

Complaint by Mr Rhys McCole about *Reporting Scotland*

Type of case	Fairness and Privacy
Outcome	Upheld
Service	BBC 1 Scotland
Date & time	06 May 2020, 18:30
Category	Fairness
Summary	We have upheld a complaint about unjust or unfair treatment in the programme as broadcast.

Case summary

The news programme reported on the increasing rise of deaths related to the coronavirus in care homes in Scotland and included a montage of photographs of people who, it said, had died from the coronavirus. A photograph of Mr Rhys McCole was included in this montage. Mr McCole complained to Ofcom that this was unfair to him as it had wrongly presented as fact that he was dead.

Ofcom found that the broadcast of Mr McCole's photograph in the report gave the impression that he had died when he had not, and this resulted in unfairness to Mr McCole in the programme as broadcast.

Programme summary

On 6 May 2020, BBC 1 Scotland broadcast an edition of its news programme, *Reporting Scotland*, which included a report about the increasing rise of deaths related to the coronavirus in care homes in Scotland and the difficulties care homes faced in preventing the spread of the virus. During the report, a montage of photographs of people's faces was shown, one of which was Mr McCole's, with the following commentary by the programme's reporter:

"Each one of these faces is a life lost to Covid-19 in Scotland. Their deaths are not data. Each one is a life story. Today, at last, we heard that there are few deaths this week".

The report moved on to look at the political response to the particular difficulties faced by care homes before the report concluded. Mr McCole was not named in the report, nor was his photograph shown again in the remainder of the programme.

Summary of the complaint and broadcaster's response

The complaint

Mr McCole complained that he was treated unfairly in the programme as broadcast because the programme misrepresented material facts about him by including a photograph of him in a montage of other photographs of people who were said to have died from the coronavirus. Mr McCole had clearly not died and said that he, his family and friends, had been shocked to see his photograph in the report.

Broadcaster's response

The BBC said that it accepted that the photograph of Mr McCole should not have been included in the report and that it regretted any distress which this had caused to Mr McCole and his family.

The broadcaster said that the photograph was included in error as the result of a genuine production mistake. It explained that a graphic showing a number of people in Scotland who had died as a result of the coronavirus was originally produced for a *Reporting Scotland* news report broadcast on Wednesday 22 April 2020. It said that the photographs used had been taken from previous news reports compiled by *Reporting Scotland*, and from reports published on the BBC News website. The BBC said that the images were collated by a news producer who had checked that the BBC had permission to use them in news reports to illustrate some of those who had died from the coronavirus. It said that the images were then sent to a graphic designer, who prepared the graphic for use in the programme.

The BBC said that one of the images was of a former teacher of Mr McCole's, who had died in April from the coronavirus. It said that it understood Mr McCole had provided the BBC with a photograph of himself and his former teacher for use in a BBC News website report about how current and former pupils had found a way to honour their teacher even though they were unable to attend his funeral. The BBC said that the graphic designer had inadvertently cropped this photograph to show Mr McCole's face, rather than the face of his former teacher. It said that the error was spotted by the producer when the finished graphic was delivered, and that the producer had then asked the designer to change the montage. The BBC said that the correct version showing the teacher's face was subsequently broadcast on *Reporting Scotland* on 22 April 2020.

The broadcaster said that while the initial, incorrect, version of the montage should have been deleted after the mistake was noticed by the producer, unfortunately this did not happen. It said that when another producer subsequently asked to re-use the graphic for the report broadcast on 6 May 2020, the wrong version was sent by mistake.

The BBC said this was a case of genuine human error made under unusual broadcasting conditions where many members of staff were working remotely, and in which usual working practices had been changed and adapted.

The broadcaster said that after Mr McCole's photograph was broadcast on 6 May 2020 at 18:30, the error was spotted by the producer who had originally commissioned the graphic for the edition which went out on 22 April 2020. It said that the producer had contacted the newsroom and the report was edited to ensure that the correct version was included in the later broadcast of *Reporting Scotland* at 22:30. The broadcaster said that BBC Scotland also ensured that the incorrect graphic was not included in any other subsequent news bulletins that day.

The BBC said that the following day, the report was removed from BBC iPlayer, and that the News Editor sent an email to Mr McCole apologising for the error and "for the hurt this may have caused you and your family". The BBC said that it accepted it would have been preferable if BBC Scotland had contacted Mr McCole on the evening of the broadcast to apologise, and it acknowledged that the report should have been removed from BBC iPlayer more promptly.

Ofcom's Preliminary View

Ofcom prepared a Preliminary View that Mr McCole's complaint should be upheld. Both parties were given the opportunity to make representations on the Preliminary View. The broadcaster did not submit any representations. Mr McCole chose to make representations, which insofar as they are relevant to the complaint entertained and considered by Ofcom, are summarised below.

Mr McCole disputed the BBC's account of the steps it took to remove the photograph. In particular Mr McCole said that it was him, his family and friends who had notified the BBC of the error rather than that the error had been spotted by a producer.

Decision

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

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme and transcript of it, and both parties' written submissions, including representations made by Mr McCole in response to Ofcom's Preliminary View. After careful consideration of the representations, we considered that the points raised did not materially affect the outcome of Ofcom's Preliminary View to uphold the complaint.

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("the Code"). In assessing the broadcaster's compliance with this Rule, we had regard to Practice 7.9 of the Code which states:

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

Ofcom considered Mr McCole’s complaint that he was treated unjustly or unfairly in the programme as broadcast because the programme misrepresented material facts about him by including a photograph of him in a montage of other photographs of people who had died from the coronavirus.

As set out in the “Programme summary” above, a montage of photographs of people’s faces, one of which was Mr McCole’s, was shown in the programme in a report about the rise of deaths related to the coronavirus in care homes in Scotland. The images were accompanied with commentary by the programme’s reporter saying, “*Each one of these faces is a life lost to Covid-19 in Scotland*”. Mr McCole was not named in the report, but his face was shown clearly.

We recognised that Mr McCole’s photograph was shown in the programme only briefly, however, we considered that he was clearly identifiable from the image that was shown. We took into account the broadcaster’s response that the photograph had been included as a result of human error, but we considered that the use of Mr McCole’s photograph in a montage of other photographs of people who had died from the coronavirus clearly gave the impression to viewers, which included Mr McCole’s friends and family, that he had died, when he had not. For this reason, therefore, we considered that the broadcaster had not taken reasonable care to ensure that material facts were not presented, disregarded or omitted in a way that was unfair to Mr McCole in the programme. We found, therefore, that the programme resulted in unfairness to Mr McCole.

Ofcom has upheld Mr McCole’s complaint of unjust or unfair treatment in the programme as broadcast.