

Preliminary View

Not Upheld

Complaint by Mr Julian Assange

True Stories: WikiLeaks: Secrets and Lies, More 4, 29 November 2011

Summary: Ofcom's Preliminary View is that this complaint made by Mr Assange of unjust or unfair treatment and unwarranted infringement of privacy in the broadcast of the programme should not be upheld.

The programme charted the history of WikiLeaks¹ and featured contributions from Mr Assange, a number of employees from 'The Guardian' and other newspapers. Other contributors, such as former employees of WikiLeaks and others who came into contact with Mr Assange or who were affected by the impact of the material that was published by WikiLeaks, also featured and gave their opinions on WikiLeaks, Mr Assange and related matters.

Mr Assange complained to Ofcom that he was treated unjustly or unfairly in the programme as broadcast and that his privacy was unwarrantably infringed in the programme.

Ofcom's Preliminary View is as follows:

- Mr Assange did provide his informed consent to appear in the programme;
- Material facts were presented in a way that was not unfair to Mr Assange and omitting certain facts or points raised by Mr Assange did not create unfairness;
- Mr Assange was provided with a timely and appropriate opportunity to respond to the points in the programme; and
- Mr Assange did not have a legitimate expectation of privacy in relation to the footage of him dancing in a nightclub in Iceland.

Introduction

On 29 November 2011, Channel 4 broadcast on its channel More 4 an episode from its *True Stories* strand of documentaries, entitled "*WikiLeaks: Secrets and Lies*". The programme chronicled the history of WikiLeaks, which was described in the programme as "*the biggest leak of secrets in history. In its wake, dictators fall, wrongdoing is uncovered and a superpower [the USA] is humbled*". The programme featured extracts of interview footage of Mr Julian Assange and other contributors who were involved with WikiLeaks and Mr Assange.

After a brief introduction, the programme featured footage from an interview with Mr Assange, in which he was shown responding to the question of why he started WikiLeaks. The programme then cut to the programme's narrator who gave a brief biography of Mr Assange and stated that Mr Assange had "*attended 37 schools as a child*" and that, while studying at Melbourne University in Australia, he had:

"established himself as Australia's foremost hacker. His tag: mendax – translation: given to lying. In 1996 he was prosecuted for a hack into telecoms giant Nortel; his conviction [was] one of the world's earliest".

¹ WikiLeaks is described on its website as: "a not-for-profit media organisation" whose "goal is to bring important news and information to the public."

The narrator stated that Mr Assange set up WikiLeaks as a “*website openly committed to whistle-blowing*” in 2006, and that as “*the secrets poured in*” he had hired a “*Berlin-based computer programmer*” called Mr Daniel Domscheit-Berg. Excerpts from Mr Domschiet-Berg’s interview was broadcast throughout the programme. He was described in text shown in screen as a “*WikiLeaks spokesperson*” and the programme explained how and why Mr Domscheit-Berg became involved with WikiLeaks.

The programme included interview footage from Mr David Leigh, the investigations editor at The Guardian newspaper, who described his first meeting with Mr Assange at a journalist conference in Norway in March 2010 and his impressions of him. Mr Leigh said that during this meeting Mr Assange had shown him footage of US soldiers shooting civilians in Iraq. This footage, known as the “*Collateral Murder footage*”, was also broadcast in the programme. Mr Leigh remarked that in releasing this footage, Mr Assange was “*providing a great journalistic service*”.

A contribution from Mr Adrian Lamo, who was introduced as “*one of Assange’s few rivals for most famous hacker in the world*”, was also featured in the programme. The programme explained that Mr Lamo had been in contact with Mr Bradley Manning, a US serviceman who was subsequently charged with supplying classified information to WikiLeaks after Mr Lamo informed the US authorities that Mr Manning had allegedly confessed to leaking information to WikiLeaks. The narrator said that Mr Manning’s arrest had prompted an internal split at WikiLeaks, with Mr Assange wanting to continue publishing material and Mr Domscheit-Berg wanting to stop.

The programme moved on to discuss the meeting which took place at ‘The Guardian’ newspaper headquarters in London attended by representatives from ‘The New York Times’, ‘Der Spiegel’ (a news magazine in Germany) and Mr Assange. This meeting was the culmination of an agreement between Mr Nick Davies (a special correspondent at ‘The Guardian’) and Mr Assange, to disclose the next batch of “*secrets*” (the “*Afghan War Logs*”) through a “*media alliance*”. During this part of the programme, Mr Leigh stated that Mr Assange had carried himself as “*a cult leader*” and “*made you feel you were dealing with someone who wasn’t quite from the same planet as the rest of us*”.

Mr Davies stated in the programme that for moral and political reasons the newspapers and magazines involved were always aware that they could not publish anything “*which might get someone hurt on the ground*”. Therefore, it was important that the material “*did not identify any sensitive locations or sensitive methods of operations*”. Mr Leigh added that at this point it became apparent that Mr Assange and WikiLeaks had a “*very different mindset*” because they just wanted to “*dump out all the data*”. Mr Leigh explained that they had tried to warn Mr Assange of the possible reprisals that informants might suffer if he published the material, but Mr Assange had replied “*they’re American informants, they deserve to die*”. The programme then cut to footage taken from Mr Assange’s interview in which he said “*there was no row at all....only hints of a discussion*”.

The programme then included archive footage from 25 July 2010 when the various media partners published, in conjunction with WikiLeaks, the “*Afghan War Logs*”. Mr Davies said that after the material had been published, ‘The Times’ newspaper had gone to the WikiLeaks website and had discovered information which “*clearly put in jeopardy the safety of identifiable Afghan civilians*”. Mr Domschiet-Berg stated that, in his view, the WikiLeaks story had now changed to “*publishing for the sake of publishing*” and that it was “*becoming the kind of organisation that does things because no one can stop you*”.

Mr Assange stated in the programme that he was in “*a precarious position*” and that in late July 2010, he had to go into hiding. Consequently, he had given a copy of a password which would allow access to 250,000 confidential diplomatic ‘cables’ (“*the Diplomatic Cables*”) to

Mr Leigh for “safe-keeping”. Mr Leigh then said that while he was reading this material, he received a telephone call from Mr Davies who told him that Mr Assange had been arrested on suspicion of rape². Mr Davies expressed his disbelief at the allegations and said that he had called the WikiLeaks co-ordinator, Mr Donald Bostrom, who told him: “*I am sorry to tell you it’s true*”. Footage of Mr Assange dancing in a nightclub in Iceland was shown accompanied by Mr Leigh stating that Mr Assange had:

“upset these two women by his incontinent sexual behaviour which had involved, it would appear, jumping on them and not using a condom even though they had very much wanted him to.”

Mr Davies remarked that he found it “*distressing*” that Mr Assange was suggesting that the rape allegations were “*some kind of American dirty trick*” because “*the guy [Mr Assange] is supposed to stand for truth and that wasn’t true*”.

The programme then referred to the publication of the “*Iraq War Logs*” and stated that at this point, although Mr Davies had wanted to continue publishing, he was not prepared to “*be the main point of contact with Mr Assange*.” This was because Mr Assange had approached a number of television stations to cover the Afghan war logs despite WikiLeaks’ contract with ‘The Guardian’ newspaper, and because it was necessary for the material to be kept secret because otherwise the Pentagon might prevent the media outlets involved from publishing it. The programme then cut to interview footage of Mr Assange who said that Mr Davies was a part of the UK media industry which he viewed as a “*credit-stealing, credit-whoring and back-stabbing industry*”. Mr Davies further stated that he had never “*met a human being as dishonest as Julian [Assange]*”.

When the “*Iraq War Logs*” were published, the programme stated that ‘The New York Times’ had run a personal profile of Mr Assange which he described as a “*sleazy hit piece full of factual inaccuracies*”. The programme’s narrator said that Mr Assange was furious and consequently decided that ‘The New York Times’ would have “*no part in the release of the last and most significant batch of documents...*”. However, the programme went on to state that a “*pact*” was subsequently formed between the existing media partners (i.e. ‘The Guardian’, ‘Der Spiegel’ and ‘The New York Times’), Mr Assange and two new media partners (‘Le Monde’ and ‘El Pais’³) for the release of the Diplomatic Cables.

Archive footage of Mr Assange arriving at the High Court in England and news items detailing Mr Assange’s refused bail application was then shown in the programme. Mr Davies commented that:

“ WikiLeaks moral and political authority flows from the fact of truth-telling and you cannot do that and then also tell lies to the world, it doesn’t work”.

The programme then went on to detail Mr Assange’s decision to publish “*all the cables with nothing blacked out*” despite facing worldwide condemnation, including from his “*former media partners*”. Mr Domscheit-Berg described the decision as “*anti-secrecy*” rather than “*pro-whistle blowing*” and Mr Davies said that it was “*a Greek tragedy...but ultimately it had become a disaster because of one man’s personality flaws*”. Immediately following Mr Davies’ comments, Mr Assange was shown stating that:

² On 7 December 2010, Mr Assange was arrested, pursuant to a European Arrest Warrant . This had been issued in response to a request made by Swedish police to question Mr Assange on allegations of sexual assault.

