

# **Ofom Broadcast Bulletin**

**Issue number 187  
1 August 2011**

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## Introduction

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives<sup>1</sup>, Ofcom must include these standards in a code or codes. These are listed below.

The Broadcast Bulletin reports on the outcome of investigations into alleged breaches of those Ofcom codes, as well as licence conditions with which broadcasters regulated by Ofcom are required to comply. These include:

- a) Ofcom's Broadcasting Code ("the Code"), which, can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>.
- b) the Code on the Scheduling of Television Advertising ("COSTA") which contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken. COSTA can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/advert-code/>.
- c) certain sections of the BCAP Code: the UK Code of Broadcast Advertising, which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility. These include:
  - the prohibition on 'political' advertising;
  - sponsorship (see Rules 9.16 and 9.17 of the Code);
  - 'participation TV' advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including 'adult' chat), 'psychic' readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and 'message board' material where these are broadcast as advertising<sup>2</sup>.

The BCAP Code is at: [www.bcap.org.uk/The-Codes/BCAP-Code.aspx](http://www.bcap.org.uk/The-Codes/BCAP-Code.aspx)

- d) other licence conditions which broadcasters must comply with, such as requirements to pay fees and submit information which enables Ofcom to carry out its statutory duties. Further information on television and radio licences can be found at: <http://licensing.ofcom.org.uk/tv-broadcast-licences/> and <http://licensing.ofcom.org.uk/radio-broadcast-licensing/>.

Other codes and requirements may also apply to broadcasters, depending on their circumstances. These include the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code. Links to all these codes can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/>

It is Ofcom's policy to describe fully the content in television and radio programmes that is subject to broadcast investigations. Some of the language and descriptions used in Ofcom's Broadcast Bulletin may therefore cause offence.

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

<sup>2</sup> BCAP and ASA continue to regulate conventional teleshopping content and spot advertising for these types of services where it is permitted. Ofcom remains responsible for statutory sanctions in all advertising cases

## Standards cases

### In Breach

#### Your Health

*Sunrise TV, 10 April and 8 May 2011, 12:00*

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#### Introduction

Sunrise TV (“Sunrise”) broadcasts a general entertainment channel for the UK Asian community. The licence for the channel is held by Sunrise TV Limited.

*Your Health* was a regular one-hour programme broadcast in Hindi and English, throughout which viewers were invited in a permanent onscreen banner, and regularly by the presenter, to call the studio by phone, to discuss their personal health issues with a studio guest. Calls were charged at a premium rate of £1.50 per minute.

The studio guest on 10 April 2011 was an ayurvedic practitioner, while the guest on 8 May 2011 was a homeopath. Throughout the programmes, the studio guests offered advice, which included, among other things, specific treatments to address callers’ symptoms and/or complement their current medication.

A viewer contacted Ofcom about each broadcast, as she was concerned that such advice was given “without seeing the patient or asking the patient to consult his GP, especially when they have serious health conditions.”

Having assessed the material, Ofcom considered that it was ‘participation TV’ (“PTV”) programming, as it was clearly formulated principally to take advantage of premium rate telephony revenues. As long-form advertising (i.e. teleshopping), PTV is subject to the requirements of the BCAP Code<sup>1</sup>.

Ofcom considered the material raised issues warranting investigation under Rule 11.13.1 of the BCAP Code, which includes the following requirement:

“Advertisements must not contain offers to ... treat remotely (including by phone...)...”.

Further, Ofcom noted that, while the broadcasts were PTV content, the studio presentation was editorial in style. We therefore considered the material raised issues warranting investigation under Rule 2.1 of the BCAP Code, which states:

“Advertisements must be obviously distinguishable from editorial content, especially if they use a situation, performance or style reminiscent of editorial content, to prevent the audience being confused between the two. The audience should quickly recognise the message as an advertisement.”

We asked Sunrise to provide its comments under these rules.

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<sup>1</sup> Under a memorandum of understanding (“MoU”) with Ofcom, the Broadcast Committee of Advertising Practice administers this Code. While broadcast advertising complaints are generally considered by the Advertising Standards Authority, under the same MoU, issues concerning PTV are not. Ofcom therefore remains responsible for enforcing the BCAP Code with regard to such content.

## Response

Sunrise confirmed that *Your Health* provided “health based information and complimentary remedies within a phone based discussion format”, noting that the presenter regularly reminded viewers both that the remedies discussed were not alternatives to licensed medicines prescribed by a general practitioner and that viewers should consult their own doctors.

The broadcaster said that the programme was popular with viewers, providing, “in some circumstances, an outlet ... offer[ing] information to those who may for what ever reason [be] reluctant in the first instance to discuss their symptoms with a GP.” However, it admitted that its consideration of the complaints had “raised fundamental issues which [had] caused Sunrise TV to review the programme concept and conclude that in order to comply with the various regulations it [could] no longer broadcast this show in its current format, if at all.” The broadcaster added that, “whilst the basic premise of the show [was] that of a programme, the high prominence of a premium rate line to elicit the caller interaction” appeared to bring its content into conflict with the BCAP Code, which precluded broadcast advertisements from offering to treat (viewers) remotely.

Sunrise said that *Your Health* had been removed from its schedule. However, it noted that such broadcast material appeared to have been well received by viewers, without having caused widespread concern. Nevertheless, the broadcaster assured Ofcom that it was fully aware of its responsibilities under its licence, adding that its breach of the BCAP Code was an unintended consequence of its desire to develop new programmes that catered for the particular tastes and interests of its audience.

## Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a duty to set such standards for broadcast content as appear to it best calculated to secure specific standards objectives, including “that the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented.” In relation to the potential for advertising to cause medical harm, the BCAP Code therefore contains a number of rules regarding the advertising of medical treatments, including that “advertisements must not contain offers to ... treat remotely (including by phone...)...” (Rule 11.13.1).

In this case, we noted that Sunrise accepted that the material it broadcast not only offered viewers remote treatment, but also provided it. The broadcasts were in breach of Rule 11.13.1 of the BCAP Code.

A further standards objective under the Act requires Ofcom to ensure that the UK’s international obligations with respect to television advertising are complied with. Article 19 of the AVMS Directive<sup>2</sup> requires, among other things, that “television advertising and teleshopping shall be readily recognisable and distinguishable from editorial content.”

The BCAP Code therefore requires, among other things, that “advertisements must be obviously distinguishable from editorial content...” (Rule 2.1).

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<sup>2</sup> See Chapter VII (Television Advertising and Teleshopping), at:  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF>

Ofcom noted Sunrise's admission that "...the basic premise of the show [was] that of a programme". Given the editorial style and studio presentation of the content, we did not consider that, without further information (by caption, for example) it would have been clear to viewers that the content was advertising (and not editorial). The broadcasts were therefore in breach of Rule 2.1 of the BCAP Code.

While Ofcom accepted that Sunrise may seek to "develop new programmes that [cater] for the particular tastes and interests of its audience", we noted that, in this instance, such an approach appeared to have been taken without considering fully BCAP Code compliance implications. We therefore welcomed the broadcaster's decision to remove *Your Health* from its schedule.

However, this is the sixth breach Finding recorded by Ofcom against Sunrise TV over the past 15 months, all of which have concerned the broadcast of promotional material.<sup>3</sup> Ofcom is therefore putting the broadcaster on notice that any further breach of this nature is likely to result in our consideration of the imposition of statutory sanctions.

### **Breaches of Rules 2.1 and 11.13.1 of the BCAP Code**

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<sup>3</sup> The five previous recorded breaches are:

*Your Health*, Broadcast Bulletin issue number 155, published on 12 April 2010, at:  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb155/Issue155.pdf>;

*Asiana Bridal Show 2010*, Broadcast Bulletin issue number 158, published on 24 May 2010, at:  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb158/Issue158.pdf>;

in the Breach Findings Table (COSTA compliance report), Broadcast Bulletin issue number 169, published on 8 November 2010, at:  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb169/issue169.pdf>;

*Kundli Aur Kismat (Future & Fortune)*, Broadcast Bulletin issue number 175, published on 7 February 2011, at:  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb175/issue175.pdf>; and

in the Breach Findings Table (COSTA compliance report), Broadcast Bulletin issue number 179, published on 4 April 2011, at:  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb179/obb179.pdf>.

