makers and Channel 5 to obtain footage of these particular events at and inside the property in this manner. Therefore, contrary to Channel 5's assertions in its representations on the Preliminary View, Ofcom considered that this was a case in which the programme makers acted in the speculative hope of gathering material for potential broadcast.

It is also important to emphasise that a failure to follow any of the practices in the Code will only constitute a breach of the Code where it results in an unwarranted infringement of privacy. In other words, a finding that a broadcaster has failed to follow Practice 8.13 (in relation to surreptitious filming) does not, in and of itself, automatically lead to an unwarranted infringement of privacy. Ofcom therefore proceeded to consider whether Mrs R and her children held legitimate expectations of privacy in relation to the obtaining of the footage.

Ofcom considered that, ordinarily, personal and financial conversations and negotiations in which the people concerned felt that they could speak openly and where they understood that the matter they were talking about would be treated in confidence, could reasonably be regarded as sensitive and attract an expectation of privacy. We considered also that such conversations could reasonably be characterised as distressing and sensitive for those involved. This is particularly the case where such conversations take place within the confines of a person's home and where those involved are discussing potentially being unable to settle the debt themselves and/or are experiencing extreme personal and family difficulties due to ill health and mental illness. We recognised too that Mrs R was concerned about the potential impact the presence of the HCEAs in her home was having on her children. The execution of the Writ may have been a matter of public record, however, we do not consider that this fact, of itself, prevents a person who is not the subject to those proceedings, but who nevertheless chooses to involve themselves in discussions concerning its enforcement, from having an expectation of privacy in relation to the matter.

Factors specific to Mrs R

First visit to the property

Mrs R was approached by the HCEAs at her house about a debt which was in her estranged husband's name, and without any prior warning that the HCEAs would be accompanied by a camera crew. She was questioned on her doorstep about the whereabouts of her husband, who had been traced to that address. The HCEAs informed her that they would take the car, which Mrs R said belonged to her, to repay the debt. Inside Mrs R's property the HCEAs spoke to her in the presence of Mr R about the prospect of items, which Mrs R said belonged to her, being removed from inside the house to settle the debt.

We acknowledged that Mrs R was not personally named on the Writ but that the debt appeared to be connected to a business with which she acknowledged she had some involvement. This was evident, for example, from the way in which she spoke about events connected with the business, which she often referred to as "our business".

However, we also took into account that the HCEAs had arrived at the property unannounced when Mr R, who was personally named on the Writ, was not present and that Mrs R had no choice about involving herself in discussions with the HCEAs about their threatened removal of the car, which she said belonged to her.

Mrs R was therefore in a position where she had to respond to the HCEAs' enquiries and potentially to discuss financial and personal matters with them, irrespective of the presence of the cameras.

We took into account that Mrs R did not at any point choose to talk to the camera crew. As set out above, the evidence strongly suggested that Mrs R was not aware that the material filmed on the body cameras might be broadcast and she was unlikely to have understood or appreciated that the conversations she was having with the HCEAs on her doorstep were being picked up by the microphones worn by the HCEAs and relayed via a live audio feed to the camera crew. Therefore, we considered that Mrs R was considerably more unguarded when dealing the HCEAs than might have been the case if she had reason to believe that she was being filmed for a television programme.

The information revealed by Mrs R during her conversations with the HCEAs on the doorstep of her house included the following:

- that she was married but that financial difficulties had contributed to the breakdown of her marriage;
- that her husband no longer lived at the property;
- that she had two children, who were currently unwell;
- that she was unwell and suffering from other health issues & [REDACTED]³²; and,
- that she would be unable to settle the debt owed in full.

Mrs R revealed further information about herself and her personal situation to the HCEAs within the confines of her house. In particular, Mrs R revealed very personal details about her financial situation, her health, wellbeing, personal relationships, and upbringing & [REDACTED]³³.

We also took into account that the body cameras captured footage of Mrs R inside her house as the pressurised financial negotiations with the HCEAs took place and they tried to reach an agreement. This included her reactions to the HCEAs and her discussions with Mr R and various other family members about matters connected with the Writ. The hallway, living room, kitchen and conservatory of her home were also filmed, together with personal belongings and a number of family photographs, and the body cameras captured footage of Mrs R as she engaged with her children in a domestic setting. In addition, the material recorded included footage of Mrs R as she became increasingly upset and distressed about the presence of the HCEAs in her home and the potential impact it was having on her children. She was filmed as she discussed with Mr R how best to resolve the matter and considered who might be able to help them. This included details about her grandmother's health and finances & [REDACTED]³⁴. Footage

³² Text redacted for legal reasons.

³³ Text redacted for legal reasons.

³⁴ Text redacted for legal reasons.

of Mrs R was also captured as she tried to contact various friends and family members for help.

Second visit to the property

As with the first visit to the property, Mrs R was filmed as she discussed financial and personal matters with the HCEAs. We observed from the unedited footage that she was approached by the HCEAs without any prior warning that the HCEAs would be accompanied by a camera crew. Although the HCEAs had been accompanied by a camera crew on the first visit, we did not consider it necessarily followed that Mrs R would have anticipated that the camera crew would have returned. Once again, Mr R was not at the property when the HCEAs arrived and Mrs R had no choice about engaging with the HCEAs and responding in the presence of the cameras to their enquiries about the debt which was not in her name. As previously, Mrs R did not at any point choose to talk to the camera crew.

We took into account Channel 5's representations that Mrs R attempted to deceive the HCEAs about the true ownership of the vehicle to prevent it from being removed. Although she initially spoke to the HCEAs through an open ground floor window, Mrs R subsequently chose to come outside to the driveway of her property when Mr R arrived, to discuss the matter further with the HCEAs. During this time, she was filmed by the camera crew from the public highway but the majority of the footage of Mrs R speaking to the HCEAs before she came outside was captured solely by the body cameras worn by the HCEAs.

The information revealed by Mrs R during her conversations with the HCEAs on the driveway of her house included that she had been evicted from her property and had ten days to leave. She also revealed very personal details about her health, her personal relationships and the health of her children <[REDACTED]³⁵.

We took into account that footage was captured as Mrs R became increasingly agitated and distressed about the HCEAs' threat to remove the car. Mrs R was also filmed saying she was "*not in a good place*" and that she had "*lost everything*" and was having to "*beg and borrow*" in order to prevent her and her children from becoming homeless. We also took into account that towards the end of the enforcement process, after a payment plan had been agreed between Mr R and the HCEAs, Mrs R was filmed by the body cameras worn by the HCEAs inside the house as Mr R signed the paperwork with the HCEAs. In particular, this footage showed Mrs R speaking further about the difficult time they had been going through on account of their financial problems and revealed that she was still clearly agitated.