³ ‘Le Monde’ and ‘El Pais’ are broadsheet daily newspapers in France and Spain respectively.

“There is a view that one should never be permitted to be criticised for being even possibly engaged in a contributory act that might be immoral. And that that type of arse-covering is more important than actually saving people’s lives. That it is better to let 1000 people die than risk going to save them and possibly run over someone on the way. That is something that I find to be philosophically repugnant.”

The programme concluded with on-screen text stating:

“November 2nd 2011 High Court rejects Julian’s appeal⁴. Julian is appealing - again”.

This is followed by:

“WikiLeaks suspends all publishing”.

Following the broadcast of the programme, Mr Assange complained to Ofcom that he was treated unjustly or unfairly in the programme as broadcast and that his privacy was unwarrantably infringed in the programme as broadcast.

Summary of the complaint and the broadcaster’s response

Unjust or unfair treatment

In summary, Mr Assange complained that he was treated unjustly or unfairly in the programme as broadcast in that:

- a) The programme did not obtain Mr Assange’s informed consent to appear in the programme. In particular, Mr Assange complained that:
 - i) The programme makers misrepresented to him what the programme would focus on.

In summary and in response, Channel 4 said that it was clear from a number of emails (provided to Ofcom) prior to the interview being filmed, the interview itself and the release form, signed by Mr Assange, that Mr Assange was in fact given a detailed and accurate description of the programme as it evolved including who would be likely to be featuring in it. Channel 4 also stated that during the course of the filming the bitter enmities between the key protagonists and their criticisms of each other became increasingly apparent but this was reflected in subsequent emails between the programme makers and Mr Assange.

- ii) Mr Assange was not made aware of other key contributors who would be appearing in the programme.

In summary and in response, Channel 4 said that the email exchanges and his interview reflect that Mr Assange was well aware of who the key players were in the story.

- iii) Opportunities to preview the programme were not offered to him but were offered to other contributors such as ‘The Guardian’ newspaper.

In summary and in response, Channel 4 said that the producers entered into a perfectly legitimate access agreement with ‘The Guardian’. This had to be carefully

⁴ This relates to Mr Assange’s appeal in the Supreme Court in the UK against being extradited to Sweden to stand trial for allegations of rape.

negotiated because 'The Guardian' had concluded an agreement with a production company concerning the film rights to the book "WikiLeaks: Inside Julian Assange's War on Secrecy" and therefore rights for the documentary needed to be carefully discussed and agreed. Mr David Leigh of 'The Guardian' acted as an ad hoc consultant and provided access to many useful contacts and assisted in the process of checking on certain factual matters. A reasonable fee was agreed with him to cover these consultancy services. Channel 4 said that Mr Leigh was not an advisor to the programme and was not credited as such. 'The Guardian' requested, and was granted, a right to preview the programme solely for the purpose of raising concerns about factual accuracy. Mr Assange did not at any stage when the interview with him was negotiated request a preview of the programme and the issue was not raised when he signed the amended release form.

- b) The programme presented, disregarded and omitted material facts in a way that was unfair to Mr Assange. In particular, Mr Assange complained that the programme:
- i) Broadcast material which was highly prejudicial to his extradition hearing in England (which was held a few days after the programme was broadcast), and other potential legal hearings related to the allegations of rape or WikiLeaks. Mr Assange said that the programme included comments from interviewees, who had no first-hand knowledge of the allegations he faced. In addition, the programme did not interview any of Mr Assange's legal team who had the authority to provide information on the allegations.

In summary and in response, Channel 4 said that it was "fanciful" to suggest that a documentary programme could in any way influence the decision making of the Supreme Court in this country. Channel 4 added that Mr Assange's application to continue his legal fight was ultimately successful and therefore Channel 4 said that there had not been any prejudice to his case. Channel 4 argued that the attempt to extradite Mr Assange from the UK, his legal battle to oppose extradition, the allegations made about him in Sweden, and his immediate public response to them were crucial aspects of the story and so it would have been bizarre not to have referred to them in the programme. Channel 4 said that Mr Assange spoke about the case in his interview and a brief extract was included in the programme. At no time did Mr Assange suggest that the programme makers should speak to his legal team.

Channel 4 also stated that the legal case was not the focus of the programme which fairly reported that Mr Assange denied the allegations and was continuing the appeal process. Channel 4 argued that the programme simply stating the fact that the allegations had been made against Mr Assange was true, adding that there was no unfairness to Mr Assange in the way that the allegations of sexual assault in Sweden and subsequent legal proceedings were reported either by commission or omission. Furthermore, Channel 4 contended that Mr Assange had initially claimed publicly that the allegations were part of an American intelligence dirty tricks conspiracy against him, and therefore it was reasonable to hear from those who were critical of these claims made without an apparent evidential basis to support them.

- ii) Omitted crucial facts, such as:
- That Mr Leigh had broken a written agreement and had revealed a secret decryption key which led to the publishing of the "unredacted cables" [i.e. the U.S. Diplomatic Cables]. Instead, the programme said that this was an incomprehensible and reprehensible decision made by WikiLeaks.

In response, Channel 4 said that both the programme makers and Channel 4 made a legitimate editorial decision that this complicated dispute between Mr Assange and 'The Guardian' was not relevant to the programme and that the interests of fairness did not demand that it be included. According to Channel 4, the programme makers took the reasonable decision not to include the views of either side of this dispute on the basis that the decryption key issue is ultimately not relevant to the publication by Mr Assange of the unredacted cables.

Channel 4 said that Mr Assange gave Mr Leigh the unredacted master file of the U.S. Diplomatic Cables and that he also gave him an encryption key. Mr Leigh understood that the "password" would not work after a short time. Mr Leigh claimed that Mr Assange told him that "this file would then expire, be deleted within a matter of hours" and says that Mr Assange described it as a temporary website. Channel 4 said that Mr Assange was, and still is, very critical of Mr Leigh's decision to publish the key in his book. Channel 4 also added that some months prior to this publication, WikiLeaks, unbeknownst to Mr David Leigh, replicated the files on the web. Mr Assange alleges that Mr Daniel Domscheit-Berg allowed a German publication to make the connection between the files and the published encryption key and that it is only for this reason that he (Mr Assange) was forced to publish the unredacted files in their entirety. However, this account is disputed in a number of respects. Channel 4 said that it does not appear to be disputed that Mr Assange always intended to publish the cables in their un-redacted form and Mr Assange even states this in the programme. Channel 4 argued that, on the basis of this, a reasonable editorial decision was made that the detail of this dispute was not relevant to the programme and that there was no unfairness to Mr Assange in not including it in the programme.

- Attributing the statement "*they're American informants, they deserve to die*" to Mr Assange but failing to mention that two individuals, Mr Goetz and Mr Stark (who were also present at the time this statement was supposed to have been made) have no recollection of Mr Assange making such a statement.

In response, Channel 4 said that the dinner at a restaurant in London was attended by Mr Assange, Mr Declan Walsh and Mr David Leigh of 'The Guardian', and Mr John Goetz and Mr Marcel Rosenbach of 'Der Spiegel'. Mr Holger Stark of 'Der Spiegel' told the programme makers (on camera in his interview) that he was not there and was away at the time. Mr Declan Walsh, 'The Guardian's' Afghan correspondent, entirely supports Mr David Leigh's account. In fact in 'The Guardian' book "WikiLeaks Inside Julian Assange's War on Secrecy" co-authored by Mr David Leigh, it is reported that Mr Declan Walsh, who is quoted, was particularly concerned by this comment, which he calls "callous", on the basis of his knowledge of the country, and the virulence of its feuds. Marcel Rosenbach declined to be interviewed for the programme and John Goetz would not discuss the dinner on camera. However, Mr Goetz did not at any time tell the programme makers that Mr Assange did not make this statement.

Channel 4 said that the programme left viewers with the clear and unequivocal impression that Mr Assange denies having made this remark because he denies there was a "row". Not to include an explicit denial from him caused no unfairness and it is not tenable to suggest that it was also incumbent upon the programme makers to interview people who Mr Assange suggests would agree he did not say the remark alleged by Mr Leigh and Mr Walsh – not least because that is at odds with the Producer's research.

- Failing to mention that Mr Domscheit-Berg (whose status was misrepresented by being described in the programme as a “*WikiLeaks spokesperson*” in the programme) had: stolen funds and sabotaged WikiLeaks; deleted thousands of submissions revealing war crimes and corruption in financial institutions; and, profiteered from and unleashed the chain of events that led to the publishing of the unredacted Diplomatic Cables. After February 2011, Mr Domscheit-Berg had little to no involvement with WikiLeaks operations after being sacked on 14 September 2010. Mr Assange added that all this information was available in two public statements issued by WikiLeaks.

In response, Channel 4 said that it was clear from the programme maker’s research conversations with Mr Holger Stark and Mr John Goetz of ‘Der Spiegel’, and from their recorded interviews, that Mr Domscheit-Berg was instrumental in the crucial deal being made between ‘Der Spiegel’ and WikiLeaks and that he was the key middle man in relation to their dealings. By their own account, Mr Domscheit-Berg advised that ‘Der Spiegel’ should work with WikiLeaks and he alerted the newspaper to a big story coming up that he suggested they should work on together. Mr Domscheit-Berg also set up Mr Stark’s trip to London to meet Mr Assange which led to ‘Der Spiegel’ becoming a major media partner with WikiLeaks in the key publication events discussed in the programme.