## In Breach

### Provision of recordings

*South For You, 4 April 2011, 18:00*

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#### Introduction

South For You provides a general entertainment service aimed at a Tamil audience in India.

As part of Ofcom's routine monitoring of broadcasters' compliance with COSTA, Ofcom formally asked South For You to provide recordings of its output of 4 April 2011 between 18:00 and 23:00. The Licensee failed to acknowledge Ofcom's request or provide recordings of the programmes requested by Ofcom on three occasions.

Given the Licensee's failure to provide recordings as requested, Ofcom considered the case raised issues warranting investigation under Conditions 11(2)(a) and 11(2)(b) of South For You's Television Licensable Content Service ("TLCS") licence, which state that:

"11(2) In particular the Licensee shall:

- (a) Make and retain or arrange for the retention of a recording in sound and vision of every Licensed service for a period of 60 days from the date of its inclusion therein; and
- (b) At the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction."

We requested South For You's comments under these Licence Conditions and provided a final opportunity for the Licensee to provide the recordings.

The Licensee did provide the recordings to Ofcom at a later date.

#### Response

South For You said that recordings for all programmes had been made and retained as demanded by its TLCS licence, but that these were retained in India, which was the reason it experienced some logistical problems in bringing these to the UK.

South For You fully accepted that this resulted in a failure to promptly deliver the data requested by Ofcom and appreciated the implications of not complying diligently with Ofcom requests. The Licensee assured Ofcom that this was unlikely to occur again, and undertook that, in the future, all requested data would be made available promptly upon request.

#### Decision

Ofcom noted that it formally asked South For You on several occasions to provide recordings of the output at the date and time specified so that Ofcom could view them and decide whether they raised issues under COSTA. The Licensee failed to provide the recordings forthwith on Ofcom's request, as required by its licence, and, in Ofcom's view, it did not provide valid reasons to justify its repeated failure in this

respect. We therefore concluded that South For You had breached Condition 11(2)(b) (production of recordings forthwith) of its licence to broadcast.

All breaches of Condition 11 are serious because they impede Ofcom's ability to assess whether a particular broadcast raises potential issues under the relevant codes. This therefore affects Ofcom's ability to carry out its statutory duties in regulating broadcast content.

Ofcom notes South For You's apology and assurances, but nevertheless intends to monitor the Licensee's compliance with its Licence Conditions closely in the future.

### **Breach of Licence Condition 11(2)(b)**

## Not in Breach

### EastEnders

*BBC 1, 31 December 2010, 20:00, 1 January 2011, 20:30; and various episodes to 14 April 2011, 19:30*

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#### Introduction

*EastEnders* is a long-running and well established drama with a record of tackling controversial and, at times, highly sensitive social issues.

Over two episodes of the programme, broadcast at 20:00 on New Year's Eve 2010 and 20:30 on New Year's Day 2011, the character Ronnie Branning lost her new born son James to Sudden Infant Death Syndrome ("SIDS" or "cot death"). The programme showed the stunned Ronnie cradling her dead child in Albert Square as the New Year festivities went on around her. On being alerted to the sound of another new born baby boy crying in the Queen Vic pub, Ronnie entered the building and made her way to the crying baby, Tommy, who had just been born to the character Kat Moon. Ronnie then swapped her dead baby for Tommy. The episodes that followed explored the experience of the characters Kat and Alfie Moon, who believed it was their baby Tommy who had died of cot death, and Ronnie became withdrawn and tearful.

Ofcom received 1,044 complaints from viewers, most of which were received in the days following the episodes broadcast on New Year's Eve and New Year's Day. Complainants were concerned that the baby swap storyline was an inaccurate, insensitive and sensationalised portrayal of the behaviour of a mother who has lost a baby from cot death. Others commented that, in addition to the storyline being "distressing" and "horrific" particularly for those parents affected by SIDS, the scheduling of the broadcast was inappropriate, particularly given it was broadcast pre-watershed on New Year's Eve.

Ofcom considered that in this case it would not be possible to assess whether the Code had been breached until the storyline had concluded. This was because Ofcom needed to take into account the full context in which the baby swap storyline was featured. The storyline concluded in April 2011 when Ronnie could no longer cope with her actions and confessed to Kat and Alfie, returned baby Tommy to them and turned herself in to the police.

Given the complaints were overwhelmingly referred to what complainants regarded as the offensive nature of the broadcast we considered the material with reference to Rule 2.3 of the Code:

"In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by context ... Such material may include, but is not limited to, ... distress ... Appropriate information should also be broadcast where it would assist in avoiding or minimising offence."

Ofcom did not consider it necessary to seek the BBC's formal comments before reaching a decision in this case. The broadcaster did, however, provide Ofcom with some background information.

## Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives. One of these objectives requires the application of standards that “provide adequate protection for members of the public from...offensive and harmful material”.

Rule 2.3 requires broadcasters to ensure that material which may cause offence is justified by context.

The main issue raised by the baby swap storyline, as referred to by complainants, was that the drama presented the baby swap in an offensive manner because it appeared to suggest that a mother who has suddenly and tragically lost a baby through cot death would react by stealing another baby to replace that loss. This was considered to have the potential to generate great distress. Any offence was potentially heightened not just by the time of the broadcast, which was pre-watershed, but also because it was scheduled on New Year’s Eve. Ofcom acknowledged that the broadcast on New Year’s Eve, when taken in isolation, was clearly capable of causing offence.

Ofcom went on to consider whether the material which had the potential to generate offence was justified by the context provided by the broadcaster. Context includes, but is not limited to, the editorial content of the programme, the time of broadcast, the extent to which the material can be brought to the attention of the potential audience, and the overall degree of harm and offence likely to be caused by the inclusion of the material in the programme.

Ofcom first considered the character of Ronnie as depicted in the programme and whether the storyline did suggest that it was the loss of her baby alone that was critical in her motivation for swapping the baby. While Ofcom noted that this was the immediate shocking event that preceded the baby swap, there had also been a number of other events in the storyline leading up to her taking this action which arguably contributed to her behaviour. These included: her losing the daughter she had been forced to give up for adoption at 14, her desperation to have a baby and the tragedy she had experienced when she had miscarried, and the recent revelation of sexual abuse by her father. Ronnie’s state of mind at the time of the swap was revealed in full to viewers in the episode following the handing back of baby Tommy to his mother Kat, when Ronnie talked to a police psychiatrist and discussed her personal history.

Ofcom also noted that there was another “bereaved” mother involved in the storyline, the character Kat, who believed it was her baby who had died of SIDS. The broadcaster did not present her reaction to the sudden loss of her baby in the same way as Ronnie. The storyline presented her grief, disbelief and anger and the temporary breakdown of her relationship as well as her gradual coming to terms with her loss and the efforts to re-build her life following the tragedy. This underlined the fact to viewers that whilst the loss of baby James was a catalyst, Ronnie’s reaction was born out of extreme personal trauma in her life and not as the direct and sole consequence of losing her baby. It is Ofcom’s view that the broadcaster did not intend the storyline to suggest that her actions were a typical response of a mother who had experienced SIDS and therefore sufficient editorial context was provided to viewers.

Ofcom acknowledges that *EastEnders* is a drama and therefore the storyline must have scope to present issues and subjects in a fictionalised manner. On the other

hand, Ofcom also anticipates that where such sensitive issues are aired, there is a need to ensure realism because viewers will personally relate to the experiences of the characters. Therefore, Ofcom asked the BBC for information on what steps were taken to ensure the editorial credibility of the script.

The BBC advised that the programme makers consulted the Foundation for the Study of Infant Death (“FSID”). FSID advised on the cot death aspect of the storyline and script, and put *EastEnders* in touch with parents who had lost babies through cot death. Those parents met with the cast members involved and the story producer, and all parents expressed support for the storyline. In addition, a BBC Action line contact number was included after the programmes to support viewers who may have been affected by the issues raised.

It is Ofcom’s view that the scenes involving the baby’s immediate death were limited and the sadness at the heart of the storyline was juxtaposed throughout against other lighter continuing storylines and scenes of the other regular *EastEnders* characters enjoying the festivities and fun of New Year’s Eve. While the storyline was about a sensitive and emotive issue, it is Ofcom’s view that the actual scenes broadcast were not unduly disturbing or graphic.