Factors specific to Mrs R's children

Mrs R's children were under one and three years old at the time of the filming. It was clear from both the unedited and broadcast footage that they were filmed in their private home and that the majority of the footage was captured solely by the body cameras. Significantly more footage of Mrs R's children was captured during the HCEAs' first visit to the property than during the second visit. The filming captured highly sensitive information about both children, including information about their health <

³⁵ Text redacted for legal reasons.

[REDACTED]³⁶. It was clear that Mrs R was concerned about the potential distress to her children caused by the presence of the HCEAs, particularly in relation to her eldest child who appeared to be aware of the HCEAs and the fact that they were there to remove the car. It also was also evident that Mrs R was so concerned about the impact the presence of the HCEAs was having on her children, that a family member came to the property to take her eldest son away.

We considered that Mrs R was significantly less guarded when it came to the presence of the HCEAs than might have been the case if she had reason to believe that she and her children were being filmed by the body cameras for a television programme. As noted above, Mrs R had raised concerns about the filming of her children by the main camera crew.

The complainant's and her children's legitimate expectations of privacy

Ofcom took into account Channel 5's assertion that the execution of a Writ is a public matter, not a private one, and that the execution of the Writ was not a matter connected with a person's life. We considered that the existence of a county court judgment may be considered a matter of public record and may not, therefore, be information about which Mrs R or her children had legitimate expectations of privacy. However, the information captured by the filming of Mrs R and her children went beyond the fact of the debt, for which Mrs R was not personally liable, and the personal consequences and impact of the enforcement process on her.

We did not accept that the events surrounding the enforcement of a debt were necessarily a matter of public record, or that there can be no legitimate expectation of privacy in relation to those events (and especially not where some of those events take place within the confines of a private family home). We also did not accept that the fact that some of the events took place outside Mrs R's property meant that she had no legitimate expectation of privacy (as we consider below). In this instance, it was Ofcom's view that the nature of much of the information contained in the obtained footage was very sensitive and constituted a significant intrusion into Mrs R's and her two children's private and family life. We considered that the information disclosed by Mrs R significantly exceeded the information which might otherwise have been in the public domain as a consequence of the court enforcement process.

We took into account that some of the filming of Mrs R had taken place openly and from a public pavement and that Mrs R was aware of the main TV camera. Further, it took place in full view of any members of the public who may have been in the area at the time. We also took into account Channel 5's view that Mrs R could have no legitimate expectation of privacy in relation to the footage of her which was filmed by the main camera crew outside her home. Further, we considered Channel 5's view that as Mrs R was aware that she was being filmed, she had taken "a risk" in choosing to speak in public. However, we recognise that there may be circumstances in which people may have a legitimate expectation of privacy in relation to filming in a public place, when some activities and conditions may be of such a private nature that filming, or recording could involve an infringement of privacy. As above, Mrs R was filmed on her doorstep without any prior warning and spoke to the HCEAs about her husband's debt and disclosed to them sensitive and private information about herself. We also took into account that Mrs R chose to involve herself further during the HCEAs' second visit to the

³⁶ Text redacted for legal reasons.

property by coming out of her house to speak with them and Mr R on her driveway. However, we did not consider that this filming could meaningfully be separated from the footage filmed in the property which was all connected to the issue of repayment of a debt. We did not consider that it was unreasonable for Mrs R to approach the HCEAs outside her property, particularly as she wanted the matter resolved. Nor did we consider that her decision to do so limited the extent to which Mrs R had a legitimate expectation of privacy in relation to this part of the filming, particularly as the situation could reasonably be characterised as distressing and sensitive for Mrs R.

As mentioned previously, the test as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself³⁷. The location of some of the filming was one of several factors that was relevant to Ofcom's consideration of this case. In our view, the events involving Mrs R and her children which the filming captured could reasonably be characterised as being highly sensitive to them, particularly taking into account their family situation and Mrs R's mental health and the health of her children, and plainly came within the scope of "private and family life" and thus engaged Article 8. Therefore, we considered that the situation the complainant and her children were in attracted a legitimate expectation of privacy.

Given all the factors above and taking into account the use of surreptitious filming and its consequences, Ofcom considered that the interference with the complainant's privacy and the privacy of her children, which was caused by the obtaining of this material with a view to its being broadcast, was very significant.

Whether the infringement was warranted

There was no dispute between the parties that Mrs R's consent was not sought for the filming of her and her children. Therefore, it was not necessary for Ofcom to consider this point further. We therefore went on to consider whether the infringement of the legitimate expectation of privacy of Mrs R and her children was warranted on the particular facts of this case.

The Code states that "warranted" has a particular meaning. It means that, where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. Examples of public interest could include revealing or detecting crime, protecting public health and safety, exposing misleading claims by individuals or organisations or disclosing incompetence that affects the public.

Ofcom carefully balanced Mrs R's and her two children's rights to privacy with regard to the obtaining of the footage with the broadcaster's right to freedom of expression.

³⁷ See, for example, Anthony Clarke MR in *Murray v Express Newspapers Ltd* [2009] CH 481, at para 36: "the question whether there is a reasonable expectation of privacy is a broad one, which takes account of all the circumstances of the case. They include the attributes of the claimant, the nature of the activity in which the claimant was engaged, the place at which it was happening, the nature and purpose of the intrusion, the absence of consent and whether it was known or could be inferred, the effect on the claimant and the circumstances in which and the purposes for which the information came into the hands of the publisher".

We took into account Channel 5's argument that there was a public interest in the filming of the footage in that it showed the activities of the HCEAs while executing their official duties and Mrs R's apparent attempts to obstruct such duties from being carried out. We also considered Channel 5's submission that the enforcement of the debt was a public matter and that there is a clear public interest in seeing the activities of the HCEAs, the kinds of difficulties they face and the impact of their activities on the lives of those who are affected in the course of executing their official duties. We also considered Channel 5's submission that any right to privacy claimed by Mrs R was outweighed by Channel 5's Article 10 right to communicate, and the public's right to receive, information concerning matters of public interest such as the activities of the HCEAs carrying out their official duties. We also took into account Channel 5's submission that "only the most weighty of private information" was capable of restricting its Article 10 rights.

Ofcom did not agree with Channel 5's interpretation of the decision in *Ali v Channel 5* in its representations on Ofcom's Preliminary View. Weighing up the respective ECHR rights of the parties, the court decided that the balance came down in favour of the claimants' Article 8 privacy rights. While the court accepted that Channel 5 had editorial discretion in the tone and way it told the story it did not accept that Channel 5's editorial discretion extended to the decision to include the private information, unless it was in the public interest to do so. On the facts in *Ali* the court considered that overall the programme did contribute to a debate of general interest, but that the inclusion of the claimants' private information went beyond what was justified for that purpose. The court went on to say that the focus of the programme was upon the drama of the conflict which had been encouraged by the HCEA to make "good television".