Channel 4 said that Mr Domscheit-Berg published a book entitled “Inside WikiLeaks: My Time with Julian Assange at the World’s Most Dangerous Website” and was described on the front cover as “former spokesman of WikiLeaks” and the book describes him as “the effective No. 2 at WikiLeaks and the organization’s most public face, after Julian Assange”.

In Channel 4’s view, it was not the role of the programme to rehearse the public or private disputes between Mr Assange and Mr Domscheit-Berg, including Mr Assange’s various allegations against him and contention that his role as spokesperson was limited to Germany. Channel 4 argued that the programme reported that Mr Domscheit-Berg had been “suspended for disloyalty insubordination and de-stabilization in a time of crisis” and it would not have been appropriate, and was not incumbent upon, the programme makers to report what Channel 4 described as detailed, defamatory and unsubstantiated claims made against Mr Domscheit-Berg by Mr Assange.

Channel 4 submitted that the crucial issue is that Mr Domscheit-Berg was involved in the key events at WikiLeaks at the material time and was therefore able to give a view on what happened at the time and events subsequently. According to Channel 4, this was not unfair to Mr Assange because his own account about Mr Domscheit-Berg’s time at WikiLeaks appears contradictory as Mr Assange claims in his complaint that Mr Domscheit-Berg had “little to no involvement in WikiLeaks post February 2010 and none at all after 25 August 2010”.

- Disregarding the fact that the reason that Mr Assange did not want ‘The New York Times’ to be involved in the publishing of the U.S. Diplomatic Cables was because ‘The New York Times’ had told the White House about earlier releases.

In response, Channel 4 said that this fact was reported in the programme and was not “disregarded” Channel 4 added that in his interview Mr Assange made it clear - as the other interviewees involved contend - that a key reason, if not the key reason, behind Mr Assange’s decision to exclude ‘The New York Times’ from the arrangement was his dissatisfaction with their coverage of him and

WikiLeaks. In any event Channel 4 said the programme addressed Mr Assange's objections to 'The New York Times' decision to tell the White House in advance of publication - a view which was also shared by Mr David Leigh in the programme.

- Disregarding the banking blockade against WikiLeaks and the ongoing harassment of WikiLeaks volunteers. Mr Assange said that the programme gave the impression that WikiLeaks suspended publication because of his impending court hearing when, in fact, WikiLeaks suspended publication on 27 October 2011 due to financial blockades that were imposed on WikiLeaks, before the High Court made its decision on 2 November 2011.

In response, Channel 4 said that the two captions at the end of the programme were reporting entirely separate matters and were even separated by actuality of Julian Assange outside court. Channel 4 said that there was no suggestion that these events are related to each other.

- iii) The programme portrayed Mr Assange as "anti-American" and a "hacker" rather than a journalist or publisher.

In response, Channel 4 said that it was an undisputed fact that Mr Assange has been involved in the release of material that the American authorities did not wish to be published. In addition, it was a matter of public record that Mr Assange was, at an early stage of his career, a well-known hacker. In his interview with Mr Assange, the programme director asked Mr Assange if he is different to mainstream journalists and his reply was included in the programme.

Channel 4 said that they disagreed that by referring to his hacking past the programme suggested that Mr Assange was a "hacker" rather than a "journalist or publisher." Mr Assange was captioned throughout as "Julian Assange – WikiLeaks". The programme made it clear he had been at the heart of key journalistic collaborations between mainstream media outlets. Channel 4 did not consider that there was any unfairness to Mr Assange in this portrayal.

- c) Mr Assange was not given a timely and appropriate opportunity to respond to the allegations made in the programme. In particular, Mr Assange stated that he was not given direct questions to answer in relation to many of the allegations stated in the programme.

In reply, Channel 4 said that the answers from Mr Assange included in the programme were both in response to direct questions and fairly edited and not taken out of their proper context. It would not have been "appropriate" to have provided Mr Assange with each and every actual comment or statement of general opinion expressed by interviewees and attributed to them. Indeed the programme makers did not go back to any interviewees and specifically put to them the specific criticisms Mr Assange made of them. This approach is simply not required by the Code or the interests of fairness.

Channel 4 said that some trenchant criticisms were made of Mr Assange by a number of interviewees, but he was given an appropriate opportunity to answer his detractors.

Unwarranted infringement of privacy

In summary, Mr Assange complained that his privacy was unwarrantably infringed in the programme as broadcast in that:

- d) Footage that was filmed of Mr Assange in a nightclub in Iceland was broadcast in the programme without his consent.

Mr Assange said that the person who recorded the video sought his permission to film him in the nightclub and that Mr Assange agreed to this on the basis that it would be for his personal use only. However, it was broadcast in the programme and Mr Assange had no knowledge of how the programme's producer sourced this footage. Mr Assange said that he could not understand why this footage had been included in the programme or why it was relevant.

In response, Channel 4 said that Mr Assange did not have a legitimate expectation of privacy in relation to this footage but that, if he did, the material was in the public domain to such a degree that it had lost any quality of privacy. The broadcaster submitted that Mr Assange did not have a legitimate expectation of privacy with regard to the filming of him dancing in a night club because the night club was a place open to members of the public and was not a private or restricted invitation event. Further, Channel 4 said that the filming of Mr Assange was not done surreptitiously and was with his knowledge and permission. In addition, Mr Assange was not engaged in a private act and the footage includes nothing of a sensitive or private nature.

In addition, Channel 4 said that Mr Assange if Mr Assange did have a legitimate expectation of privacy, then this had been lost since the footage has been shown so frequently around the world since. Channel 4 also stated that the footage was legitimately licensed by Channel 4 from the person who filmed it. Channel 4 said that the material is in the public domain and so any privacy rights that Mr Assange may have enjoyed with regard to the footage had been lost. The copyright owner informed the programme makers that he has since 1 April 2011 sold the clip or approved its use on a non-exclusive licence basis to a number of media organisations. The footage has not just appeared on YouTube but on the website of well-known publications.

Preliminary View

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 unfair treatment and unwarranted infringement of privacy in, or in connection with, the obtaining of material included in the programme.

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

In reaching its preliminary view, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript, both parties' written submissions and the unedited footage of Mr Assange's interview.

When considering first the complaints of unfair treatment, Ofcom had 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"). Ofcom took this rule into account when reaching its preliminary view on the individual heads of complaint concerning unfairness detailed below.

- a) Ofcom first considered the complaint that the programme did not obtain Mr Assange's informed consent to appear in the programme. In particular, Mr Assange complained that:
- i) The programme makers misrepresented to him what the programme would focus on;
 - ii) He was not made aware of other key contributors who would be appearing in the programme; and
 - iii) Opportunities to preview the programme were not offered to him but were offered to other contributors such as 'The Guardian' newspaper.

In considering this head of the complaint, Ofcom had regard to Practice 7.2 of the Code which states that broadcasters should normally be fair in their dealings with potential contributors to programmes unless, exceptionally, it is justified to do otherwise. In particular, Ofcom considered whether Mr Assange gave his informed consent to participate in the programme, as outlined in Practice 7.3 of the Code, which sets out that in order for a potential contributor to a programme to be able to make an informed decision about whether to take part, they should be given sufficient information about the programme's nature and purpose, as well as their likely contribution. They should also be informed about the areas of questioning and wherever possible, the nature of other likely contributions; and, any changes to the programme that might affect their decision to contribute.

Ofcom considered the following sub-heads of this complaint in order to reach an overall decision as to whether Mr Assange had given his informed consent to appear in the programme.

- i) The programme makers misrepresented what the programme would focus on.

Ofcom was provided with the release form which was signed by Mr Assange. The release form described the programme as:

"A definitive account of the WikiLeaks affair. It will focus on the core of the story, the substance content and the impact of the Iraqi, Afghan and diplomatic cables."

Ofcom also noted that prior to Mr Assange confirming his involvement in the programme, email correspondence between his assistant and the programme makers over a number of weeks sought to establish the content of the programme and what it would focus on.

In an email, dated 6 July 2011, for example the programme makers stated that they were interested in asking Mr Assange:

"How has WikiLeaks changed global political interaction, political transparency and why is it so important for the progress of civilization that we have this mine of information in order to understand how humanity operates -potentially forcing us to behave in a moral way. The idea discussed that WikiLeaks has made it impossible for people not to know what is happening in the name of war and diplomacy is very compelling as is the idea that states have been forced into a state of un-deniability over their actions. We are honestly not at all interested in the personal life of Julian but in his work to bring about the biggest leak in history."

Ofcom further observed that on 22 August 2011, Mr Assange's assistant asked the following point:

“We would also like to be sure that the majority of the interview focuses on the points that you have shown you agree are most important - the effects and philosophies of WikiLeaks.”