The broadcaster also provided advanced information so that the storyline was brought to viewers’ attention before the broadcast so viewers could choose whether this was an appropriate programme to view with children and on New Year’s Eve. The storyline had been signalled extensively in advance in pre-programme publicity and featured in TV listings magazines and newspapers prior to the actual episodes featuring the storyline. In addition, the information provided immediately before the start of the programme on New Year’s Eve said : “...as the babies come home, one new mum has her new found joy cut short.”

Ofcom considered that for the regular *EastEnders* audience, the storyline would not have exceeded their expectations given that the soap is known for presenting a range of challenging and, at times, controversial issues. For those less familiar with the programme it is Ofcom’s view that the publicity surrounding the storyline and the guidance provided by the broadcaster before the start of the programme would have provided additional context thereby limiting the degree of offence likely to be caused by the baby swap storyline.

For the reasons set out above, Ofcom concluded that the broadcaster provided sufficient context overall to justify the potential offence. Consequently, there was no breach of Rule 2.3.

### **Not in Breach**

## Advertising Scheduling cases

### In Breach

#### Advertising minutage

*NME TV, 11 May 2011, 13:00*

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#### Introduction

Rule 4 of the Code on the Scheduling of Television Advertising (“COSTA”) states:

“time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes.”

Chart Show TV, the Licensee which is responsible for the compliance of NME TV and other music channels, contacted Ofcom on 11 May 2011 to alert us to the fact that it had shown 15 minutes of advertising within a single clock hour on that same day.

Ofcom therefore sought formal comments about this incident from Chart Show TV under Rule 4 of COSTA.

#### Response

Chart Show TV said one of the broadcast technicians was running a check on a test channel from one of its other music stations, Scuzz, when the live NME channel was “inadvertently” accessed and three videos from the live schedule were deleted by mistake. The Licensee said the technician tried to correct the situation as soon as he realised what had occurred, but “it was too late and the ads had gone out”.

Chart Show TV said this meant that one 3 minute 30 second break “suddenly leapt forward” and pulled the ad break into the earlier hour, causing 15 minutes of adverts to shown in the 13:00 clock hour.

The Licensee said this was a “highly unusual situation” and that it implemented new restriction controls “immediately” to “prevent a user from repeating this one-off error.” It hoped Ofcom would take into account that Chart Show TV proactively alerted Ofcom to the situation when reaching a decision.

#### Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content which it considers are best calculated to secure a number of standards objectives. One of these objectives is that “the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”.

Articles 20 and 23 of the EU Audiovisual Media Services (AVMS) Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has transposed these requirements by means of key rules in COSTA. Ofcom undertakes routine monitoring of all of its licensees’ compliance with COSTA.

In this case, Ofcom found that the amount of advertising broadcast on NME TV was in breach of Rule 4 of COSTA.

Ofcom noted that Chart Show TV explained that the incident was the result of an unusual human error, which it had taken steps to remedy, and that the Licensee alerted us to the situation on the day it took place.

However, Ofcom also noted that NME TV exceeded the maximum allowance of 12 minutes by a full 3 minutes and this was a significant overrun. Accordingly, Ofcom does not expect any similar occurrences of this nature in the future.

**Breach of Rule 4 of COSTA**

## In Breach

### Breach findings table

*Code on the Scheduling of Television Advertising compliance reports*

Rule 4 of the Code on the Scheduling of Television Advertising (“COSTA”) states:

“... time devoted to television advertising and teleshopping spots on any channel must not exceed 12 minutes.”

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
Attheraces	27 April 2011, 22:00; 1 May 2011, 22:00; 20 May 2011, 22:00	COSTA Rule 4	Ofcom noted, during monitoring, that Attheraces exceeded the permitted advertising allowance by 70, 84 and 30 seconds respectively.  <b>Finding: Breach</b>
Ayngaran-Kalaignar TV	4 April 2011, 21:00	COSTA Rule 4	Ofcom noted, during monitoring, that Ayngaran-Kalaignar TV exceeded the permitted advertising allowance by 43 seconds in one clock hour.  <b>Finding: Breach</b>
Sky Sports 1	24 April 2011, 18:00	COSTA Rule 4	Ofcom noted, during monitoring, that Sky Sports 1 exceeded the permitted advertising allowance by one minute and 33 seconds.  <b>Finding: Breach</b>

Rule 17 of COSTA stipulates the maximum number of internal breaks programmes (other than those exceptions in Rule 15) may contain:

<b>Scheduled duration of programme (on non-PSB channels)</b>	<b>Number of breaks</b>
< 26 minutes	One
26 – 45 minutes	Two
46 – 65 minutes	Three
66 – 85 minutes	Four
86 – 105 minutes	Five
106 – 125 minutes*	Six

\*for every additional 20 minutes of programming, a further break is permitted.

<b>Channel</b>	<b>Transmission date and time</b>	<b>Code and rule / licence condition</b>	<b>Summary finding</b>
Bloomberg	4 April 2011, 18:00	COSTA Rule 17	Ofcom noted, during monitoring, that Bloomberg included three internal breaks in a 30 minute programme; and eight internal breaks in a 90 minute programme.  <b>Finding: Breach</b>

## Resolved

### Resolved findings table

*Code on the Scheduling of Television Advertising compliance reports*

Rule 4 of the Code on the Scheduling of Television Advertising (“COSTA”) states:

“... time devoted to television advertising and teleshopping spots on any channel must not exceed 12 minutes.”

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
Quest, Animal Planet, Discovery Channel (Discovery)	20 June 2011:  Quest: 07:00 and 18:00  Animal Planet: 09:00  Discovery Channel: 08:00 and 09:00	COSTA Rule 4	<p>Discovery notified Ofcom that Quest, Animal Planet and Discovery had all exceeded the permitted advertising allowance by 20 seconds in each of the clock hours listed.</p> <p>Ofcom noted that Discovery notified us swiftly of this overrun and took speedy action to redress it, by reducing the amount of advertising that it broadcast on these three channels by a total of one minute and 30 seconds on 6 July 2011 to compensate. Discovery has also assured us that it has improved the clarity in communications with its sales house in this area.</p> <p><b>Finding: Resolved</b></p>
Nick Jr	2 May 2011, 19:00	COSTA Rule 4	<p>Ofcom noted, during monitoring, that Nick Jr exceeded the permitted advertising allowance by nine seconds in one clock hour.</p> <p>Nickelodeon explained that this was caused by human error following 40 schedule changes over the bank holiday when staff were limited, and assured Ofcom that it would look into staff levels to ensure appropriate cover and minimise the need for last minute schedule changes. We note that compliance staff will be reminded of the necessity to remain</p>

			<p>compliant with COSTA.</p> <p><b>Finding: Resolved</b></p>
Sky1	7 May 2011, 11:00	COSTA Rule 4	<p>Ofcom noted during monitoring that Sky1 exceeded the permitted advertising allowance by 20 seconds.</p> <p>Sky said that the overrun was caused by a technician trying to overcome a playout fault on Sky1 during a simultaneous transmission of Soccer AM on Sky1 and Sky Sports1, which had caused the transmission to lose sync with Sky Sports1. The technician mistakenly manually added 20 seconds of advertising in order to correct the link to Sky Sports1. Sky has reminded transmission staff of the correct procedure to follow and the technical fault which caused the loss of synchronisation has been fixed.</p> <p><b>Finding: Resolved</b></p>
Sky Sports News	12 April 2011, 22:00	COSTA Rule 4	<p>Ofcom noted, during monitoring, that Sky Sports News exceeded the permitted advertising allowance by 16 seconds in a single clock hour.</p> <p>Ofcom noted Sky's explanation that a live programme overran, resulting in 16 seconds of the last commercial being played in the 22:00 clock hour; that the mistake should have been picked up by its transmission system; and that the technical problem was being investigated. We also noted that the problem was being investigated to ensure such issues are corrected before transmission.</p> <p><b>Finding: Resolved</b></p>

Rule 16 of COSTA states that

“Restrictions apply when inserting advertising breaks during the following programmes;

- a) Films and news programmes may only include one advertising or teleshopping break for each scheduled period of at least 30 minutes.