Applying the same approach as the court in *Ali*, Ofcom accepted that the public interest was engaged in making this programme in that it illustrated the type of interaction HCEAs routinely engage in and the difficulties experienced by people in the position of Mrs R. Ofcom also accepted that Channel 5 had editorial discretion in the tone and way it told the story and that its editorial discretion extended to the decision to include the private information, but only if the inclusion of the private information at issue was justified in the public interest. Therefore, having satisfied itself that the complainants had a legitimate expectation of privacy, Ofcom intensely focussed on the weight of the comparative rights under Articles 8 and 10 that are in issue in order to decide where the balance lies in these particular circumstances.

On the facts of this case, we considered that the interference with the right to privacy of the complainant and her children was significant, particularly given that some of the footage of Mrs R had been obtained within the family home and, due to her general wellbeing and the wellbeing of her children at the time they were filmed. We also took into account the age of Mrs R's children at the time they were filmed, the fact that they had been filmed in a domestic setting, and that Mrs R was concerned about the impact the visits were having on them. We also took into account all the relevant factors set out above, including, but not limited to, the fact Mrs R had been filmed as she spoke about very sensitive matters including information about her and her children's health and wellbeing. We considered that the level of interference with the legitimate expectation of privacy of Mrs R and her children was significant and of such a nature and gravity as to outweigh the public interest in programming of this nature and the wider Article 10 rights of the broadcaster and programme maker.

Ofcom also considered whether, in accordance with Practice 8.9, the material had been obtained proportionately in all the circumstances. The footage was obtained while the programme makers accompanied the HCEAs in carrying out their duties. The filming by the main TV camera of Mrs R on the doorstep and on the driveway appeared to be open i.e. it was not obtained surreptitiously. We also considered it was unobtrusive and observed that it mainly took place outside the boundary of the complainant's home. However, as set out already above in relation to Practice 8.13, we considered that the manner in which the footage inside their home was obtained and the recording of Mrs R's conversations with the HCEAs at the window and immediately outside the property, was surreptitious. In Ofcom's view, the use of surreptitious filming in this instance was not warranted particularly as the filming inside Mrs R's private home allowed the programme makers unfettered access to personal family interactions as they occurred, via a live audio feed, and for inclusion in the programme. As mentioned above, although the fact of the enforcement of a Writ may be a matter of public record, it does not follow that its consequences and impact for those connected to the debtor are also necessarily public matters in respect of which no legitimate expectation of privacy arises. Nor does it follow that intrusive footage capturing exchanges between the debtor and their family in a family home is justified by the public interest in learning about the HCEAs' work and the enforcement process. While we took into account Channel 5's representations on this point, Ofcom considered that the means of obtaining the material had not, in all the circumstances, been proportionate for the purpose of Practice 8.9.

Having taken all the above factors into account, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the public interest in obtaining the footage of Mrs R and her children in this instance did not outweigh their legitimate expectation of privacy in relation to the filming of them, or justify the very significant intrusion which the obtaining of the footage caused to their rights in this regard.

Therefore, Ofcom considered that the complainants' privacy in connection with the obtaining of material included in the programme was unwarrantably infringed.

- b) Ofcom next considered Mrs R's complaint that her privacy and that of her two children were unwarrantably infringed in the programme as broadcast because the footage of her and her children was included in the programme without her consent.

We had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. In addition, Ofcom took into consideration Practice 8.4 which states that broadcasters should ensure that actions filmed or recorded in, or broadcast from, a public place, are not so private that prior consent is required before broadcast from the individual concerned, unless broadcasting without their consent is warranted.

We also took into account Practices 8.20 and 8.21 in relation to Mrs R's children.

The complainant's and her children's legitimate expectations of privacy

We assessed whether Mrs R and her children had legitimate expectations of privacy regarding the broadcast of footage of them included in the programme. We applied the same objective test as set out in head a) above. We also took into account the considerations relating to children as set out in head a) that may result in children having

a greater legitimate expectation of privacy or in having an expectation of privacy in circumstances where an adult might not.

As set out in the "Programme summary" above, we took account of the material shown in the programme. In particular, Mrs R was shown not only discussing matters with the HCEAs relating to the debt, for which she was not personally liable, but also explaining her personal and financial circumstances. Further, the footage showed Mrs R and her children in their home and Mrs R as she interacted with her children. Mrs R's face was not obscured in the programme, but the faces of her children had been obscured.

Practice 8.14 states that "Material gained by surreptitious filming and recording should only be broadcast when it is warranted". As explained in detail at head a) above, Ofcom considered that the footage filmed of Mrs R inside her home had been obtained surreptitiously. Some of this footage was included in the programme as broadcast.

We also took into account that some of the interactions with the HCEAs had taken place on the doorstep of Mrs R's property, at a ground floor window, and on the driveway and that some, if not all, of these interactions would have been in full view of any members of the public who may have been in the area at the time. However, the fact some of the events took place outside or in the potential view of the public did not, in our view, mean that Mrs R had no legitimate expectation with respect to this footage which we considered could not be meaningfully separated from the parts which were filmed in Mrs R's private home. We considered that the two visits, which were each presented in the programme as a single sequence of events and together comprised a single story which was featured in two parts, revealed information about Mrs R's personal and financial circumstances and showed her as she interacted with the HCEAs in a distressing and sensitive situation.

We recognised that Channel 5 had taken some steps to limit the extent of the intrusion into the privacy of Mrs R's two children by blurring their faces. We also took into account that the programme included only limited footage of Mrs R's children. However, we considered that the programme included private and sensitive information about their private family life and also showed them in a domestic setting. Although Mrs R's identity was not disguised and only her first name was included in the programme, the programme did include the full name of Mr R, together with footage of him. For this reason, we considered that Mrs R's children were identifiable in the programme.

For the reasons set out in head a) above, Ofcom considered that all the footage in question was highly sensitive and private in nature. We also considered that the intrusion was particularly acute as a result of the subsequent disclosure of that footage in a nationally televised programme (with attendant exposure that substantially exceeded anything which someone in the complainants' position could possibly have expected at the time)³⁸. In these circumstances we considered that the inclusion of this material in the programme as broadcast constituted a very significant interference with Mrs R's and her two children's privacy rights.

³⁸ *Peck v United Kingdom* [2003] ECHR 44.

Whether the infringement was warranted

It was not disputed by the broadcaster that the footage was included without Mrs R's consent. We therefore went on to consider whether the broadcast of this material was warranted under the Code.