The response from the programme makers to the above query, sent on 23 August 2011, stated as follows:

“ The film is a story of a defining moment in history and we want Julian’s account of events as the central protagonist. So I guess our framing of Julian is simply that – as WikiLeaks progenitor, and defining spirit and it’s really important that he gives his own account of what happened, and why it did, this covers events, philosophy and results. And yes, in some instances that will involve responding to what others say/their version of events during the process, but what we really want is him recounting and explaining a very important story in his own words.”

Ofcom noted that after the broadcaster had published its press release on the programme, Mr Assange sent an email, dated 17 November 2011, to the programme makers in which he expressed his view that the programme did not reflect his understanding of what it would focus on and contained many inaccuracies.

Ofcom watched Mr Assange’s unedited contribution (provided by Channel 4). In summary, the main content of Mr Assange’s interview was as follows:

- the reasons why Mr Assange started WikiLeaks, which included his philosophical and moral impetus for starting WikiLeaks;
- his views on and attitudes to the people who supply WikiLeaks with information and the information itself;
- the media and its interaction with society;
- the issue of redaction and the extent to which individuals should be identified in material that is published;
- his opinion on particular journalists, institutions and governments;
- the political and moral impact of the material he was publishing; and
- his position in relation to the legal trials which were related to him personally or to WikiLeaks.

Ofcom went on to compare the description of the programme, as set out in the release form, email correspondence and the unedited footage of the interview, with the programme as broadcast. Ofcom noted that the programme was a retrospective account of WikiLeaks since its inception, and this was told through the people involved at the time. The main focus of the programme concerned what Ofcom considered to be the heart of the debate on WikiLeaks: the impact of releasing the information and the disagreements which arose from the differing approaches towards redacting portions of material. Ofcom observed that the majority of Mr Assange’s contributions in the programme concerned his personal view and wider philosophical approach to certain events and issues which occurred during WikiLeaks’ operations. Ofcom further noted that the programme made reference to the allegations of rape which Mr Assange faced, and included opinions from contributors on this matter - in addition to general impressions, opinions and criticisms of Mr Assange and WikiLeaks.

Ofcom considered that the description of the nature and purpose of the programme, as set out in the release form and the email correspondence, was broad in its scope. In Ofcom’s view, the programme featured topics and subjects which were inextricably related to the general premise of the programme, which was a “definitive account of the WikiLeaks affair”. It was evident from the unedited interview with Mr Assange what the subject areas and approach were which the programme was likely to take and, as described above, the

unedited interview with Mr Assange covered in detail the majority of the content areas which were featured in the programme as broadcast. Therefore, Ofcom considered that the programme makers had not misrepresented what the programme would focus on.

- ii) Ofcom considered the complaint that Mr Assange was not made aware of other key contributors who would be appearing in the programme.

In relation to this particular aspect of the complaint, Ofcom recognises that there is no obligation on the programme makers or the broadcaster to provide a contributor with a comprehensive list of all contributors. Instead Practice 7.3 states that contributors should normally be informed about “wherever possible, the nature of other likely contributions”.

Ofcom examined the correspondence between the programme makers and Mr Assange’s assistant and the unedited interview footage. In particular Ofcom noted in an email dated 22 July 2011, that the programme makers did set out a number of contributors and/or possible contributors to the programme:

“ At ‘Der Spiegel’ we are speaking to Georg Mascolo and Holger Stark. At ‘The Guardian’, so far we have been in touch with Alan Rusbridger and David Leigh and we are going to speak to one of two others who dealt with the material but we have not yet been in touch with them. We are speaking to Dean Baquet and Bill Keller at the New York Times. This is so they can tell us about how the story of the leaks unfolded, their dealings with the US administration and what was significant about the content of the leaks.”

In another email to Mr Assange dated 14 July 2011, the programme makers said:

“Just so you know, Josh Steiber who was part of the Collateral Murder lot, had agreed to take part and talk about why he became a conscientious objector and why it was important to see the reality of war in this way, through the release of the video and we are talking to Ethan McCord who also approved of the leaking of the material because of what it showed the public about what was being done in the name of war. We also have PJ Crowley taking part who obviously didn’t approve of the leaks but did speak out against the torture of Bradley Manning.”

Ofcom also noted from the footage of the unedited interview with Mr Assange that a number of the individuals referred to in the correspondence were also mentioned in the interview by the interviewer to Mr Assange (such as Mr Domscheit-Berg, Mr Adrian Lamo and Mr Nick Davies) and these individuals subsequently appeared in the programme.

Ofcom considered that, although there was no obligation on the broadcaster to provide a definitive list of the key contributors in order to ensure that Mr Assange could provide informed consent, Mr Assange had nevertheless been provided with many of the names prior to consenting to appear in the programme. In Ofcom’s view, the combination of the names which were provided in email correspondence, and Mr Assange’s knowledge of the content of the programme from his own interview (as further set out in sub-head i) above), in Ofcom’s opinion, provided Mr Assange with not only an idea as to the type of contributors who were being asked to participate in the programme, but also what their contributions were likely to consist of.

- iii) Opportunities to preview the programme were not offered to him but were offered to other contributors such as ‘The Guardian’ newspaper.

Ofcom noted from Channel 4's submission that 'The Guardian' was offered the opportunity to preview the programme for the purposes of fact-checking and because of the commercial agreement that 'The Guardian' had in relation to a film also being made about WikiLeaks.

One of the provisions set out in Practice 7.3 is that participants should normally "be given clear information **if offered an opportunity** [emphasis added by Ofcom] to preview the programme, about whether they will be able to effect any changes to it [i.e. the programme]." It is important to note that there is no obligation on the broadcaster to provide contributors with an opportunity to preview the programme in order to ensure that they have provided informed consent.

Ofcom reviewed the correspondence between the programme maker and Mr Assange and his assistant and noted that at no point did the programme makers or the broadcaster offer Mr Assange an opportunity to preview the programme. In addition, Mr Assange did not request to preview the programme until he raised concerns about the broadcast (following a press release about the programme) in an email to the programme makers, dated 17 November 2011, which was 12 days before the programme was shown. Ofcom noted that the broadcaster did not agree to offer Mr Assange an opportunity to preview the programme.

Ofcom took into account: that there was no opportunity offered to preview the programme, the late request from Mr Assange to preview the programme, and that the reasons for offering 'The Guardian' an opportunity to preview the programme concerned their commercial arrangement rather than any editorial reasons. As a result, Ofcom did not consider that not offering an opportunity to Mr Assange to preview the programme negated the informed consent he had given to contribute, particularly in light of the information he already had about the programme (as set out in sub-heads i) and ii) above).

In light of all the above factors, Ofcom did not consider that Mr Assange was misled about what the programme would focus on. We concluded that Mr Assange had been made sufficiently aware of the other likely contributors and what their contributions were likely to involve. Further, it was not necessary for Mr Assange to preview the programme in order to ensure that his consent was "informed." Therefore, Ofcom concluded that the broadcaster and programme makers had taken sufficient measures to ensure that consent given by Mr Assange in contributing to the programme was "informed consent".

Ofcom's preliminary view is that Mr Assange did provide informed consent and was not treated unfairly in this respect.

- b) Ofcom next considered the complaint that material facts were presented, disregarded or omitted in a way that was unfair to Mr Assange.

When considering this head of complaint, and the individual sub-heads of complaint below, Ofcom had regard to whether, in accordance with Practice 7.9 of the Code, reasonable care was taken by the broadcaster to satisfy itself that material facts had not been presented, disregarded or omitted in a way which was unfair to Mr Assange.

In relation to some of the sub-heads of complaint below, Ofcom also had regard to Practice 7.6 of the Code which states that when a programme is edited, contributions should be represented fairly.

Ofcom recognises that while programme makers and broadcasters have editorial discretion over what material to include in a programme, there is an obligation on them to ensure that material facts are presented fairly. This is an editorial decision and it would be unreasonable and a disproportionate interference with a broadcaster's right to freedom of expression to require the broadcaster to cede editorial control or to oblige

the broadcaster to include contributions in full. Broadcasters must however ensure that material facts and contributions are presented fairly. It is in this context, that Ofcom considered whether or not Mr Assange was portrayed unfairly under this head of the complaint.

Ofcom considered the following sub-heads of complaint in order to reach an overall decision as to whether the programme was unfair to Mr Assange.

- i) Ofcom considered first the complaint that the programme broadcast material which was highly prejudicial to Mr Assange's extradition hearing (which was held in the UK a few days after the programme was broadcast), and other potential legal hearings related to the allegations of rape or WikiLeaks. Mr Assange said that the programme included comments from interviewees, who had no first-hand knowledge of the allegations he faced. In addition, Mr Assange argued that the programme did not interview any of Mr Assange's legal team who had the authority to provide information on the allegations.