Additionally, Rule 3 f) of COSTA states that

“films’ means cinematographic works and films made for television.”

Rule 17 of COSTA stipulates the maximum number of internal breaks programmes (other than those exceptions in Rule 15) may contain:

Scheduled duration of programme (on non-PSB channels)	Number of breaks
< 26 minutes	One
26 – 45 minutes	Two
46 – 65 minutes	Three
66 – 85 minutes	Four
86 – 105 minutes	Five
106 – 125 minutes*	Six

\*for every additional 20 minutes of programming, a further break is permitted.

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
BET	28 February 2011 4 March 2011 8 March 2011 18 March 2011 4 April 2011 6 April 2011	COSTA Rule 16(a)	<p>During monitoring, Ofcom noted that between 28 February and 6 April 2011, BET broadcast six films that contained more internal breaks than permitted by Rule 16(a) of COSTA. Five of these films had a scheduled duration of 120 minutes and contained five internal breaks. One film had a scheduled duration of 150 minutes and contained seven internal breaks.</p> <p>BET explained that it was not aware that these broadcasts fell within the scope of Rule 16(a). Ofcom noted the broadcaster’s assurance that upon being made aware of the issue, it adjusted its advertising scheduling to fully comply with COSTA.</p> <p><b>Finding: Resolved</b></p>

## Fairness and Privacy cases

### Not Upheld

#### Complaint by Mr Chris Elliott

*Channel Report, ITV1 (Channel Television), 2 February 2011*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment made by Mr Chris Elliott.

The programme reported on the relocation of Mr Elliott, Guernsey's Director of Marketing and Tourism, from Guernsey to the UK mainland. The report included "vox pop" style interviews with three members of the public about whether it mattered that Mr Elliott did not live on the island he promoted. Two of the three interviewees said that it did matter, while the third said that it did not *"look good if the guy who promotes the place doesn't live here, but Guernsey has so much going for it that it doesn't really matter"*. Mr Elliott was then interviewed in the studio where he was asked about his move and whether he could continue to promote the island in his role when not living on it.

Mr Elliott complained to Ofcom that he was treated unfairly in the programme as broadcast.

Ofcom found that Mr Elliott's position on his move to the UK mainland, and his response to the criticism that it had given rise to, had been presented fairly in the programme. It also considered that the "vox pop" interviews in the report had illustrated the widely reported criticism surrounding Mr Elliott's move and that Mr Elliott had addressed this criticism in his subsequent interview in the programme. Ofcom concluded therefore that the programme did not portray Mr Elliott in a way that was unfair to him and that viewers would have been able to form their own opinion of him and his position on his move to the UK mainland.

#### Introduction

On 2 February 2011, Channel Television broadcast on ITV1 an edition of its regional early evening news programme, *Channel Report*, which reported on the relocation of Mr Chris Elliott, Director of Marketing and Tourism for the States of Guernsey, from Guernsey to the UK mainland.

The report included "vox pop" style interviews with three members of the public on their views about whether it mattered that Mr Elliott did not live on the island he promoted. Two of the three interviewees said that it did matter, while the third said that it did not *"look good if the guy who promotes the place doesn't live here, but Guernsey has so much going for it that it doesn't really matter"*. The programme then included a studio interview with Mr Elliott, who was asked by the programme's presenter about his relocation and whether he could continue to promote the island in his role when not living on Guernsey. Mr Elliott explained that he was relocating because of his wife's career and that his employers had agreed to the move. He also made it clear that his salary would not be increased to meet his travel and accommodation costs, which he would meet himself, and that he would continue to pay tax on the island as well as UK mainland tax.

Following the broadcast of the programme, Mr Elliott complained to Ofcom that he was treated unfairly in the programme as broadcast.

## **The Complaint**

### **Mr Elliott's case**

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

- a) He was misled by the programme makers as to the nature and format of the programme.

Mr Elliott said that on the day of the broadcast, he had agreed with the programme makers that he would give an interview and that he would respond only to questions from the presenter, who would raise some of the issues that had been reported in the local media over the previous couple of days about his impending move. Mr Elliott said that the programme makers had confirmed that he would not be responding to any interviews with other people, since no one else was being interviewed for the programme in relation to the story.

However, Mr Elliott said that when he arrived at the studio later that day, he was informed by the programme makers that a series of "vox pop" interviews was being made on the streets of Guernsey in which members of the public were being asked what they thought about the fact that the Director of Tourism was not going to live on the island. Mr Elliott said that he had asked the programme makers to revert to the originally agreed format or to give him an opportunity to give a summary response to any points raised by the "vox pop" interviewees in his interview. Mr Elliott said that he was told by Channel Television's news editor that the programme would not revert to the original format and that the "vox pops" would be used. Mr Elliott said that he told the news editor that he was unwilling to take part in the programme due to the unilateral change in the agreed format, but that the news editor said that if Mr Elliott did not take part that the programme would state, prominently, that he had refused to be interviewed. Mr Elliott said that a suggestion of refusal to take part, along with the negative "vox pop" interviews would have reflected badly on him.

Mr Elliott said that he had been manipulated into taking part in a programme where the format had been fundamentally changed from what he had agreed, to his disadvantage. Mr Elliott said that he believed that he had been lied to about the format of the programme and subsequently "blackmailed" into proceeding with his participation in it.

- b) The inclusion of the negative "vox pop" interviews at the beginning of the programme was unbalanced, detrimental and unfair to him, in that the reporter could not have presented the interviewees with balanced case to which they could respond.

### **Channel Television's case**

In summary, Channel Television responded to the complaint of unfair treatment as follows:

- a) Channel Television said that on 2 February 2011, it sought an interview with Mr Elliott in relation to his planned move to the UK mainland, which had attracted public criticism in Guernsey. Stories about his planned move had been printed in Guernsey's daily newspaper and broadcast on the island's two radio stations.

Channel Television maintained that it did not mislead Mr Elliott as to the nature and format of the programme. It said that Mr Elliott was not directly involved in any discussion with the programme's reporter or the production team over the format of the programme or any agreement regarding "terms of engagement". Channel Television said that it was a colleague of Mr Elliott, Ms Wendy Crame, who had spoken to the reporter and that only stipulation was that any interview with Mr Elliott should not be pre-recorded and then edited. The interview would also only be granted if it was to be broadcast in full. Channel Television said that owing to technical reasons that evening, it would not have been possible to accommodate a live interview in the Guernsey studio during the programme. However, it said that the programme's producer agreed to conduct an "as live", pre-recorded two minute studio interview which would be broadcast in full.

Channel Television said that Mr Elliott's statement in his complaint that "it was specifically agreed and later reconfirmed by [the reporter] on Guernsey that I would not be responding to any interviews with others since no-one else was being interviewed for the programme", was incorrect. Channel Television said that the reporter did not speak directly to Mr Elliott prior to the interview, but did confirm to Ms Crame that the "as live" interview would be a "one-to-one" with the programme's presenter and that no other interviewees would be present in the studio, i.e. it would not be a "double headed" interview with any critic of Mr Elliott. Channel Television said that it was not its policy to give any undertakings to prospective interviewees that no other interviews would be conducted as part of a news story and that it was inappropriate and unreasonable for a person who was the subject of a news story to make demands as to how a news item was produced.

Channel Television said that when Mr Elliott arrived at the studio, the editorial team openly provided information about a brief report that was being produced on the issue for broadcast as a lead in to Mr Elliott's interview. The editorial team referred to the inclusion of "vox pop" interviews so that Mr Elliott would be aware of the area of questioning by the presenter and would have an opportunity to respond to the concerns and criticisms being voiced by members of the public. Channel Television said that the inclusion of the "vox pop" interviews within the report did not contravene any previously agreed term of engagement since no such term had been discussed or approved by the editorial team.

Channel Television said that when Mr Elliott objected to the inclusion of "vox pop" interviews, he was referred to the news editor, who informed him that if he withdrew his consent to the interview, the report would need to clearly state his refusal in order to confirm to viewers that Channel Television was not broadcasting a report that could be seen as unbalanced or biased and that efforts had been made to seek his comment.

- b) Channel Television said that the issue of Mr Elliott's move to the UK mainland had been debated in the island's other media during the preceding days and was the subject of much public comment and some criticism.