We again carefully balanced Mrs R's and her two children's right to privacy regarding the inclusion of the relevant footage in the programme with the broadcaster's right to freedom of expression and the audience's right to receive the information broadcast without unnecessary interference. We also took into account that the footage depicted both Mrs R and her two children in their home as Mrs R interacted with the HCEAs and as she sought to assist Mr R. Footage of her home and personal belongings was also shown.

We considered that the programme involved a very significant intrusion into Mrs R's and her two children's privacy as a consequence of including unguarded exchanges at and within the confines of the domestic home, the interior of that home, and how they lived and interacted with others in that environment, including the HCEAs. This went substantially beyond the fact of the outstanding debt. Additionally, the material filmed and subsequently broadcast included footage of Mrs R as she became increasingly upset about the matter and as she disclosed highly personal and sensitive information about herself and her children, their health, and their family life.

As above in head a) we took into account Channel 5's argument and its representations that there was a public interest in broadcasting the footage in that it showed the activities of the HCEAs while executing their official duties. We also took into account the broadcaster's representations on Ofcom's Preliminary View, as also set out above in head a).

As previously, we acknowledged that the public interest was engaged in broadcasting programmes that highlight the serious issue of debt and the issues which the HCEAs encounter when seeking to enforce court orders made in that regard. For example, the programme showed that controlled goods orders can be placed over property as surety for repayment agreements. It also showed the consequences of defaulting on a repayment agreement, how some debtors try to obstruct the activities of the HCEAs, and the type of resolution that can be achieved by being honest and co-operative with the HCEAs. We also recognised that the inclusion of named or identifiable individuals may enhance that public interest by making the broadcast footage more accessible or engaging to the watching audience³⁹. However, in weighing up the competing rights of the parties, Ofcom took particular account of the serious nature of the interference with the complainants' rights to privacy, particularly in light of the fact that Mrs R was not personally liable for the debt. We also took into account the manner in which some of the footage had been obtained within the family home, and the sensitive and personal matters which were recorded about their private and family life. In weighing up the competing rights of the parties, Ofcom considered it significant that Mrs R did not give her consent to the broadcast of this material and that some of the material was obtained by means that, in Ofcom's view, amounted to surreptitious filming or recording.

³⁹ *In re S (identification: Restrictions on Publication)* [2005] 1 AC 593 (at p604); *In re Guardian News & Media Ltd* (at para 63).

Having taken all the factors above into account Ofcom considered that, on balance, the interference with the complainants' rights to privacy in this case was significant and of such a nature and gravity as to outweigh the public interest in programming of this nature and the wider Article 10 rights of the broadcaster and programme makers. Ofcom also took the view that the broadcast of the footage of Mrs R and her children gained by the surreptitious filming was not warranted for the purpose of Practice 8.14 in these circumstances. For these reasons, Ofcom considered that the complainants' privacy was unwarrantably infringed in the programme as broadcast.

Ofcom has upheld Mrs R's complaint made on her own behalf and on behalf of her children of unwarranted infringement of privacy in connection with the obtaining of material included in the programme, and in the programme as broadcast.

Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 12 and 25 November 2018 and decided that the broadcaster or service provider did not breach Ofcom's codes, rules, licence conditions or other regulatory requirements.

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

Programme	Service	Transmission date	Categories
Undercover Girlfriend (trailer)	Channel 5	24/08/2018	Offensive language

For more information about how Ofcom conducts investigations about content standards on television and radio programmes, go to:

https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf

Investigations conducted under the General Procedures for investigating breaches of broadcast licences

Licensee	Licensed service	Categories
Netplay TV Group Limited	SUPERCASINO.COM	Provision of info (diversity)

For more information about how Ofcom conducts investigations about broadcast licences, go to: https://www.ofcom.org.uk/_data/assets/pdf_file/0019/31942/general-procedures.pdf

Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 12 and 25 November 2018 because they did not raise issues warranting investigation.

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

Programme	Service	Transmission Date	Categories	Number of complaints
Four in a Bed	4Seven	10/11/2018	Violence	1
Rich Kids Go Skint	5Star	05/11/2018	Generally accepted standards	1
Programming trailers	CBS Reality	01/10/2018	Scheduling	1
24 Hours in A&E	Channel 4	12/11/2018	Age discrimination/offence	1
Brexit: What the Nation Really Thinks	Channel 4	05/11/2018	Due impartiality/bias	13
Celebrity Hunted	Channel 4	06/11/2018	Generally accepted standards	1
Celebrity Hunted	Channel 4	13/11/2018	Crime and disorder	3
Channel 4 News	Channel 4	22/08/2018	Due impartiality/bias	1
Channel 4 News	Channel 4	11/10/2018	Gender discrimination/offence	1
Channel 4 News	Channel 4	24/10/2018	Due accuracy	1
Channel 4 News	Channel 4	29/10/2018	Generally accepted standards	1
Channel 4 News	Channel 4	07/11/2018	Due impartiality/bias	1
Channel 4 News	Channel 4	12/11/2018	Due impartiality/bias	1
Channel 4 News	Channel 4	18/11/2018	Due impartiality/bias	1
Channel ident	Channel 4	20/11/2018	Crime and disorder	1
Extreme Everest with Ant Middleton	Channel 4	11/11/2018	Generally accepted standards	1
Formula One: United States Grand Prix – Qualifying	Channel 4	20/10/2018	Race discrimination/offence	1
Four in a Bed	Channel 4	19/11/2018	Offensive language	1
Gogglebox	Channel 4	09/11/2018	Sexual orientation discrimination/offence	2
Gogglebox	Channel 4	16/11/2018	Religious/Beliefs discrimination/offence	1
Hollyoaks	Channel 4	11/11/2018	Materially misleading	1
Naked Attraction	Channel 4	06/11/2018	Nudity	1
Naked Attraction	Channel 4	08/11/2018	Generally accepted standards	2