Ofcom noted the following in a section towards the end of the programme that focussed on the allegations of rape that were made in Sweden against Mr Assange. In particular Ofcom observed the following comments made by Mr Davies and Mr Leigh, which were accompanied by footage of Mr Assange dancing in a nightclub in Iceland:

Mr Davies: *"I woke up to find an email from an American journalist with a link to this Swedish newspaper Expressen, front page claims that Julian is charged with sexually assaulting two women. Now that's obviously a joke, I don't believe it, this is some sort of satirical spoof. I had been in Stockholm with Julian and I had got to know the WikiLeaks co-ordinator there - a very nice Swedish journalist called Donald Bostrom. So I called Donald and before I made the phone call I thought well there are various possibilities here - I mean one is this is women who want to sleep with a celebrity so that they can make up a story and sell it to newspapers. Or maybe it's some crazy right wing group who've set this up to try and discredit him. Maybe out on the outer shores of possibility it is the American authorities who are doing something evil. And I went through to Donald and said what's going on here? And he said my friend I'm sorry to tell you it's true."*

Mr Leigh: *And it was an extraordinary story, Julian had upset these two women by his incontinent sexual behaviour which had involved, it would appear, jumping on them and not using a condom, even though they, they very much wanted him to. After he had had sex with these two women in rapid sequence and had misconducted himself with both of them they had got together and one of the things they wanted was they wanted him to have an AIDS test. And Julian's friend, this man Donald Bostrom, who was a sort of intermediary, he told us, he said I was on the phone all the time between these women and Julian you know and these women are saying we want him to have an AIDS test and Julian is saying oh I'm not going to do that. And they are saying well if you don't we're going to go to the police. And by the time he's agreed this, it's ten past five on a Friday in Stockholm and apparently you can't find a clinic that's open at that time in Stockholm. So he didn't have the AIDS test, so the women made good their threat and went to the police".*

The narrator of the programme stated that Mr Assange spoke to the police *"once and then leaves Sweden, claiming this isn't just a rape enquiry but something more sinister."* Archive

news footage is also included shortly after this, which reported that Mr Assange's statement that the allegations are untrue and were part of a "*dirty tricks campaign*" and "*politically motivated*".

Ofcom then observed that Mr Davies made the following comment:

"To see Julian tweeting and giving mainstream media comment which clearly suggested that she [the Swedish woman accusing Mr Assange of rape] was some kind of American dirty trick was very distressing because the guy is supposed to stand for truth and that wasn't true."

Mr Davies also said in the programme:

"I am not saying that I know that Julian is guilty of a crime, I don't know the truth about that, I'm saying that Julian misled the world when he claimed, or hinted, that there was some kind of conspiracy by the Americans behind it."

Immediately following Mr Davies' comment, Mr Assange stated:

"It's extremely interesting, it's revealed a whole lot of relationships, it's revealed a really extraordinary [relationship] between Sweden and the United States, that I wasn't aware of. Even my most cynical interpretations of Swedish geo-political behaviour didn't encompass what the actual, what the actuality is. Its revealed interesting relationships about the EU that essentially the elite in one country in the EU and the elite in the other countries in the EU all agree to crush their respective populations for each other."

Ofcom took into account Mr Assange's submission that he was legally barred from talking about the allegations and therefore was unable to speak directly about the allegations of rape when considering whether the broadcaster had taken reasonable care to satisfy itself that material facts were presented in a way that was not unfair to Mr Assange. We noted that the discussion of the allegations in the programme did not reveal anything which was not already in the public domain before the programme was broadcast, and therefore it was likely that many viewers would have been familiar with the allegations and Mr Assange's unequivocal denial of them. In addition, the focus of this part of the programme concerned reactions to the news that Mr Assange had been arrested from those who had been involved with Mr Assange, such as Mr Davies and Mr Domscheit-Berg. Their comments centred on their doubts about Mr Assange's position that the allegations were "*politically motivated*". This is evident for example from Mr Davies' comment when he states, "*I am not saying that I know Julian is guilty of a crime... I'm saying that Julian misled the world when he claimed, or hinted, that there was some kind of conspiracy by the Americans behind*".

Ofcom observed that Mr Assange's stance (i.e. that he denied the allegations and that the allegations were a result of political campaign against him) was reflected in the programme through the archive news footage set out above and more generally by Mr Assange himself when he stated that it had "*revealed interesting relationships about the EU that essentially the elite in one country in the EU and the elite in the other countries in the EU all agree to crush their respective populations for each other.*"

Ofcom took into account Mr Assange's complaint that his legal representatives or anyone who had first-hand knowledge of the case were not approached. However, in Ofcom's view the programme was not concerned with the veracity or otherwise of the rape allegations, but had included the references to them as forming part of the events of the WikiLeaks story. This was the context in which the information in the programme about the rape allegations was broadcast, and Mr Assange's denial and his view on there being a conspiracy were already widely documented prior to the broadcast of the programme. In turn the programme

also made clear that Mr Assange denied the allegations. Therefore it was not incumbent on the programme makers to seek further comment from either Mr Assange or his legal representatives in order to satisfy themselves that material facts were presented fairly. In any event, as set out in head c) below, the programme reflected Mr Assange's response to the main allegations made against him.

In relation to the trial of Mr Bradley Manning, Ofcom again noted that the programme informed viewers of issues that were already available in the public domain, such as his alleged confession to Mr Lamo. In addition, the programme stated that:

"the allegation is that harsh treatment of Iraqi detainees persuaded Manning to transfer half a million confidential military and diplomatic cables out of Crypto net into WikiLeaks' hands".

Ofcom noted that throughout the programme, Mr Manning was often referred to as the "potential source" but it was clear from the programme that WikiLeaks had not confirmed this as true.

Taking all the above into account, Ofcom did not consider that the programme was prejudicial to Mr Assange's UK extradition case (which concerned a technical legal issue, rather than any adverse allegation to Mr Assange dealt with in the programme)⁵, the rape allegations or any other potential trial related to WikiLeaks. Ofcom considered that many viewers would have understood that the matters being discussed were a report of what had happened and in many instances were speculation or a contributor's opinion, rather than allegations of fact. As a result, Ofcom's view is that programme makers had taken reasonable care to satisfy themselves that material facts had been presented in a way that was not unfair to Mr Assange.

ii) Ofcom next considered the complaint that the programme was unfair to Mr Assange by omitting crucial facts such as:

- Ofcom considered the complaint that the programme omitted that Mr Leigh had broken a written agreement and had revealed a secret decryption key which led to the publishing of the "unredacted cables" [i.e. the U.S Diplomatic Cables]. Instead the programme said that this was an incomprehensible and reprehensible decision made by WikiLeaks.

Ofcom noted the following:

Mr Assange: *I personally was in a very precarious position. We were still worried about a surprise sneak attack, simultaneous across all continents where our people were. We also knew that we had a CIA taskforce assigned to us, some 120 people working in the Pentagon against us and other organisations.*

We knew that they knew that we had 251,000 diplomatic cables, over 100,000 of which were classified. So under that basis we were willing to give 'The Guardian' a copy of the material for safekeeping.

⁵ On 2 February 2012, the Supreme Court of the United Kingdom retired to consider Mr Assange's appeal in relation to his possible extradition to Sweden. The issue being considered, as described on the Supreme Court website, is whether a "European Arrest Warrant ("EAW") issued by a public prosecutor is a valid Part 1 EAW issued by a "judicial authority" for the purpose (and within the meaning) of sections 2 and 66 of the Extradition Act 2003". On 30 May 2012 the Supreme Court handed down its judgment, which rejected Mr Assange's appeal against extradition to Sweden.

Mr Leigh: *This piece of paper was written on by Julian Assange, it's a bit of a souvenir I suppose, in July 2012 when he wrote down the password which was going to enable us to access the entire 250,000 state department cables and he told me that this file would then expire, be deleted within a matter of hours. It says a collection of history since 1966 to the present day and there's a little hash symbol. And he said here's what I've written down but when you put in this password you have to add an extra word so that it says a collection of diplomatic history and I said "yes" Julian, right, I'll remember that you know and I'll put in that extra word, so it was all very James Bond.*

I went off to Scotland where we have a little cottage and it was my holiday and I spent my holiday not climbing hills in Scotland, as I'd hoped, but closeted with my laptop and this little memory stick wading through this extraordinary collection of American diplomatic communications.

What we had here was material which was capable of complicating or disrupting American relationships with 100 countries.....

Towards the end of the programme, Ofcom noted the following:

Narrator: *While Manning's defence team are preparing for his trial, a final twist in the WikiLeaks saga. To worldwide condemnation, Julian Assange announces he is planning to put out all the diplomatic cables with nothing blacked out.*

Mr Domscheit
-Berg: *That's about the worst decision I am aware of, that's like this shouldn't happen, because this is again where you are not a pro whistle blowing organisation, but you're just a mere anti-secrecy organisation. And there's a big difference in these two things.*

Interviewer: *And the difference is?*

Mr Domscheit
-Berg: *One is a responsible thing and the other one isn't.*

Mr Davies: *It's like a Greek tragedy. You've seen a triumph turn into a disaster, and I mean I don't doubt that 'The Guardian' and 'The New York Times' made mistakes along the way, but ultimately the triumph has become a disaster because of one man's personality flaws.*

Mr Assange: *There is a view that one should never be permitted to be criticised for being even possibly in the future engaged in a contributory act that might be immoral. And that type of arse-covering is more important than actually saving people's lives. That it is better to let a thousand people die than risk going to save them and possibly running over someone on the way. And that is something I find to be philosophically repugnant.*

Ofcom noted that the parts of the programme set out above were likely to lead viewers to the conclusion that the decision to publish all the U.S Diplomatic Cables in the un-redacted form was a decision made solely by Mr Assange. However, we also noted that although the

programme contained criticisms from contributors and most notably from Mr Domscheit-Berg, the programme did not state that this was “an incomprehensible and reprehensible decision made by WikiLeaks”, as submitted by Mr Assange in his complaint.

