

# 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 objectives<sup>1</sup>. Ofcom also has a duty to ensure that On Demand Programme Services ("ODPS") comply with certain standards requirements set out in the Act<sup>2</sup>.

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 advertising<sup>3</sup>.
- 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.

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<sup>1</sup> The relevant legislation is set out in detail in Annex 1 of the Code.

<sup>2</sup> The relevant legislation can be found at Part 4A of the Act.

<sup>3</sup> BCAP and ASA continue to regulate conventional teleshopping content and spot advertising for these types of services where it is permitted. Ofcom remains responsible for statutory sanctions in all advertising cases.

**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

#### Steg in the Afternoon

*Sunny Govan Radio, 21 May 2018, 17:55*

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#### 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 a complaint about the broadcast of offensive language in the track *This is America* by Childish Gambino, which was broadcast at 17:55 on 21 May 2018. The track included one instance of the word "motherfuckers".

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

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

Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context".

We therefore requested comments from the Licensee about how the content complied with these rules.

#### Response

SGCMG apologised "wholeheartedly" for any offence caused by the broadcast. It confirmed that a "file labelling issue" led to the explicit version of the track being added to the system erroneously marked as "clean". It added that the track was subsequently removed from the playlist system.

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.

#### Decision

Reflecting our duties under the Communications Act 2003<sup>1</sup>, 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.

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

### Rule 1.14

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

The programme included one use of the word "motherfucker". Ofcom's 2016 research<sup>2</sup> on offensive language clearly indicates that this word is considered by audiences to be among the strongest examples of offensive language.

The Code states that the times "when children are particularly likely to be listening" to radio are "the school run and breakfast time, but might include other times". Ofcom's guidance on offensive language in radio<sup>3</sup> states:

"broadcasters should have particular regard to broadcasting content at the following times: between 06:00 and 09:00 and 15:00 and 19:00 Monday to Friday during term time".

We therefore considered that the use of the word "motherfucker" at 17:55 on a Monday during school term time in this case was an example of the most offensive language being broadcast at a time when children were particularly likely to have been listening.

We acknowledged the steps taken by the Licensee to improve its compliance. However, Ofcom's decision is that the broadcast was in breach of Rule 1.14.

### Rule 2.3

This rule requires broadcasters 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.

As outlined above, Ofcom's research on offensive language indicates that the word "motherfucker" is considered by audiences to be among the most offensive language. Therefore the use of the word in this case clearly had the potential to cause offence to listeners.

Ofcom therefore considered whether the 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 of 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 this song was broadcast.

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<sup>2</sup> On 30 September 2016, Ofcom published updated research in this area – *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](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf)

<sup>3</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0014/40541/offensive-language.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0014/40541/offensive-language.pdf)

Ofcom's decision is that this broadcast also breached Rule 2.3.

**Breaches of Rules 1.14 and 2.3.**

## In Breach

### **Vision 2030: Advertisement placed by the Saudi Center for International Communication on behalf of the Saudi Ministry for Culture**

***Sky 1, 6 to 8 March 2018, various times***

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#### **Introduction**

Ofcom received three complaints from viewers who considered an advertisement for the Kingdom of Saudi Arabia's Vision 2030, placed by the Saudi Centre for International Communication on behalf of the Kingdom's Ministry of Culture and Information, was political advertising, in contravention of the Communications Act 2003 ("the Act").

Ofcom has a statutory duty, under section 319(2)(g) of the Act, to secure the standards objective "that advertising that contravenes the prohibition on political advertising set out in section 321(2) is not included in television or radio services".

Political advertising is prohibited on radio and television under the terms of section 321(2) and 321(3) of the Act<sup>1</sup>, which is reflected in Rules 7.2.1 and 7.2.2 of the UK Code of Broadcast Advertising ("the BCAP Code")<sup>2</sup>.

For most matters, the BCAP Code is enforced by the Advertising Standards Authority ("ASA"). However, Ofcom remains responsible, under the terms of a Memorandum of Understanding between Ofcom and the ASA<sup>3</sup>, for enforcing the BCAP Code rules on political advertising.

The advertisement for Vision 2030 was broadcast on the Sky 1 channel 56 times during the three days, 6 to 8 March 2018. It lasted a minute and was comprised of a montage of images and footage of historic and contemporary Saudi Arabia, which included: cityscapes; women driving; cinemas; entertainment; cultural events; industry; the Vision 2030 logo; members of the Saudi Royal Family; and the flags of Saudi Arabia and the UK. This was accompanied by the following voiceover:

*"Things are undoubtedly changing in Saudi Arabia. Economy and daily life are shifting quickly. Saudi women have been allowed to drive and cinemas are set to open again this year, after a 35-year ban. The entertainment sector is bracing itself for a new era – one of concerts and cultural events. The Kingdom is reducing its reliance on oil by investing in various projects to achieve the 2030 vision of turning Saudi Arabia into a hub connecting three continents. Led by King Salman and Crown Prince Mohammed Bin Salman, these action-oriented goals are within reach. Key world partnerships are at the heart of this shift, mainly with the United Kingdom. Our longstanding relationship brings increased prosperity and security for both countries".*

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2003/21/section/321>

<sup>2</sup> <https://www.asa.org.uk/codes-and-rulings/advertising-codes/broadcast-code.html>

<sup>3</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0029/79472/memorandum\\_of\\_understanding\\_2014.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0029/79472/memorandum_of_understanding_2014.pdf)

Section 321(2) of the Act explains that an advertisement contravenes the prohibition on political advertising if it is:

- a) an advertisement which is inserted by or on behalf of a body whose objects are wholly or mainly of a political nature;
- b) an advertisement which is directed towards a political end; or
- c) an advertisement which has a connection with an industrial dispute.

An advertisement may therefore fall foul of the prohibition on political advertising either because of the character of the advertiser or because of the content and/or character of the advertisement. Section 321(3) sets out an inclusive, non-exhaustive list of examples of "objects of a political nature" and "political ends".

In reaching our Decision, we carefully considered the content of the advertisement in two ways:

- firstly, whether the advertisement was of a "public service nature" and therefore exempt from the prohibition on political advertising set out in section 321 of the Act; and, if not,
- second, whether the advertisement was "political", as defined by the Act.

#### **Content of the advertisement: "public service nature"**

Ofcom took into account that the Kingdom of Saudi Arabia's "Vision 2030" is a government plan for the Kingdom's future, building on its "leading role as the heart of Arab and Islamic worlds", using its "investment power to create a more diverse and sustainable economy" and relying on its "strategic location" to become an "integral driver of international trade and to connect three continents: Africa, Asia and Europe"<sup>4</sup>. Ofcom also took into account that the advertisement had been placed by the Saudi Centre for International Communication ("CIC") on behalf of the Kingdom of Saudi Arabia's Ministry for Culture and Information. The CIC is described on its website<sup>5</sup> as follows:

"The Saudi Center for International Communication...was established in August 2017. It is an initiative of the Ministry for Culture and Information...to facilitate relationships with the global media community. The Center serves as a central source of information on Saudi Arabia, which includes all publicly available government statistics. It also provides content and responds to media enquiries on a variety of topics such as tourism, gender equality, human rights, local investment opportunities among many others..."

Ofcom understands that the Ministry for Culture and Information is part of the cabinet of the Kingdom of Saudi Arabian government and functions as a government department, regulating the media in Saudi Arabia and communications between Saudi Arabia and other countries. In Ofcom's view, the advertisement was therefore placed by the communications arm of a Saudi government department on behalf of that department.

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<sup>4</sup> <http://vision2030.gov.sa/en> (in particular, <http://vision2030.gov.sa/en/node/132>)

<sup>5</sup> <https://cic.org.sa/about-cic/>

A general exception to the statutory scheme of section 321 exists at section 321(7)(a) of the Act. This applies to advertisements of a "public service nature" that have been inserted by or on behalf of a government department:

"(7) Provision included by virtue of this section [section 321] in standards set under section 310 is not to apply to, or to be construed as prohibiting the inclusion in a programme service of –

(a) an advertisement of a public service nature inserted by, or on behalf of, a government department..."

Ofcom therefore sought comments from Sky UK Limited ("Sky" or "the Licensee") and other relevant parties involved in the broadcast (see below) as to whether the content of the advertisement was of a "public service nature" before reaching a Decision on whether the exception at section 321(7)(a) applied in this case.

The other relevant parties were:

- Clearcast, the organisation that provides a pre-broadcast advertising clearance service for agencies, advertisers and broadcasters;
- Beaux Media, the company that produced the advertisement, which was nominated by Honeycomb Media, the UK advertising agency used by the advertiser, to respond on its behalf; and
- the Center for International Communication ("CIC"), the advertiser, via Beaux Media.

### **Responses – content of the advertisement: "public service nature"**

The comments received from Clearcast, Beaux Media, CIC and Sky with respect to section 321(7)(a) of the Act are set out below.

#### Clearcast

Clearcast said it considered the requirements of sections 321(2)(b) and 321(3)(f) of the Act did not apply in this instance "because it was a restrained advertisement about the trading relationship between the UK and Saudi Arabia, where it [described] the longstanding relationship and the increased prosperity through trade to [the] benefit of each party ending with an image of the two nations flags". It added that "referring to the status quo [the advertisement was] akin to a public service advertisement".

#### Beaux Media

Beaux Media said its "intention during the production of the ad was to promote the relations between the two nations". It added that it "did not consider that the ad might fall under...BCAP Rule 7.2.1 or 7.2.2 [sections 321(2) and (3)]", from which it "believe[d] the ad should [have been] exempt under rule 7.2.3(a) [section 321(7)]". The production company said its "intention was to promote the change taking place in Saudi Arabia aiming to increase business relations between the two nations". It said CIC had "confirmed that the ad was to promote the relations between the two nations and had no political intentions", adding that "several versions of the ad were sent to Clearcast and many modifications were applied

following their comments”, the final broadcast version having been approved by them with no mention of any potential conflict with BCAP Rule 7.2.1 and 7.2.2 [sections 321(2) and 321(3)]”.

### Sky

Sky UK said, “the compliance clearance of this commercial was undertaken by Clearcast on behalf of Sky”, adding that it therefore had nothing further to add to Clearcast’s representations at this stage.

### **Decision – content of the advertisement: “public service nature”**

As described above, section 321(7)(a) of the Act contains a general exception to the statutory scheme which operates by disapplying the previous subsections in relation to an advertisement of a “public service nature” placed by, or on behalf of, a government department. Ofcom therefore first considered whether the exception applied in this case.

Public service advertising has a long history. By way of example, previous advertisements of a public service nature placed by government departments have included campaigns providing information and/or advice to the public about health conditions, road safety, fire prevention, or encouraging literacy.

In Ofcom’s view, the primary determinant of an advertisement of a public service nature is that the advertisement’s purpose is to inform and educate the public by providing information that is in the public interest. When determining whether an advertisement is of a public service nature, Ofcom will do so on a case by case basis.

In addition to considering the advertisement’s purpose, Ofcom is also likely to consider other factors such as: the nature of the advertisement’s subject matter; the nature of any information or advice given; the manner in which information or advice is given; the timing and context of the advertisement’s broadcast; and the degree of any controversy that might be associated with the subject matter and/or contents of the advertisement.

Ofcom drew a distinction between whether the wider policy might be considered by most people to be in the public interest (in this case, the UK’s role in Saudi Arabia’s vision of becoming a “*hub connecting three continents*” by 2030) and whether the advertisement itself was of a public service nature. It is not Ofcom’s role to comment on such wider matters and this Decision should not be interpreted as passing any comment on them.

We began by considering the timing and context in which the advertisement for Vision 2030 was broadcast. The advertisement was broadcast 56 times between 6 and 8 March 2018, coinciding with an official visit to the UK by Crown Prince Mohammed bin Salman of the Kingdom of Saudi Arabia. A primary purpose of this visit was to reaffirm relations between the two countries, in particular, the UK’s role in the Kingdom’s future plans<sup>6</sup>. However, the

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<sup>6</sup> A “Joint Communiqué” between the UK and the Kingdom of Saudi Arabia (“the Joint Communiqué”) was published by the Foreign and Commonwealth Office immediately after this official visit, in which “Saudi Arabia and the United Kingdom confirmed and reinforced the relations between the two countries, and committed to developing a deeper and more strategic partnership to enhance mutual interests”. The Joint Communiqué also stated that “the United Kingdom confirmed its strong support for Vision 2030 and the Kingdom of Saudi Arabia’s programme for economic diversity and social

visit took place amid public controversy and debate, when questions were asked in the UK Parliament about the UK's relationship with the Kingdom of Saudi Arabia. The issues raised in this debate focused on the Kingdom's approach to issues such as freedom of speech and human rights (in particular, women's rights), as well as its involvement in the Yemeni Civil War and its role more generally in the Middle East<sup>7</sup>. In the context of these debates, reference was made to Vision 2030 as the mechanism by which the Kingdom of Saudi Arabia intends to implement reform<sup>8</sup>.

Ofcom also took into account the controversy and debate that was taking place among the wider public more generally, as reflected in the media reports published in the days immediately preceding and during the visit by Saudi royalty and officials. As stated in one report (from Sky News), "the visit will not be without criticism and protest", with respect to Saudi Arabia's military intervention in Yemen and its record on human rights<sup>9</sup>.

We took into account the content and purpose of the advertisement. Lasting one minute, it showed a montage of images of historic and contemporary Saudi Arabia which included: cityscapes; women driving; cinemas; entertainment; cultural events; industry, the Vision 2030 logo; members of the Saudi Royal Family and the flags of the Kingdom of Saudi Arabia and the UK. These images were accompanied by a voice-over, which described the reforms that are taking place in the Kingdom of Saudi Arabia, where women are to be allowed to drive cars and cinemas are re-opening after a 35-year ban. The narrative also referred to the Kingdom's plans for its future, relying less on oil and investing in various other projects. The voice-over concluded with a statement that "*key world partnerships are at the heart of this shift*", in particular, the relationship between the Kingdom of Saudi Arabia and the UK, where this "*longstanding relationship brings increased prosperity and security for both countries*".

Ofcom took into account the representations received from the Licensee and the other relevant parties involved in the broadcast. This included Beaux Media's statement that its "intention [had been] to promote the change taking place in Saudi Arabia aiming to increase business relations between the two nations", and Clearcast's view that the advertisement "was a restrained advertisement about the trading relationship between the UK and Saudi Arabia, where it [described] the longstanding relationship and the increased prosperity through trade to [the] benefit of each party ending with an image of the two nations flags". Clearcast also said that the advertisement was "referring to the status quo" and "akin to a public service advertisement".

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reform...". See: <https://www.gov.uk/government/news/united-kingdom-saudi-arabia-joint-communicue>

<sup>7</sup> See: <https://hansard.parliament.uk/commons/2018-03-07/debates/1F02F2B7-7D83-4615-B1FE-721728DE881C/UKRelationsSaudiArabia>

<sup>8</sup> See, for example, the Minister for the Middle East, Alistair Burt, speaking in the House of Commons on 7 March 2018 – link in footnote 7, above.

<sup>9</sup> <https://news.sky.com/story/uk-can-expect-a-stronger-relationship-with-saudi-arabia-after-brexite-11277934>; see also:  
<https://www.theguardian.com/uk-news/2018/mar/07/saudi-crown-prince-uk-visit>;  
<https://www.theguardian.com/world/2018/mar/07/uk-to-focus-on-areas-of-agreement-as-saudi-crown-prince-arrives>;  
<http://www.middleeasteye.net/news/saudi-crown-prince-confirmed-visit-uk-7-march-799921816>;  
and <https://edition.cnn.com/2018/03/07/europe/saudi-crown-prince-uk-visit-intl/index.html>.

Taking account of the factors and representations above, particularly the content of the advertisement and the context in which it was broadcast, Ofcom did not consider that the advertisement was of "a public service nature", such that the exception in section 321(7)(a) of the Act should apply in this case. The advertisement focused on the Kingdom of Saudi Arabia and the reforms that are underway in that country, and its primary purpose appeared to be to promote the Kingdom positively to the UK audience and to endorse the benefits of maintaining a relationship with the Kingdom at a time when this was a matter of heightened public controversy in the UK. In Ofcom's view, the primary aim of the advertisement was to portray the Kingdom of Saudi Arabia in a positive light.

For the reasons stated above, Ofcom's Decision is that the advertisement was not therefore of a public service nature and did not fall within the exception set out in section 321(7)(a) of the Act.

### **Content of the advertisement: "political advertising"**

Ofcom went on to consider whether the advertisement was "political", as defined by the Act. We considered the content against sections 321(2) and 321(3) of the Act. In particular, we sought comments from Clearcast, Beaux Media, CIC and Sky with regard to the following provisions of section 321 of the Act:

"(2) For the purposes of section 319(2)(g) an advertisement contravenes the prohibition on political advertising if it is –

...

(b) an advertisement which is directed towards a political end...

(3) For the purposes of this section objects of a political nature and political ends include each of the following –

...

(f) influencing public opinion on a matter which, in the United Kingdom, is a matter of public controversy".

### **Responses – content of the advertisement: "political advertising"**

The comments received from Clearcast, Beaux Media, CIC and Sky with respect to sections 321(2)(b) and 321(3)(f) of the Act are set out below.

#### **Clearcast**

In its initial representations, Clearcast said that, when it had received the advertisement for clearance, it had "discussed the nature of the advertisement and its purpose with particular regard to rule 7.2 [sections 321(2) and (3) of the Act]", adding that it did not consider the advertisement raised issues under sections 321(2)(b) and 321(3)(f) of the Act. It said that it believed "the advertisement [was] essentially a trade one which [emphasised] a position that already [existed], that is [the] trading relationship between the two nations [the Kingdom of Saudi Arabia and the UK]". Clearcast added that, "given that the theme [was] about current and continuing trade and that the ad [sought] to point out individual areas of change within Saudi Arabia such as allowing women to drive and the re-opening of cinemas [it did] not see these as matters of public controversy in the UK".

In response to Ofcom's Preliminary View that there had been a breach of sections 321(2)(b) and 321(3)(f) of the Act (as reflected in BCAP Code Rules 7.2.1(b) and 7.2.2(f)), Clearcast said that it stood by its view that "the advertisement was [an] overwhelming one about trade between the UK and Saudi Arabia", and that, "whilst there was a reference to for instance, women now being able to drive, it was in the margins, incidental, setting the tone and atmosphere to enhance a continued trading relationship".

Clearcast also said it was concerned that the Preliminary View had "broad implications that Ofcom should consider further". It noted that "encouraging trade with Saudi Arabia is government policy and the Department for International Trade provides assistance for companies wishing to do so"<sup>10</sup>, adding that "it is not clear from the [Preliminary View] that Ofcom feels that the ad would be considered political simply because [as stated in the Preliminary View] "the statements made in the advertisement sought to portray the Kingdom of Saudi Arabia and its relationship with the UK in a positive light"". Clearcast said "it would appear that Ofcom "took into account the controversy and debate that was taking place among the wider public more generally" and it [was] the combination of these factors that Ofcom felt to be intended to influence public opinion in the UK on matters of public controversy".

Clearcast considered that Ofcom's approach presented "a problem for the preclearance of advertising as the point at which an ad is cleared may be some time apart from when it is broadcast". It added that, "whilst contemporary controversy and debate may be objectively measured at the time of broadcast of an ad (as Ofcom has done here by quoting a Sky News report) it is something [Clearcast] may only be able to speculate about at the point of clearance". Clearcast concluded that "a positive trade ad may therefore be acceptable at some times and not others and the [Preliminary View] may affect previously approved copy from China and Turkey for instance".

Clearcast said it was "also concerned about implications of the preliminary ruling for future advertising in this area, for instance advertisements coinciding with a future state visit of say President Trump and possible advertisements promoting trade tourism and cultural links with the US".

#### Beaux Media

In its initial representations, Beaux Media said it was "tasked with creating promotional material that [highlighted] the relations between the United Kingdom and Saudi Arabia". It said that, "during ... production, [it] did not have the intention to influence the audience nor deliver a political message", adding that "the...ad was intended to promote "business expansion" between the two countries by highlighting their existing partnership and historical ties". The agency said it had sought comments from CIC (with respect to sections 321(2)(b) and 321(3)(f) of the Act) but had received no response.

In its response to Ofcom's Preliminary View, Beaux Media said it would "respect any decision from Ofcom", adding that it had sought comments from CIC (with respect to the Preliminary View) but had received no response.