### **Mr Elliott's comments**

In summary and in response to Channel Television's response to the complaint, Ms Crame, of the media team of Mr Elliott's department, responded on behalf of Mr Elliott.

Ms Crame said that the reporter contacted the media team with a request to interview Mr Elliott for the evening news programme about his relocation to the UK, why was this happening and what would the “tourists” view be. Ms Crame said that this was a sensitive issue for Mr Elliott and that it was important to be clear on the format of the interview. Ms Crame said that she had needed to understand whether the interview would be a “one-to-one” interview with the presenter or whether other parties would be involved. Ms Crame said that she was told that there would not be any other interviewees and she was not told about the “vox pop” interviewees.

Ms Crame said that, as Mr Elliott’s interview was not going to be a live interview, but an “as live” interview, she needed to ensure that no editing would be involved and that the interview would go out as recorded, which was agreed. However, she said that it became apparent, after the broadcast, that the recording of the “vox pop” interviews would have been underway, though at no time was this mentioned.

### **Channel Television’s final comments**

In summary, Channel Television responded to Ms Crame’s comments as follows:

Channel Television said that the programme makers had answered Ms Crame’s enquiries regarding the requested interview with Mr Elliott clearly and with no attempt to mislead. They had understood her to be asking if Mr Elliott would be responding to other interviewees (i.e. present in the studio) during his interview. Ms Crame was therefore told that Mr Elliott would not be responding to anyone else during his interview, but would be answering questions from the presenter only.

Channel Television said that at no stage did Ms Crame ask if anyone else was being interviewed as part of the report leading into the “as live” interview with Mr Elliott. Notwithstanding this, Channel Television maintained that it was not obliged to outline the content of such reports to a prospective interviewee for approval. It said that the programme makers were very open about the inclusion of “vox pop” interviews when asked directly by Mr Elliott when he arrived to record the interview.

Channel Television also said that it was not under any obligation to broadcast the interview with Mr Elliott “live” or to run the interview unedited and in full. However, Channel Television said that it did agree to broadcast an “as live” interview in full as it wished to be completely fair to Mr Elliott and recognised his wish to fully explain his position.

### **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 unfair treatment and unwarranted infringement of privacy in, or in the making of, programmes included 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 considered all the relevant material provided by both parties. This included a recording of the programmes as broadcast, a transcript of the report and written submissions and supporting material from both parties.

When considering complaints of 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"). Ofcom had regard to Rule 7.1 when reaching its decisions on the individual heads of complaint detailed below.

Owing to the overlapping nature of some of the factors and issues related to both heads of Mr Elliott's complaint, Ofcom considered heads a) and b) together.

a) & b)

Ofcom considered together Mr Elliott's complaints that he was misled as to the nature and format of the programme and that the inclusion of the negative "vox pop" interviews at the beginning of the programme was unbalanced, detrimental and unfair to him, in that the reporter could not have presented the interviewees with balanced case to which they could respond.

When considering this head of complaint, Ofcom had regard to whether the broadcaster was fair in their dealings with Mr Elliott as a potential contributor to the programme (as outlined in Practice 7.2 of the Code). In particular, it considered whether Mr Elliott 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, he should be given sufficient information about: the programme's nature and purpose; his likely contribution; the areas of questioning and wherever possible, the nature of other likely contributions; and, any changes to the programme that might affect his decision to contribute. Ofcom also had regard to whether the inclusion of the "vox pop" interviews were consistent with the broadcaster's obligation to ensure that material facts had not been presented, omitted or disregarded in a way which was unfair to Mr Elliott (as outlined in Practice 7.9 of the Code).

Having carefully considered the submissions of the parties (summarised in detail in "The Complaint" above), Ofcom recognised that there was a conflict between the recollection of Mr Elliott and Ms Crame and that of the programme makers as to the precise nature and format the report and interview would take. It was also aware that there was no further documentary material, such as contemporaneous notes made of the various conversations that apparently took place, that assisted it as to what assurances were, or were not, given to Mr Elliott and Ms Crame by the programme makers. However, Ofcom's remit is to consider and adjudicate on complaints of unfair treatment (and unwarranted infringement of privacy) and as such is not required to resolve conflicts of evidence as to the nature or accuracy of particular accounts of events. Its role is to adjudicate on whether the complainant has been treated unfairly in the programme as broadcast.

Ofcom considered that there was a genuine public interest of the local community in the programme's reporting of Mr Elliott's intended move to live on the UK mainland, given his position as Guernsey's Director of Marketing and Tourism. It also recognised that it was legitimate for the broadcaster to select material for the report and to include it in the programme. This is an editorial decision and would be, in Ofcom's view, unreasonable for an individual contributing to a programme to expect a broadcaster to cede editorial control. However, the use of such material must be done in a fair manner.

Ofcom noted that the report began with an introduction to the topic of Mr Elliott's intended relocation to the UK mainland and the question was posed whether it

mattered that Guernsey's "*Head of Tourism*" did not live on the island he promoted. Immediately following this question, brief "vox pop" interview footage of three members of the public was shown and who responded to the question as to whether Mr Elliott's move mattered as follows:

Vox Pop 1: *"I think so, it just seems very odd, it seems to be you go there, I'll stay here.*

Vox Pop 2: *I don't think it looks good if the guy who promotes the place is not prepared to live here, but I think Guernsey's got so much going for it does it really matter?*

Vox Pop 3: *I still think it's important for someone local to do it, I think we need to keep our roots".*

After this part of the report, Mr Elliott joined the presenter in the studio to discuss the issues surrounding his move to the UK mainland. The presenter asked Mr Elliott three questions relating to: the reasons for his move; the public criticism about him not living on the island that he promoted; and whether he would be getting paid more because of the extra tax and accommodation costs his move would incur.

Ofcom noted that Mr Elliott explained that the reason for his move was personal (i.e. his wife's employment commitments) and that he had sought and had obtained approval from his employers, who agreed that he could commute from the UK mainland to Guernsey. He went on to explain that many hundreds of thousands of people visited Guernsey each year, the majority of whom were unlikely to know he existed. Mr Elliott said that visitors to the island would not know where he lived and would not care whether he slept on the island at the weekend or not. Towards the end of the interview, Ofcom noted that Mr Elliott made it very clear that he had not been given a pay rise to cover the extra cost of living off the island. He said that he would be paying tax on Guernsey and on the UK mainland and would be paying for his airfares, accommodation and food. Mr Elliott also said that, if anything, his move would contribute to the economy of Guernsey in that he would be paying full tax and not educating his children on the island.

Ofcom considered that the presenter's questioning of Mr Elliott had been polite and non-accusatory in nature and took the view that Mr Elliott was confident and articulate in his response and was able to make his points fully and clearly, without undue interruption. Ofcom considered that Mr Elliott's reasons for moving and his response to criticisms levelled against him were adequately represented in the report and that viewers would have been left in no doubt as to his position on the matter.

In relation to the inclusion of the "vox pop" interviews in the report, Ofcom considered that the broadcaster was not obliged to disclose or discuss the nature of other contributions, whether "vox pop" interviews or otherwise, unless failure to do so was likely to create unfairness to Mr Elliott. Ofcom was satisfied that the content of the contributions from the three members of the public consisted of nothing that could be reasonably construed as leading to unfairness to Mr Elliott in the broadcast, as they reflected widely held and widely reported views. Although Ofcom acknowledged that the details of the comments made by "vox pop" interviewees were not put to Mr Elliott, the comments had been, in Ofcom's view, even-handed and echoed the public criticism and debate that had been reported widely reported comments and discussions in the press on Guernsey about whether or not it mattered that the Director of Marketing and Tourism did not live on the island. As set out above, Ofcom considered that Mr Elliott was able to respond directly and fully to that criticism and

that his response had been presented in the programme during his interview with the presenter.

While Ofcom acknowledged that Mr Elliott was unhappy at the way he perceived he was treated by the broadcaster in making the programme, it was satisfied that in the broadcast of the programme, Mr Elliott's position and response to the criticism had been presented in the report fairly. Taking all the above factors into account, Ofcom concluded that the programme did not portray Mr Elliott in a way that was unfair to him and that viewers would have been able to form their own opinion of him and his position in relation to his move to the UK mainland. Ofcom therefore found no unfairness to Mr Elliott in the programme as broadcast.