Mr Assange provided Ofcom with a copy of a contract signed by Mr Rusbridger, editor of ‘The Guardian’, which stated ‘The Guardian’ would not publish the material “known as Package 3” (which Ofcom presumes refers to the U.S Diplomatic Cables material). Ofcom also took into account Channel 4’s statement that this issue was complicated, there were two conflicting views and misunderstandings about it, and therefore an editorial decision was made by the programme makers not to include this “complicated dispute”.

Having reviewed the unedited interview footage and Channel 4’s submissions on this point, Ofcom’s view is that this issue was indeed quite complicated. It was clear that both ‘The Guardian’ and Mr Assange’s recollections differed. It is important to note that Ofcom’s role is not to resolve conflicts of evidence and to act as a tribunal of fact, but only to consider whether the programme presented, disregarded or omitted material facts in a way that is unfair to a Mr Assange.

Ofcom noted from the unedited interview footage that Mr Assange had explained the complicated issue of how and why the cables came to be published in the un-redacted form. In Mr Assange’s unedited interview he stated that he had found out that another organisation was planning to publish the material and he had asked the organisation not to publish the material unredacted, because the effect would be that “all our redaction work is in vain.” Ofcom considered that the effect of omitting Mr Assange’s more detailed explanation as to why he had to publish the material unredacted was that viewers may have formed the impression that Mr Assange had a somewhat cavalier attitude to the material he was publishing. However, we further noted that Mr Assange stated that, although he was planning to “publish the majority of the material by November 29, we’d have to rush this forward and publish all the rest.” Therefore he did not dispute that his intention was to publish the information un-redacted.

Consequently, Ofcom considered that the essential material facts in relation to this point was that Mr Assange had published the material unredacted. In relation to omitting the fact that ‘The Guardian’ had broken the written agreement which had in turn revealed the key to the material, Ofcom accepted that because the programme maker could not be satisfied that this was what actually happened, it was not incumbent to include this in the programme in order to reflect the constituent part of the journalistic story, which was that the U.S Diplomatic Cables were published in un-redacted form and this was not a decision which everyone agreed with.

Ofcom also took into consideration that although the purpose of this programme was to give an overall history of WikiLeaks, it was also an opportunity to inform viewers about the conflicts of view between the various participants in the story which existed at the time. We were mindful that the intention of the programme was not always to state what had happened, but simply to present viewers with the conflicting opinions of the various participants, so that they could in turn form their own opinions and impressions on contentious topics.

Ofcom therefore considered that the reasons given by the broadcaster for omitting that ‘The Guardian’ had, according to Mr Assange, broken a written agreement, was reasonable in the circumstances and that they had exercised their editorial discretion responsibly.

- Ofcom next considered the complaint that the programme attributed the statement “they’re American informants, they deserve to die” to Mr Assange but failed to mention that two

individuals, Mr Goetz and Mr Stark, who were also present at the time this statement was supposed to have been made, have no recollection of Mr Assange making such a statement.

Ofcom noted that this phrase was reported in the section of the programme which dealt with the issue of redactions. Mr Leigh stated as follows:

Mr Leigh: *We all went out one night to quite a well known Moorish restaurant called Moro and we all sat down round a table and we had dinner. And we said Julian, we've got to deal with this question of informants you know, you have got to understand that if they're published by you, not by us, because we're not going to do that, but if you're going to dump out all this material and there's stuff in there with informants names, they could suffer reprisals, they could be killed.*

And Julian said, and this stick in everybody's minds because there was a sort of pause, as a little chill went round the table, he said well they're American informants they deserve to die. That was his attitude and there was a like abyss opened up at that point between the way we saw the world and the way he was seeing the world.

Mr Assange: *There was, there was no row at all, there was no row, there was no, there was not even only hints of a discussion.*

Mr Schmitt: *My colleagues called me the day after and said you wouldn't believe what he's going to do, you've got to help...and so I send him a note and I say Julian, this is crazy, you've got, you've got to be listening to these guys.*

Mr Mascolo: *We had to argue with Afghanistan, this could put people in real harm, so what we told WikiLeaks from the beginning is that we don't subscribe to their idea of simply taking all this material and put it on the internet.*

Mr Davies: *What finally got through to Julian was the political point. It was obvious, even while we were working on the Afghan War Logs, that when we published them we would be starting an information war. And the line that the Pentagon would take would be to say you are helping the bad guys, you are helping terrorists by doing this. Now we knew very well that we weren't and what I kept saying to Julian was if you publish this material then you're giving them the ammunition that they need to fire at us.*

Mr Schmitt: *And to his credit over night, he did re-think this and ultimately decides that they'll take off the table.....*

Ofcom considered that attributing the statement "*they're American informants, they deserve to die*" to Mr Assange had the potential to cause unfairness to Mr Assange. Ofcom again took note of the fact that there was a clear conflict of recollection between the parties on this point and, as stated earlier in the Preliminary View, Ofcom's role is not to resolve conflicts of evidence.

However, Ofcom took into consideration that the broadcaster had been told by Mr Stark that he was not present at the dinner referred to in the programme when the comment ("*they're American informants, they deserve to die*") was alleged to have been made, and that there

was no other witness who could give a view on the account of the dinner put forward by Mr Leigh and others who were there and the programme makers' own research.

Ofcom observed from the unedited footage that this particular event (i.e. the discussion at the restaurant) was not discussed or put to Mr Assange in interview. In particular, in response to the interviewer's question about whether there was a row between Mr Assange and 'The Guardian', Mr Assange stated that there was no row. Ofcom noted that Mr Assange's general denial of any row, immediately followed Mr Leigh's account.

Ofcom considered that although it may have clarified matters to have included Mr Assange's specific account of the dinner, his brief statement denying there was a quarrel was sufficient for viewers to be alerted to a disagreement on whether there was a dispute or not, and therefore whether this statement was even made by Mr Assange or not.

Ofcom noted that the attribution of the comment to Mr Assange was made by a contributor to the programme (Mr Leigh) rather than the programme's narrator. In addition, in light of the fact that Channel 4 had not received any evidence from Mr Holger or Mr Stark that the statement had not been made, the material facts available to the programme makers at the time were that Mr Leigh said that the statement was made and that Mr Assange broadly denied any "row", it would have been reasonably clear to a viewer that Mr Assange denied Mr Leigh's account, including that he denied making the statement attributed to him. The cumulative impression likely to have been formed by viewers was that there were differences in the accounts and opinions between the contributors in the programme, and viewers would have been in a position to take their own views on the issue.

- Ofcom next considered the complaint that the programme was unfair to Mr Assange in that it failed to mention that Mr Domscheit-Berg (whose status was misrepresented by being described as a "WikiLeaks spokesperson" in the programme, according to Mr Assange) had: stolen funds and sabotaged WikiLeaks; deleted thousands of submissions revealing war crimes and corruption in financial institutions; profiteered from and unleashed the chain of events that led to the publishing of the unredacted Diplomatic Cables. Mr Assange stated that after February 2011, Mr Domscheit-Berg had little to no involvement with WikiLeaks operations after being sacked on 14 September 2010. Mr Assange added that all this information was available in two public statements issued by WikiLeaks.

Ofcom noted that the programme first introduced Mr Daniel Domscheit-Berg at the beginning of the programme as follows:

"As the secrets poured in, Assange recruited a German deputy, Berlin based computer programmer, Daniel Domscheit-Berg."

Ofcom noted that a caption which stated "*Daniel Domscheit-Berg, WikiLeaks spokesperson*" appeared on screen.

Mr Domscheit-Berg appeared at various intervals throughout the programme to give his opinion and state his reaction to key events which took place. Ofcom observed that at the point in the programme where the arrest of Mr Bradley Manning was discussed the narrator stated as follows:

"The arrest prompts a furious row inside WikiLeaks. Documents arrive anonymised, so is Manning their guy? And if he is, what responsibility do they owe him? Wikileaks have a mountain of unpublished secrets from the same source. Julian wants to keep going, Daniel doesn't."

Later in the programme, the narrator stated the following:

“Once back in London, he [Mr Assange] acts swiftly to deal with those inside WikiLeaks critical of his leadership. He suspends Daniel Domscheit-Berg for disloyalty, insubordination and de-stabilisation in a time of crisis”.

Ofcom took into account Mr Assange’s complaint that Mr Domscheit-Berg had “little to no involvement in WikiLeaks after February 2011” after he was sacked on 14 September 2010. Ofcom also had regard to the fact that Mr Domscheit-Berg had worked for WikiLeaks during key moments (such as the release of the Collateral Murder footage, the arrest of Mr Manning and the publishing of the War Logs) and therefore he was entitled to give his opinion and reaction to such events which had happened during the time when he was working for WikiLeaks. Ofcom considered that the description “spokesperson” was a generic term and conveyed to viewers the point that Mr Domscheit-Berg had worked at WikiLeaks (which many viewers would have been aware of) and that he therefore had the standing to be able to give his opinion on certain matters.