#### Sky

In its initial representations, Sky said that, "as a responsible broadcaster and in compliance with the BCAP Code, [it] ensures that all advertisements are cleared before broadcast on any

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<sup>10</sup> <https://www.gov.uk/world/organisations/department-for-international-trade-saudi-arabia>

of Sky's channels or channels represented for adsales by Sky Media", using the services of Clearcast, "the industry-standard recognised body for pre-clearance of TV advertising in the UK". It added that "Sky relies on Clearcast's expertise to ensure all advertisements are properly cleared for broadcast in compliance with the BCAP Code before transmission". The Licensee said that "Clearcast cleared this advertisement for transmission...and Sky consequently transmitted the advertisement in accordance with Clearcast's direction. It added that its "belief that the advertisement [complied] with the BCAP Code is based on Clearcast's approval of the advertisement" and said it would therefore "defer to Clearcast to speak to their specific rationale in this case".

In its response to Ofcom's Preliminary View, Sky said that it had "no further representations to make in addition to those...being made by Clearcast".

### **Decision – content of the advertisement: "political advertising"**

It is Ofcom's statutory duty<sup>11</sup> to regulate broadcast advertising so as to ensure that the regulatory regime set out in the Act is enforced, and to set standards in line with the objectives specifically set out in the Act.

Since commercial broadcasting began in the UK in the 1950s, Parliament has made clear through successive Acts of Parliament concerning broadcast regulation that political advertising should not be permitted on either television or radio.

The legislation has not made it any part of Ofcom's statutory duty or function to form any judgment about the merits or otherwise of such advertising campaigns. Indeed, it appears to Ofcom that the prohibition and wording in the Act, is drafted in such a way as to ensure that Ofcom cannot differentiate between what some may describe as "good politics" and "bad politics". Rather, Ofcom must, as a matter of law, only look at whether political advertising requirements have been complied with.

Section 321 of the Act sets out the ways in which an advertisement can contravene the prohibition on political advertising because it is "directed towards a political end".

Having taken into account the representations of the Licensee and other relevant parties involved in the broadcast, Ofcom considered that section 321(3)(f) ("influencing public opinion on a matter which, in the United Kingdom, is a matter of public controversy") was the most relevant provision for consideration in this case.

Ofcom began by considering the content and purpose of the advertisement as described earlier. It showed a montage of images depicting historic and contemporary Saudi Arabia. These images were accompanied by a voice-over that described the positive reforms taking place in the Kingdom of Saudi Arabia and referred to its relationship with the UK as being key to these developments, and in bringing "increased prosperity and security for both countries".

We took into account the representations from the Licensee and the other relevant parties involved in the broadcast. This included Beaux Media's statement that it had been "tasked with creating promotional material that [highlighted] the relations between the United Kingdom and Saudi Arabia" and that, "during ... production, [it] did not have the intention to influence the audience nor deliver a political message".

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<sup>11</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/321>

Ofcom also took into account Clearcast's view that the advertisement was "overwhelming[ly]" about trade between the UK and Saudi Arabia", and that, "whilst there was a reference to for instance, women now being able to drive" those references were "in the margins, incidental, setting the tone and atmosphere to enhance a continued trading relationship". Further, Ofcom noted Clearcast's representations that encouraging trade with Saudi Arabia is government policy, where the Department for International Trade provides assistance to companies for this purpose. Further, we took into account Clearcast's view that, "given that the theme [was] about current and continuing trade and that the ad [sought] to point out individual areas of change within Saudi Arabia such as allowing women to drive and the re-opening of cinemas [it did] not see these as matters of public controversy in the UK".

We also took into account the timing and context in which the advertisement for Vision 2030 was broadcast, which coincided with an official visit to the UK by Crown Prince Mohammed bin Salman of the Kingdom of Saudi Arabia. As set out above, this visit took place amid considerable controversy and debate, both within the UK Parliament and among the wider UK public, with respect to the UK's relationship with that Kingdom. The issues raised included the Kingdom of Saudi Arabia's approach to freedom of speech, human rights, and women's rights, as well as security-related matters, such the sale of UK weapons to the Kingdom and the Kingdom's involvement in the Yemeni Civil War<sup>12</sup>. Ofcom took into account that these topics have been core features of the controversy and debate in the UK with respect to its relationship with the Kingdom of Saudi Arabia.

In our view, the statements made in the advertisement were not, as Clearcast submits, "overwhelming[ly]" about trade between the UK and the Kingdom of Saudi Arabia. Rather, the advertisement focused on the "*longstanding relationship*" between the UK and Kingdom of Saudi Arabia generally, as one of the "*key world partnerships...at the heart*" of the Kingdom of Saudi Arabia's aspirations to become "*a hub connecting three continents*". To the extent that trade may be relevant in achieving that goal, the advertisement made no express reference to it. The advertisement did, however, refer expressly to issues which were a matter of public controversy at the time of broadcast, for example, freedom of speech and women's rights. The statements included in the advertisement appeared designed to promote positively the Kingdom of Saudi Arabia and to persuade UK viewers of the benefits of the UK maintaining a relationship with it, at a time when such a relationship was a matter of contention. It is therefore Ofcom's view that the broadcast of the advertisement was intended to influence public opinion in the UK on matters of public controversy. Ofcom took into account Sky's representation that it used the services of Clearcast as "the industry-standard recognised body for pre-clearance of TV advertising in the UK", relying on its expertise "to ensure all advertisements are properly cleared for broadcast in compliance with the BCAP Code before transmission", and that the Licensee therefore "[deferred] to Clearcast to speak to their specific rationale in this case". We also took into account

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<sup>12</sup> See, for example:

<https://hansard.parliament.uk/commons/2018-03-07/debates/1F02F2B7-7D83-4615-B1FE-721728DE881C/UKRelationsSaudiArabia>;  
<https://www.independent.co.uk/news/uk/home-news/uk-britain-saudi-arabia-hypocritical-relationship-isis-yemen-weapons-trade-war-crimes-high-court-a7593231.html>;  
<https://hansard.parliament.uk/Lords/2017-11-15/debates/978077AF-7B1E-46FD-994B-1B4B32369E17/SaudiArabiaAndIran>;  
<https://labour.org.uk/press/corbyn-demands-government-acts-to-end-suffering-of/>; and  
<http://www.bbc.co.uk/news/uk-politics-39485083>.

Clearcast's view that Ofcom's approach was potentially problematic for the pre-clearance of advertisements, as contemporary controversy and debate may be capable of being objectively measured at the time of broadcast, but a matter of speculation at the point of clearance. As a result, advertisements that may be acceptable at some points in time, may not be acceptable at others.

Ofcom reminds licensees that, while they may have decided to use specialist services to aid regulatory compliance, it remains every licensee's responsibility under its licence to ensure that it occurs. In carrying out their compliance duties, licensees may determine that material previously approved by Clearcast is not compliant with the BCAP Code at the time of broadcast.

Clearcast raised concern about the implications the Preliminary View may have for future advertisements, citing, for example, those coinciding with a future state visit of President Trump and possible advertisements promoting trade tourism and cultural links with the US.

In assessing broadcast licensees' compliance with their regulatory requirements, Ofcom must consider each advertisement on a case-by-case basis, assessing the particular content and circumstances at the time. In each case, context is crucial. In this particular case, issues relating to the Kingdom of Saudi Arabia's approach to freedom of speech, human rights, and women's rights, as well as to the UK's relationship with the Kingdom of Saudi Arabia generally, had been matters of public controversy appearing regularly in the UK media for some time<sup>13</sup>. Further, as stated above, there was widespread debate about these issues in the lead up to (as well as during) the official visit to the UK by Crown Prince Mohammed bin Salman of the Kingdom of Saudi Arabia. In these circumstances, it is Ofcom's view that it was reasonably foreseeable that the matters referred to in the advertisement were likely to have been considered matters of public controversy, both at the time of clearance and at broadcast.

On that basis, having carefully considered the representations received from the relevant

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<sup>13</sup> See, for example:

[https://hansard.parliament.uk/Commons/2015-07-21/debates/15072129000001/HumanRights\(SaudiArabia\)?highlight=saudi#contribution-15072129000063](https://hansard.parliament.uk/Commons/2015-07-21/debates/15072129000001/HumanRights(SaudiArabia)?highlight=saudi#contribution-15072129000063); <https://hansard.parliament.uk/Lords/2016-02-01/debates/1602019000473/SaudiArabiaExecutions?highlight=saudi#contribution-1602019000004>; <https://hansard.parliament.uk/Commons/2016-01-05/debates/16010526000001/SaudiArabia?highlight=saudi#contribution-16010526000142>; <https://hansard.parliament.uk/Commons/2016-06-08/debates/16060823000001/HumanRightsAndArmsSalesToSaudiArabia?highlight=saudi#contribution-DEFDF2C9-0755-44B9-9125-C68BA27091FD>; <https://hansard.parliament.uk/Commons/2017-07-17/debates/2482A866-F3EA-41F5-9A63-2CBB75F7D420/SaudiArabiaAnticipatedExecutions?highlight=saudi#contribution-44D3BED7-BCDE-4606-8F33-C4881F2869EB>; <https://hansard.parliament.uk/Commons/2017-01-12/debates/636453C3-B68E-4E61-A1C8-F2918D61DA2F/Yemen?highlight=saudi#contribution-8262383E-DA28-484F-B15F-F33E8BF89514>; <https://www.bbc.co.uk/news/uk-politics-39485083>; <https://www.independent.co.uk/news/uk/home-news/uk-britain-saudi-arabia-hypocritical-relationship-isis-yemen-weapons-trade-war-crimes-high-court-a7593231.html>; <https://www.theguardian.com/commentisfree/2017/sep/18/the-guardian-view-on-saudi-arabia-the-seventh-son-rises>; and [https://www.huffingtonpost.co.uk/andrew-smith/saudi-arabia\\_b\\_5151790.html](https://www.huffingtonpost.co.uk/andrew-smith/saudi-arabia_b_5151790.html).

parties, it is Ofcom's view that the advertisement in this case was intended to influence public opinion on a matter of public controversy in the UK, in breach of sections 321(2)(b) and 321(3)(f) of the Act (as reflected in BCAP Code Rules 7.2.1(b) and 7.2.2(f)).

**Breaches of BCAP Code Rules 7.2.1(b) and 7.2.2(f)**

## In Breach

### Sky News

#### *Sky News, 14 November 2017, various times*

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#### Introduction

Sky News ("Sky News" or the "Licensee") broadcast a series of reports about the Perrin Technique, a practice claimed to be effective in the diagnosis of Chronic Fatigue Syndrome (CFS) or Myalgic Encephalomyelitis (ME). The premise of the reports was the result of research carried out by the University of Central Lancashire and published in the BMJ Open journal<sup>1</sup> ("the research").

The first report featured a patient talking about their own experience and interviewing Dr Perrin, as follows:

Presenter: *"A British doctor who has pioneered a method for diagnosing chronic fatigue illnesses says it should be made available to every GP in the country. The Perrin Technique looks for five physical symptoms and has an 86% success rate in early testing. [Patient name], a former ME sufferer from Lancashire, says the technique transformed her life".*

(cut to a self-authored report presented by Patient A)

Patient A *"Hi, my name's [...], I'd like to ask you how tired you are. Not just tired but when it seems it's taking over your whole life".*

(Picture of Patient A when they were younger)

*"That was me age 12, it meant I missed the whole of years 8 and 9 at school. I felt exhausted, drained, I didn't have the energy to speak, listen or communicate. I felt isolated but thankfully my life has been transformed. I've had a lot of medical appointments in my life. But I found a specialist in Manchester, Ray Perrin, who has helped prove that lymph vessels drain out of the brain and if they don't work properly, they can cause problems like ME. It proved that it's not just an illness in my mind, it's my body. His five-point physical check could transform diagnosis for many people".*

Dr Perrin: *"As we've shown by simple techniques that we can teach to every primary healthcare practitioner; every doctor in the world can learn these techniques to learn how to diagnose very simply, very efficiently to help in the aid to diagnosing ME".*

Patient A: *"And is getting the diagnosis as quick as possible paramount for ME sufferers?"*

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<sup>1</sup> [https://www5.uclan.ac.uk/sites/ImageBank/Marketing\\_Image\\_Library/bmjopen-2017-017521.pdf](https://www5.uclan.ac.uk/sites/ImageBank/Marketing_Image_Library/bmjopen-2017-017521.pdf)

*Dr Perrin: "It's absolutely, as you know yourself, if you would have been diagnosed straight away you wouldn't have gone through the terrible things you had to go through to recover".*

*Patient A: "A quarter of a million people in the UK suffer from ME. The diagnosis and treatment that I had may not work for everyone, but it worked for me. I've gone back to work full time, I've climbed Mount Kenya, I've gone to Vegas and New York on holidays and I've been all around the world watching Man City play. I've been symptom free for seven years now. If this is you please never give up, life can get better".*

This report was repeated on two further occasions during the day.

The second report featured a live interview with another patient, as follows:

*Presenter: "Now, a British doctor has pioneered a method for diagnosing chronic fatigue illnesses and says it should be made available to every GP in the country. It's called the Perrin Technique and it looks for five physical symptoms and it has an 86% success rate in early testing*

*Well we can speak now to [Patient B's name] who suffered chronic fatigue, but her life has been changed after this treatment, she joins us now live from Preston.*

*Good morning to you..."*

*Patient B: "Good morning".*

*Presenter: "So, tell us more about the Perrin Technique, you say it completely transformed your life".*

*Patient B: "Yes, I had ME diagnosed when I was 11. To the point I was 18, so seven years, I gradually got worse and worse to the point that I was completely wheelchair bound, couldn't stand, always getting increasing ill all the time...and it was just kind of luck really that we found the Perrin Technique through just word of mouth from a friend and went to see Dr Perrin and it was like someone switched the light on. It completely changed our lives in that he first officially diagnosed me with ME positively. The NHS guidelines on ME, there is no positive diagnosis, it's a process of elimination, so that the room for misdiagnosis is quite high. Whereas Dr Perrin's diagnosis is 100% positive, he looks for physical signs. So once I've had that done, positively diagnosed with ME, I underwent the Perrin Technique treatment which is a form of cranial osteopathy and lymphatic massage which then helped me get better over the next couple of years".*

*Presenter: "Do you think that the lack of ability to diagnose it properly within the healthcare system at the moment has led to this misunderstanding of chronic fatigue illnesses because it's been misunderstood for quite some time, so perhaps you can explain to people who are watching at home, what a chronic fatigue illness is?"*

Patient B: *"Yes, it does have a massive effect on how people view it because there's no firm diagnosis and because it's a multi-systemic disease...so it can affect people in very different ways. You kind of have, even from medical professions, you have erm...kind of a...'oh you have ME' kind of thing 'it might be in your head, it might not be real, it's not as bad as you think it is' kind of attitude, when really its completely debilitating. I didn't have a teenage life at all. I couldn't go to school, I was wheelchair bound, I lost touch with all of my friends and I was basically in the house in incredible pain all the time, feeling extremely ill and no one could tell me what, definitively what was wrong or could do anything to be honest with you".*

Presenter: *"It's an incredible transformation for you now. What is life like since diagnosis and treatment. How are you now?"*

Patient B: *"I'm fine now, I'm married, I've got a nearly two year old son and I work 3 days a week. So, I'm running around after [child's name] and then I work full days on 3 days. So, I have a normal life now, which I very much doubt I would be here today without the Perrin Technique. I was that ill that no one was expecting me to live a lot longer or at least have any sort of quality of life, I was getting increasingly worse. So, this really has changed my life without a doubt".*

Presenter: *"Well, it is good to hear that you are doing well and you need all that energy with a two year old [laughing]. So, thank you very much for talking to us about your experience here on Sky News Sunrise. Really appreciate it".*

During the live interview the following graphic was displayed:

*"[Patient's name]'s life has been turned around after treatment from Dr Perrin and she has climbed Scafell Pike in the Lake District".*

Ofcom received two complaints that the reports were promotional in nature and were not objective in their coverage of the technique.

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

Rule 5.1: *"News, in whatever form, must be reported with due accuracy and presented with due impartiality".*

We therefore sought comments from the Licensee on how the reports complied with this rule.

## **Response**

Sky News said its coverage of the Perrin Technique was prompted by the findings of the research, which it considered to be of significant interest to the public as diagnosis of the condition had always been problematic. It added that the production team had researched the matter and had decided to report on the technique from the perspective of patients who considered they had benefited from it. It stressed that decisions about how the reports were presented were made by Sky News and said it believed the approach was editorially justified as it would encourage discussion of this issue.

Sky News reiterated that the foundation for its editorial interest in the technique was the publication of the research in the BMJ Open Journal<sup>2</sup>. Sky News said that much of the debate around CFS/ME had focused on whether the condition exists. It did not accept that there was the same degree of controversy about diagnosis and understood that the current diagnostic method worked on a process of eliminating other conditions. Sky News added the reason it was interested in the Perrin Technique was that it could potentially advance medical understanding of the condition. It said that, for editorial reasons, it felt it appropriate for people who believed they had benefited from the technique to tell their story. It said the case studies featured did show positive outcomes, but importantly, they also reflected that the same approach may not work for all those who have the condition.

Sky News told Ofcom that it had no reason to doubt the accuracy or integrity of the research. It said that it had approached the ME Association<sup>3</sup> for its view on the finding and the Association's response was that it neither recommended or endorsed the technique. Sky News argued this response was neutral and effectively amounted to a "no comment". While accepting that it was important to reflect a range of views and to remain impartial, the Licensee argued that the ME Association's response in effect "provided an absence of opinion which would have been of questionable value to the viewer". However, Sky News also told Ofcom that, on reflection, it considered that the audience should have been informed of the ME Association's response. It added it had subsequently discussed the coverage with all of those involved and stressed the need to reflect a range of views when covering potentially controversial subjects.

Sky News added that these were personal view reports which were clearly flagged as such. It accepted that the case studies talked about the technique positively in terms of personal impact, but pointed out that one of the reports very clearly stated that it would not work for everyone.

In response to Ofcom's Preliminary View that the reports were in breach of Rule 5.1, Sky News said it was disappointed that Ofcom considered that it had not met its impartiality requirements. It believed its acknowledgement that the ME Association response should have been included and the commitment to do so in future reporting around these issues would have resolved Ofcom's concerns. Sky News added the intention of its coverage was to shine a light on a life limiting health condition that affects many, and that an editorially interesting approach was to try and investigate the issue through the experiences of sufferers. It added the research was about the Perrin Technique and, by focussing on people who believed they had benefitted from it, and while it may have presented a positive view without appropriate counterbalance, this was not its intention.

In terms of accuracy, Sky News said it took issue with Ofcom's Preliminary View that the reports were not duly accurate. It argued that to find it in breach suggested that its reporting was inaccurate and misleading. The Licensee said early tests with an experienced practitioner had an 86% success rate. Although there was a 69% success rate attributable to a second, less experienced practitioner, Sky News contended it was not inaccurate to highlight the success rate that someone experienced in the Perrin Technique enjoyed, without a reference

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<sup>2</sup> <http://bmjopen.bmj.com/content/7/11/e017521> - BMJ Open is an online, open access journal, covering a broad range of medical research. Publishing procedures are built around fully open peer review.

<sup>3</sup> The ME Association is a registered charity which aims to support people with ME/CFS through all stages of their illness.

to a less experienced practitioner. The Licensee explained it needed to translate often complex statistical information into a format that its viewers could understand, adding there was no intent to mislead and asking Ofcom to reconsider its finding in respect of due accuracy.

In summary, the Licensee said that when reporting on the research, it did not endorse it. It added that it was unaware of a strong counter view on the Perrin Technique. Sky News said the Perrin Technique that was being recommended to be provided free of charge through GPs and which would undergo further approvals and testing. Therefore, Sky News believed the reports were presented with due accuracy and impartiality.

Finally, Sky News pointed out its record in terms of compliance, in particular with regard to Section 5 of the Code. It said it had acknowledged that the failure to include the response of the ME Association was regrettable but had put safeguards in place to prevent a similar situation arising in future.

## Decision

Reflecting our duties under the Communications Act 2003, Section Five of the Code requires that the special accuracy and impartiality requirements are met in news programming.

Rule 5.1 requires that “news, in whatever form, must be reported with due accuracy and presented with due impartiality”.