**Accordingly, Ofcom has not upheld Mr Elliott's complaint of unfair treatment in the programme as broadcast.**

## Not Upheld

### Complaint by Mr Michael Gibbs

*Central News, ITV1 (Central), 23 March 2011*

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**Summary:** Ofcom has not upheld this complaint of unwarranted infringement of privacy in the programme as broadcast made by Mr Michael Gibbs.

An item in this regional news programme reported on the announcement by Friends Provident Life and Pensions Limited (“Friends Life”) that it would be relocating from Coventry to Bristol and that 563 employees would be made redundant in 2012. Footage of Friends Life employees leaving the building where the redundancy announcement was made was included in the report. Mr Gibbs was shown, unobscured, amongst a group of employees walking away from the building.

Mr Gibbs complained to Ofcom that his privacy was unwarrantably infringed in the programme as broadcast in that footage of him was broadcast without his consent.

In summary, Ofcom found that Mr Gibbs did not have a legitimate expectation of privacy in relation the broadcast of the footage of him included in the programme as it had been filmed in a public place and it did not disclose any information about him of a sensitive or private nature.

#### Introduction

On 23 March 2011, ITV1 Central broadcast an edition of its regional news programme, *Central News*. This reported on the announcement by a local employer, Friends Provident Life and Pensions Limited (“Friends Life”), that it would be relocating from Coventry to Bristol and that 563 employees would be made redundant in 2012.

The report included footage of a number of Friends Life employees leaving the building where the redundancy announcement was made and being asked for their reaction to the news by the programme’s reporter. Mr Gibbs was shown, unobscured, amongst a group of people walking away from the building. No footage of Mr Gibbs speaking to the reporter was broadcast. The footage of Mr Gibbs was shown briefly in the item and it was also used at the beginning of the programme to illustrate the news headlines (amounting to approximately five seconds in total). Mr Gibbs was not named nor identified in any other way.

Following the broadcast of the programme, Mr Gibbs complained to Ofcom that his privacy was unwarrantably infringed in the programme as broadcast.

#### The Complaint

Mr Gibbs complained that his privacy was unwarrantably infringed in the programme as broadcast in that footage of him was included in the programme as broadcast without his consent. Mr Gibbs said that his face was featured in the programme and that he was fully identifiable.

By way of background to the complaint, Mr Gibbs said that he was approached by the reporter for comment but that he had told him that he thought the programme makers’ presence was not appropriate. Although footage of Mr Gibbs speaking to the

reporter was not shown in the item, he said that the programme makers still assumed that they could use the footage of him leaving the building. Mr Gibbs explained that friends and family members had seen him in the programme, some of whom he had not told about his redundancy. Mr Gibbs said that he had wanted the opportunity to discuss his redundancy with his friends and family in his own time, but felt that his inclusion in the programme had taken this away from him.

Mr Gibbs said that he would not have taken issue with the broadcast if he had been part of a large crowd or if his face had been obscured. He said that many of his colleagues had been willing to talk to the reporter, therefore it was frustrating that they decided to use footage of him without his consent and knowing that he had shown his dissatisfaction at their presence.

### **ITV's Statement**

In summary and in response to Mr Gibbs' complaint that his privacy was unwarrantably infringed in the programme as broadcast, ITV said that it believed that Mr Gibbs had no legitimate expectation of privacy.

ITV said that at the time of broadcast, the information regarding the redundancies at Friends Life was already in the public domain. Friends Life had provided ITV with a press release detailing the redundancies before the announcement was made and was clearly anticipating some media attention on the story. ITV said that Mr Gibbs could not have controlled how that news would be disseminated after the announcement, whether it was by another employee or by a news report, nor was it reasonable for him to expect to do so. ITV said that the news was, in fact, already in the public domain and, given the public nature of the way the news was communicated to the employees, it was not so private that Mr Gibbs should be afforded a legitimate expectation of privacy.

ITV said that Mr Gibbs was filmed openly in a public place. He was neither named nor focused on, nor was any other specific information about him provided in the report. ITV noted that Mr Gibbs said that he would not have objected if he had been shown as part of a "large crowd". ITV acknowledged that the group he was shown in whilst leaving the cathedral was not a large one, but said that the venue was not so private or the location so sensitive that separate consent to broadcast should have been obtained from Mr Gibbs, whose inclusion in the report was brief and incidental.

ITV said that the news that the entire Coventry office was to be closed and all 563 jobs made redundant meant that it was likely that friends and family of Mr Gibbs would have been aware that he was being made redundant. Therefore, the risk that his family would hear this before he had an opportunity to discuss it with them was present regardless of whether or not he was seen in the television report.

However, ITV went on to state that should Ofcom consider that Mr Gibbs had a legitimate expectation of privacy, then it believed that any such infringement was warranted and that as such his consent for broadcast was not required.

ITV said that there was great public interest in reporting the news that 563 jobs in the Coventry area were to be made redundant in 2012, but particularly during a time of economic recession. The report of the redundancies was broadcast in the same news programme that reported the announcement of the 2011 Budget by the Chancellor of the Exchequer. Therefore, ITV said that the context in which the Friends Life redundancies were communicated was of great importance to viewers who were undoubtedly keen to understand economic developments in their local

community at such a sensitive time and within the context of the Government's future economic plans.

ITV said that the camera crew had filmed and reported on the story with an appropriate degree of sensitivity to the staff affected by it. Prior to Friends Life's press release, ITV was made aware by an anonymous text message that the redundancies would be announced in Coventry cathedral. ITV then contacted Friends Life and asked for more details. The news team agreed with Friends Life that they would not arrive at the cathedral before the announcement, so as not to upset any attendees nor would they broadcast any details until the employees had heard the announcement themselves. ITV said that the camera crew had adhered to this request and arranged to wait away from the immediate vicinity of the door through which people were leaving, providing them with an opportunity to see where the camera was situated and avoid it if they wished. ITV said that several Friends Life employees willingly contributed to the report. ITV said that Mr Gibbs was at no point placed under pressure to contribute and had an opportunity to object to being filmed but only said that he thought the news team's presence was inappropriate. This exchange was not included in the report.

ITV said that the image of Mr Gibbs that was included in the report was brief and incidental and resulted from him being filmed openly in a public place. He was not named and no further personal information was given about him. Although he had expressed disquiet at the media presence at the venue, he did not ask that he not be filmed or included in the report. ITV said that obscuring Mr Gibbs or not showing his image at all would not have prevented family and friends from discovering that he had been made redundant before he had had an opportunity to tell them.

## **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 unfair treatment and unwarranted infringement of privacy in, or in the making of, programmes included 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 considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast and written submissions and supporting material from both parties.

Ofcom considered the complaint that Mr Gibbs' privacy was unwarrantably infringed in the programme as broadcast in that the programme included footage of him without his consent.

In Ofcom's view, the individual's right to privacy has to be balanced against the competing rights of the broadcaster to freedom of expression. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to 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 Ofcom's Broadcasting Code ("the Code"), which states that any infringement of privacy in programmes or in connection with obtaining material included in programmes must be warranted. Ofcom also had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

In considering whether or not Mr Gibbs' privacy was unwarrantably infringed in the programme as broadcast, Ofcom first considered the extent to which he could have legitimately expected that the footage of him leaving a meeting in which he and his colleagues were told of redundancies by their employer would not be broadcast without his consent.

Ofcom noted that Mr Gibbs was filmed walking with a group of people leaving a meeting in which he, along with other colleagues from Friends Life, had been told that the company's Coventry office would be closed and that 563 people would be made redundant in 2012. Having examined the footage, it was clear to Ofcom that the programme makers had filmed openly, in full view of those leaving the meeting, and that the filming had occurred in a public place where any member of the public could have seen Mr Gibbs. Ofcom noted that the footage in no way focused on Mr Gibbs and that it was brief, approximately five seconds in total. Notwithstanding that Mr Gibbs was leaving a meeting in which he and his colleagues had just been informed about redundancies, given that the nature of the announcement of the redundancies was to a large group of employees and that the filming took place in a public place, Ofcom's view was that the broadcast footage of Mr Gibbs did not amount to information that could be regarded as either private or sensitive in nature.