Ofcom considered whether omitting the matters in relation to Mr Domscheit-Berg referred to by Mr Assange, any unfairness was caused to Mr Assange. The programme signalled to viewers that there was a dispute between Mr Assange and Mr Domscheit-Berg and it clearly stated that Mr Domscheit-Berg had been suspended by Mr Assange for “*disloyalty, insubordination and de-stabilisation in a time of crisis*”. Therefore, Ofcom considered that viewers would have been aware of the fact of a dispute (which had also been documented in the media, many months before the programme was broadcast) and that there were matters which were subject to disagreements between Mr Assange and Mr Domscheit-Berg. Ofcom did not consider the matters raised were material facts which needed to be presented and that omitting them did not cause any unfairness to Mr Assange. The fact that the programme reported that Mr Domscheit-Berg had been suspended for “disloyalty, insubordination and de-stabilisation” reflected to viewers that there was a serious disagreement between them and this would have been taken into account by viewers when watching the programme and hearing Mr Domscheit-Berg’s account of the matters discussed in the programme.

Ofcom considered that Mr Domscheit-Berg’s contribution (in addition to those of other participants) was confined to matters regarding his opinion on key events rather than as a factual, definitive source on what actually happened and this would have been clear to viewers.

- Ofcom considered the complaint that the programme disregarded the fact that the reason that Mr Assange did not want ‘The New York Times’ to be involved in the publishing of the Diplomatic Cables was because ‘The New York Times’ had told the White House about earlier releases.

Ofcom noted the following in the programme:

Narrator: *But just a day later the New York Times publishes a front page profile of Julian. He’s described as increasingly dictatorial, erratic and intolerant of dissent. It claims that the Swedish trial is having a terrible effect on morale inside WikiLeaks.*

Mr Keller: *I think all of my exchanges with Julian Assange have consisted of him complaining to me or haranguing me for things that the New York Times had done.*

Mr Assange: *They produced a sleazy hit piece, targeting me personally and WikiLeaks as an organisation, full of factual inaccuracies that could have easily been fact checked. It was a sleazy tabloid hit piece.*

Narrator: *Furious, Julian insists that the New York times are out. They will have no part in the last and most significant batch of documents from that initial leak. A quarter of a million secret reports from US ambassadors around the globe.*

Mr Keller: *You know we had learned early on that we were dealing with an unpredictable element. So I wasn't shocked to learn that he intended to exclude us.*

Mr Schmitt: *He made it known that we hadn't played nicely and the New York Times was not going to play in the big game that is the Diplomatic Cables. And then 'The Guardian' came to our rescue.*

Mr Leigh: *I took a few decisions which is that I am going to keep the New York Times in the loop on this and I am not going to betray our partners and I give the New York Times a copy of my memory stick with these cables on.*

Ofcom considered from the above exchange that at this point in the programme the impression viewers were likely to have was that Mr Assange's reasons for not wanting 'The New York Times' to be involved in the publication of the Diplomatic Cables was directly linked to the "*sleazy, hit piece*" of journalism which was produced by the New York Times. This impression was further strengthened by Mr Schmitt's comments that Mr Assange "*had made it known that we hadn't played nicely and the New York Times was not going to play in the big game, that is the Diplomatic Cables.*"

Ofcom also reviewed the unedited footage and noted that the interviewer asked what Mr Assange's "beef" was with 'The New York Times'. Ofcom has marked in bold below the parts of Mr Assange's contribution that were included in the programme.

"Our beef with 'The New York Times' was number one, they produced the hit story on Bradley Manning where they stripped him down of any admirable er motivation at all, stripped him down and talked about his homosexuality, I mean it was just dirty tabloid crap. Number two, that they killed the Taskforce 373 story, even though it had been written for them, and then number three, that they produced a story the day after our collaborations with them on the Iraq War Logs, um a **sleazy tabloid piece targeting me personally and WikiLeaks as an organisation, full of factual-factual inaccuracies that could've been easily checked. It was a sleazy tabloid hit piece.....** So we saw, the New York Times as, yes, influential, within its market, but on the other hand so corrupting of the material that we were trying to get out, and so hostile to us as an organisation in order to save itself, in order to distance itself, um that we were not only betraying the impact of the material, but **we were shooting ourselves as an organisation every time we work with the New York Times.**

Ofcom considered that it was clear from Mr Assange's unedited contribution that **one** of the reasons Mr Assange did not want to work with the New York Times was because of the article that they had published about him and WikiLeaks.

Ofcom noted that earlier in the interview, Mr Assange was asked about his reaction to the New York Times decision to speak to the White House.

Well my view has always been that **the organisation you're exposing um should not know before the victims.** Um one might even argue that it should know after the victims, and that is because as soon as it knows, it will engage in a [reguard] action to spin the whole issue, set up its whole press lines, get all its consultants and its

leverage and pull it all together to try and defeat your exposure. **And if you are producing journalism with the goal of it producing justice, then you don't want that goal undermined.**

Approximately five minutes later in the programme, Ofcom noted that Mr Assange's words highlighted in the unedited footage were broadcast in the programme as follows:

Narrator: *No sooner has peace broken out than the New York Times threaten it. They're going to tell the White House what they plan to publish.*

Mr Assange: *We were shooting ourselves every time as an organisation every time we work with the New York Times. If you're producing journalism with the goal of it producing justice, then you don't want that goal undermined.*

Ofcom considered that the programme reflected Mr Assange's contribution fairly and that part of his reasons for not wanting to work with the New York Times was because of the article they had produced **and** (emphasis added by Ofcom) because, they were, in Mr Assange's view, undermining the objective of justice. Ofcom therefore considered that all relevant and material reasons given for not working with the New York Times were stated accurately in the programme.

- Ofcom next assessed the complaint that the programme disregarded the banking blockade against WikiLeaks and the ongoing harassment of WikiLeaks volunteers. Mr Assange said that the programme gave the impression that WikiLeaks suspended publication on 27 October 2011 due to financial blockades that were imposed on WikiLeaks, before the High Court made its decision on 2 November 2011.

Ofcom noted that at the end of the programme, the following captions appeared on screen:

Caption: November 2nd 2011. The High Court rejects Julian's appeal, Julian is appealing - again.

Caption: WikiLeaks suspends all publishing.

The above captions were separated by footage of Mr Assange outside court. Ofcom also took into account Mr Assange's complaint that the order in which the events occurred was not reflected in the captions and that this may have given viewers the impression that the reason WikiLeaks suspended publishing was because the High Court had rejected Mr Assange's appeal. Ofcom observed that the reasons for WikiLeaks suspending publications was not discussed anywhere in the programme and therefore there would be many viewers who would not have automatically made this connection. The programme was broadcast on 29 November 2011 and many newspapers had already reported widely on the financial blockades that had been imposed on WikiLeaks, prior to the broadcast of the programme. Therefore, Ofcom considered that it was reasonable to assume that many viewers would have been aware of the reasons why WikiLeaks had suspended publishing.

Ofcom acknowledged that providing the reasons why WikiLeaks had suspended publishing may have provided clarity on the events, however including this information was not necessary in the circumstances to avoid any unfairness to Mr Assange.

Taking all the above factors into account, Ofcom took the view that material facts had been presented in a way that was fair to Mr Assange.

- iii) Ofcom considered the complaint that the programme portrayed Mr Assange as “anti-American” and a “hacker” rather than a journalist or publisher.

Ofcom noted that at the start of the programme, a short biography of Mr Assange was given:

Born in Australia in 1971, Julian Assange attended 37 schools as a child, started and dropped out of a Physics degree at Melbourne University and established himself as Australia’s foremost hacker, his tag mendax; translation - given to lying.

In 1996, he was prosecuted for a hack into Telecoms giant Nortel. His conviction, one of the world’s earliest. In 2006, he set up WikiLeaks as a website openly committed to whistle blowing, seeking classified information worldwide.

The next reference to hacking in the programme was made in relation to Mr Lamo, who was described as “one of Assange’s few rivals for most famous hacker in the world”.

Ofcom noted that the programme introduced Mr Leigh, who stated that he had met Mr Assange at a “journalist conference” in Norway and that Mr Assange was one of the speakers at the conference. In addition Mr Leigh stated that in making the Collateral Murder footage available to the public, he had “performed a great journalistic service”.

Ofcom observed the following statement made by Mr Assange in the programme:

“When I was in, did a conference at Berkeley, and I said there “are you a journalist or are you an activist?” I then thought who cares you know, isn’t it more interesting just what you, what you let the, let the information speak for itself? But why is that? Well, you know as far as journalism is getting information the public doesn’t know and processing it, verifying it’s true, giving it to the public in various ways, well I’m a journalist. But if I had to choose between the goals of justice and the goals of whatever that is. I would choose the goals of justice. So to that degree I am an activist.”