Ofcom's published Guidance to Section Five<sup>4</sup> makes clear that “due” means adequate or appropriate to the subject and nature of the programme. The approach may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signalled to the audience. For example, where a matter is of particular public interest, the requirement to present that matter with due accuracy and due impartiality will be correspondingly higher. The rule is primarily intended to ensure that viewers can trust news broadcasters to report the facts of events, and the background to them, with appropriate accuracy and impartiality. It goes to the heart of the relationship of trust between a news broadcaster and its audience.

Ofcom takes 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. Ofcom must seek to balance broadcasters' freedom to discuss any controversial subject or point of view in their programming and compliance with Section Five.

In its news reports in this case, Sky News featured the findings of a study published in the BMJ Open Journal. Ofcom acknowledged there were editorial reasons why the study into a new diagnostic technique for CFS/ME would be of public interest. We understand there is currently no approved clinical test for positively diagnosing CFS/ME in the UK<sup>5</sup> and clearly research into improving diagnosis is likely to be of considerable interest to viewers, particularly people with CFS/ME, and their families and friends. As set out above and in our

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<sup>4</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0033/99177/broadcast-code-guidance-section-5-march-2017.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0033/99177/broadcast-code-guidance-section-5-march-2017.pdf)

<sup>5</sup> <https://www.nhs.uk/conditions/chronic-fatigue-syndrome-cfs/diagnosis/>

published Guidance, the due accuracy and impartiality required in such circumstances needed to reflect that degree of public interest.

The study examined whether the five physical signs identified through the Perrin Technique could assist in the diagnosis of patients with CFS/ME.<sup>6</sup> The study comprised of 94 patients: 52 with CFS/ME and 42 without the condition. It involved two trained practitioners and a third practitioner who had experience in working in NHS CFS/ME clinics, but no training in the Perrin Technique. There are two points about the published study which are particularly relevant in informing our Decision. First, the study covered only the “diagnostic accuracy” of the Perrin Technique for CFS/ME, and not whether the Technique could treat the condition effectively; the published findings clearly state that the study was limited to assessing whether screening of physical symptoms may potentially lead to faster diagnosis. Secondly, the findings acknowledged that the study was, “a small single-centre study, and therefore, further validation in other centres and larger populations is needed”.

Ofcom first considered whether the Sky News reports were duly impartial. The content of these reports focused on the personal experiences of patients who had been not only diagnosed but also treated by Dr Perrin at his clinic. The patients featured believed the positive diagnosis and subsequent treatment they had received from Dr Perrin had changed their lives for the better. For example, one patient said she had been “*symptom free for seven years*” and detailed some of the things she had been able to do in her life post treatment. During a live interview, another patient detailed how the diagnosis and treatment from Dr Perrin “*was like someone switched a light on; it completely changed our lives*”. The patient went on to say “*I very much doubt I would be here today without the Perrin Technique...no one was expecting me to live a lot longer or at least have any sort of quality of life...so this has really changed my life, without a doubt*”. A graphic displayed during the live interview reinforced the patient’s positive view of the Technique, “[Patient’s name]’s life has been turned around after treatment from Dr Perrin and she has climbed Scafell Pike in the Lake District”.

While we recognised there were some caveats (for example, one patient saying that the Technique “*may not work for everyone*”) we considered the reports presented the Technique both in terms of diagnosis and treatment of the condition in an overwhelmingly positive light.

Sky News told Ofcom that it had contacted the ME Association to get its view on the Technique<sup>7</sup>. In a statement (which was not broadcast) the ME Association told the Licensee that while it was aware of The Perrin Technique, it was not something it would recommend or endorse. It went on to clearly state that in its view the key to finding a cure to the illness lies in biomedical research. The Association added “with no current drug treatments available, patients are often desperate and will do anything – pay anything – for treatments which are at best scientifically unproven and at worst, damaging”. The Association added early and accurate diagnosis of ME was crucial and there is strong evidence to suggest that the quicker patients are diagnosed, the better they are able to manage their health. Therefore the ME Association was funding new research at Oxford University which it hoped would help to develop a definitive diagnostic test for the illness.

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<sup>6</sup> <http://bmjopen.bmj.com/content/7/11/e017521>

<sup>7</sup> Sky News provided Ofcom with a copy of the statement and email exchanges with the ME Association

Sky News argued this statement was “neutral” and effectively a “no comment” on the study. Ofcom disagreed. In our view the statement from the ME Association took a clear position on the Technique which was at odds with how the reports presented it. Email exchanges between Sky News and the ME Association showed that the Association offered an opportunity to speak with its medical adviser, to give “a more in-depth picture on why it's not something we endorse”.<sup>8</sup> In our view, this email exchange clearly indicated that the ME Association was not neutral on this subject. Freely available information online also makes clear that the ME Association's medical adviser has expressed reservations about the Technique in the past.<sup>9</sup> Ofcom considered that this perspective from a leading ME charity would have been critical to the audience's understanding that there is an alternative view of the Perrin Technique.

Ofcom considered that excluding the alternative view of a leading ME charity, of which Sky News was aware, which was sceptical about the use of the Technique as a diagnostic or treatment method, was a significant omission. It meant viewers were denied a substantive counterpoint to the highly positive portrayal of the Perrin Technique as both a method of diagnosis and treatment for CFS/ME.

We took into account that the Licensee said that it had later reflected that it should have told its viewers about the ME Association's response and had discussed future coverage with all of those involved and stressed the need to reflect a range of views. We also took into account the Licensee's argument in response to the Preliminary View that Ofcom should have considered the matter resolved. However, Ofcom concluded that, in featuring patients who were overwhelmingly positive about the effectiveness of the Perrin Technique and not reflecting an alternative position, the reports were not duly impartial.

We then went on to consider whether the Sky News reports were duly accurate. The authors of the BMJ Open study included clear caveats about the scale and scope of the study, and the fact that it explored solely whether the Perrin Technique was accurate at diagnosing CFS/ME, and not whether the Technique was potentially an effective treatment for the condition.

The news reports began by referring to the Perrin Technique as a method for diagnosing CFS/ME, as evidenced by the published study, but went on to portray the Technique as also being a form of effective treatment through patient testimonies.

In the first report, Patient A described the Perrin Technique and gave a caveat that: *“The diagnosis and treatment that I had may not work for everyone, but it worked for me”*. She went on to say: *“I've gone back to work full time, I've climbed Mount Kenya, I've gone to Vegas and New York on holidays and I've been all around the world watching Man City play. I've been symptom free for seven years now. If this is you please never give up, life can get better”*.

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<sup>8</sup> Sky News provided Ofcom with this email exchange

<sup>9</sup> <http://www.meassociation.org.uk/2012/02/my-17-year-battle-with-the-invisible-illness-cambridge-evening-news-25-february-2012/>  
<http://www.dailymail.co.uk/health/article-467398/Could-detox-massage-really-help-cure-ME.html>

In the second report, the presenter said: *"Well we can speak now to [Patient B's name] who suffered chronic fatigue, but her life has been turned around after treatment from Dr Perrin and she has climbed Scafell Pike in the Lake District"*. A caption said: *"[Patient B's name]'s life has been turned around after treatment from Dr Perrin and she has climbed Scafell Pike in the Lake District"*.

Patient B's testimony then included the statement: *"I underwent the Perrin Technique treatment which is a form of cranial osteopathy and lymphatic massage which then helped me get better over the next couple of years"*.

Later in the report, the presenter said: *"It's an incredible transformation for you now. What is life like since diagnosis and treatment. How are you now?"*

To which Patient B responded: *"I'm fine now, I'm married, I've got a nearly two year old son and I work 3 days a week. So, I'm running around after [child's name] and then I work full days on 3 days. So, I have a normal life now, which I very much doubt I would be here today without the Perrin Technique. I was that ill that no one was expecting me to live a lot longer or at least have any sort of quality of life, I was getting increasingly worse. So, this really has changed my life without a doubt"*.

Rule 5.1 requires broadcasters to present news with due accuracy. It is our Decision that requirement was not met in this case. These reports were based on the results of a small published study that investigated the diagnostic accuracy of the Perrin Technique. However, the reports conflated the diagnosis and treatment of CFS/ME. In doing so, they suggested that the Perrin Technique was effective in both diagnosing and treating the condition. However, this was not supported by the results of the published study. We therefore considered that this conflation of the effectiveness of the Perrin Technique as a diagnostic method and treatment did not accurately reflect the research findings.

In our Preliminary View, we also noted that the reports stated that the Perrin Technique had an "86% success rate" in diagnosing ME in early testing. We queried the accuracy of this claim given it reflected the diagnostic accuracy of a more experienced Perrin Technique practitioner, but not a less experienced practitioner.<sup>10</sup> Sky argued this figure was a simplification of the data presented in the study, and was not misleading. On balance, whilst there were a number of ways the statistical information in the report could have been presented in a distilled manner, we accept one of these was to report the "success rate" by reference to the accuracy of a more experienced practitioner. However, as set out above, we consider the inaccuracy arose from conflation in the reports of effective diagnosis with effective treatment.

Ofcom's Decision is therefore that the reports were not duly accurate or duly impartial, in breach of Rule 5.1 of the Code.

### **Breach of Rule 5.1**

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<sup>10</sup> One Perrin Technique practitioner in the study successfully diagnosed 88% of the patients with CFS/ME, and 83% of the healthy patients (average of 86% across both groups). Another less experienced practitioner successfully identified 69% of CFS/ME patients and 86% of healthy patients (average of 77%). A third physician, not using the Technique, identified 44% of those with CFS/ME and 100% of the healthy patients (average of 72%).

## In Breach

### Bob's Breakfast

**Bob FM, 4 May 2018, 08:40**

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#### Introduction

Bob FM is a local commercial radio service for Hertford and its surrounding areas. The station's output consists of music and information aimed at listeners aged between 25 and 54. The licence is held by Shadow Radio Holdings Limited ("the Licensee").

We received a complaint about a segment broadcast during the station's daily breakfast programme, during which the presenter took call from a listener who identified the location of a vehicle with a mobile speed camera. The listener described the person conducting the speed checks as a "scumbag" and said he was "sat there like a little maggot".

The presenter then said that this person was:

*"in the back of a van, catching hard-working, tax-paying people who are on their way to work...to earn their living, to take their place in society, to make a bit of a difference, to you know, help the economy of this country so they can earn a living to put a roof over their head and pay taxes. Those are the people that this maggot thinks are criminals and is giving them tickets for going a little bit over the speed limit".*

The presenter then asked the listener for "the exact location again" and went on to discuss whether speed limit signs had been put up following a previous broadcast:

Presenter: *"we had one the other day, he was a maggot in a van and kept catching innocent people but he didn't put his signs up...if there are no signs up, they are not allowed to nick you but he's put them up this time has he? He was obviously listening...it's just a revenue generating thing because..."*

Caller: *"Oh yeah it's nothing about road safety, it's about topping up the..."*

Presenter: *"Oh yeah, if it was about road safety, they would be nicking all the idiots on the road but they're not doing that, they're nicking people that are going about their business, going to work..."*

Caller: *"Yeah, they go for the easy stuff".*

He finished the item by thanking the listener for his contribution to "maggotwatch" and invited other listeners to call the studio with information about other "maggots in a van".

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 offensive language...[or] discriminatory treatment or language"*

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

## Response

The Licensee explained that its listeners report being frustrated that speed cameras are used as a means of collecting revenue from "otherwise law-abiding people" for minor offences and that Bob's Breakfast is a show that reflects the views of its audience.

The Licensee said that the language used was provocative and designed to be entertaining while empathising with listeners' frustration. It added that there was no assertion that the person in the speed camera van was a police officer or whether the van was unmanned.

The Licensee said that regular listeners are familiar with the programme's "tongue in-cheek style" and that this segment was broadcast a time when children would be at school. However, it acknowledged the material may have sounded too aggressive to some listeners and that allowing the caller to use the word "scumbag" unchallenged was unacceptable.

The Licensee added that the presenter has now left the station.

## Decision

Reflecting our duties under the Communications Act 2003<sup>1</sup>, 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.

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, the time of broadcast and the likely expectation of the audience.

We first considered whether the material had the potential to cause offence.

This two-minute segment called into question the actions of speed camera operators and their motivation for carrying out this function. The item contained six uses of the word "maggot", two uses of the word "maggotwatch" and one use of the word "scumbag" to describe people who operate mobile speed cameras. The presenter and caller criticised their work, saying that its purpose was to generate revenue and that it caught "innocent" people.

In Ofcom's view, the language used in this segment was critical and derogatory and had the potential to cause offence. We took into account the Licensee's argument that there was no assertion that the people operating the speed cameras were police officers. However, in our view, listeners were likely to have understood the criticism as being directed at police officers in speed camera vehicles. We considered that this heightened the potential for offence. We also took into account the Licensee's submission that children were unlikely to be in the audience. However, our concern in this case was the potential offence to the audience generally rather than just children.

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

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

Ofcom accepted that there were legitimate grounds for Bob FM to reflect its listeners' views on how speeding restrictions are enforced. Further we acknowledged that regular listeners of *Bob's Breakfast* would have been aware of the programme's presentation style. However, in our view the repeated derogatory language and the suggestion that the operators' sole purpose was to generate revenue, rather than ensure road safety, amounted to considerable criticism and hostility. In addition, the language and criticism were reiterated and endorsed by the presenter without any challenge. For these reasons, Ofcom considered that this item was likely to have exceeded listeners' expectations.

Therefore, our Decision is that the offence caused by this segment was not justified by the context and in breach of Rule 2.3.

### **Breach of Rule 2.3**

## Resolved

### Formula E, Channel 5, 10 June 2018, 16:30

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#### Introduction

On Sunday 10 July 2018 at 16:30, Channel 5 (or "the Licensee") broadcast coverage of a race in the Formula E motor racing championship, live from Zurich.

Two complainants alerted Ofcom to the broadcast of offensive language used by Lucas Di Grassi, the Formula E driver who won the race. At 17:55, as Lucas Di Grassi was shown completing his winning lap of the race the audio of his in-car microphone included his comment, *"Yes, you did it! You're fucking brilliant"*. The presenter then immediately stated, *"Apologies for the language there, as Di Grassi celebrates..."*.

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

Rule 1.14: "The most offensive language must not be broadcast before the watershed".

Ofcom requested comments from the Licensee on how the programme complied with the above rule.

#### Response

Channel 5 said that it had "limited control" over the output and conduct of the drivers as the race coverage was part of a live feed, provided to broadcasters worldwide, on behalf of Formula E. It said that there was a desire to broadcast the audio from the team radios to share insight into tactics. However, the Licensee said that it had taken "proportionate measures" to minimise the likelihood that offensive language would be broadcast. Specifically:

- it had discussed with Formula E how best to ensure compliance with the Code, making clear that the most offensive language is unacceptable pre-watershed, and that an apology must be made immediately in the event that such language is broadcast;
- Formula E had advised that the Race Director was instructed to remind all drivers of their responsibilities when using the live team radios; and,
- the producer of the live feed had been instructed to take care when deciding to include radio audio, particularly from drivers who may be more prone to using offensive language.

The Licensee said that the language was not used in an aggressive manner, and that most viewers would understand that live broadcasts of sports events may occasionally contain strong language. It also said the potential for offence may have been mitigated by the immediate apology from the presenter, but nevertheless it sincerely apologised for any offence caused.

Channel 5 said that following the incident it "swiftly agreed" steps to address the issue and reduce the possibility of any future broadcast of offensive language. It said that it had contacted Formula E about the use of offensive language before being notified by Ofcom.

Formula E responded that it had written to the “offenders”, and that it would remind the drivers and teams of their responsibilities at briefings before the next race. Formula E proposed that any future use of offensive language by the teams would result in disciplinary action. Formula E also said that ahead of the next race it had changed the producer responsible for managing the broadcast of audio from the team radios and would be “very conservative” with the use of the team radios audio.

On the basis of the above, Channel 5 said it considered that the matter should be resolved.

### **Decision**

Reflecting our duties under the Communications Act 2003<sup>1</sup>, Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes.

Rule 1.14 states that the most offensive language must not be broadcast before the watershed on television.

Ofcom's 2016 research<sup>2</sup> 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 inclusion of the word “fucking” in this programme at 16:30 was therefore a clear example of the most offensive language being broadcast before the watershed.

However, we took into account that this was a live broadcast, the Licensee had taken a number of measures in advance to minimise the risk of offensive language being broadcast and that viewers are likely to value the audio from the drivers' microphones. We also took into account that the presenter apologised on air immediately after the incident. Further, we acknowledged the steps Channel 5 said it and Formula E had taken to minimise the risk of offensive language being broadcast in future.

In light of these factors, Ofcom's Decision is that this matter be resolved.

### **Resolved**

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

<sup>2</sup> On 30 September 2016, Ofcom published updated research in this area – *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](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf)

## Resolved

### 24-Hour Marathon

#### *Insanity Radio, 26 March 2018, 02:30*

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#### Introduction

Insanity Radio is a community radio station aimed at students studying at Royal Holloway University and other young people aged 15-24 in Egham and the surrounding area. The station broadcasts education-orientated content and provides a public forum for students. The licence for the service is held by The Royal Holloway and Bedford New College. ("RHBNC" or "the Licensee").

Ofcom received a complaint that during the annual *24-Hour Marathon* fundraising broadcast, a guest ("Guest 1") discussed how he broke the speed limit when he was driving on a local route to the University:

Guest 1: *"On a good day I can do it in five [minutes] that's 'cos I break the speed limit quite a lot".*

Presenter and Guest 2: [sigh together]

Guest 1: *"I'm one of them ones".*

Presenter: *"Jeez".*

Guest 1: *"There's a road, oh I don't know what it is called. It's near Englefield Green and I regularly play a game late at night – because nobody drives down it – nobody at all..."*

Guest 2: *"...wait where in Englefield?"*

Guest 1: *"It's where the school is".*

Guest 2: *"Errrr..."*

Guest 1: *"Er – it's like near the Green. I don't know what's the road called. There is a school on it. They have a blue uniform. That's all I know..."*

Guest 2: *"...Er I don't know..."*

Guest 1: *"...because when I drive past there are children coming out in blue uniforms. Ermm and I play a game late at night how fast I can get down there like what speed I can get up to. I got up to 60 one night – I was well pleased with that".*

Presenter: [Laughter]

Guest 3: *"Not condoning anything but if you want a good road to drive down – the one going to Kingswood?"*

Guest 1: *"No I haven't been down there".*

Guest 2: *"Just going to drop that in there. It's just a good road. And before we say, admit to breaking any more rules I think we need to go to the next song".*

Presenter: *"Yes, I think we definitely need to skip this conversation".*

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...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**

RHBNC said that the broadcast material was unsuitable and the comments made about speeding were "entirely inappropriate".

The Licensee highlighted that both the Presenter and Guest 2 reacted by sighing at the comments Guest 1 made about breaking the speed limit but acknowledged that neither made any attempt to correct them. It added that Guest 2 did however suggest playing a song *"before breaking any more rules"*. RHBNC explained that this was "an attempt to stop an inappropriate conversation" from continuing. However, the Licensee recognised that a better response would have been "to correct and admonish the guest whilst apologising for their comment" and it was "wrong" that this did not happen.

RHBNC explained that this conversation was part of a 24-hour marathon and, at the time these comments were made, the Presenter had been on-air for 14 hours. It conceded that "the presenter was probably not as focused on the programme as he would have normally been".

The Licensee explained that it had received a complaint directly following the broadcast and had begun an investigation before being contacted by Ofcom. Consequently, it had issued an immediate apology to the complainant and the three participants in the broadcast, who were volunteers, were called in to discuss the issue and accepted the content was inappropriate. RHBNC also explained that when joining the radio station, all participants agreed to the station's terms and provided a broadcast deposit. As a result of this incident, Guest 1 and Guest 2 "forfeited their deposit and were removed from air before going through re-training".

The Licensee said it "had an exemplary compliance record" and was "disappointed that this incident occurred". It added that it had rigorous standards and training processes in place, particularly as many of the presenters were "novices" and did not have previous broadcasting experience. It explained that its compliance procedures were reviewed following any amendments to the Code and also annually before the start of the academic year. This incident had also provided an opportunity "to re-look at how we communicate the issues raised in the Code to the presenting and production team". RHBNC added that at the

beginning of the new term, it would be introducing an online compliance training portal to ensure that all presenters received full compliance training.

## Decision

Reflecting our duties under the Communications Act 2003<sup>1</sup>, 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.

### Rule 2.3

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, the time of broadcast and the likely expectation of the audience.

We first considered whether the material had the potential to cause offence.