Programme	Service	Transmission Date	Categories	Number of complaints
Naked Attraction	Channel 4	09/11/2018	Generally accepted standards	1
Naked Attraction	Channel 4	15/11/2018	Nudity	1
Naked Attraction	Channel 4	16/11/2018	Generally accepted standards	1
Naked Attraction	Channel 4	16/11/2018	Nudity	1
Naked Attraction	Channel 4	22/11/2018	Generally accepted standards	1
The Last Leg	Channel 4	09/11/2018	Religious/Beliefs discrimination/offence	8
The Secret Life of The Zoo	Channel 4	14/11/2018	Offensive language	1
The Sex Robots Are Coming	Channel 4	20/11/2018	Generally accepted standards	1
Big Brother	Channel 5	17/10/2018	Generally accepted standards	4
Big Brother	Channel 5	05/11/2018	Materially misleading	4
Big Brother	Channel 5	05/11/2018	Voting	9
Blood	Channel 5	22/11/2018	Religious/Beliefs discrimination/offence	1
Can't Pay? We'll Take It Away!	Channel 5	03/11/2018	Generally accepted standards	1
GPs: Behind Closed Doors	Channel 5	14/11/2018	Animal welfare	2
Jeremy Vine	Channel 5	30/10/2018	Race discrimination/offence	1
Jeremy Vine	Channel 5	31/10/2018	Age discrimination/offence	1
Jeremy Vine	Channel 5	09/11/2018	Due accuracy	1
Noddy: Toyland Detective	Channel 5	02/11/2018	Generally accepted standards	1
Police Interceptors	Channel 5	19/11/2018	Race discrimination/offence	1
Rusty Rivets	Channel 5	18/11/2018	Dangerous behaviour	1
Scrambled!	CiTV	18/11/2018	Due impartiality/bias	2
Impractical Jokers	Comedy Central	08/10/2018	Generally accepted standards	1
Gavin and Stacey	Dave	04/11/2018	Offensive language	1
Celebs Go Dating	E4	08/11/2018	Generally accepted standards	1
Celebs Go Dating	E4	08/11/2018	Religious/Beliefs discrimination/offence	1
Harry Enfield and Chums	Gold	17/10/2018	Sexual orientation discrimination/offence	1
Gold's Greatest Hits	Gold (Nottingham / Derby)	11/11/2018	Generally accepted standards	1

Programme	Service	Transmission Date	Categories	Number of complaints
Heart Breakfast Show	Heart	29/10/2018	Offensive language	1
Heart Breakfast with Joel and Lorna	Heart North West	06/11/2018	Generally accepted standards	1
Butterfly	ITV	14/10/2018	Generally accepted standards	9
Butterfly	ITV	14/10/2018	Suicide and self harm	15
Butterfly	ITV	21/10/2018	Suicide and self harm	2
Coronation Street	ITV	07/10/2018	Religious/Beliefs discrimination/offence	1
Coronation Street	ITV	26/10/2018	Gender discrimination/offence	1
Coronation Street	ITV	26/10/2018	Violence	2
Coronation Street	ITV	05/11/2018	Race discrimination/offence	1
Coronation Street	ITV	07/11/2018	Generally accepted standards	1
Coronation Street	ITV	07/11/2018	Religious/Beliefs discrimination/offence	1
Coronation Street	ITV	07/11/2018	Sexual material	1
Coronation Street	ITV	21/11/2018	Animal welfare	3
Dark Heart	ITV	31/10/2018	Violence	3
Dark Heart	ITV	01/11/2018	Generally accepted standards	1
Emmerdale	ITV	08/11/2018	Generally accepted standards	1
Emmerdale	ITV	09/11/2018	Dangerous behaviour	1
Emmerdale	ITV	15/11/2018	Generally accepted standards	1
Good Morning Britain	ITV	16/10/2018	Generally accepted standards	1
Good Morning Britain	ITV	17/10/2018	Generally accepted standards	1
Good Morning Britain	ITV	05/11/2018	Gender discrimination/offence	1
Good Morning Britain	ITV	05/11/2018	Generally accepted standards	2
Good Morning Britain	ITV	06/11/2018	Generally accepted standards	1
Good Morning Britain	ITV	06/11/2018	Offensive language	1
Good Morning Britain	ITV	07/11/2018	Generally accepted standards	3
Good Morning Britain	ITV	07/11/2018	Materially misleading	1
Good Morning Britain	ITV	07/11/2018	Race discrimination/offence	1

Programme	Service	Transmission Date	Categories	Number of complaints
Good Morning Britain	ITV	13/11/2018	Generally accepted standards	4
Good Morning Britain	ITV	16/11/2018	Generally accepted standards	1
Good Morning Britain	ITV	19/11/2018	Offensive language	1
Good Morning Britain	ITV	21/11/2018	Animal welfare	1
Good Morning Britain	ITV	21/11/2018	Generally accepted standards	1
HSBC advertisement	ITV	22/11/2018	Political advertising	1
I'm a Celebrity...Get Me Out of Here!	ITV	18/11/2018	Animal welfare	1
I'm a Celebrity...Get Me Out of Here!	ITV	18/11/2018	Gender discrimination/offence	1
I'm a Celebrity...Get Me Out of Here!	ITV	18/11/2018	Generally accepted standards	7
I'm a Celebrity...Get Me Out of Here!	ITV	18/11/2018	Promotion of products/services	1
I'm a Celebrity...Get Me Out of Here!	ITV	19/11/2018	Animal welfare	3
I'm a Celebrity...Get Me Out of Here!	ITV	19/11/2018	Generally accepted standards	2
I'm a Celebrity...Get Me Out of Here!	ITV	20/11/2018	Generally accepted standards	8
I'm a Celebrity...Get Me Out of Here!	ITV	20/11/2018	Sexual material	1
I'm a Celebrity...Get Me Out of Here! (trailer)	ITV	13/11/2018	Generally accepted standards	1
ITV News	ITV	08/11/2018	Due impartiality/bias	1
ITV News	ITV	09/11/2018	Due accuracy	1
ITV News	ITV	09/11/2018	Due impartiality/bias	1
ITV News	ITV	09/11/2018	Generally accepted standards	3
ITV News	ITV	09/11/2018	Religious/Beliefs discrimination/offence	1
ITV News	ITV	10/11/2018	Due impartiality/bias	1
ITV News	ITV	12/11/2018	Due impartiality/bias	1
ITV News	ITV	12/11/2018	Generally accepted standards	1
ITV News	ITV	12/11/2018	Religious/Beliefs discrimination/offence	61
ITV News	ITV	12/11/2018	Undue prominence	1
ITV News	ITV	15/11/2018	Religious/Beliefs discrimination/offence	5
ITV News	ITV	19/11/2018	Violence	1