Ofcom recognised that there was a genuine public interest to the local community in the programme reporting the announcement of the redundancies. It also appreciated that Mr Gibbs considered that the day of the announcement was a sensitive time for those involved. However, Ofcom considered that the circumstances in which he was filmed were not so sensitive so to attract a degree of privacy for those filmed in a public place and not engaged in activity that Mr Gibbs could have legitimately expected not to have been broadcast to a wider audience without his consent.

Ofcom noted that Mr Gibbs said that he had not given his consent for footage of him to be included in the broadcast programme. However, given the lack of any special circumstances in relation to filming of Mr Gibbs which gave rise to an expectation of privacy in the subsequent broadcast of the footage, Ofcom considered that his prior consent was not required.

Therefore, taking all the factors above into account, Ofcom did not consider that Mr Gibbs had a legitimate expectation of privacy in relation to broadcast of the footage of him leaving the meeting. It was also satisfied that the circumstances in which Mr Gibbs was filmed were such that his consent for the footage to be subsequently broadcast was not required. Given this conclusion, it was not necessary for Ofcom to consider whether any intrusion into Mr Gibbs' privacy was warranted.

Ofcom therefore found that there was no unwarranted infringement of Mr Gibbs' privacy in the programme as broadcast and has not upheld the complaint in this respect.

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

## Other Programmes Not in Breach

Up to 11 July 2011

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Äntligen fredag	TV3	29/04/2011	Sexual material	1
Big Brother's Big Mouth	E4	03/09/2010	Transgender discrimination/offence	6
Cricket	ITV4	16/04/2011	Product placement	1
Home and Away Competition	Channel 5	n/a	Competitions	1
IslamiQA	Islam Channel	07/04/2011	Religious/Beliefs discrimination/offence	1
Missing	Pick TV	01/06/2011	Materially misleading	1
Morning Masala	B4U Music	19/05/2011	Offensive language	1
Psychic Interactive	Psychic TV	14/04/2011	Participation TV - Misleadingness	1
Strange Sex Promo	DMAX	12/06/2011	Sexual material	1
Trailers	ITV1	29/05/2011	Violence and dangerous behaviour	1
Ultimate Big Brother	Channel 4	24/08/2010	Generally accepted standards	1
Ultimate Big Brother	Channel 4	03/09/2010	Generally accepted standards	2
Ultimate Big Brother	Channel 4	03/09/2010	Transgender discrimination/offence	17
Westwood	BBC Radio 1Xtra	20/05/2011	Disability discrimination/offence	1

## Complaints assessed but not further investigated

### Between 28 June and 11 July 2011

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
8 Out of 10 Cats	Channel 4	24/06/2011	Generally accepted standards	3
8 Out of 10 Cats	Channel 4	24/06/2011	Generally accepted standards	1
8 Out of 10 Cats	Channel 4	29/06/2011	Generally accepted standards	1
8 Out of 10 Cats	Channel 4	08/07/2011	Generally accepted standards	1
Adrian Durham and Darren Gough Drive Time	Talksport	21/06/2011	Generally accepted standards	1
Alan Carr: Chatty Man	Channel 4	24/06/2011	Product placement	1
Alan Robson	Metro Radio	23/06/2011	Offensive language	1
Alien 3	TV3	19/06/2011	Advertising scheduling	1
Angry Boys	BBC3	09/07/2011	Under 18s in programmes	1
Arrested Development (trailer)	FX	06/06/2011	Gender discrimination/offence	1
BBC News	BBC1	08/07/2011	Generally accepted standards	1
Boxing	Sky Box Office/Sky Sports News	02/07/2011	Other	1
Billy Falkner Show	Channel 4	30/06/2011	Offensive language	1
Breaking a Female Paedophile Ring	Channel 4	26/05/2011	Generally accepted standards	1
Britain's Next Top Model	Sky Livingit	22/06/2011	Nudity	1
Bruno Mars "The Lazy Song"	BBC Radio 1	20/04/2011	Sexual material	1
Bruno Mars "The Lazy Song"	Chart Show TV	21/04/2011	Sexual material	1
Bruno Mars "The Lazy Song"	Heat Radio	25/04/2011	Sexual material	1
Bruno Mars "The Lazy Song"	BBC Radio 1	28/04/2011	Sexual material	1
Bruno Mars "The Lazy Song"	Capital Radio	05/05/2011	Sexual material	1
Bruno Mars "The Lazy Song"	Capital Radio	10/05/2011	Sexual material	1
Bruno Mars "The Lazy Song"	4Music	11/05/2011	Sexual material	1
Bruno Mars "The Lazy Song"	Rock FM	15/05/2011	Sexual material	1
Bruno Mars "The Lazy Song"	BBC Radio 1	19/05/2011	Sexual material	1
Bruno Mars "The Lazy Song"	BBC Radio 1	07/06/2011	Sexual material	1

Bruno Mars "The Lazy Song"	Capital FM	15/06/2011	Offensive language	1
Bruno Mars "The Lazy Song"	BBC Radio 1	n/a	Generally accepted standards	1
BT Vision's sponsorship of Drama on 4	Channel 4	04/07/2011	Materially misleading	1
Camelot	Channel 4	11/06/2011	Generally accepted standards	1
Case Histories	BBC1	19/06/2011	Generally accepted standards	1
Channel Promotions	Comedy Central	n/a	Hypnotic and other techniques	1
Comedy Central Trailers	Comedy Central	n/a	Outside of remit / other	1
Coronation Street	ITV1	24/06/2011	Drugs, smoking, solvents or alcohol	1
Coronation Street	ITV1	27/06/2011	Drugs, smoking, solvents or alcohol	1
Coronation Street	ITV1	27/06/2011	Sexual material	1
Coronation Street	ITV1	08/07/2011	Generally accepted standards	1
Cricket	ITV4	15/04/2011	Advertising/editorial distinction	1
Danny Gallagher Show	Moray Firth Radio	24/06/2011	Generally accepted standards	1
Daybreak	ITV1	28/06/2011	Scheduling	1
Deal or No Deal	Channel 4	19/06/2011	Generally accepted standards	1
Dinner Date	ITV1	27/06/2011	Generally accepted standards	1
Dispatches	Channel 4	04/07/2011	Due accuracy	1
Dispatches	Channel 4	04/07/2011	Due impartiality/bias	1
Doctors	BBC1	06/07/2011	Generally accepted standards	1
Don't Tell the Bride	BBC3	13/06/2011	Offensive language	1
Drive Time	Talksport	29/06/2011	Generally accepted standards	15
EastEnders	BBC1	01/05/2011	Generally accepted standards	1
EastEnders	BBC1	07/07/2011	Generally accepted standards	1
Eastenders	BBC1	n/a	Generally accepted standards	1
Eastenders	BBC1	n/a	Product placement	1
Elite Nights	Elite TV	28/05/2011	Participation TV - Offence	1
Embarrassing Bodies	Channel 4	22/06/2011	Nudity	1
Embarrassing Bodies	Channel 4	29/06/2011	Nudity	1
Embarrassing Bodies: Live from the Clinic	Channel 4	22/06/2011	Materially misleading	1
Emmerdale	UTV	21/06/2011	Generally accepted standards	1
Emmerdale	ITV1	22/06/2011	Generally accepted standards	1
Emmerdale	UTV	n/a	Generally accepted	1