Guest 1 boasted that he could get to a destination in five minutes because he broke the speed limit on a particular route *"quite a lot"* and declared he was *"...one of them ones"*, suggesting he was someone who regularly broke the speed limit. He then went on to say he played a game *"late at night"* to see how fast he could go on a public road. He commented that when he had reached a speed of 60 mph on one occasion, he was *"well pleased with that"*.

Ofcom considered that these comments condoned and advocated deliberate dangerous driving. In Ofcom's view, the language used and the attitude expressed to irresponsible dangerous driving had the potential to cause offence.

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

We took into account that Guest 1's claims of deliberate and irresponsible dangerous driving were not challenged or criticised by the Presenter or Guest 2. Instead, Guest 2 exacerbated the likely level of offence in this case by suggesting an alternative road for speeding before light-heartedly commenting that before admitting breaking *"...any more rules"* they should play another song. Therefore, in Ofcom's view, the Presenter and Guest 2's responses did not sufficiently minimise the likelihood of listeners finding this content offensive.

We acknowledged that this discussion was broadcast in the early hours when listeners might expect to hear more challenging material in radio programming. Nonetheless, Ofcom considered that presenting deliberate dangerous driving as *"regularly play[ing] a game"*, and suggesting roads in the local area were *"good"* places to break the speed limit was likely to have exceeded the expectations of listeners to this education-focused, community-radio station.

We took into account the specific circumstances of this 24-hour broadcast on a community radio station staffed by volunteers. We also acknowledged that RHBNC had acted quickly to respond to the concerns raised, and had accepted that the material should not have been

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

broadcast. In view of the actions taken by the Licensee as set out above, including the various steps it said it was taking to prevent recurrence, Ofcom considered the matter resolved.

**Resolved**

## Broadcast Licence Conditions cases

### In Breach

#### Providing a service in accordance with 'Key Commitments' *Cando FM (Furness Broadcast Media CIC) 24 to 30 May 2018*

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##### Introduction

Cando FM is a community radio station licensed to provide a service for "16 to 40 year olds in Barrow-in-Furness". The licence is held by Furness Broadcast Media CIC ("Cando FM" or "the Licensee").

Like other community radio stations, Cando FM is required to deliver 'Key Commitments', which form part of its licence.<sup>1</sup> These set out how the station will serve its target community and include: a description of the programme service; social gain (community benefit) objectives such as training provision; arrangements for access for members of the target community; opportunities to participate in the operation and management of the service; and accountability to the community.

Ofcom received a complaint that Cando FM's output was not delivering some of the programming requirements set out in the station's Key Commitments. In particular, it was alleged that the station was not providing the required amount of locally-produced output.

We requested recordings of three days of Cando FM's output: Thursday 24 May, Friday 25 May and Saturday 26 May 2018. The audio consisted of a large amount of music and very little locally-relevant editorial content other than short news and weather updates. We therefore had concerns about Cando FM's compliance with the following Key Commitments:

- "The service provides locally-produced output<sup>2</sup> for a minimum of 13 hours per day".
- "The service provides...the facilitation of discussion and the expression of opinion".

Ofcom considered that this issue warranted investigation under Conditions 2(1) and 2(4) in Part 2 of the Schedule to Cando FM's licence. These state, respectively:

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

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

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<sup>1</sup> <http://static.ofcom.org.uk/static/radiolicensing/Community/commitments/cr101253.pdf>

<sup>2</sup> Locally-produced output is any output made and broadcast from within the service's licensed coverage area. It may include all types of local production.

## Response

In response to Ofcom's request for information during its assessment of the complaint, Cando FM admitted that across the week of 24 to 30 May, during which it was required to broadcast 91 hours of locally-produced content, it broadcast 58 hours.

The Licensee referenced the timing of the complaint, just three weeks after the transfer of the licence to Furness Broadcast Media CIC, and explained that it is "a very new company in its early stage of development as a social enterprise adjusting to the departure of some key staff and volunteers".

Cando FM explained that the new company "does not have the financial resources of Furness College [the previous Licensee] and is currently being run entirely on the good will of its volunteers", while adding that the summer presents challenges given the lack of available local sports coverage and that the number of students and presenters offering their volunteer support drops significantly during this period.

The Licensee acknowledged that "the station may be underperforming in some respects due to the significant amount of time currently being dedicated to moving the operation from Furness College to the new location" but confirmed that it is working very hard with its community partners and provided evidence of this collaboration.

Cando FM provided evidence that it had facilitated discussion or opinion, but all the examples fell outside of the monitoring period. It confirmed that "plans have already been put in place to improve 'facilitated discussion and opinion' programming". It stated that "based on feedback, interaction, online discussion and word of mouth the station's reputation, despite this recent complaint, has greatly improved since the new company took over the operation of the licence and it is expected this momentum will continue as part of the relocation plans".

The Licensee also requested to work with Ofcom to review their current Key Commitments, with a view to temporarily reducing the current commitments "until the station is relocated".

## Decision

Reflecting our duties to ensure a diverse range of local radio services, community radio licensees are required to provide the licensed service specified in their Key Commitments.

During the three days we monitored it was clear that Cando FM had not been delivering core programming elements required by the Key Commitments set out in its licence. The licensee failed to meet the commitment of 13 locally-produced hours per day on all three days of the monitoring period. Locally-produced programming amounted to five hours on Thursday 24 May, seven hours on Friday 25 May and, ten hours on Saturday 26 May. Across the week of 24 to 30 May, Cando FM was required to broadcast 91 hours of locally-produced content, but confirmed it broadcast 58 hours.

In addition to this, during the monitoring of the content there was no evidence of the facilitation of discussion or opinion programmes as set out in the Key Commitments. While the licensee did provide evidence where they worked closely in this area with their community partners, there was no evidence provided that highlighted such examples during

the week which included the monitoring period. Ofcom's decision is therefore that the licensee failed to meet the Key Commitment which states that the service must provide a service that facilitates discussion and expression of opinion.

Ofcom recognises that the licence has recently been transferred from Furness College to a very new company which is in its early stages of development. However, licensees are required to meet their Key Commitments at all times and Cando FM should have put in place plans to ensure that it could meet its Key Commitments from the date the licence was transferred.

Ofcom notes that Cando FM intends to submit a request to change its Key Commitments to ensure that they are realistic while still providing a service that serves its target community.

**Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by Furness Broadcast Media CIC (licence number CR101253).**

## In Breach

### Compliance with advertising and sponsorship income rules *Lindum Radio Broadcasting Company CIC, 2017*

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#### Introduction

Lincoln City Radio is a community radio station licensed to provide a service for Lincoln, with a particular focus on the over-50s. The licence is held by Lindum Radio Broadcasting Company CIC ("Lindum Radio" or "the Licensee").

Community radio stations are required to complete annual reports, which detail the amount and sources of funding each calendar year, to ensure compliance with funding rules and for reporting purposes.

The funding rules state that:

- Stations are allowed to raise on-air advertising and sponsorship income up to £15,000 (the "fixed revenue allowance").
- Stations may raise a further amount from this type of income, but it must not exceed 50% of the station's total relevant income (disregarding the fixed revenue allowance).
- At least 25% of the total relevant income generated must come from other sources of income (such as grants or donations).

On reviewing the figures submitted by Lindum Radio for 2017, we noted that the relevant income from on-air advertising and sponsorship exceeded the allowance by 5%. In addition, only 20% of its relevant income came from other sources.

Ofcom considered this raised potential issues under Condition 6(2) and 6(4) in Part 2 of the Schedule to Lindum Radio's licence. These state, respectively:

- "6(2) [...] (a) the inclusion in the Licensed Service of remunerated advertisements; or  
(b) the sponsorship of programmes included in the Licensed Service

must not, in any financial year of the Licensee, exceed:

- (c) £15,000 (the "fixed revenue allowance"); plus
- (d) 50% of the total relevant income, disregarding the fixed revenue allowance".

- "6(4) The Licensee must ensure that, in calculating its relevant income for the purposes of Condition 6(2)(d):

- (a) at least 25 per cent. of the relevant income is attributable to sources of funding other than:
  - (i) remunerated advertisements;
  - (ii) the sponsorship of programmes included in the Licensed Service; and
  - (iii) volunteer contributions; and

(b) the Licensee has regard to guidelines published by Ofcom”.

We requested comments from Lindum Radio on how it had complied with these conditions.

### Response

The Licensee accepted that it had inadvertently received more income from on-air advertising and sponsorship than was allowed, and consequently, had not received enough income from other sources.

It explained that it had undertaken an investigation and noted a lot of income received from donations had fallen outside of the calendar year. The Licensee recognised the seriousness of the mistake and has taken measures to ensure that the error does not occur again.

### Decision

Community radio stations are local radio stations provided principally for the good of members of the public or for a particular community, rather than primarily for commercial reasons. They are required to deliver social gain, be run on a not-for-profit basis, involve members of their target communities and be accountable to the communities they serve.

There are statutory restrictions on the funding of community radio stations.<sup>1</sup> Specifically, no community radio station is allowed to generate more than 50% of its annual income from the sale of on-air advertising and sponsorship and at least 25% of a community radio station's total relevant income must come from other sources of income.

These rules are in the legislation for two reasons. Firstly, to reduce the degree of competition for such income between community and commercial radio services. And secondly, to ensure that community radio stations have a number of different funding sources and are therefore less likely to be driven by the need to satisfy advertisers, which may conflict with the requirement for community radio services to deliver social gain.

The Licensee acknowledged that it had breached its licence conditions in respect of its funding for 2017. We noted its future plans to prevent the breach recurring.

**Breaches of Licence Conditions 6(2) and 6(4) in Part 2 of the Schedule to the community radio licence held by Lindum Radio Broadcasting Company CIC (licence number CR000166BA).**

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<sup>1</sup> Section 105(6) of the Broadcasting Act 1990, as modified by the Community Radio Order 2004 and as amended by the Community Radio (Amendment) Order 2010 and the Community Radio (Amendment) Order 2015.

## In Breach

### Provision of recordings *TMCRFM Limited (Thorne and Moorends)*

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#### Introduction

TMCR FM is a community radio station licensed to provide a service for the people of Thorne, Moorends and surrounding areas in north-east Doncaster, South Yorkshire. The licence is held by TMCRFM Limited ("the Licensee").

Following a complaint that the Licensee was not broadcasting the service described in its Key Commitments, Ofcom asked the Licensee to provide recordings of the content broadcast on 6, 8 and 10 June, as well as a programme schedule, to determine whether the service was broadcasting the licensed service, including the agreed amount of original<sup>1</sup> output.

The Licensee informed Ofcom that it was not able to provide the requested recordings. Ofcom considered that this raised potential issues under Conditions 9(1) ("Provision of information") of TMCRFM Limited's licence, which require that 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".

Ofcom therefore asked the Licensee for its formal comments on its compliance with this licence condition.

#### Response

The Licensee stated that when it came to retrieve the recordings for Ofcom, it found "that the wiring had been disconnected" on the equipment used, so the programmes had not been recorded. The Licensee provided a summary of the programming it had broadcast during the specified week but was unable to supply recordings of the output. The Licensee stated that "recording [sic] are now being checked daily" and it was "currently working to return to full strength by training extra presenters and making sure that our key commitments are met".

#### Decision

Ofcom has a duty to ensure that community radio services provide the service for which they have been licensed. In this case, the Licensee failed to provide a recording of its output requested by Ofcom, and subsequently confirmed that it had not made recordings on these dates. Without the recordings, Ofcom was unable to assess the station's broadcast output and confirm whether the programming Key Commitments had been met preventing Ofcom from carrying out one of its statutory duties. The Licensee was therefore in breach of Licence Condition 9(1).

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<sup>1</sup> Original output is content that is first produced for and transmitted by the service and excludes output that was transmitted elsewhere before. Original output can be live, pre-recorded or voice-tracked. Repeat broadcasts of original output do not count towards the minimum requirement.

While the steps taken by the Licensee to ensure future compliance are welcome, Ofcom is putting the Licensee on notice that further recordings will be requested in due course to check both to retention and provision of recordings, and Key Commitments compliance.

**Breach of Licence Condition 9(1) of the community radio licence held by TMCRFM Limited (licence number CR000154BA).**

## In Breach

### Broadcast licensees' late payment of licence fees *Various licensees*

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#### Introduction

Ofcom is partly funded by the broadcast licence fees it charges television and radio licensees. Ofcom has a statutory obligation to ensure that the fees paid by licensees meet the cost of Ofcom's regulation of broadcasting. The approach Ofcom takes to determining licensees' fees is set out in the Statement of Charging Principles.<sup>1</sup> Detail on the fees and charges payable by licensees is set out in Ofcom's Tariff Tables.<sup>2</sup>

The payment of a licence fee and payment made on time is a requirement of a broadcasting licence.<sup>3</sup>

- 1) "The Licensee shall pay to Ofcom such fees as Ofcom may determine in accordance with the tariff fixed by it and for the time being in force under Section 87 (3) of the 1990 Act as Ofcom shall from time to time publish in such manner as it considers appropriate.
- 2) Payment of the fees referred to...above shall be made in such manner and at such times as Ofcom shall specify..."

Failure by a licensee to pay its licence fee when required represents a significant and fundamental breach of a broadcast licence, as it means that Ofcom may be unable properly to carry out its regulatory duties.

#### In Breach – late payment

The following licensees failed to pay their annual licence fees by the required payment date. These licensees have therefore breached Condition 3(2) of their licences.

Licensee	Service Name	Licence Number
An individual	Kings on Air Radio	DP000069
Leicester Radio Broadcasting Limited	LRB DIGITAL	DP102053
Lyca Media II Limited	Lyca Radio 1458/Lyca Dil Se 1035	DP100393
Paco Limited	Peterborough Community Radio	CR100790
Premier Christian Communications Limited	Premier	DN000010
Westfield Arts College	AIR	CR000243

The outstanding payments have now been received by Ofcom. Ofcom will not be taking any further regulatory action in these cases.

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<sup>1</sup> [http://stakeholders.ofcom.org.uk/binaries/consultations/socp/statement/charging\\_principles.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/socp/statement/charging_principles.pdf)

<sup>2</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0019/112465/Tariff-Tables-2018\\_19.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0019/112465/Tariff-Tables-2018_19.pdf)

<sup>3</sup> As set out in Licence Condition 3 for radio licensees and Licence Condition 4 for television licensees.

## In Breach

### Provision of information *Various radio licensees*

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#### Introduction

Each licensee is required to submit financial information to Ofcom for the previous calendar year which is used by Ofcom to fulfil its market reporting obligations<sup>1</sup>. The provision of information is a licence requirement in broadcasting licences, including Digital Sound Programme Service (DSPS) licences and Radio Licensable Content Service (RLCS) licences.

Several DSPS and RCLS licensees failed to submit the requested financial information to Ofcom by the deadline specified.

Ofcom considered that this raised issues warranting investigation under the Licence Condition "General provision of information to Ofcom"<sup>2</sup>, which states:

"The Licensee shall furnish to Ofcom in such manner and at such times as Ofcom may reasonably require such documents, accounts, estimates, returns, 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".

Failure by the licensee to submit the required information represents a significant breach of a broadcast licence, as the absence of the information contained in the return means that Ofcom is unable to properly carry out its regulatory duties.

#### In Breach

The following licensees have failed to submit the requested information by the deadline provided. These licensees have therefore been found **in breach of Licence Condition 8(1) of the Digital Sound Programme Service licences**; and **in breach of Licence Condition 9(1) of the Radio Licensable Content Service licences**:

Licensee	Service Name	Licence Number
Radio Khushkhabri Ltd	Radio Khushkhabri Ltd	RLCS000128
The Word Network	The Word Network	RLCS000018

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<sup>1</sup> In the case of certain licence types, Ofcom also requires financial information to calculate annual licence fees. The Digital Sound Programme Service (DSPS) licences and Radio Licensable Content Service (RLCS) licences subject to this Decision are subject to a fixed annual licence fee.

<sup>2</sup> Licence condition 8(1) in DSPS licences and 9(1) in RLCS licences.

## Fairness and Privacy cases

### Upheld

#### **Complaint by Mr Hashaam Riaz Sheikh, made on his behalf by Mr Muhammad Ahmad Pansota News Bulletin, Samaa TV, 29 November 2017**

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#### Summary

Ofcom has upheld this complaint by Mr Hashaam Riaz Sheikh, made on his behalf by Mr Muhammad Ahmad Pansota, of unjust or unfair treatment in the programme as broadcast.

The news programme featured a report about "China-cutting", an illegal practice of appropriating and selling plots of state owned land or property for personal gain. It included allegations that Mr Sheikh was part of a "land mafia", which was guilty of "plundering" the city of Karachi and "grabbing" plots of land for development.

Ofcom found that:

- The comments made in the programme about Mr Sheikh amounted to significant allegations that were likely to materially and adversely affect viewers' perceptions of him in a way that was unfair. We took the view therefore that the broadcaster did not take reasonable care to satisfy itself that material facts were not presented in the programme in a way that was unfair to Mr Sheikh.
- Given that significant allegations were made in the programme about Mr Sheikh, the broadcaster was required to provide him with an appropriate and timely opportunity to respond to the allegations. Its failure to do so resulted in unfairness to Mr Sheikh.

#### Programme summary

On 29 November 2017, Samaa TV broadcast an edition of its live daily news programme. Samaa TV is an Urdu language channel broadcast under an Ofcom licence held by Up and Coming TV Limited. As the programme was broadcast in Urdu, an English translation was prepared by Ofcom and provided to the complainant and the broadcaster for comment. Neither party commented on the translation. The parties were informed that Ofcom would use this translation for the purpose of its investigation.

The programme featured a report about "China-cutting". The programme named a number of people whom it alleged were part of a "land mafia", which was guilty of "plundering" the city of Karachi and "grabbing" plots of land for development.

One of the presenters, Mr Syed Faisal Kareem, introduced the report:

*"A big piece of news and a big discovery in Karachi. The court has expressed serious reservations. The land mafia has ruined the city of Karachi... The Supreme Court has ordered 35 plots subject to china-cutting to be vacated. Details of these plots have been sought in the light of the original masterplan of the city. Irfan Ul Haq reports".*

A second presenter said:

*"I am Neelam Aslam welcome to the bulletin. Let's start with Karachi. Is this the city of the founder or a goldmine for the land mafia, from which anyone can extract gold, anytime and anywhere?"*

Footage of Karachi's urban buildings were shown as the programme's reporter, Mr Irfan Ul Haq, said:

*"A big discovery. 35 plots have been subject to china-cutting. The director of the masterplan tells all to the Supreme Court. The director makes discoveries of china-cutting. Karachi has been destroyed. Have the fear of God. In Ayub Khan's<sup>1</sup> era, Karachi used to look like Europe. Instead of London, people would visit Karachi, Justice Gulzar expresses his ire at the Karachi Development Authority [{"KDA"}]. Come out of your offices; are we to tell you your responsibilities? Justice Gulzar's remarks. The Director-General of KDA said that in two days, 27 illegal construction sites have been pulled down. Karachi has six masterplans. The court has sought details of plots in the light of the original masterplan. Wherever your team goes, there seems to be an increase in transgressions. There is only ten feet of road left in the Saddar district. If they are sent to spend some time at the public's pleasure, everything will be rectified... This is the story of one the great cities of the world, which sold out by its own residents, sparing neither roads nor parks..."*

Satellite images of Karachi taken in previous years were shown alongside satellite images from 2017 to demonstrate how the city had been developed. The reporter pointed to plots of land where "China-cutting" had allegedly taken place. He said:

*"The same people behind this are responsible for the problems of Karachi. Those people have taken the founder's city to be a free asset that can be raided"*

Mr Kareem said:

*"Karachi has been raided, looted and ruined by its own. 12,000 restored plots owned by the KDA. have been subject to a trillion-rupee theft. Who are the thieves? Let us unveil their names and their faces"*

Names and photographs of various people were shown, and specific allegations were made against each of them by Mr Kareem. A photograph of Mr Sheikh was displayed alongside his name and text stating his affiliation to the Pakistan People's Party ("PPP"). Mr Kareem said:

*"Here is another face. His name is Hassaam Riaz Sheikh and his association is with the Pakistan People's Party. He is dancing on the destruction of Karachi"*

A caption was shown:

*"The name of Hassaam Riaz Sheikh from the People's Party is also included in the land-grabbing group"*

One of the presenters said:

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<sup>1</sup> Field Marshal Ayub Khan, the second President of Pakistan between 1960-69.