Programme	Service	Transmission Date	Categories	Number of complaints
Just Eat's sponsorship of The X Factor	ITV	11/11/2018	Sponsorship credits	1
Loose Women	ITV	01/10/2018	Gender discrimination/offence	1
Loose Women	ITV	29/10/2018	Gender discrimination/offence	1
Saturday Morning with James Martin	ITV	10/11/2018	Animal welfare	1
The Chase	ITV	05/10/2018	Fairness	1
The Chase	ITV	07/11/2018	Generally accepted standards	1
The Jeremy Kyle Show	ITV	02/11/2018	Generally accepted standards	1
The Jeremy Kyle Show	ITV	05/11/2018	Offensive language	1
The Jonathan Ross Show	ITV	03/11/2018	Generally accepted standards	1
The X Factor	ITV	21/10/2018	Under 18s in programmes	1
The X Factor	ITV	10/11/2018	Generally accepted standards	1
The X Factor	ITV	10/11/2018	Offensive language	1
The X Factor	ITV	10/11/2018	Product placement	2
The X Factor	ITV	10/11/2018	Violence	1
The X Factor	ITV	11/11/2018	Generally accepted standards	1
The X Factor	ITV	11/11/2018	Other	1
The X Factor	ITV	17/11/2018	Generally accepted standards	1
The X Factor	ITV	17/11/2018	Religious/Beliefs discrimination/offence	1
The X Factor	ITV	18/11/2018	Other	1
The X Factor	ITV	18/11/2018	Sexual material	103
The X Factor	ITV	18/11/2018	Under 18s in programmes	2
The X Factor	ITV	18/11/2018	Voting	8
This Morning	ITV	27/09/2018	Exorcism, the occult and the paranormal	1
This Morning	ITV	22/10/2018	Materially misleading	1
This Morning	ITV	23/10/2018	Generally accepted standards	1
This Morning	ITV	05/11/2018	Generally accepted standards	1
This Morning	ITV	19/11/2018	Harm	1
Tipping Point	ITV	11/11/2018	Race discrimination/offence	1

Programme	Service	Transmission Date	Categories	Number of complaints
Tombola Arcade's sponsorship of I'm a Celebrity...Get Me Out of Here!	ITV	18/11/2018	Sponsorship	2
We Are Most Amused and Amazed	ITV	13/11/2018	Due impartiality/bias	5
We Are Most Amused and Amazed	ITV	13/11/2018	Religious/Beliefs discrimination/offence	3
Programming	ITV channels	21/10/2018	Competitions	1
ITV News London	ITV London	13/11/2018	Due impartiality/bias	1
Celebrity Juice	ITV2	15/11/2018	Animal welfare	1
Coronation Street	ITV2	26/10/2018	Under 18s in programmes	1
Coronation Street	ITV2	27/10/2018	Offensive language	1
Family Guy	ITV2	11/11/2018	Generally accepted standards	2
Harry Hill's Alien Fun Capsule	ITV2	10/11/2018	Generally accepted standards	1
I'm a Celebrity...Extra Camp	ITV2	18/11/2018	Gender discrimination/offence	1
I'm a Celebrity...Extra Camp	ITV2	18/11/2018	Generally accepted standards	1
The Mummy	ITV2	11/11/2018	Scheduling	1
Absolutely Ascot	ITVBe	23/09/2018	Generally accepted standards	1
Dinner Date	ITVBe	14/11/2018	Disability discrimination/offence	1
Sam & Billie Faiers: The Mummy Diaries	ITVBe	07/11/2018	Generally accepted standards	1
The Only Way Is Essex	ITVBe	04/11/2018	Offensive language	1
The Only Way Is Essex	ITVBe	11/11/2018	Generally accepted standards	1
The Real Housewives of Cheshire	ITVBe	03/11/2018	Offensive language	1
The Real Housewives of Cheshire	ITVBe	10/11/2018	Offensive language	1
Breaking News med Filip och Fredrik	Kanal 5 (Sweden)	06/09/2018	Due impartiality/bias	1
Breaking News med Filip och Fredrik	Kanal 5 (Sweden)	10/09/2018	Race discrimination/offence	2
Breaking News med Filip och Fredrik	Kanal 5 (Sweden)	13/09/2018	Due impartiality/bias	1
Wahlgrens Värld	Kanal 5 (Sweden)	18/10/2018	Undue prominence	1
James O'Brien	LBC 97.3 FM	11/10/2018	Generally accepted standards	1

Programme	Service	Transmission Date	Categories	Number of complaints
James O'Brien	LBC 97.3 FM	12/10/2018	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	29/10/2018	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	01/11/2018	Commercial communications on radio	1
James O'Brien	LBC 97.3 FM	05/11/2018	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	14/11/2018	Race discrimination/offence	1
James O'Brien	LBC 97.3 FM	16/11/2018	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	21/11/2018	Commercial communications on radio	1
Maajid Nawaz	LBC 97.3 FM	20/10/2018	Due accuracy	1
Maajid Nawaz	LBC 97.3 FM	20/10/2018	Generally accepted standards	1
Nick Ferrari	LBC 97.3 FM	02/11/2018	Due accuracy	1
Nick Ferrari	LBC 97.3 FM	08/11/2018	Generally accepted standards	1
Steve Allen	LBC 97.3 FM	20/11/2018	Generally accepted standards	1
Steve Allen	LBC 97.3 FM	21/11/2018	Generally accepted standards	1
Tom Swarbrick	LBC 97.3 FM	13/11/2018	Race discrimination/offence	1
Breakfast Show	Magic 105.4	09/11/2018	Competitions	1
Come Dine with Me	More 4	19/11/2018	Generally accepted standards	1
Geordie Shore	MTV	30/10/2018	Generally accepted standards	1
On Repeat	MTV Base	15/11/2018	Offensive language	1
Street Crime UK	Pick	10/11/2018	Materially misleading	1
The Force: Essex	Pick	13/11/2018	Generally accepted standards	1
Counterfeit Cat	POP	13/11/2018	Offensive language	1
Stewart Nicholson	Rother FM	20/10/2018	Generally accepted standards	1
Better Watch Out	Sky Cinema Premier	10/11/2018	Scheduling	1
Better Watch Out	Sky Cinema Premier	11/11/2018	Scheduling	1
International Rugby Union	Sky Main Event	17/11/2018	Other	1

Programme	Service	Transmission Date	Categories	Number of complaints
International Rugby Union	Sky Main Event / BT Sport 2	17/11/2018	Other	1
Premier League Football: Chelsea v Everton	Sky Main Event	11/11/2018	Offensive language	4
Sky News	Sky News	23/10/2018	Due impartiality/bias	1
Sky News	Sky News	28/10/2018	Generally accepted standards	1
Sky News	Sky News	01/11/2018	Due accuracy	1
Sky News	Sky News	03/11/2018	Due impartiality/bias	1
Sky News	Sky News	09/11/2018	Due impartiality/bias	1
Sky News	Sky News	15/11/2018	Due impartiality/bias	2
Live Usyk v Bellew	Sky Sports Box Office	10/11/2018	Generally accepted standards	1
Heist	Sky1	08/11/2018	Dangerous behaviour	1
Heist	Sky1	09/11/2018	Crime and disorder	1
Matam Khan Reporting Live	Star Plus	31/10/2018	Offensive language	1
Studio 66 Days	Studio 66	10/09/2018	Scheduling	1
STV News at Six	STV	01/11/2018	Due accuracy	1
Matthew Wright	Talk Radio	07/11/2018	Race discrimination/offence	2
The Late Night Alternative with Iain Lee	Talk Radio	30/08/2018	Generally accepted standards	1
Alan Brazil Sports Breakfast	Talksport	09/11/2018	Generally accepted standards	1
Drive	Talksport	09/11/2018	Generally accepted standards	2
Matchday Live: Arsenal v Liverpool	Talksport	03/11/2018	Commercial communications on radio	1
Paper Review	Talksport	10/11/2018	Generally accepted standards	1
Life Below Zero	Travel Channel	26/09/2018	Animal welfare	1
Diabetesgalan (Diabetes Gala)	TV3 (Sweden)	14/11/2018	Generally accepted standards	1
Dokumentär: I huvudet på en mördare	TV3 (Sweden)	04/10/2018	Materially misleading	1
Leva Utan att Dö (Live Without Dying)	TV3 (Sweden)	18/10/2018	Generally accepted standards	1
Programming	TV6 (Sweden)	Various	Race discrimination/offence	1
Istikhara	TV99	02/07/2018	Harm	1