			standards	
Extreme Fishing with Robson Green	Channel 5	25/06/2011	Offensive language	1
Fox News	Fox News	n/a	Other	1
Fresh & Jo in the Morning	Beacon Radio	n/a	Competitions	1
Great TV Mistakes	BBC3	18/06/2011	Sexual material	1
Hollyoaks	E4+1	02/07/2011	Generally accepted standards	1
In with the Flynns	BBC1	06/07/2011	Sexual material	1
Injustice (trailer)	ITV1	01/06/2011	Generally accepted standards	3
Inside Nature's Giants	Channel 4	30/06/2011	Animal welfare	6
ITV News and Weather	ITV1	29/06/2011	Crime	1
ITV News and Weather	ITV1	01/07/2011	Due impartiality/bias	1
ITV News and Weather	ITV1	01/07/2011	Generally accepted standards	1
Johnny Vaughan	Capital Radio	21/06/2011	Generally accepted standards	1
Kids Do The Funniest Things	ITV1	11/06/2011	Under 18s in programmes	1
Little Man	Sony TV	09/07/2011	Offensive language	1
Loose Women	ITV1	17/06/2011	Due impartiality/bias	1
Loose Women	ITV1	04/07/2011	Generally accepted standards	1
Loose Women	ITV2	11/07/2011	Gender discrimination/offence	1
Love Actually	Sky Movies Drama / Romance	11/06/2011	Scheduling	1
Matt Forde	Talksport	27/06/2011	Generally accepted standards	1
Midsomer Murders	ITV1	09/06/2011	Nudity	1
Midsomer Murders	ITV1	24/06/2011	Scheduling	1
Midsomer Murders	ITV1	08/07/2011	Offensive language	3
Murphy's War	Film4+1	27/06/2011	Offensive language	1
Music Video	Starz TV	18/06/2011	Generally accepted standards	1
Night Owls	Metro Radio	20/06/2011	Crime	1
No Output	North Manchester FM	01/07/2011	Format	1
Odd One In	ITV1	02/07/2011	Race discrimination/offence	1
Only Fools and Horses	BBC1	06/07/2011	Offensive language	1
Penn and Teller: Fool Us	ITV1	25/06/2011	Harm	1
Pissed and Pregnant	Sky Living	09/07/2011	Generally accepted standards	1
Points West News update	BBC1 Bristol	20/04/2011	Offensive language	1
Radio Hafren	Radio Hafren	24/06/2011	Format	1
Rage's sponsorship of The Walking Dead	Channel 5	10/04/2011	Advertising content	1

Regional News and Weather	BBC1	30/06/2011	Scheduling	1
Repeats	Various	n/a	Scheduling	1
Saggers and Quinn	Talksport	30/06/2011	Materially misleading	1
Sam on Buzz	Buzz Asia	25/06/2011	Offensive language	1
Scott and Bailey	ITV1	19/06/2011	Violence and dangerous behaviour	1
Shameless US	More4	23/06/2011	Animal welfare	1
Sirens	Channel 4	04/07/2011	Offensive language	1
Sky Box Office promo for Haye v Klitschko	Pick TV	17/06/2011	Generally accepted standards	1
Sky Box Office promo for Haye v Klitschko	Sky Sports 1	18/06/2011	Generally accepted standards	1
Sky Box Office promo for Haye v Klitscho	Pick TV	22/06/2011	Generally accepted standards	1
Popular Drama	Various	n/a	Generally accepted standards	1
Steve Allen	LBC 97.3FM	19/06/2011	Crime	1
Stolen	BBC1	03/07/2011	Race discrimination/offence	1
Sunrise	Sky News	05/07/2011	Generally accepted standards	1
T4 on the Beach	Channel 4	10/07/2011	Offensive language	1
The Apprentice: You're Fired!	BBC2	06/07/2011	Generally accepted standards	1
The Bubble	Dave Ja Vu	10/07/2011	Offensive language	1
The Choir That Rocks	ITV1	16/06/2011	Promotion of products/services	1
The Chris Moyles Show	BBC Radio 1	13/06/2011	Drugs, smoking, solvents or alcohol	1
The Killing (trailer)	Channel 4	30/06/2011	Generally accepted standards	1
The Marriage Ref	ITV1	25/06/2011	Disability discrimination/offence	1
The Marriage Ref	ITV1	02/07/2011	Offensive language	2
The Morning Line	Channel 4	02/07/2011	Generally accepted standards	1
The One Show	BBC1	28/06/2011	Generally accepted standards	1
The Scheme	BBC1	05/07/2011	Drugs, smoking, solvents or alcohol	1
The Simpsons	Channel 4	23/05/2011	Drugs, smoking, solvents or alcohol	1
The Simpsons	Channel 4	22/06/2011	Violence and dangerous behaviour	1
The Simpsons	Sky 1	09/07/2011	Violence and dangerous behaviour	1
The World's Strictest Parents	BBC3	05/07/2011	Offensive language	1
The Wright Stuff	Channel 5	28/06/2011	Materially misleading	1
This Morning	ITV1	07/07/2011	Generally accepted standards	1
Today	BBC Radio 4	27/06/2011	Crime	1
Top Gear	BBC3	22/06/2011	Offensive language	1
Top Gear	BBC2	26/06/2011	Race	1

			discrimination/offence	
Top Gear	BBC2	03/07/2011	Harm	1
Toy Story 3 promotion	Disney Junior	n/a	Harm	1
Trailer for Strange Sex	Discovery Real Time	18/06/2011	Scheduling	1
Undercover Boss (trailer)	Channel 4	28/06/2011	Sexual material	1
Undercover Boss (trailer)	Channel 4	05/07/2011	Sexual material	1
Various Programmes	BBC		Animal welfare	1
Walking the Amazon	Channel 5	23/06/2011	Animal welfare	1
Wall of Fame (trailer)	Sky1	27/06/2011	Generally accepted standards	1
Wimbledon 2011	BBC2	23/06/2011	Scheduling	1
Wimbledon 2011	BBC2	24/06/2011	Offensive language	1
Would I Lie to You?	BBC1	11/06/2011	Animal welfare	1

## Investigations List

If Ofcom considers that a broadcast may have breached its codes, it will start an investigation.

Here is an alphabetical list of new investigations launched between 14 and 27 July 2011

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission date</b>
50 Biggest Sellers: R and B Hits of the 00s	Kiss Music	Sunday, 10 July 2011
50 Cent	Greatest Hits TV	Wednesday, 22 June 2011
Advertising minutage	Attheraces	Wednesday, 27 April 2011 to Sunday, 12 June 2011
Advertising minutage	Liverpool FC TV	Tuesday, 7 June 2011 to Thursday, 16 June 2011
Advertising minutage	Liverpool FC TV	Sunday, 22 May 2011
Advertising minutage	MTV Rocks	Thursday, 21 April 2011
Advertising minutage	Nick Jr	Monday, 2 May 2011
Advertising minutage	NME TV	Wednesday, 11 May 2011
Advertising minutage	Sky Atlantic	Wednesday, 22 June 2011
Advertising minutage	Sky Sports 1, Sky Sports News	Tuesday, 12 April 2011 to Sunday, 24 April 2011
Advertising minutage	Sky1	Saturday, 7 May 2011
Advertising minutage	Sony TV	Monday, 23 May 2011
Advertising minutage	Star Plus	Monday, 20 June 2011 to Sunday, 26 June 2011
Advertising minutage	Syfy	Thursday, 9 June 2011
Advertising minutage	The Africa Channel	Saturday, 25 June 2011
Advertising minutage	Wedding TV	Sunday, 15 May 2011
Election Coverage	Leeds Community 87.9 FM	Friday, 22 April 2011 to Wednesday, 4 May 2011
Evening with Akram Rahi	DM Digital	Wednesday, 13 April 2011

Fatboy Slim "Star 69"	On FM	Saturday, 18 June 2011
Ice Road Truckers	History	Wednesday, 29 June 2011 and Thursday, 30 June 2011
Ken Livingstone and David Mellor - London's biggest conversation	LBC 97.3	Saturday, 18 June 2011
Leeds Community Radio	Leeds Community Radio 87.9FM	Monday, 3 May 2011
Nittileaks	Kanal 5	Monday, 13 June 2011
Sky News	Sky News	Tuesday, 26 July 2011
Sponsorship of Boombox	B4U Music	Wednesday, 15 June 2011
Storm Afternoons	Storm	Sunday, 3 July 2011
The Hotel Inspector	Channel 5	Monday, 23 May 2011
The Sex Education Show: Stop Pimping Our Kids	Channel 4	Tuesday, 19 April 2011
The Sex Researchers	Channel 4	Thursday, 23 June 2011
The Wright Stuff Extra with Gabby Logan	Channel 5	Friday, 22 July 2011
Traffic Cops	BBC1	Thursday, 23 June 2011
Victorious Pentecostal Assembly	Believe TV	Saturday, 25 June 2011

**It is important to note that an investigation by Ofcom does not necessarily mean the broadcaster has done anything wrong. Not all investigations result in breaches of the Codes being recorded.**

For more information about how Ofcom assesses complaints and conducts investigations go to:

<http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>.

For fairness and privacy complaints go to:

<http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/fairness/>.