*"The genie of China-cutting in Karachi has come out of the bottle. Who started the land-grabbing and when and how? Political parties are trading accusations. Nobody is willing to accept the blame".*

Mr Kareem said:

*"Those who dipped their hands into the flowing river of china-cutting are now worried about their homes being snatched".*

The reporter said:

*"Will the issue be contained by the destruction of buildings illegally constructed through China-cutting? Or will the black wolves involved in this face punishment? Everyone awaits the answer to this question".*

The programme went on to discuss the various actions being taken by local authorities to address the issue of "China-cutting" in Karachi. Mr Sheikh was not named or referred to specifically again in the programme.

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

- a) Mr Pansota complained that Mr Sheikh was treated unjustly or unfairly in the programme as broadcast because serious allegations of "land grabbing" were levelled against him.

Mr Pansota said that the allegations were "defamatory" and "baseless", and did not in any way correspond with "existing realities". He said that the allegations were intended to malign Mr Sheikh's name and reputation.

Samaa TV said that it had broadcast news about Mr Sheikh's involvement in "illegal land grabbing" on the basis of proceedings in the Supreme Court of Pakistan. It said that the broadcast was based on a report in which Mr Sheikh was mentioned as a person who had acquired property on the basis of "forged, fictitious and fabricated" documents. Samaa TV said that such allegations were of public importance especially when levelled against prominent figures, celebrities and politicians. It said that as Mr Sheikh and his wife were "prominent politicians" in Pakistan, any reports and allegations against Mr Sheikh and his wife were of public importance and the public had a right to know about them.

Samaa TV said that the National Accountability Bureau in Pakistan had initiated an inquiry on Mr Sheikh and his wife in relation to offences of corruption and corrupt practices. It said that there was a history of allegations against Mr Sheikh and all allegations against him were matters of public importance. It said that the Pakistan Army and the Pakistan Rangers<sup>2</sup> were asked by the Federal Government of Pakistan to "clean" the city of Karachi from "various Criminals Mafias" and to "eliminate" them. It said that, as the criminal gangs involved in crimes such as extortion of money, land grabbing and narcotics were interconnected, the army asked the KDA to submit a detailed report on illegal land allotment and grabbing. It said that it was in this context that the report was prepared by the KDA and submitted to the Rangers. Samaa TV provided Ofcom with

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<sup>2</sup> A paramilitary law enforcement organisation.

what it said was a copy of the relevant pages of the report and said that the complainant was referred to in it. It also provided a recording and translation of an interview with the Additional Director of the KDA, Mr Jameel Ahmed Baloch, which it said confirmed that a report had been put together by the KDA for the Pakistan Rangers.

Samaa TV said that the Supreme Court of Pakistan directed the KDA regarding the publicly owned land that had been "encroached" upon: "These are the lands meant for recreation of peoples of the area and for benefit/enjoyment of citizens of Karachi. Whatever allotments and illegal encroachments on these amenity plots, the same will be cancelled and resumed by the KDA and all boundary walls shall be demolished and report in this respect be made available before the Court on the next date of hearing". Samaa TV said that the KDA submitted its report once again and the Supreme Court of Pakistan in its Order dated 29 November 2017 referred to the reports, noting that the lands had been "encroached upon or have been illegally allotted or occupied pursuant to forged and fictitious allotment/leases".

Samaa TV explained that the KDA reports were then returned to the KDA because it had requested two months to submit a report regarding action taken in relation to the lands mentioned. However, Samaa TV said that the KDA reports "clearly showed Mr Sheikh as a land grabber". It said, therefore, that the news aired by Samaa TV was fair, in the public interest, based on truth and made for public good. It said that land grabbing was a widespread concern in Karachi faced by many of its citizens and that any news about land grabbing was in the public interest and for the public good, especially when the alleged land grabber was part of a prominent political family in Pakistan.

Samaa TV said that a politician and public figure such as Mr Sheikh is always subjected to more scrutiny and criticism based on their involvement in politics and governance. Any report or allegation against politicians is, therefore, always given more prominence and importance. Mr Sheikh had, therefore, not been treated unjustly or unfairly.

- b) Mr Pansota also complained that Mr Sheikh was not given an appropriate and timely opportunity to respond to the allegations. He said that the programme had judged Mr Sheikh "guilty in light of the defamatory remarks" without giving him any chance to defend himself. Mr Pansota said that "fair and responsible journalistic position" demanded that Mr Sheikh be contacted before such serious allegations with far reaching consequences were levelled against him.

Samaa TV said that the complaint also alleged that "Fair and responsible journalistic position" demanded that the broadcaster contacted Mr Sheikh "before levelling such serious allegations with far reaching consequences". In response to this, Samaa TV quoted at length an extract from the House of Lords' judgment in *Jameel (Mohammed) and another v Wall Street Journal Europe Sprl*<sup>3</sup>, and highlighted the following: "...the general obligation of a publisher to communicate important information on a matter of real public interest which the public had a general entitlement to receive; that where the article as a whole concerned a matter of public interest the inclusion of a defamatory statement of which complaint was made might be justifiable so long as it made a proper contribution to the whole thrust of the publication:... that, since the subject matter of the defendant's article was of considerable public importance, ... failure to obtain the claimants' response was an insufficient ground on which to deny the defence".

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<sup>3</sup> [2006] UKHL 44.

## Preliminary View

Ofcom prepared a Preliminary View in this case that the complaint should be upheld. Both parties were given the opportunity to make representations on the Preliminary View. The parties' representations are summarised below insofar as they were relevant to the complaint as entertained and considered by Ofcom.

### *Representations by Mr Pansota on behalf of Mr Sheikh*

Mr Pansota said that Samaa TV continued to rely on the notion that the KDA report formed the basis of the "defamatory programme". He said that the broadcaster had filed a petition before the High Court in Pakistan against both the KDA and Mr Sheikh, wherein it requested a certified copy of the complete KDA report. Mr Pansota said that this action was "fatal" to Samaa TV's rebuttal of Mr Sheikh's complaint as it amounted to an admission that they never had access to either a certified or complete copy of the report they relied upon in making the allegations against Mr Sheikh on the programme. Additionally, Mr Pansota said that the KDA had already officially stated that no such report existed. Mr Pansota said that, therefore, either "gross negligence or malicious intent" had led the broadcaster to create and disseminate the programme without verifying any of its source material.

### *Representations on behalf of Samaa TV*

Samaa TV said that it had initiated proceedings in the High Court in Pakistan against the KDA in order to obtain a certified copy of the KDA report. The broadcaster said that, although the purpose of this case was to obtain a certified copy of the KDA report, the existence of the KDA report was not in dispute. It said that while Mr Sheikh might take the view that the KDA report was not a genuine document, the genuineness of the document was not an issue in the abovementioned case. It said that these issues were beyond Ofcom's jurisdiction.

Samaa TV said that it was not the case that the allegations were broadcast without any basis, but rather a case where allegations were broadcast based on a document and that the objection was the fact that the document was "not in its entirety". It said that the list contained in the KDA report which showed Mr Sheikh as an "encroacher" was given to Samaa TV by a KDA official. Samaa TV said that Mr Baloch had confirmed the existence of this report and that neither Mr Sheikh nor anyone else had denied its existence.

The broadcaster also said that it had taken reasonable care in presenting the contents of the report as the allegations against Mr Sheikh were presented in the same manner in which they were made by the KDA. It said that nothing was broadcast against Mr Sheikh which was not mentioned in the KDA report.

Samaa TV said that Ofcom had "erroneously" stated that there was nothing in the KDA document which identified Mr Sheikh as a land grabber or encroacher and stated that there was no context on the purpose of the KDA document or its provenance. The broadcaster said that a bare reading of the document clearly showed that its purpose was to identify encroachments made on KDA lands which, it said, was obvious from the column marked "ENCROACHERS".

The broadcaster said that, because the case involved a public figure and politician as well as the encroachment of lands, which it said was an issue faced by many citizens of Pakistan, the

case was one which involved public interest. The broadcaster submitted that in such cases, a greater leeway to freedom of expression was to be given.

Samaa TV also said that Ofcom had "erroneously" stated that the broadcaster should have given Mr Sheikh an opportunity to respond to the allegations against him and that its failure to do so resulted in unfairness. It said that Ofcom's finding in this regard was clearly contrary to the House of Lords' judgment in the case of *Jameel (Mohammed) and another v Wall Street Journal Europe Sprl*. It also stated that, although Practice 7.11 of the code states that individuals should normally be given an opportunity to respond, a failure to give an opportunity to respond does not, in itself, equate to a violation of Practice 7.11. Samaa TV said that Ofcom's misinterpretation of Practice 7.11 of the Code in this manner violated the freedom of expression in matters of public interest.

## Decision

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

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

In reaching this Decision, we carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast, a translated transcript of it and both parties' written submissions. Ofcom also took careful account of the representations made by the parties in response to being given the opportunity to comment on Ofcom's Preliminary View on this complaint. After careful consideration of both parties' representations, we considered that the points raised did not materially affect the outcome of Ofcom's decision to uphold the complaint.

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

- a) We first considered the complaint that Mr Sheikh was treated unjustly or unfairly in the programme as broadcast because serious allegations of "land grabbing" were levelled against him.

Practice 7.9 states:

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

Ofcom is unable to make findings of fact on the allegations made about Mr Sheikh in the programme. Our role is to consider whether by broadcasting the allegations the broadcaster took reasonable care not to present, disregard or omit material facts in a way that was unfair to him.

The Code recognises the importance of freedom of expression and the public interest in allowing broadcasters the freedom to broadcast matters in programmes. However, in presenting material in programmes, reasonable care must be taken by broadcasters not to do so in a manner that causes unfairness to people or organisations. Whether a broadcaster has taken reasonable care to present material facts in a way that is not unfair to an individual or organisation will depend on all the particular facts and circumstances of the cases including, for example, the seriousness of any allegations and the context within which they are made.

We began by considering the seriousness of the allegations and whether they had the potential to materially and adversely affect viewers' opinions of Mr Sheikh in a way that was unfair. We then went on to consider whether, if the allegations did have this potential, the manner in which they were presented in the programme resulted in unfairness.

As set out in detail in the "Programme summary" above, the programme reported on the illegal practice of "China-cutting" in Karachi. The programme named and showed photographs of various people it alleged were involved in the practice. The programme referred to these people as "thieves" who had "raided, looted and ruined" Karachi. A photograph of Mr Sheikh was shown alongside his name and text stating his affiliation to the Pakistan People's Party as the presenter said:

*"Here is another face. His name is Hassaam Riaz Sheikh and his association is with the Pakistan People's Party. He is dancing on the destruction of Karachi".*

A caption was shown which read:

*"The name of Hassaam Riaz Sheikh from the People's Party is also included in the land-grabbing group".*

Ofcom considered that these statements amounted to significant allegations against Mr Sheikh, in that they accused him of being involved in the illegal practice of "China-cutting". In particular, we considered that the manner in which the allegations against Mr Sheikh were made was accusatory and would have left viewers in no doubt that he was involved in wrongdoing. We also took into account that the presenter's comments about Mr Sheikh were stated as established, unequivocal fact, rather than it was an allegation based on one particular source which, from the material submitted by both parties, appeared to be disputed. Therefore, it was Ofcom's view that, given the serious nature of the allegations made in the programme, these comments had the potential to materially and adversely affect viewers' opinions of Mr Sheikh negatively and in a way that was unfair.

Ofcom then considered whether the presentation of these comments in the programme as broadcast resulted in unfairness to Mr Sheikh.

We agreed with Samaa TV's submission that it was legitimate for a broadcaster to make and broadcast a programme examining allegations of wrongdoing, especially in the context of a story about a prominent public figure such as Mr Sheikh. However, Ofcom considers that when including material that has the potential to amount to an allegation of wrongdoing, or any other significant allegation, reasonable care must be taken by the broadcaster that the broadcast material is consistent with the requirements of the Code and does not mislead viewers or portray people or organisations in a way that is unfair, without sufficient basis to do so. This might include ensuring that any allegations made during the programme are properly tested and challenged, for example, by representing the viewpoint of the person or organisation that is the subject of the allegation. Ofcom therefore assessed what steps, if any, the broadcaster had taken to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to Mr Sheikh.

Samaa TV said in its response that a KDA report into "illegal land allotment and grabbing" had listed Mr Sheikh among others as a "land grabber" and that this had formed the basis for the inclusion of the allegations in the programme. However, this was disputed by the complainant who said that no such report had been issued by the KDA. While we recognised that the broadcaster said that it had relied on this KDA report for making the allegations in the programme, it was unable to provide Ofcom a full copy of the report. Instead, the broadcaster provided Ofcom with a nine-page "annex" which included a table entitled "LIST OF ST PLOTS IN KORANGI TOWNSHIP". On the third page of this annex, under a column entitled "ENCROACHERS", there was the following entry: "Hassam, Riaz Sheikh (PPPP), with Coordination Assistant Director Korgani Umair Bharni". Samaa TV said in its representations that it was "obvious" from this document that its purpose was to identify encroachments made on KDA lands. However, we did not agree. In our view, the document did not contain any identifiable markings, wording, dates or anything else which indicated that it was a genuine KDA report identifying Mr Sheikh as a "land grabber", nor did it provide any context as to its purpose or provenance, other than claiming it was from the KDA report. We took into account Samaa TV's representations, in which it stated that it had initiated legal proceedings in Pakistan against the KDA in order to obtain a certified copy of the full KDA report. However, we did not agree with the broadcaster's submission that Ofcom's ability to adjudicate on the matter was dependent on the outcome of these proceedings. It was our view that the document submitted to Ofcom by Samaa TV and which was relied upon by the broadcaster prior to and at the time of the broadcast did not substantiate the serious claim made in the programme that Mr Sheikh was involved in "China-cutting". Samaa TV also provided Ofcom with a document from the Pakistani National Bureau of Accountability which the broadcaster said showed that the Bureau had initiated an inquiry on Mr Sheikh and his wife in relation to "offences of corruption". However, whether or not the document supported the broadcaster's position that Mr Sheikh had a "history of allegations" against him, and Ofcom has not taken a view on this, we did not consider that it provided a supporting basis for including the serious allegations of land grabbing against Mr Sheikh that were included in the programme. Ofcom also considered that the programme made no attempt to place the allegation about Mr Sheikh's alleged involvement in "China-cutting" into any context: by explaining, for instance, the sources on which they had based the allegations, or that the claims

were allegations and not proven facts; by noting that this was just one particular view or opinion, or by representing a counter-balancing point of view.

Taking into account all the factors above into account, and notably that nowhere in the programme was anything said to place into appropriate context the allegations made about Mr Sheikh, we considered that the allegations made about him were serious and had the clear potential to materially and adversely affect viewers' opinions of him in a way that was unfair.

While we recognised the broadcasters' right to freedom of expression, including the right to broadcast programmes which express views on matters of interest to viewers and critical opinions without undue constraints, we considered that in the particular circumstances of this case, the broadcaster did not take reasonable steps to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to Mr Sheikh.

This resulted in unfairness to Mr Sheikh in the programme as broadcast.

- b) We next considered the complaint that Mr Sheikh was not given an appropriate and timely opportunity to respond to the allegations made against him in the programme.

Practice 7.11 states:

"If a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond".

For the reasons given above at head a), we considered that the comments made in the programme amounted to serious allegations of wrongdoing against Mr Sheikh. We considered the broadcaster's representations that Ofcom had "misinterpreted" the above practice, however, we did not agree. We considered that in the very particular and specific circumstances of this case, the broadcaster should have given Mr Sheikh an opportunity to respond to the significant allegations made against him. We took into account that, in both its response to the complaint and its representations on Ofcom's Preliminary View, Samaa TV did not dispute that it had not made any attempt to contact Mr Sheikh prior to the broadcast of the programme to seek his response to the allegations made against him.

Given all the above factors, and the seriousness of the allegations made about Mr Sheikh in the programme, we considered that the broadcaster was required to provide him with an appropriate and timely opportunity to respond. Its failure to do so resulted in unfairness to Mr Sheikh.

**Ofcom has upheld Mr Sheikh's complaint, submitted on his behalf by Mr Pansota, of unjust or unfair treatment in the programme as broadcast.**

## Not Upheld

### Complaint by Turtle Bay Restaurants

#### ***BBC Inside Out West, BBC 1, 26 February 2018 and repeated on BBC iPlayer***

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#### Summary

Ofcom has not upheld Turtle Bay Restaurants' ("Turtle Bay") complaint of unjust or unfair treatment in the programme as broadcast, made on its behalf by Carter-Ruck Solicitors ("Carter-Ruck").

The programme included a report about the practice of tipping waiting staff in restaurants and included an interview with a former Turtle Bay waitress. Carter-Ruck complained that Turtle Bay was treated unfairly because the programme alleged that it operated an unfair tipping policy.

Ofcom found that:

- The broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded, or omitted in a way that was unfair to Turtle Bay.
- Turtle Bay was provided with an appropriate and timely opportunity to respond to the allegations made against the company in the programme.
- Turtle Bay's response to the allegations was fairly and accurately reflected in the programme.

#### Programme summary

On 26 February 2018, BBC1 broadcast an edition of the investigative programme *Inside Out West*. In the introduction to the programme, the presenter said:

*"We ask, are restaurant bosses pocketing the tips?"*

Footage of Mr Chris Barber, a restaurant consultant, being interviewed was shown. He said:

*"My view on tips for all of my clients is very very simple, really clear, give every single penny of the tips to the staff".*

Later in the programme, a report on tipping was included in the programme. The presenter introduced the item:

*"Now, you've had a lovely meal out, fantastic food, great service, so you leave a tip, but how do you know that the restaurant won't pocket that money? The truth is, you don't, as I've been finding out. In the UK, we spend about £50 billion a year eating out, in places where the person who serves us is often one of the lowest paid in the restaurant, so tips are crucial. But, some in the business have a secret they don't want you to know".*

Footage of Ms Francesca Roe, a former Turtle Bay waitress, being interviewed was shown. She said:

*"You do your waitressing shift and then it transpires that you haven't made enough to cover the three per cent commission, so I'd have to come out here, get cash out, and pay that three per cent that I owed them".*

Footage of Mr Barber being interviewed was shown. He said:

*"It would appear that people had to go to a cash machine to pay money back. I cannot imagine that that's legal".*

The presenter said:

*"We contacted restaurants across Bristol and Bath to ask what their tipping policy is. Ten per cent refused to tell us, but we found out in some of them, not all your tips go to the person on the minimum wage; they're going to the business. Here's what they don't want you to know. The West Country has a thriving restaurant scene, there are thousands of establishments offering so much choice. And, their tipping policies are as varied as their menus. Turtle Bay [footage of a Turtle Bay restaurant was shown at this point and was shown at various times throughout the report] is a chain of Caribbean themed restaurants...They use a system called the table levy. It's a commission waiting staff have to pay and customers aren't even aware of it".*

The presenter asked Ms Roe how long she had worked for Turtle Bay to which she replied: *"It was nine to ten months, so just shy of a year"*. The presenter then said:

*"Frankie earned the minimum wage when she waitressed there in 2015 and had to pay this table levy".*

Ms Roe was then shown saying:

*"They charge a commission to work there, so you will turn up and you have to pay three per cent of all of the money that you take from the tables".*

The presenter said:

*"She claims on two shifts, she didn't make enough money in tips to pay the three per cent levy".*

Ms Roe said:

*"So, I would kind of go in and say to the manager, 'Look, I've not made enough'. And, they'd be quite apologetic and quite nice about it because a lot of them didn't agree with the policy, but they would say, 'I'm really sorry, but you are going to have to get cash and cover it'. So, I'd have to come out here, get cash out, and pay that three per cent that I owed them".*

The presenter then asked Ms Roe:

*"As far as the customers, they have no idea?"*

Ms Roe responded:

*"No, they don't know. You're not supposed to tell them about it".*

The presenter said:

*"That alone must make you angry".*

Ms Roe said:

*"Yeah, it does because you know what, there are a lot of really nice people who were giving that money in good faith, and, if you are going to tip, then you should know who it's going to".*

The presenter then said:

*"It's not only Turtle Bay that charges its staff a table levy. Aqua Italia do it as well. There are seven restaurants in the Aqua chain, we know in total they can take as much as £3,000 a week from this levy. Industry insider, Chris, has 30 years experience in the trade, he pretty much knows everything there is to know about the restaurant business".*

Interview footage of Mr Barber was shown again. He said:

*"I had one of my team brought it to my attention, 'Have you heard about this, it's extraordinary?' So even for professionals in the business, we're questioning how this actually worked. I mean, part of it was intriguing to me, 'I wonder how that works', and, I began to look into it. I think the effect of it now when it's reached the general public is utter, utter PR disaster, and people begin to think it erodes your confidence in the whole of the business, and you start questioning everywhere you go, what happens to those tips? That's really damaging".*

The presenter said:

*"We understand that Turtle Bay maintains that Frankie's salary never fell below the national minimum wage, that the three per cent levy is only payable if enough tips are received to cover it, and they say there is a cap on the maximum amount that floor servers have to pay, so they keep the majority of their tips. Aqua Italia declined to comment".*

The presenter was then shown sitting in a restaurant. He said:

*"Now, if you've had a good experience and thought the service was up to scratch, you'd think that giving the service charge was the same as paying a tip, but you'd be wrong. It's an optional charge added to your bill on top of the cost of food and drink".*

Mr Barber was shown again and said:

*"Restaurants become more and more stretched and under pressure, they want to maximise income, so the easiest way to make it for the guest is that I'm going to calculate the amount of service charge onto your bill and I'm going to make it an optional charge".*

The presenter said:

*"The Ivy in Clifton adds a 12.5 per cent discretionary charge to your bill. So, what does that add up to for the typical waiter or waitress? Well we monitored one of their waiting staff here over two Saturday nights. Over the course of a night, diners in their section spent an average of £2,000, paying £235 in added service charges, so what share of those charges did they get? £11. But, where did the remaining £224 go?"*

A statement was then read out from The Ivy:

*"Our staff receive all of the optional service charge after tax deductions. Our tipping policy is clearly explained to them when they start. They also receive a raft of other benefits, including paying them more than the national living wage, a free meal when they're working and a staff discount when they're not. The income raised through the service charge has an added tax benefit as well".*

Mr Barber said:

*"So, the key thing is, somewhere on the menu, on the receipt, somewhere, it's got to say to you that this money is an optional service charge, optional gratuity, and that's a very key thing to remember, because from a tax point of view, it is exempt of VAT. And, the reason again, for a restaurant, why it's so important is if you imagine that money coming in and there's no VAT on it, immediately it's 20 per cent more valuable to me".*

The presenter said:

*"Another way restaurants can take a percentage of the tip is by something called the admin fee. This is when restaurants take a slice from the tip money and diners don't know it's happening. The restaurant here at Harvey Nics [Harvey Nichols] takes a 15 per cent admin fee on all card tips and service charges".*

A statement was then read out from Harvey Nichols:

*"15 per cent of the discretionary service charge or card tip is retained by the business to recover the charges we incur in administration costs in distributing sums to staff and associated business costs".*

The presenter said:

*"We've shown you three different ways restaurants are using your tips and service charges, but there are so many more, and not everyone is open about it. We contacted 50 restaurants in Bristol and Bath, five refused to tell us their tipping policy".*

Mr Barber said:

*"My view on tips for all of my clients is very very simple, really clear, give every single penny of the tips to the staff. Now, there are business reasons, but as importantly, there is the PR effect of this. What I want to know as a guest coming into your business is that the tip that I'm giving is going to the staff".*

The presenter said:

*"After hearing about Aqua Italia, Bristol MP Darren Jones raised the table levy in Parliament".*

Footage of Mr Jones in Parliament was shown. He said:

*"In Bristol, a case has arisen of restaurant owners charging their waiters and waitresses to work".*

An unidentified MP was shown responding:

*"Well, that sounds quite extraordinary and I would encourage the honourable gentleman to take that up with the Home Office in terms of whether it's actually legal or not. That seems to me to be an extraordinary account".*

Footage of the presenter speaking with Mr Jones was then shown. The presenter said:

*"Darren, you're a lawyer by trade, what do you make of this?"*

Mr Jones said:

*"The law that exists today says that if after those tip deductions have been taken out, the average pay of the worker is below the national minimum wage, then yes, it is illegal, but, if after those tips have been taken out, that it's above the national minimum wage, then apparently it's perfectly legal. I think that's a loophole that needs to be closed".*

Further footage of Ms Roe being interviewed was shown. She said:

*"You know, looking back on it, people will say the obvious question is, 'Why didn't you get up and leave and get a better job?' But, there's always that fear of, is it going to be out of one kind of particularly bad situation and just into another one, because hospitality isn't exactly known for sort of equitable working conditions".*

The presenter said:

*"As a customer, we have the biggest influence on what restaurants do. If we don't like the way they run their business, we can always choose to eat somewhere else".*

The report on tipping ended.

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

### The complaint

Carter-Ruck complained that Turtle Bay was treated unjustly or unfairly in the programme as broadcast because:

- a) The programme included allegations from a former employee that gave the misleading overall impression to viewers that Turtle Bay implements an unfair tipping policy. In particular, Carter-Ruck said that:

- Ms Roe claimed that on two shifts, she had not made enough money to pay the three per cent levy and had had to pay the difference out of her own pocket.
- Ms Roe said that the customers were not aware of the table levy and staff were not supposed to tell them about it.

Carter-Ruck said that these allegations were unfair, and that Turtle Bay's policy was in line with the Government's recommendations as set out in the May 2016 consultation on tipping, gratuities, cover and service charge, and complied with the British Hospitality Association's Code of 'Best Practice on Tipping'.

- b) Turtle Bay was not provided with an appropriate and timely opportunity to respond to the allegations made about it by Ms Roe in the programme. Carter-Ruck said that, in particular, Turtle Bay's response to these allegations was not included in the programme.

### The broadcaster's response

The BBC said that the Department for Business, Innovation and Skills had carried out a consultation into "tipping, gratuities, cover and service charges" in 2016<sup>1</sup> in which it made it clear there was a lack of transparency in how such "discretionary payments for service" were distributed. The BBC pointed out that the Executive Summary of the consultation stated that the Government had launched an investigation "in response to concerns surrounding the treatment and transparency of the payment of tips, gratuities, cover and service charges" and that the investigation would be seeking evidence on, among other things, "employers charging workers a fee based on table sales".

The BBC said that programme sought to investigate the extent to which restaurants in its region employed such practices when handling discretionary payments made by restaurant customers. It said that many of these practices were unknown to diners, and the way in which discretionary tips and service charges were collected and distributed was frequently unclear. The BBC said that there was, therefore, a public interest in examining and explaining the operation of some of the less well-known practices.

The BBC said that the table levy, as used by Turtle Bay, was a fee charged by the company to workers based on table sales. It was described by the programme as "*a commission waiting staff have to pay and customers aren't even aware of it*". It said that a former Turtle Bay waitress, Ms Roe, explained the system as follows:

*"They charge a commission to work there, so you will turn up and you have to pay three per cent of all of the money that you take from the tables".*

The BBC said that viewers would have, therefore, reasonably understood that the restaurant would take three per cent of the total money paid by diners who were served by a particular waitress or waiter. It said that, for example, if a member of the waiting staff served several tables and the total bill for all those diners came to £1,000, the restaurant would take three per cent of the £1,000, or £30.

The BBC said that the point Ms Roe made in the programme was that if she did not make sufficient money in tips on a particular night, she would have to use her own money to pay the cash "levy".

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<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/521946/bis-16-172-tipping-consultation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/521946/bis-16-172-tipping-consultation.pdf)

The BBC said that the programme did not suggest the practice of imposing a table levy was unlawful and it did not suggest that Turtle Bay had breached any laws in relation to the wages it paid to its staff. It said that the programme highlighted the relatively unknown practice of imposing a table levy and the consequences for waiting staff, supported by the first-hand experiences of a number of waiters and waitresses employed by Turtle Bay between 2012 and 2016.

The BBC then addressed the specific heads of complaint.

- a) In response to the complaint that Ms Roe's claim that she did not make enough money during two shifts to pay the three per cent levy misrepresented the way the levy was implemented and was therefore unfair to Turtle Bay, the BBC said that the programme accurately presented both Ms Roe's evidence and the response of the restaurant chain. It said that the audience would have been able to judge the contrasting positions accordingly.

The BBC said that Ms Roe had told the programme that there were two occasions when she did not make enough money in tips to cover the table levy during the nine or ten months during which she worked for the restaurant. The BBC said that, therefore, viewers would have understood that while such an event was extremely rare, there were occasions when the tips Ms Roe received did not cover the full three per cent and that she had to pay the difference at the end of a shift with her own money.

The BBC said that the programme makers had made "significant efforts" to confirm and substantiate Ms Roe's version of events. It said that the programme makers had spoken to three other people who had worked at Turtle Bay between 2012 and 2016 who, it said, had had the same experience. It said that all three were employed as waiting staff and confirmed there were occasions on which they were also put under pressure to pay the three per cent commission from their own money, sometimes having to use the cashpoint outside the restaurant. It also said that the programme makers had further testimony from another former employee who witnessed this happening to waiting staff on several occasions at Turtle Bay's Bristol city centre restaurant. It said that the programme makers also spoke to someone who, although not employed by Turtle Bay, "specifically corroborated Ms Roe's account" that she had paid the three per cent from her own money following a waitressing shift.

The BBC said that similar allegations had also been published on the internet. It pointed out that one employee review on the website [indeed.co.uk](https://www.indeed.co.uk)<sup>2</sup> said:

"10 March 2018: My experience was pretty bad. Management was awful, stupid tipping policy when you end up paying from your own money if you don't make enough tips".

The website [glassdoor.co.uk](https://www.glassdoor.co.uk)<sup>3</sup> included the following review:

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<sup>2</sup> <https://www.indeed.co.uk/cmp/Turtle-Bay/reviews>

<sup>3</sup> <https://www.glassdoor.co.uk/Reviews/Turtle-Bay-Reviews-E994714.htm>

"17 April 2018: Cons. Where to start. People quitting all the time due to bad management, no training food being low rate changing menu to be worse than ever...paying 3% of tips even if you haven't made any".

An article in 'The Independent' from August 2015<sup>4</sup> included the following:

"According to the companies' tipping policy, the waiters have to give 3 per cent of their sales money to their managers but they say that if they do not earn enough tips to cover this cost then they pay nothing. However, reports from staff have contradicted this.

An anonymous Turtle Bay waiter told 'The Guardian' about a time recently when: 'The tips didn't cover 3 per cent of the sales I'd made, and by the end of the night I had to get £20 out of my pocket and give it to my manager'".

The BBC said that the Government consultation in 2016 considered evidence about the manner in which table levies are imposed and noted (at paragraph 63):

"The evidence obtained during our investigation suggests that this practice does not take account of whether a worker has received enough discretionary payments for service to pay such a charge, often paying this charge out of their own pocket or future earnings".

The BBC said that there was, therefore, "persuasive evidence" to support the claim made in the programme by Ms Roe. However, it said that the programme also included a summary of the information provided by Carter-Ruck on behalf of Turtle Bay in its letter of 23 February 2018 to ensure the company's formal position was fairly and accurately reflected:

*"We understand that Turtle Bay maintains Frankie's [Ms Roe] salary never fell below the national minimum wage, that the three per cent levy is only payable if enough tips are received to cover it, and they say there is a cap on the maximum amount that floor servers have to pay, so they keep the majority of their tips".*

The BBC said that the audience would therefore have been aware of the company's policy on the collection of the three per cent levy and would have understood that it differed from Ms Roe's account of what had happened to her.

The BBC said that the information about the collection of the levy provided to the BBC in advance of the programme by Carter-Ruck in its letter of 23 February 2018 appeared to be contradicted by the information it subsequently provided to Ofcom in its complaint.

In its letter to the BBC, Carter-Ruck explained the system as follows:

"It is untrue that under our client's table levy scheme 'waiters and waitresses have to pay three per cent of whatever their customers spend'. This allegation seriously misrepresents the true position, which is that **the basic 3% table levy is only payable if enough tips are received to cover the required amount**. In addition, the payment is capped and therefore there is a maximum amount which floor servers will be

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<sup>4</sup> <https://www.independent.co.uk/life-style/food-and-drink/news/las-iguanas-and-turtle-bay-tipping-policy-forcing-waiters-to-pay-to-work-10468090.html>

required to pay on any given shift, such that the waiting staff keep the majority of their tips" (BBC's emphasis).

However, in Carter-Ruck's complaint to Ofcom, it said:

"As regards the second allegation, in our letter of 23 February..., the BBC was also explicitly referred to Clause 19.6 of Turtle Bay's template contract of employment. Clause 19.6 states that where a shift's gratuities do not cover the required payment, the employee would 'be required to make up the balance of any shortfall in the next or subsequent shifts'".

The BBC said that this indicated that the full three per cent was payable each shift and that any shortfall would be taken from tips received on a subsequent shift. It said that the information provided to the BBC prior to broadcast was, therefore, "incomplete and inaccurate".

The BBC said that it was clear that the contract of employment confirmed, contrary to what Carter-Ruck had told the programme makers, that Turtle Bay staff were liable for the full three per cent irrespective of what they took in tips. It said that it believed that any concern a customer might have about the lack of transparency about the table levy policy would not be dependent on whether any shortfall was payable at the end of a shift or at a later date. The broadcaster said that, in any event, there was no reason to disbelieve Ms Roe's account, which was "amply supported" by the accounts of others. The BBC said that former Turtle Bay staff had confirmed that at the end of a shift, managers would calculate how much each member of staff owed and ensure staff paid at the time.

The BBC next responded to Carter-Ruck's complaint that it was unfair to assert that customers were not aware of the imposition of a table levy on waiting staff and unfair to say members of staff were not supposed to tell customers of its existence.

The broadcaster said that on the first point, Carter-Ruck had said in its letter to the BBC of 23 February 2018:

"As regards the fact that our staff do not discuss the tipping policy with customers, there is simply no need for them to do so since the policy is clearly set out on our client's menus".

This claim was restated in Carter-Ruck's letter to BBC Complaints on 26 March 2018:

"The true position, of which [the BBC] was informed in our letter dated 23 February, is that Turtle Bay's policy is clearly set out on our client's menus. Turtle Bay's customers are therefore plainly aware of the existence of a table levy".

The BBC said that this claim was not supported by the evidence. It said that the programme makers had visited the Turtle Bay restaurant in Bristol city centre on several occasions prior to broadcast and "at no time did the menu include any reference to the table levy". It said that the menu available on 23 February 2018 (a copy of which was provided to Ofcom) included the following wording:

“YOUR TIPS: All our staff love tips because it’s a sure fire way of them knowing that you have had a good time. There is no automatic addition to the bill of a service charge (unless you’re a party of 5 or more, in which case an optional 10% is added to the bill). Most guests, if they have had a good time, leave about 10%. Turtle Bay like to ensure all tips are spread out to the whole team, including the kitchen, as it’s a team effort. We do not charge an admin fee for this. All prices include VAT at 20%. We take cash, Visa, Mastercard, Amex & Maestro”.

The BBC said that, at the time of responding to the complaint, the same wording still appeared on the menu available online (a copy of the menu downloaded on 15 June 2018 was provided to Ofcom). The BBC said that the levy was not, therefore, “clearly set out on [Turtle Bay’s] menus” and it was misleading for Carter-Ruck to claim customers would have been aware of the table levy imposed by Turtle Bay on its waiting staff.

The BBC said that in addition, the programme makers had found no signs referring to the table levy during any visits to Turtle Bay restaurants. It also said it had found no reference to the levy on the restaurant’s website up to the day of broadcast. However, the BBC said that on 26 February 2018, the day of broadcast, the company updated its website with a Fair Share Policy statement<sup>5</sup> (a screenshot of which was provided to Ofcom) which said:

“We believe in transparency and clarity towards both our guests and our teams. As such, we want to take the opportunity to explain our tipping policy and make sure our guests have a full understanding of where their generous tips are going”.

The BBC said that the timing of the publication of this statement suggested that the company recognised that it had not previously been transparent or clear about its tipping policy prior to the day the programme was broadcast.

On the second point made by Carter-Ruck in the complaint, the BBC said that all former members of staff who were contacted by the programme makers confirmed Ms Roe’s account that employees were instructed not to tell customers about the three per cent table levy. It said that, for example, a person who worked at the restaurant in Bristol city centre had said:

“The way we were told to deal with customers who asked about tips was not to mention the 3% and instead tell them their tips go to all of us”.

The BBC said that this was in line with the findings of the Government consultation which indicated “a broad agreement that intervention is required to improve the treatment and transparency of these payments” (at paragraph 11).

The broadcaster said that Carter-Ruck had stated in its complaint to Ofcom that Turtle Bay’s policy on tipping “complies with the British Hospitality Association’s Code of Best Practice on Tipping”. The BBC said that the British Hospitality Association had merged with the Association of Licenced Multiple Retailers in February 2018<sup>6</sup> to form UKHospitality. The BBC said that the programme makers had contacted UKHospitality and it had indicated that the imposition of a table levy did not comply with its code of

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<sup>5</sup> <https://www.turtlebay.co.uk/tipping-policy-statement/>

<sup>6</sup> <https://www.thecaterer.com/articles/518861/almr-and-bha-to-merge-creating-ukhospitality>

practice (a copy of an email dated 11 April 2018 from UK Hospitality was provided to Ofcom). It said:

“Even if not expressed directly, a table levy is likely contrary to the spirit of the code of practice on tipping and is not something UKHospitality would advocate”.

- b) The BBC said that the programme makers initially contacted Turtle Bay's head office on 9 February 2018 to inform it that the BBC intended to broadcast a report on discretionary service charges in which Turtle Bay would feature. The BBC said that the programme makers were instructed to provide details to the company's Chief Operating Officer.

The BBC said that the programme makers had therefore written to the company's Chief Operations Officer on 16 February 2018 and had set out the scope of the proposed report. The letter (a copy of which was provided to Ofcom by Carter-Ruck) highlighted a number of separate issues and provided specific details of claims made by a named former member of staff and current employees about the company's use of a table levy and its tipping policy. The letter specifically referred to Ms Roe's claim that she had to draw money out of a bank machine to cover the three per cent levy, as follows:

“We have interviewed Frankie Roe, a former member of staff at the Bristol City Centre restaurant. She says that on two occasions at the end of her shift she had to withdraw money from her bank account via the cashpoint next door to the restaurant to pay the levy. This was because she had not made enough tips to cover the charge”.

The BBC said that the letter also made specific reference to the fact members of staff were told not to discuss the table levy policy with customers:

“The BBC has approached staff currently working at your Bristol restaurant to ask about the table levy and the tipping policy. They have told us that they have been instructed by management not to discuss the three per cent policy with any customers who ask”.

The letter offered the company a right of reply as follows:

“I would be grateful if you could please respond to the allegations and concerns that have been raised by Friday 23 February to ensure inclusion into our programme”.

The BBC said that Turtle Bay was therefore provided with sufficient information about the issues the programme intended to highlight and was given an appropriate and timely opportunity to respond.

The BBC said that the programme makers had sent a further email on 20 February 2018 (a copy of which was provided to Ofcom by Carter-Ruck) setting out the efforts made to get information about the company's tipping policy. The email restated the scope of the programme and invited the company to provide a response.

Carter-Ruck provided a detailed response on 23 February 2018. The BBC said that it was clear from the content of the letter that Carter-Ruck was aware of the allegations which the programme intended to make about Turtle Bay and understood the subject matter of the report. The BBC also said that the response indicated that the company had

“ample time” to check the employment history of Ms Roe and provide a considered response to the specific concerns raised by the programme makers in the letter of 16 February 2018. The broadcaster said that in a letter to the programme’s producer dated 26 February 2018, Carter-Ruck confirmed:

“You received our client’s substantive response to the allegations set out in your letter dated 16 February and in Ms Simon’s e-mail dated 20 February...Our client denies all of the allegations made by Ms Roe and by other waiters and waitresses who worked for Turtle Bay between April 2012 and November 2016...”.

The BBC said that it was therefore apparent that the company had sufficient information about the subject matter of the report and was provided with an appropriate and timely opportunity to respond.

The BBC also said that the programme accurately and fairly reflected Turtle Bay’s response to the allegations made about it. The BBC said that Carter-Ruck chose not to provide a formal statement for broadcast, but that the programme makers broadcast a summary of its substantive response (set out above in the “Programme summary”). The BBC said that the programme therefore included a fair and accurate summary of Turtle Bay’s tipping policy and its response to the broad claims made in the programme.