Programme	Service	Transmission Date	Categories	Number of complaints
Istikhara	TV99	16/07/2018	Generally accepted standards	1
Istikhara	TV99	19/07/2018	Harm	1
Istikhara	TV99	23/07/2018	Harm	1
HSBC Advertisement	Various	Various	Political advertising	1
Programming	Various	25/10/2018	Generally accepted standards	1

For more information about how Ofcom assesses complaints about content standards on television and radio programmes, go to:

https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf

Complaints assessed under the Procedures for investigating breaches of content standards on BBC broadcasting services and BBC ODPS.

Programme	Service	Transmission Date	Categories	Number of complaints
Programming	BBC	n/a	Due impartiality/bias	1
BBC News	BBC 1	13/11/2018	Due impartiality/bias	1
EastEnders	BBC 1	Various	Generally accepted standards	1
The One Show	BBC 1	04/04/2018	Promotion of products/services	2
Reporting Scotland	BBC 1 Scotland	27/06/2018	Due impartiality/bias	1
Mock the Week	BBC 2	07/09/2018	Generally accepted standards	1
How Does That Make You Feel?	BBC Radio 4	03/09/2018	Disability discrimination/offence	1
Thought for the Day	BBC Radio 4	Various	Generally accepted standards	1
Today	BBC Radio 4	19/07/2018	Due accuracy	1
Breakfast Show	BBC Radio Derby	10/10/2018	Generally accepted standards	1

For more information about how Ofcom assesses complaints about content standards on BBC broadcasting services and BBC ODPS, go to:

https://www.ofcom.org.uk/_data/assets/pdf_file/0002/100100/Procedures-for-investigating-breaches-of-content-standards-on-BBC-broadcasting-services-and-BBC-on-demand-programme-services.pdf

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

Here is an alphabetical list of complaints that, after careful assessment, Ofcom has decided not to pursue between 12 and 25 November 2018 because they did not raise issues warranting investigation.

Licensee	Licensed service	Categories	Number of complaints
ITV Broadcasting Limited	ITV	Television Access Services	1

For more information about how Ofcom assesses complaints about broadcast licences, go to: https://www.ofcom.org.uk/data/assets/pdf_file/0019/31942/general-procedures.pdf

Complaints assessed under the Procedures for investigating breaches of rules for On Demand programme services

Service provider	Categories	Number of complaints
ITV Hub	Access services	1

For more information about how Ofcom assesses complaints about on demand services, go to: https://www.ofcom.org.uk/data/assets/pdf_file/0033/74499/procedures-investigating-breaches.pdf

Complaints outside of remit

Here are alphabetical lists of complaints received by Ofcom that fell outside of our remit. This is because Ofcom is not responsible for regulating the issue complained about. For example, the complaints were about the content of television, radio or on demand adverts or an on demand service that does not fall within the scope of regulation.

Programme	Service	Transmission Date	Categories	Number of complaints
Advertisement	All 4	14/06/2018	Advertising content	1
Advertisement	All 4	09/11/2018	Advertising content	1
Gogglebox	All 4	13/11/2018	Advertising content	1
The One Show	BBC 1	21/11/2018	Outside of remit	1
Racist, sexist or out of order: Serena Williams debate	Channel 4 News (YouTube)	10/09/2018	Due impartiality/bias	1
Advertisement	Channel 5	22/11/2018	Advertising content	7
Advertisements	Channel 5	18/11/2018	Advertising content	1
Big Brother's Bit On The Side	Channel 5	05/11/2018	Outside of remit	1
Jeremy Vine	Channel 5	n/a	Outside of remit	1
Advertisements	Disney Junior	10/11/2018	Advertising content	1
Advertisements	Disney Junior Plus	10/11/2018	Advertising content	1
Advertisement	E4	08/11/2018	Advertising content	1
Advertisement	Facebook	n/a	Other	1
About A Boy	Film4	09/11/2018	Outside of remit	1
Listen	Huffington Post	16/11/2018	Hatred and abuse	1
Advertisement	ITV	31/10/2018	Advertising content	1
Advertisement	ITV	01/11/2018	Advertising content	1
Advertisement	ITV	10/11/2018	Advertising content	1
Advertisement	ITV	17/11/2018	Advertising content	1
Advertisement	ITV	18/11/2018	Advertising content	1
Advertisement	ITV	20/11/2018	Advertising content	1
Advertisement	ITV	21/11/2018	Advertising content	2
Advertisement	ITV	22/11/2018	Advertising content	1
Advertisements	ITV	10/11/2018	Advertising content	1
Advertisements	ITV	22/11/2018	Advertising content	1
I'm a Celebrity...Get Me Out of Here!	ITV	20/11/2018	Outside of remit	2
Programming	ITV	11/11/2018	Outside of remit	1
The Chase	ITV	15/11/2018	Outside of remit	1
The X Factor	ITV	17/11/2018	Outside of remit	1
Advertisement	ITV Hub	22/11/2018	Advertising content	1
Advertisement	ITV Hub	n/a	Advertising content	1
Advertisements	ITV Hub	14/11/2018	Advertising content	1
News article	ITV News website	13/11/2018	Hatred and abuse	1
Advertisement	ITV2	14/11/2018	Advertising content	1
Advertisement	ITV2	17/11/2018	Advertising content	1