Ofcom considered that the reference to being a hacker was only made in the context of Mr Assange’s past. In particular, Ofcom noted that the narrator stated that in 1996, Mr Assange was “convicted” for hacking into Nortel and that in 2006, his website WikiLeaks was set up and that this was “openly committed to whistle blowing”. On examining the programme, Ofcom could not see any additional references or material broadcast which might lead viewers to think that Mr Assange was still a “hacker”. Ofcom also took the view that Mr Leigh’s explicit reference to Mr Assange providing a “journalistic service” combined with Mr Assange’s comment that in some respects he was a “journalist” and the knowledge that WikiLeaks was a website “openly committed to whistle blowing” would, in Ofcom’s view lead viewers to think of Mr Assange as a journalist and a publisher, whose stated aim was to expose wrongdoing.

In relation to Mr Assange’s complaint that the programme portrayed him as “anti-American”, Ofcom could not find any references in the programme that could reasonably lead viewers in the programme to this conclusion. However, it considered that when taking into account the fact that the effect that WikiLeaks had on the U.S Government and that the material it had published had the biggest implications for the U.S Government, there may be some viewers who arrived at the conclusion that he may be anti-American. However, Ofcom did not consider that this was a theme or view which the programme itself created.

- c) Ofcom considered the complaint that Mr Assange was not given a timely and appropriate opportunity to respond to the allegations made in the programme. In particular, Mr Assange

stated that he was not given direct questions to answer in relation to many of the allegations stated in the programme.

In considering this head of the complaint, Ofcom had particular regard to Practice 7.11 of the Code which states that 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.

The provisions of the Code require broadcasters to put allegations of wrongdoing or incompetence or other significant allegations to those concerned. In Ofcom's view, the fact that Mr Assange was not provided with each specific criticism which was voiced against him in the programme did not necessarily amount to unfairness. However, in presenting the significant allegations, reasonable care must be taken not to do so in a way that causes unfairness to individuals and organisations and to provide an opportunity for the individual or organisation to respond to such allegations.

As set out in head a) of the Preliminary View above, Ofcom noted that when Mr Assange was approached to contribute to the programme, there was detailed email correspondence between his assistant and the programme makers for the purposes of establishing the content of the programme. The interview with Mr Assange itself also provided him with sufficient information to be informed about the stated purpose of the programme, what issues and subjects were likely to be tackled in the programme and that there would be contributors who were likely to criticise certain decisions taken.

Ofcom examined the unedited footage, along with the unedited transcript which was also provided, of Mr Assange's interview. Ofcom highlighted below in bold the parts of the interview which were broadcast in the programme. As discussed in head a) above, Ofcom noted that the content of Mr Assange's interview covered all the overarching issues and criticisms which arose in the programme. Ofcom observed the following by way of example:

Interviewer: So come on, redactions are going on at the same time, now there is or isn't a row going on about redaction, I haven't the faintest clue whether there is or isn't...?

Mr Assange: No, there's no row going on about redactions at all.There was a group of reports where although they were not really intelligence informants there were sort of hotline tips...something called threat reports comprised one in five of the Afghan War Logs and so we held them back for a line by line redaction...But what we didn't do was redact one in five lines, putting black marker through it, we just removed them, and so it looked like we hadn't redacted everything but in fact we had redacted a fifth of all material, and this permitted an attack, a political attack, to come from 'The Times' of London...So 'The Times' did a proxy war on 'The Guardian' through us by attacking us....**So most of those names were meant to be there, it is right for them to be published, it is right to publish the names of politicians, generals bureaucrats, etc, who are involved in this sort of activity**, it is right even to publish the names of corrupt radio stations in Kabul that were taking SYOPS programme content. **It is also right to publish the names of those people who have been killed and murdered and who need to be investigated and it is right to publish the names of all incidental characters who themselves are not at serious and probable risk of physical harm.** Those incidental characters are someone who owns a company for example is just involved in shipping operations....So then there is the question **were there any sort of villagers or so on who**

gave information that might lead to reprisals, were there some of those? Um there were some villagers who - who had given information, um so that is a regrettable oversight, but it is not our, not merely our oversight it was the oversight of the United States military who should've never included that material and who falsely classified it, and who then made it available to everyone and it then got out.

Ofcom took the view that the interviewer's questions were not specific questions, however they were indicative of the particular subject which was raised in the programme. In addition, the parts which were broadcast in the programme provided viewers with the alternative version of events. Throughout the interview the questions posed to Mr Assange enabled him to express at some length his opinions and version of events and they were reflected in the programme, to counter other contributors' opinions on events or criticisms levelled at him.

Ofcom also took into account that the programme did not contain any material which was new or unfamiliar to Mr Assange. Further, the documentary was not investigative in nature. The aim, as stated by the broadcaster, was to present the history of WikiLeaks. This would have included differences of opinions and in some instances harsh criticisms; however it was largely up to the viewer to reach their own conclusions on the matters covered by the programme.

Ofcom concluded that although as stated in Mr Assange's complaint he was not given "direct" questions to answer, he would have been aware of the general allegations and criticisms to be made against him, which had been rehearsed on many occasions prior to the programme being broadcast. Therefore Ofcom considered that Mr Assange, particularly when taking into consideration his position as founder of WikiLeaks, was given the opportunity to provide, and was capable of providing, robust responses to his critics, which were fairly represented in the programme.

Ofcom therefore took the view that specifying each and every allegation or criticism was not necessary, and that the programme maker had provided Mr Assange with a timely and appropriate opportunity to respond to allegations made in the programme.

Privacy

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

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

- d) Ofcom finally considered the complaint that footage was filmed of Mr Assange in a nightclub in the programme without his consent. Mr Assange said that the person who recorded the video sought his permission to film him in the nightclub and that Mr Assange agreed to this on the basis that the footage would be for the filmmaker's personal use only. However, it was broadcast in the programme and Mr Assange had no knowledge of how the programme's producer sourced this footage. Mr Assange said that

he could not understand why this footage had been included in the programme or why it was relevant.

In considering this part of the complaint, Ofcom had regard to Practice 8.6 of the Code. Practice 8.6 of the Code states that if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. It also had regard to Practice 8.10 which states that broadcasters should ensure that the re-use of material (i.e. use of material originally filmed or recorded for one purpose or used in a later or different programme) does not create an unwarranted infringement of privacy. This applies both to material obtained from others and the broadcaster's own material.

In considering whether or not Mr Assange's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first considered the extent to which he had a legitimate expectation of privacy that footage of him dancing in a nightclub would not be broadcast in the programme without his consent.

Ofcom noted that the footage of Mr Assange dancing in the nightclub which was broadcast in the programme lasted for approximately one minute. The footage showed Mr Assange dancing in a nightclub amongst others. Ofcom noted that because of the dark lighting, Mr Assange was not easily recognisable; however it was clear from the commentary which accompanied the footage that it was Mr Assange who was dancing in the nightclub. Ofcom therefore considered that Mr Assange was identifiable from the footage.

Ofcom took into consideration that: Mr Assange was aware that he was being filmed and had given permission to the videographer to be filmed; and Mr Assange also complained that the videographer had stated that the filming was for his personal use only but subsequently uploaded this onto the video sharing site, YouTube.

The Code states that "legitimate expectations of privacy will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye. There may be circumstances where people can reasonably expect privacy even in a public place. Some activities and conditions may be of such a private nature that filming or recording, even in a public place, could involve an infringement of privacy. People under investigation or in the public eye, and their immediate family and friends, retain the right to a private life, although private behaviour can raise issues of legitimate public interest."

Ofcom noted that the footage was filmed in a nightclub, which is a public place and that Mr Assange was not shown engaged in an activity which could reasonably be considered to be private or in circumstances which could normally give rise to a legitimate expectation of privacy. Ofcom also took into account that Mr Assange has been in the public eye since the launch of WikiLeaks. Further, the footage had been made available to the public in a number of items on the internet months before the programme was broadcast.

Mr Assange's complaint that the footage was filmed on the condition that it would be "for personal use". However Ofcom noted that Channel 4 stated that the person who filmed the footage said that he did not know who Mr Assange was and that the material had been licensed legitimately. Therefore, there was a conflict between the parties' evidence as to the purpose of the filming and Ofcom was not provided with any evidence which could assist it in determining this issue.

Ofcom took the view that there could be circumstances in which the use of material obtained from the internet and already available to the public would give rise to a legitimate expectation of privacy. Simply by fact of something appearing on the internet does not immediately mean a broadcaster does not have to consider the requirements of the Broadcasting Code. However, in the particular circumstances of this case, and taking into account all the factors set out above, Ofcom considered that Mr Assange did not have a legitimate expectation of privacy that the footage (which had already been made freely available to the public on numerous websites) would not be included in any other programmes.

Having found that Mr Assange did not have a legitimate expectation of privacy in these circumstances, it was not necessary for Ofcom to go on to consider whether the use of the footage in the programme was warranted.

Accordingly, Ofcom's preliminary view is that Mr Assange's complaints of unjust or unfair treatment and of unwarranted infringement of privacy in the programme as broadcast should not be upheld.