The BBC said that it was not unfair to Turtle Bay not to include a specific response from the company to Ms Roe’s claim that she had to pay a shortfall in the table levy from her own money on two occasions. It said that viewers would have understood that she was talking about her personal experience (which corresponded to that of others) and that it was sufficient to include Carter-Ruck’s general rebuttal that *“the three per cent levy is only payable if enough tips are received to cover it”* (even though this explanation was subsequently revealed to be inaccurate because the contractual position was that staff were “required to make up the balance of any shortfall in the next or subsequent shifts”).

The BBC said that it took the same view about Ms Roe’s claim (which was substantiated by others) that staff were told not to tell customers about the three per cent levy. The broadcaster said that viewers would have recognised that Ms Roe was recollecting her personal experience. The BBC said that despite Carter-Ruck’s explanation that customers would have been aware of the table levy because it was “clearly set out on our client’s menus”, the BBC said that this was not borne out by the facts.

### **Ofcom’s Preliminary View**

Ofcom prepared a Preliminary View in this case that the complaint made on behalf of Turtle Bay of unjust or unfair treatment in the programme as broadcast should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View, but neither chose to do so.

### **Decision**

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

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

In reaching this decision, Ofcom carefully considered all the relevant material. This included a recording of the programme as broadcast, and both parties' written submissions and supporting documentation.

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

- a) Ofcom considered Carter-Ruck's complaint that Turtle Bay was treated unjustly or unfairly in the programme as broadcast because the programme included allegations from a former employee that gave the misleading impression to viewers that Turtle Bay operated an unfair tipping policy.

In considering this head of complaint, we had particular regard to Practice 7.9:

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

It is important to emphasise that Ofcom is unable to make findings of fact about the claims made about Turtle Bay and its tipping policy in the programme. Our role is to consider whether, by broadcasting the claims in the programme, the broadcaster took reasonable care not to present, disregard or omit material facts in a way that resulted in unfairness to Turtle Bay. Whether a broadcaster has taken reasonable care to present material facts in a way that is not unfair to an individual or organisation will depend on all the particular facts and circumstances of the case including, for example, the seriousness of any allegations and the context within which they were presented in the programme. Therefore, Ofcom began by considering whether the comments complained of had the potential to materially and adversely affect viewers' opinions of Turtle Bay in a way that was unfair.

We took account of the nature of the material included in the programme, as set out in detail above in the "Programme summary". We had particular regard to the contribution of Ms Roe, a former Turtle Bay waitress, when being interviewed about the table levy:

*"You do your waitressing shift and then it transpires that you haven't made enough to cover the three per cent commission, so I'd have to come out here, get cash out, and pay that three per cent that I owed them."*

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*They charge a commission to work there, so you will turn up and you have to pay three per cent of all of the money that you take from the tables”.*

We also took particular account of what the presenter said about Ms Roe: *“She claims on two shifts, she didn't make enough money in tips to pay the three per cent levy”*, and, in response to the presenter's question if the customers were aware of the table levy, Ms Roe said: *“No, they don't know. You're not supposed to tell them about it”*.

We considered that these comments had the potential to have materially and adversely affected viewers' opinions of Turtle Bay, as they potentially raised a question in viewers' minds about the ethical propriety of the company and implied that Turtle Bay was potentially profiting at the expense of its employees.

In assessing whether the inclusion of Ms Roe's claims in the programme about the table levy had caused unfairness to Turtle Bay, we took account of the BBC's response to the complaint, as outlined in detail above, and in particular that the programme makers had made efforts to confirm and substantiate Ms Roe's account, by, for example, speaking to other former Turtle Bay employees and by researching online reviews of Turtle Bay as an employer. We also took into account that the programme did not suggest that the practice of imposing a table levy was unlawful, nor did it suggest that Turtle Bay had breached any laws relating to the wages it paid to its staff.

In Ofcom's view, viewers would have understood that Ms Roe was expressing her own personal account of her experience of working for Turtle Bay. In this context, we did not consider that viewers would view what Ms Roe said in the programme as unequivocal fact. We considered too that while the presenter explained that Ms Roe had said that there had been two occasions where she had not made enough money in tips during her shift to cover the full three per cent table levy and had had to pay the difference with her own money, viewers would have understood that this was not a common situation and that it was quite rare. Also, the programme included a summary of Carter-Ruck's response to the allegations made in the programme. Given this, we took the view that viewers were made aware of Turtle Bay's position on the collection of the three per cent levy and would have understood that it differed to that of Ms Roe. Therefore, we considered that viewers were provided with sufficient information to be able to form their own opinion on the example presented in the programme of one former employee's experience of her time working for Turtle Bay.

In any event, with regard to the claim that Ms Roe had, on occasion, not made enough money to pay the three per cent levy and had had to pay the difference out of her own pocket, we also took account of the fact that information about the collection of the levy provided to the BBC prior to the programme being broadcast by Carter-Ruck in its letter of 23 February 2018 was contradicted by the information it subsequently provided to Ofcom in its complaint, as outlined above in the *“Summary of the complaint and the broadcaster's response”*. We understood from Carter-Ruck's letter of 23 February 2018 that the levy was not payable if the money received in tips by a waiter or waitress on a particular shift was less than three per cent of the total bill of all diners served by that member of the waiting staff. However, Carter-Ruck's submission to Ofcom indicated that the full three per cent was payable each shift and that any shortfall would be taken from

tips received on a subsequent shift. It therefore appeared that the information provided to the programme makers prior to broadcast did not accurately reflect the policy, and that, contrary to what Carter-Ruck had told the programme makers, staff were liable for the full three per cent table levy irrespective of what they had made in tips during a shift. It was our view that any concern a customer (and viewers) might have had about the apparent lack of transparency about the table levy policy would not be dependent on whether any shortfall was payable at the end of the shift or at a later date.

With regard to Carter-Ruck's claim that it was unfair to assert customers were not aware of the table levy and that staff were told not to tell customers of its existence, we also took into account the BBC's contention that Carter-Ruck's claim that "Turtle Bay's policy is clearly set out on our client's menus. Turtle Bay's customers are therefore plainly aware of the existence of a table levy", was not supported by the evidence. As outlined in detail above, the BBC informed Ofcom that the programme makers had visited the Turtle Bay restaurant in Bristol on several occasions prior to the broadcast of the programme and had said that the menu did not include any reference to the table levy. Copies of the menu available in the restaurant on 23 February 2018 and the menu available online on 15 June 2018 were provided to Ofcom which substantiated this.

We also took into account that the BBC had pointed out that the Turtle Bay website did include a "Fair Share Policy" which explained that: "We redistribute 30% of waiting staff's tips, calculated as three per cent of the respective waiting staff's sales, to the wider team in the form of enhanced wages...". However, this information was not included on the menu, but under the "Social" tab on the website. It therefore appeared to us that table levy policy was not "clearly set out" in Turtle Bay's menus for customers.

Taking all the above factors into account, Ofcom considered that, in the circumstances of this case, the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Turtle Bay.

- b) Ofcom next considered Carter-Ruck's complaint that Turtle Bay was not provided with an appropriate and timely opportunity to respond to the allegations made about it by Ms Roe in the programme and that Turtle Bay's response to these allegations was not included in the programme.

In considering this head of complaint, we had particular regard to Practice 7.11 and 7.13:

Practice 7.11 states:

"If a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond".

Practice 7.13 states:

"Where it is appropriate to represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner".

We assessed whether Turtle Bay had been provided with an appropriate and timely opportunity to respond to claims made about it in the programme, in line with Practice 7.11.

We considered that the claims made in the programme about Turtle Bay and its tipping policy amounted to significant allegations of wrongdoing and that, in accordance with Practice 7.11, the programme makers needed to offer Turtle Bay an appropriate and timely opportunity to respond to the claims in order to avoid unfairness.

We took into account that the BBC said that the programme makers had initially contacted Turtle Bay's Head Office on 9 February 2018 to inform the company it intended to broadcast a report on discretionary services charges, in which Turtle Bay would feature. The programme makers were instructed to provide details to the company's Chief Operating Officer.

On 16 February 2018, the programme makers wrote to the company's Chief Operating Officer, outlining the allegations that they intended to include in the programme about Turtle Bay, including:

"Turtle Bay operates a three per cent table levy on its waiting staff across all restaurants in its chain. Under this scheme waiters and waitresses have to pay the restaurant three percent of whatever their customers spend. This is totted up at the end of their shift in the restaurant and normally paid out of the tips left for the waiting staff.

We have interviewed Frankie Roe, a former member of staff at the Bristol City Centre restaurant. She says that on two occasions at the end of her shift she had to withdraw money from her bank account via the cashpoint next door to the restaurant to pay the levy. This was because she had not made enough tips to cover the charge...The BBC has approached staff currently working at your Bristol restaurants to ask about the table levy and the tipping policy. They have told us that they've been instructed by management not to discuss the three per cent policy with any customers who ask...".

The programme makers asked Turtle Bay for a response to the allegations by 23 February 2018.

The programme makers sent a further email to Turtle Bay on 20 February setting out efforts they had made to contact the company about its tipping policy. The email restated the scope of the programme and invited the company again to provide a response. The letter of 16 February 2018 was also re-sent via email to Turtle Bay on 22 February 2018; the email stated: "I am sending this to you again to remind you that tomorrow is your last day to respond to these allegations".

On 23 February 2018, Carter-Ruck provided a detailed response, on behalf of Turtle Bay, in which it addressed the various claims made against Turtle Bay. In particular, we took account that the letter stated:

"It is **untrue** that under our client's table levy scheme 'waiters and waitresses have to pay three per cent of whatever their customers spend'. This allegation seriously misrepresents the true position, which is that the basic 3% table levy is only payable if enough tips are received to cover the required amount. In addition, the payment is capped and therefore there is a maximum amount which floor servers will be required to pay on any given shift, such that the waiting staff keep the majority of their tips" (Carter-Ruck's emphasis)].

And,

“As regards the fact that our staff members do not discuss the tipping policy with customers, there is simply no need for them to do so since the policy is clearly set out on our client's menus”.

On 26 February 2018, the programme makers wrote to Carter-Ruck acknowledging its response and explaining that since sending its initial letter, they had spoken with a number of other waiting staff who had worked at Turtle Bay who supported the allegations made by Ms Roe. The programme makers listed the allegations, including:

“They experienced at least one shift in which their tips did not cover the 3% levy and they were asked by a manager to provide cash the same evening to cover the shortfall”.

The programme makers invited Turtle Bay to make further comments by 13:00 that day, before the planned broadcast of the programme that evening.

On 26 February 2018, Carter-Ruck responded:

“...We repeat that the intended broadcast is based on wholly misplaced premises and misleading sources. Our client denies all of the allegations made by Ms Roe and by the other waiters and waitresses who worked for Turtle Bay between April 2012 and November 2016, which (as should be clear from our letter dated 23 February) are not only false, but also highly defamatory...”.

Given the above, it was Ofcom's view that Turtle Bay had been given an appropriate and timely opportunity to respond to the allegations featured in the investigation. The allegations to be made were set out clearly and in detail in a letter sent to the company on 16 February 2018 which invited a response by 23 February 2018. Carter-Ruck provided a detailed response to the allegations on 23 February 2018, which, in Ofcom's view was subsequently fairly reflected in the programme, in line with Practice 7.13. The programme stated:

*“We understand that Turtle Bay maintains Frankie's salary never fell below the national minimum wage, that the three per cent levy is only payable if enough tips are received to cover it and they say there is a cap on the maximum amount that floor servers have to pay, so they keep the majority of their tips”.*

Although the programme did not reflect Carter-Ruck's response to the specific claims made by Ms Roe, we considered that the programme included a fair and accurate summary of the restaurant chain's tipping policy and its response to the broad claims made in the programme. As above, we considered that viewers would have understood that Ms Roe was expressing her own recollection of her personal experience of working for Turtle Bay. In these circumstances, we did not consider that viewers would have been likely to have understood the information presented in the programme as unequivocal fact. We therefore did not consider that it was unfair to Turtle Bay not to include a specific response from the company to Ms Roe's claims that she had had to pay a shortfall in the table levy from her own money twice and that staff had been told not to speak to customers about the table levy.

Therefore, Ofcom considered that there was no unfairness to Turtle Bay in this regard.

**Ofcom has not upheld Turtle Bay's complaint of unjust or unfair treatment in the programme as broadcast.**

## Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 30 July and 19 August 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
8 Out of 10 Cats	4Music	25/07/2018	Generally accepted standards	1
Rude Tube	4Music	12/08/2018	Animal welfare	1
Football Hooligan and Proud	5Star	11/06/2018	Crime and disorder	1
Rich Kids Go Skint	5Star	12/08/2018	Animal welfare	1
Shark After Dark	Animal Planet	01/07/2018	Materially misleading	1
Rob and Jane Breakfast Show	Cannock Chase Radio FM	18/07/2018	Generally accepted standards	1
NCIS	CBS Action	23/07/2018	Violence	1
24 Hours in A&E	Channel 4	25/07/2018	Gender discrimination/offence	1
8 Out of 10 Cats Does Countdown	Channel 4	20/07/2018	Dangerous behaviour	1
8 Out of 10 Cats Does Countdown	Channel 4	10/08/2018	Disability discrimination/offence	1
999: What's Your Emergency	Channel 4	24/07/2018	Race discrimination/offence	1
Artist in Residence (trailer)	Channel 4	28/07/2018	Sexual material	1
Channel 4 News	Channel 4	12/07/2018	Due impartiality/bias	1
Channel 4 News	Channel 4	16/07/2018	Due impartiality/bias	1
Channel 4 News	Channel 4	20/07/2018	Due impartiality/bias	1
Channel 4 News	Channel 4	23/07/2018	Due impartiality/bias	1
Channel ident	Channel 4	27/07/2018	Dangerous behaviour	1
Formula One: German Grand Prix Highlights	Channel 4	22/07/2018	Offensive language	1
Formula One: Hungarian Grand Prix – Qualifying Highlights	Channel 4	28/07/2018	Disability discrimination/offence	1
Formula One: Hungarian Grand Prix Highlights	Channel 4	29/07/2018	Offensive language	3
Genderquake: The Debate	Channel 4	08/05/2018	Transgender discrimination/offence	256

Programme	Service	Transmission Date	Categories	Number of complaints
Get Rich Quick	Channel 4	06/08/2018	Generally accepted standards	1
Gogglebox	Channel 4	31/07/2018	Gender discrimination/offence	1
How to Get Rich Quick	Channel 4	30/07/2018	Harm	1
How to Get Rich Quick	Channel 4	13/08/2018	Materially misleading	1
Meet the Drug Lords: Inside the Real Narcos	Channel 4	02/08/2018	Crime and disorder	1
Meet the Drug Lords: Inside the Real Narcos	Channel 4	02/08/2018	Generally accepted standards	5
Naked Attraction (trailer)	Channel 4	14/08/2018	Nudity	1
The Big Narstie Show	Channel 4	27/07/2018	Race discrimination/offence	1
The Big Narstie Show	Channel 4	03/08/2018	Drugs, smoking, solvents or alcohol	1
The Big Narstie Show	Channel 4	03/08/2018	Offensive language	1
The Big Narstie Show	Channel 4	03/08/2018	Race discrimination/offence	2
The Handmaid's Tale	Channel 4	22/07/2018	Generally accepted standards	3
The Simpsons	Channel 4	25/07/2018	Dangerous behaviour	1
Who is America?	Channel 4	23/02/2018	Race discrimination/offence	2
Who Is America?	Channel 4	13/08/2018	Generally accepted standards	1
Blind Date	Channel 5	21/07/2018	Sexual material	1
Blind Date	Channel 5	28/07/2018	Generally accepted standards	1
Blind Date	Channel 5	11/08/2018	Sexual material	2
Channel 5 News	Channel 5	13/08/2018	Due impartiality/bias	1
Channel 5 News	Channel 5	14/08/2018	Race discrimination/offence	1
Crimewave 2018: Lawless Britain	Channel 5	23/07/2018	Race discrimination/offence	1
First-Time Call Girl	Channel 5	31/07/2018	Materially misleading	1
Gangland	Channel 5	30/07/2018	Race discrimination/offence	1
Gangland Britain: Revenge	Channel 5	13/08/2018	Crime and disorder	1
Gangland: Death in Suburbia	Channel 5	30/07/2018	Race discrimination/offence	1
Law and Disorder: The Debate	Channel 5	23/07/2018	Materially misleading	1
Nando's: A Peri Peri Big Success	Channel 5	05/07/2018	Promotion of products/services	1

Programme	Service	Transmission Date	Categories	Number of complaints
Rugby Sevens 2018 Highlights	Channel 5	30/07/2018	Race discrimination/offence	1
The Dog Rescuers with Alan Davies	Channel 5	24/07/2018	Scheduling	1
The Wonderful World of Puppies	Channel 5	22/07/2018	Materially misleading	1
The Wright Stuff	Channel 5	16/07/2018	Generally accepted standards	1
The Wright Stuff	Channel 5	17/07/2018	Generally accepted standards	1
The Wright Stuff	Channel 5	18/07/2018	Religious/Beliefs discrimination/offence	1
The Wright Stuff	Channel 5	01/08/2018	Due impartiality/bias	1
The Wright Stuff	Channel 5	15/08/2018	Generally accepted standards	1
When Live TV Goes Horribly Wrong	Channel 5	11/08/2018	Drugs, smoking, solvents or alcohol	2
When Live TV Goes Horribly Wrong	Channel 5	11/08/2018	Generally accepted standards	1
When Live TV Goes Horribly Wrong	Channel 5	11/08/2018	Race discrimination/offence	1
Funniest Ever Celebrity Moments	Channel 5+1	29/07/2018	Animal welfare	1
White Chicks	Comedy Central	02/08/2018	Race discrimination/offence	1
Alaska: The Last Frontier	Discovery	15/08/2018	Offensive language	1
Wheeler Dealers	Discovery	31/07/2018	Undue prominence	1
Gogglebox	E4	21/07/2018	Materially misleading	1
The Green Green Grass	Gold	07/08/2018	Advertising placement	1
Saturday Morning with Roberto	Heart 80s	21/07/2018	Generally accepted standards	1
Breakfast Show with Gethin, Gemma & Dave	Hits Radio Manchester	10/08/2018	Competitions	1
Programme trailers	Horror Channel	02/08/2018	Scheduling	1
Big Star's Little Star	ITV	28/07/2018	Generally accepted standards	1
Big Star's Little Star	ITV	28/07/2018	Sexual material	2
Big Star's Little Star	ITV	04/08/2018	Offensive language	1
Coronation Street	ITV	18/07/2018	Age discrimination/offence	1
Coronation Street	ITV	20/07/2018	Offensive language	2
Coronation Street	ITV	25/07/2018	Violence	1

Programme	Service	Transmission Date	Categories	Number of complaints
Coronation Street	ITV	30/07/2018	Drugs, smoking, solvents or alcohol	1
Coronation Street	ITV	03/08/2018	Generally accepted standards	1
Coronation Street	ITV	08/08/2018	Religious/Beliefs discrimination/offence	2
Emmerdale	ITV	19/07/2018	Generally accepted standards	1
Emmerdale	ITV	26/07/2018	Generally accepted standards	1
Emmerdale	ITV	30/07/2018	Generally accepted standards	1
Emmerdale	ITV	31/07/2018	Generally accepted standards	1
Emmerdale	ITV	31/07/2018	Scheduling	1
Emmerdale	ITV	31/07/2018	Violence	1
Good Morning Britain	ITV	22/06/2018	Due impartiality/bias	1
Good Morning Britain	ITV	07/07/2018	Generally accepted standards	1
Good Morning Britain	ITV	10/07/2018	Race discrimination/offence	3
Good Morning Britain	ITV	12/07/2018	Due impartiality/bias	86
Good Morning Britain	ITV	13/07/2018	Generally accepted standards	12
Good Morning Britain	ITV	18/07/2018	Generally accepted standards	4
Good Morning Britain	ITV	24/07/2018	Generally accepted standards	1
Good Morning Britain	ITV	08/08/2018	Generally accepted standards	1
Good Morning Britain	ITV	10/08/2018	Generally accepted standards	2
Good Morning Britain	ITV	13/08/2018	Race discrimination/offence	74
Good Morning Britain	ITV	14/08/2018	Due impartiality/bias	1
ITV News	ITV	23/07/2018	Due accuracy	1
ITV News	ITV	27/07/2018	Offensive language	1
ITV News	ITV	30/07/2018	Due impartiality/bias	1
ITV News	ITV	01/08/2018	Due accuracy	1
ITV News	ITV	02/08/2018	Due impartiality/bias	1
ITV News	ITV	14/08/2018	Generally accepted standards	26
ITV News	ITV	16/08/2018	Due accuracy	1
ITV Racing Live	ITV	03/08/2018	Generally accepted standards	1