Programme	Service	Transmission Date	Categories	Number of complaints
Advertisement	ITV3	11/11/2018	Advertising content	1
Advertisement	n/a	08/11/2018	Outside of remit	1
Background music	n/a	20/11/2018	Outside of remit	1
Background music	n/a	n/a	Outside of remit	1
Iceland advertisement	n/a	n/a	Outside of remit	7
n/a	n/a	17/10/2018	Other	1
n/a	n/a	n/a	Outside of remit	1
Non-editorial (out of remit)	NOW TV	10/11/2018	Non-editorial	1
Andi Peters' Food Fest	QVC	15/11/2018	Teleshopping	1
Sally D	Rainbow Sound	16/11/2018	Offensive language	1
Non-editorial (PIN setup)	Sky Q	19/11/2018	Non-editorial	1
Instagram post	Urban Xtra Radio	05/11/2018	Outside of remit	1
Non-editorial (subscription)	Various	21/10/2018	Other	1
Programming	Various	10/10/2018	Other	1
Advertisement	Watch	13/11/2018	Advertising content	1
YouTube comments	YouTube	13/10/2018	Hatred and abuse	1

For more information about what Ofcom's rules cover, go to: <https://www.ofcom.org.uk/tv-radio-and-on-demand/how-to-report-a-complaint/what-does-ofcom-cover>

BBC First

The BBC Royal Charter and Agreement was published in December 2016, which made Ofcom the independent regulator of the BBC.

Under the BBC Agreement, Ofcom can normally only consider complaints about BBC programmes where the complainant has already complained to the BBC and the BBC has reached its final decision (the 'BBC First' approach).

The complaints in this table had been made to Ofcom before completing the BBC's complaints process.

Complaints about BBC television, radio or on demand programmes

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
BBC News	BBC	19/07/2018	Due accuracy	1
BBC News	BBC	Various	Due impartiality/bias	1
BBC Look North	BBC 1	23/04/2018	Due accuracy	1
BBC News	BBC 1	10/11/2018	Due impartiality/bias	1
BBC News	BBC 1	10/11/2018	Generally accepted standards	1
BBC News	BBC 1	12/11/2018	Due impartiality/bias	1
BBC News	BBC 1	16/11/2018	Due impartiality/bias	1
BBC News	BBC 1	19/11/2018	Due impartiality/bias	1
BBC News	BBC 1	22/11/2018	Due impartiality/bias	1
Breakfast	BBC 1	17/11/2018	Generally accepted standards	1
Children in Need	BBC 1	16/11/2018	Generally accepted standards	1
Dynasties	BBC 1	18/11/2018	Generally accepted standards	2
EastEnders	BBC 1	09/11/2018	Materially misleading	1
EastEnders	BBC 1	12/11/2018	Generally accepted standards	3
EastEnders	BBC 1	13/11/2018	Generally accepted standards	1
EastEnders	BBC 1	19/11/2018	Generally accepted standards	1
EastEnders	BBC 1	22/11/2018	Gender discrimination/offence	1
EastEnders	BBC 1	22/11/2018	Sexual material	1
Have I Got News for You	BBC 1	09/11/2018	Generally accepted standards	1
Masterchef	BBC 1	08/11/2018	Gender discrimination/offence	1
Peter Kay's Comedy Shuffle	BBC 1	12/11/2018	Race discrimination/offence	1
Pointless	BBC 1	17/11/2018	Materially misleading	1

Programme	Service	Transmission or Accessed Date	Categories	Number of Complaints
Question Time	BBC 1	15/11/2018	Generally accepted standards	34
Springwatch	BBC 1	21/10/2018	Generally accepted standards	1
Strictly Come Dancing	BBC 1	11/11/2018	Due impartiality/bias	1
Strictly Come Dancing	BBC 1	11/11/2018	Voting	1
Strictly Come Dancing	BBC 1	17/11/2018	Generally accepted standards	1
The Andrew Marr Show	BBC 1	11/11/2018	Due impartiality/bias	1
The Andrew Marr Show	BBC 1	18/11/2018	Generally accepted standards	2
The Apprentice	BBC 1	21/11/2018	Generally accepted standards	1
BBC News	BBC 1 / BBC Radio 4	14/11/2018	Due impartiality/bias	1
Reporting Scotland	BBC 1 Scotland	16/11/2018	Due impartiality/bias	1
Newsnight	BBC 2	11/10/2018	Due impartiality/bias	1
Newsnight	BBC 2	13/11/2018	Due impartiality/bias	1
Politics Live	BBC 2	10/10/2018	Generally accepted standards	1
Strictly: It Takes Two	BBC 2	09/11/2018	Disability discrimination/offence	1
Strictly: It Takes Two	BBC 2	14/11/2018	Product placement	1
Victoria Derbyshire	BBC 2	26/09/2018	Due impartiality/bias	1
Programming	BBC Asian Network	Various	Race discrimination/offence	1
BBC News	BBC News Channel	01/11/2018	Due impartiality/bias	1
Greg James Breakfast Show	BBC Radio 1	07/11/2018	Generally accepted standards	1
Scott Mills	BBC Radio 1	07/11/2018	Race discrimination/offence	1
Jeremy Vine	BBC Radio 2	20/11/2018	Materially misleading	1
Sportsound	BBC Radio Scotland	18/11/2018	Generally accepted standards	1

Investigations List

If Ofcom considers that a broadcaster or service provider may have breached its codes, rules, licence condition 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 or service provider has done anything wrong. Not all investigations result in breaches of the codes, rules, licence conditions or other regulatory requirements being recorded.

Here are alphabetical lists of new investigations launched between 12 and 25 November 2018.

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

Programme	Service	Transmission date
News	Iran International	22/09/2018
The Rightly Guided Khalifas	Islam Channel	11/11/2018
Competition	True Entertainment	16/10/2018
Istikhara	TV99	13/08/2018

For more information about how Ofcom assesses complaints and conducts investigations about content standards on television and radio programmes, go to:

https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf

Investigations launched under the Procedures for the consideration and adjudication of Fairness and Privacy complaints

Programme	Service	Transmission date
Panorama: Teenage Prison Abuse	BBC 1	11/01/2016
The Murder that Changed a Nation: Corruption and Conviction	BBC 1	19/04/2018

For more information about how Ofcom considers and adjudicates upon Fairness and Privacy complaints about television and radio programmes, go to:

https://www.ofcom.org.uk/_data/assets/pdf_file/0031/57388/fairness-privacy-complaints.pdf

For information about how Ofcom considers and adjudicates upon Fairness and Privacy complaints on BBC Broadcasting Services and BBC ODPS, go to:

https://www.ofcom.org.uk/_data/assets/pdf_file/0003/100101/Procedures-for-the-consideration-and-adjudication-of-Fairness-and-Privacy-complaints.pdf

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

Licensee	Licensed Service
201 Television Limited	Wellbeing Network
Canterbury Youth and Student Media Limited	CSR

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

https://www.ofcom.org.uk/_data/assets/pdf_file/0019/31942/general-procedures.pdf