Programme	Service	Transmission Date	Categories	Number of complaints
Japandemonium	ITV	04/08/2018	Dangerous behaviour:	1
Loose Women	ITV	26/06/2018	Generally accepted standards	1
Loose Women	ITV	12/07/2018	Generally accepted standards	1
Loose Women	ITV	26/07/2018	Generally accepted standards	1
Loose Women	ITV	27/07/2018	Generally accepted standards	1
Loose Women	ITV	01/08/2018	Generally accepted standards	1
Loose Women	ITV	08/08/2018	Under 18s in programmes	2
Loose Women	ITV	09/08/2018	Generally accepted standards	1
Loose Women	ITV	10/08/2018	Race discrimination/offence	1
Lorraine	ITV	10/07/2018	Generally accepted standards	2
Lorraine	ITV	18/07/2018	Disability discrimination/offence	9
Lorraine	ITV	01/08/2018	Offensive language	1
Lorraine	ITV	02/08/2018	Materially misleading	3
Lorraine	ITV	13/08/2018	Generally accepted standards	1
Love Island	ITV	30/07/2018	Other	1
Our Shirley Valentine Summer	ITV	26/07/2018	Sexual material	1
Paul O'Grady: For the Love of Dogs	ITV	22/07/2018	Dangerous behaviour	1
The Chase	ITV	16/08/2018	Gender discrimination/offence	1
The Jeremy Kyle Show	ITV	25/07/2018	Generally accepted standards	1
This Morning	ITV	12/07/2018	Disability discrimination/offence	1
This Morning	ITV	12/07/2018	Generally accepted standards	1
This Morning	ITV	25/07/2018	Materially misleading	1
This Morning	ITV	27/07/2018	Generally accepted standards	1
This Morning	ITV	30/07/2018	Crime and disorder	1
This Morning	ITV	30/07/2018	Generally accepted standards	1
This Morning	ITV	01/08/2018	Materially misleading	5

Programme	Service	Transmission Date	Categories	Number of complaints
This Morning	ITV	08/08/2018	Generally accepted standards	4
This Morning	ITV	08/08/2018	Sexual material	1
This Morning	ITV	10/08/2018	Sexual orientation discrimination/offence	1
Tipping Point	ITV	06/04/2018	Competitions	1
Unforgotten	ITV	15/07/2018	Generally accepted standards	1
Unforgotten	ITV	29/07/2018	Disability discrimination/offence	1
Unforgotten (trailer)	ITV	11/07/2018	Scheduling	1
World Cup Live: Uruguay v France	ITV	06/07/2018	Generally accepted standards	7
WOS Wrestling	ITV	04/08/2018	Generally accepted standards	1
WOS Wrestling	ITV	11/08/2018	Violence	2
The Voice Kids 2019 (trailer)	ITV	01/08/2018	Generally accepted standards	1
ITV News Anglia	ITV Anglia	13/08/2018	Due impartiality/bias	2
Family Guy	ITV2	09/07/2018	Generally accepted standards	1
Family Guy	ITV2	30/07/2018	Disability discrimination/offence	3
Keith Lemon: Coming in America	ITV2	05/07/2018	Race discrimination/offence	3
Keith Lemon: Coming in America	ITV2	19/07/2018	Generally accepted standards	1
Keith Lemon: Coming in America	ITV2	09/08/2018	Nudity	1
Love Island	ITV2	16/07/2018	Generally accepted standards	86
Love Island	ITV2	22/07/2018	Dangerous behaviour	2
Love Island	ITV2	23/07/2018	Gender discrimination/offence	2
Love Island	ITV2	25/07/2018	Generally accepted standards	8
Love Island	ITV2	26/07/2018	Generally accepted standards	2
Love Island	ITV2	26/07/2018	Materially misleading	1
Love Island	ITV2	27/07/2018	Voting	4
Love Island	ITV2	28/07/2018	Generally accepted standards	1
Love Island	ITV2	30/07/2018	Generally accepted standards	3
Love Island	ITV2	30/07/2018	Race discrimination/offence	1

Programme	Service	Transmission Date	Categories	Number of complaints
Love Island	ITV2	30/07/2018	Voting	7
Love Island: Aftersun	ITV2	22/07/2018	Generally accepted standards	5
Love Island: Aftersun	ITV2	29/07/2018	Gender discrimination/offence	1
Love Island: The Reunion	ITV2	05/08/2018	Generally accepted standards	5
The Jeremy Kyle Show	ITV2	20/07/2018	Generally accepted standards	1
The Jeremy Kyle Show	ITV2	01/08/2018	Race discrimination/offence	1
Dinner Date	ITVBe	28/07/2018	Gender discrimination/offence	1
Piranha	Kanal 6	29/07/2018	Nudity	1
Botched	Kanal 11 (Sweden)	27/07/2018	Gender discrimination/offence	1
Outsiders	Kanal 11 (Sweden)	05/07/2018	Gender discrimination/offence	1
Miss Jason's House Party	Latest TV	25/07/2018	Offensive language	1
Jacob Rees-Mogg for Matt Frei	LBC 97.3 FM	21/07/2018	Due impartiality/bias	1
James O'Brien	LBC 97.3 FM	30/07/2018	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	31/07/2018	Race discrimination/offence	2
James O'Brien	LBC 97.3 FM	01/08/2018	Generally accepted standards	2
James O'Brien	LBC 97.3 FM	02/08/2018	Due impartiality/bias	1
James O'Brien	LBC 97.3 FM	02/08/2018	Generally accepted standards	1
LBC News	LBC 97.3 FM	13/08/2018	Due accuracy	1
Nick Ferrari	LBC 97.3 FM	12/07/2018	Generally accepted standards	1
Nick Ferrari	LBC 97.3 FM	12/07/2018	Race discrimination/offence	1
Nick Ferrari	LBC 97.3 FM	13/07/2018	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	13/07/2018	Generally accepted standards	1
Nigel Farage	LBC 97.3 FM	15/07/2018	Due impartiality/bias	6
Angie Greaves	Magic Radio	01/08/2018	Competitions	1
Martin Morrison	Moray Firth FM	11/07/2018	Disability discrimination/offence	1
The Secret Life of Five Year Olds	More4	05/08/2018	Generally accepted standards	1

Programme	Service	Transmission Date	Categories	Number of complaints
Catfish	MTV	29/07/2018	Religious/Beliefs discrimination/offence	1
AM Mayhem	MTV Rocks	08/08/2018	Dangerous behaviour	1
Audio Description promotion	Various	Various	Materially misleading	1
Dance Mums	n/a	01/01/2018	Under 18s in programmes	1
News Item	New Vision	09/07/2018	Crime and disorder	1
Game Shakers / Sam and Cat / Victorious	Nickelodeon / Disney	21/07/2018	Scheduling	1
Stephen & Cate on Q Breakfast	Q Radio (Belfast)	23/07/2018	Commercial communications on radio	1
Programming	Radio Dawn	20/07/2018	Religious/Beliefs discrimination/offence	1
The Chris Moyles Show	Radio X	24/07/2018	Sexual orientation discrimination/offence	1
The Chris Moyles Show	Radio X	25/07/2018	Generally accepted standards	1
RT News	RT	09/08/2018	Race discrimination/offence	1
Master of Photography	Sky Arts	27/07/2018	Nudity	1
The Open 2018	Sky Golf	22/07/2018	Materially misleading	1
Advertisement	Sky News	13/08/2018	Political advertising	1
All Out Politics	Sky News	30/07/2018	Due impartiality/bias	1
Line 18	Sky News	19/07/2018	Due accuracy	1
Line 18	Sky News	25/07/2018	Race discrimination/offence	1
Press Preview	Sky News	25/07/2018	Due impartiality/bias	1
Press Preview	Sky News	25/07/2018	Race discrimination/offence	1
Qatar Airways' sponsorship of Sky News weather	Sky News	16/07/2018	Advertising content	1
Sky Morning News	Sky News	05/08/2018	Due impartiality/bias	1
Sky News	Sky News	17/07/2018	Due impartiality/bias	2
Sky News	Sky News	30/07/2018	Due accuracy	1
Sky News	Sky News	30/07/2018	Due impartiality/bias	13
Sky News	Sky News	01/08/2018	Due impartiality/bias	1
Sky News	Sky News	14/08/2018	Due impartiality/bias	1
Sky News	Sky News	16/08/2018	Due accuracy	1
Sky News: Inside London Gangs	Sky News	25/07/2018	Race discrimination/offence	1
Sunrise	Sky News	30/07/2018	Due accuracy	1

Programme	Service	Transmission Date	Categories	Number of complaints
Sunrise	Sky News	31/07/2018	Materially misleading	1
Ingrid Goes West	Sky Premiere	01/08/2018	Suicide and self harm	1
Button Meets Hamilton	Sky Sports F1	22/07/2018	Dangerous behaviour	1
German Grand Prix	Sky Sports F1	22/07/2018	Dangerous behaviour	1
Sky Sports News	Sky Sports News	25/07/2018	Materially misleading	1
S.W.A.T	Sky1	29/07/2018	Religious/Beliefs discrimination/offence	1
Sick Note	Sky1	09/08/2018	Dangerous behaviour	1
Indian Idol	Sony Entertainment Television	28/07/2018	Generally accepted standards	1
Studio 66 Days	Studio 66 TV	18/07/2018	Participation TV – Harm	1
The Late Night Alternative with Iain Lee	Talk Radio	17/07/2018	Generally accepted standards	2
The Late Night Alternative with Iain Lee	Talk Radio	23/07/2018	Generally accepted standards	1
The Week with John Nicolson	Talk Radio	01/07/2018	Generally accepted standards	1
The Sports Bar	Talksport	12/07/2018	Generally accepted standards	1
Middy Show	Tameside Radio 103.6 FM	25/07/2018	Suicide and self harm	1
Mike Toolan Show	The Hits Radio	25/07/2018	Competitions	1
Pappaliv	TV3	12/07/2018	Harm	1
Audio Description promotion	Various	Various	Materially misleading	1
How to Lose a Guy in 10 Days	Various	04/08/2018	Generally accepted standards	1
Forbidden History	Yesterday	22/07/2018	Religious/Beliefs discrimination/offence	1
Coast: Denmark	Yesterday +1	03/08/2018	Materially misleading	1
Calendar	Yorkshire Television	27/07/2018	Other	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](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
Ambulance	BBC 1	31/05/2018	Harm	1
BBC Breakfast	BBC 1	25/06/2018	Due impartiality/bias	1
BBC News	BBC 1	14/02/2018	Due impartiality/bias	1
Have I Got News for You	BBC 1	04/05/2018	Generally accepted standards	1
Panorama: Hacked: Smart Home Secrets	BBC 1	14/05/2018	Promotion of products/services	1
Royal Wedding	BBC 1	19/05/2018	Generally accepted standards	1
The Andrew Marr Show	BBC 1	08/04/2018	Due impartiality/bias	1
Reporting Scotland	BBC 1 Scotland	16/04/2018	Materially misleading	1
Reporting Scotland	BBC 1 Scotland	24/04/2018	Due impartiality/bias	1
Scotland's Big Night Out	BBC 1 Scotland	31/12/2017	Materially misleading	1
Abortion on Trial	BBC 2	16/10/2017	Due impartiality/bias	1
Frankie Boyle's New World Order	BBC 2	18/05/2018	Materially misleading	2
BBC News	BBC News Channel	15/04/2018	Under 18s in programmes	1
Archive on Four: British Jews, Right and Left	BBC Radio 4	09/12/2017	Due accuracy	1
Polyonymous	BBC Radio 4	25/05/2018	Due impartiality/bias	1
Woman's Hour	BBC Radio 4	11/04/2018	Materially misleading	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](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 30 July and 19 August 2018 because they did not raise issues warranting investigation.

Licensee	Licensed service	Categories
Alive Christian Media Limited	Alive Radio	Key Commitments
Channel 5 Broadcasting Limited	5USA	Television Access Services
Channel 5 Broadcasting Limited	Channel 5	Television Access Services
Fox Networks Group (UK) Ltd	FOX	Television Access Services
Hit Mix Radio Limited	Hitmix Radio	Key Commitments
ITV Broadcasting Limited	ITV Hub	Television Access Services
Preston Community Radio 23	Beat Radio	Other
Preston Community Radio 23	Beat Radio	Key Commitments
Various	n/a	Television Access Services

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](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
NOW TV	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](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	Channel 4	25/07/2018	Advertising content	1
Advertisement	Channel 4	27/07/2018	Advertising content	1
Advertisement	Channel 4	05/08/2018	Advertising content	1
Advertisement	Channel 4	15/08/2018	Advertising content	1
Channel 4 News	Channel 4	27/07/2018	Outside of remit	1
Prison	Channel 4	02/08/2018	Outside of remit	1
Advertisement	Channel 4+1	01/08/2018	Advertising content	1
Advertisement	Channel 5	16/07/2018	Offensive language	1
Advertisement	Channel 5	10/08/2018	Advertising content	1
Sinkholes: Buried Underground	Channel 5	13/08/2018	Outside of remit	1
Advertisement	Classic FM	09/08/2018	Advertising content	1
Advertisement	Discovery	22/07/2018	Advertising content	1
Advertisement	E4	11/08/2018	Advertising content	1
Advertisement	E4	15/08/2018	Advertising content	1
PGA Championship	Eleven Sports	09/08/2018	Outside of remit	1
Advertisement	ITV	17/07/2018	Advertising content	1
Advertisement	ITV	31/07/2018	Advertising content	1
Advertisement	ITV	02/08/2018	Advertising content	1
Advertisement	ITV	05/08/2018	Advertising content	1
Advertisements	ITV	03/08/2018	Advertising content	1
Love Island	ITV2	18/07/2018	Outside of remit	1
Love Island	ITV2	29/07/2018	Outside of remit	1
Advertisement	ITVBe	24/07/2018	Advertising content	1
Advertisement	ITVBe	09/08/2018	Advertising content	1
Advertisement	Like Radio UK App	31/08/2018	Advertising content	1
Advertisement	MTV	25/07/2018	Advertising content	1
Advertisement	n/a	31/07/2018	Advertising content	1
Advertisements	n/a	18/07/2018	Advertising content	1
Tweet	n/a	n/a	n/a	1
Non-editorial (account/billing)	NOW TV	01/08/2018	Other	1
Non-editorial (subscription)	NOW TV	11/08/2018	Other	1
Advertisement	Sky Premier League	10/08/2018	Advertising content	2
Advertisement	Sky Sports Golf	03/08/2018	Advertising content	1

Programme	Service	Transmission Date	Categories	Number of complaints
Premier League Football	Sky Sports Main Event	10/08/2018	Outside of remit	1
Advertisement	Sky1	10/08/2018	Advertising content	1
Cricket (trailer)	Sky1	22/07/2018	Outside of remit	1
Thelma and Louise	Sony Movie Channel	02/08/2018	Outside of remit	1
Bigg Boss	Star Vijay TV	01/08/2018	Outside of remit	1
Programming	Studio 66 TV	09/08/2018	Outside of remit	1
Advertisement	STV	15/08/2018	Advertising content	1
Advertisement	Talksport	25/07/2018	Advertising content	1
non-editorial (billing/technical)	TalkTalk TV	28/06/2018	Other	1
Advertisement	True Movies	19/07/2018	Advertising content	1
Advertisement	Various	26/07/2018	Advertising content	1
Advertisement	Various	07/08/2018	Advertising content	1
Advertisement	Venus TV	07/08/2018	Advertising content	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 Breakfast News	BBC 1	08/08/2018	Generally accepted standards	1
BBC News	BBC 1	31/07/2018	Due accuracy	1
BBC News	BBC 1	01/08/2018	Race discrimination/offence	1
BBC News	BBC 1	13/08/2018	Due impartiality/bias	1
BBC News	BBC 1	14/08/2018	Due accuracy	1
BBC News	BBC 1	15/08/2018	Race discrimination/offence	1
BBC News	BBC 1	16/08/2018	Due impartiality/bias	1
Casualty	BBC 1	04/08/2018	Generally accepted standards	1
Countryfile	BBC 1	05/08/2018	Generally accepted standards	1
EastEnders	BBC 1	27/07/2018	Generally accepted standards	1
EastEnders	BBC 1	31/07/2018	Generally accepted standards	1
EastEnders	BBC 1	10/08/2018	Violence	1
Nadiya's Family Favourites	BBC 1	28/07/2018	Religious/Beliefs discrimination/offence	1
News	BBC 1	15/07/2018	Due impartiality/bias	1
News at Ten	BBC 1	06/08/2018	Due impartiality/bias	1
NHS at 70 (trailer)	BBC 1	02/07/2018	Generally accepted standards	1
Red Rock	BBC 1	18/07/2018	Offensive language	1
Red Rock	BBC 1	14/08/2018	Violence	1
The Andrew Marr Show	BBC 1	17/06/2018	Generally accepted standards	1
The Andrew Marr Show	BBC 1	17/06/2018	Religious/Beliefs discrimination/offence	2
The Real Marigold Hotel	BBC 1	31/07/2018	Animal welfare	1
The Real Marigold Hotel	BBC 1	01/08/2018	Generally accepted standards	1

<b>Programme</b>	<b>Service</b>	<b>Transmission or Accessed Date</b>	<b>Categories</b>	<b>Number of Complaints</b>
Thief Trackers	BBC 1	16/08/2018	Offensive language	1
Who Do You Think You Are?	BBC 1	18/07/2018	Race discrimination/offence	1
Newsnight	BBC 2	18/07/2018	Due impartiality/bias	1
Newsnight	BBC 2	31/07/2018	Due accuracy	1
Newsnight	BBC 2	01/08/2018	Due impartiality/bias	1
Newsnight (trailer)	BBC 2	14/08/2018	Due impartiality/bias	1
Programming	BBC channels	n/a	Other	1
Click	BBC News Channel	28/07/2018	Crime and disorder	1
Greg James	BBC Radio 1	16/08/2018	Race discrimination/offence	1
News	BBC Radio 1	16/08/2018	Race discrimination/offence	1
Newsbeat	BBC Radio 1	01/08/2018	Due impartiality/bias	1
Jo Whiley & Simon Mayo	BBC Radio 2	14/05/2018	Generally accepted standards	1
Jo Whiley & Simon Mayo	BBC Radio 2	06/06/2018	Generally accepted standards	1
BBC News	BBC Radio 4	11/07/2018	Gender discrimination/offence	1
Programming	BBC Radio 4	09/08/2018	Due impartiality/bias	1
Today	BBC Radio 4	07/08/2018	Due impartiality/bias	2
Week in Westminster	BBC Radio 4	05/08/2018	Due impartiality/bias	1
World at One	BBC Radio 4	17/07/2018	Due impartiality/bias	1
Chris Mann	BBC Radio Cambridgeshire	01/08/2018	Due impartiality/bias	1
Liz Green	BBC Radio Leeds	16/08/2018	Race discrimination/offence	1
BBC news	BBC website	13/08/2018	Animal welfare	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 30 July and 19 August 2018.

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

Programme	Service	Transmission date
BEN Variety Show	BEN TV	04/07/2018
Afternoon Drive show	Big City Radio	29/06/2018
Cricket Highlights	Channel 5	28/06/2018
News at 10	ITV	11/05/2018
Tour de France Highlights	ITV4	24/07/2018
High et Fines Herbes	Viceland (Belgium)	02/06/2018

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](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
A Documentary about Mahmoud Al Jaidah and the secret organisation in the UAE	Abu Dhabi Channel	28/06/2017
Confessions of Qatari intelligence agent to damage the reputation of the UAE	Abu Dhabi Channel	22/06/2017
Programming	KTV	30/09/2017
Sri Guru Singh Sabha Southall Elections Debate	KTV	27/09/2017

<b>Programme</b>	<b>Service</b>	<b>Transmission date</b>
Sali Talk	Manoto TV	09/03/2018

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](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](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

<b>Licensee</b>	<b>Licensed Service</b>
Brave Broadcasting Limited	Your Radio
Cuillin FM Ltd	Cuillin FM
Gravity FM CIC	Gravity FM

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](https://www.ofcom.org.uk/_data/assets/pdf_file/0019/31942/general-procedures.pdf)