

Ofcom Broadcast Bulletin

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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 objectives¹, 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 and product placement on television (see Rules 9.13, 9.16 and 9.17 of the Code) and all commercial communications in radio programming (see Rules 10.6 to 10.8 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 advertising².

The BCAP Code is at:

<http://www.bcap.org.uk/Advertising-Codes/Broadcast-HTML.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.

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

² 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

Chat Box

Chat Box, 6 July 2012, 21:23

Introduction

Chat Box is an interactive chat messaging service that broadcasts on the Sky digital satellite television platform. Viewers are invited to send messages via premium rate text message to participate in either a private exchange with another user or the text-based conversation shown on screen. The on screen conversation is moderated and hosted by a 'text jockey'. There is also the option for users to send pictures and voice messages to the service so that they can be displayed or aired at various times. The licence for this service is held by 4D Interactive Limited ("the Licensee" or "4D Interactive").

Interactive chat services predicated on premium rate telephony are classified as teleshopping services and so are regulated under the BCAP Code.

Ofcom received a complaint about offensive references to cancer made by one of Chat Box's text jockeys. The text jockey made various comments to one of the users of Chat Box about another user he had encountered on another interactive chat messaging service (who had been purporting to be the text jockey and with whom the text jockey had had various arguments via on-screen texts).

When viewing the material, Ofcom noted the following exchange between the text jockey and a user (as transcribed and provided by the Licensee):

User: *"at this moment you are texting in2 a dating channel whilst working 4 cb [Chat Box] lol x"*

Text jockey: *"what?"*

User: *"someone with your nick is on dc [a dating channel] telling the tj [text jockey] that they are also a tj [text jockey] x"*

Text Jockey: *"lol he [the user of the other interactive chat messaging service] is such a racist, he was calling me an asian recently but not thinking that as im not a racist i wouldnt care what i was called, the little BNP boy what a loser HAHA"*

Text Jockey: *"sorry guys and dolls ! Its jsut that our resident moron is being racist on a lesser channel and pretending to be me haha"*

The text jockey then made the following remarks:

Text Jockey: *"lol it shows what a ghastly racist he is, i hope he gets cancer !, seriously i do :) cancer!"*

Text Jockey: *"It was when he was saying I was an asain texting in filthy racist stuff - when i first used spray in jan and he ran to dc, that day he said i was an asain but using it in a racist way, its so sad that*

people like him are still alive, and also shows that he thinks using that word is hiw worst insuly, seriously cancer is too good for vermin like that. In more enlightened times he would have been dragged out his house and shot haha”.

Text Jockey: *“We are having a right laugh about it but its underlined how i have been right all along :) cancer is too good for him”.*

Text Jockey: *“lol banger 88 i hope he gets cancer”.*

Text Jockey: *“It’s an evil disease and he needs a lil touch of it, In more enlightened times he would have been stoned to death haha, I have to say that I cannot defend the jaw dropping racism he sends me daily, but its a reflection on him no one else, having the most ghastly disease on earth might be a leveller for people like him, showing him what a waste his life has been”.*

Ofcom considered the material raised issues warranting investigation under Rule 4.2 of the BCAP Code, which states:

“Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards.”

Ofcom therefore sought comments from 4D Interactive as to how the material complied with this rule.

Response

The Licensee said it takes compliance very seriously and that this was demonstrated by its good compliance record and the measures it has in place to ensure content is not of a criminal, defamatory, racial or offensive nature. This included regular reviews of its moderation guidelines and an eight hour training programme courses for all text jockeys. Additionally, 4D Interactive said that text jockeys’ content is regularly checked by other colleagues. The Licensee considered that the failure of compliance in this “one exceptional incident” should not overshadow the overall effectiveness of the compliance arrangements it has in place.

The Licensee acknowledged that the comments relating to cancer should not under any circumstances have been broadcast and “unreservedly apologised”. It explained that the text jockey concerned had allowed himself to be provoked by the conduct of the user of the other messaging service.

The Licensee said the text jockey concerned, who had been employed by 4D Interactive as a moderator for over five years, expressed his regret for the incident and unreservedly apologised for any offence caused. The text jockey also posted a message on screen to this effect:

“... What I was trying to do is show that by saying something awful in a text can hurt and be unsavoury. I would never wish any harm on anyone at all, what i wanted to achieve is to show him others feel when they recive things like that. I would never want to harm anyone here or wish them any malice i only wish everyone on cb [Chat Box] felt that way. By saying something heinous on screen is my attempt to break that wall that i feel some ppl cant see through – a opening into how others see their messages. For any

offence i apologise but i was tring to make a very firm point about things going too far on here, peace OUT”.

4D Interactive explained that the text jockey wanted to “show him [the customer] how others feel when they receive things like that”.

The Licensee said that an internal investigation commenced in the days after the incident. Following this investigation, the text jockey left the employment of 4D Interactive and refresher training was provided to all relevant staff.

Decision

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, one of which is that “the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented”. These standards objectives are contained in the BCAP Code.

When setting and applying standards in the BCAP Code to provide adequate protection to members of the public from serious or widespread offence, Ofcom must have regard to the need for standards to be applied in a manner that best guarantees an appropriate level of freedom of expression in accordance with Article 10 of the European Convention of Human Rights, as incorporated in the Human Rights Act 1998. However, the advertising content of chat services has much less latitude than is typically available to editorial material in respect of context and narrative. The primary intent of advertising is to sell products and services, and consideration of acceptable standards will take that context into account.

Rule 4.2 of the BCAP states that advertising content “must not cause serious or widespread offence against generally accepted moral, social or cultural standards.”

Ofcom noted the Licensee’s acknowledgement that the material was unsuitable for broadcast. We also took account of 4D Interactive’s good compliance history and the measures it took to address the issues raised by this case in the form of an on air apology and extra compliance training for its staff. However, it was clear to Ofcom that the text jockey’s repeated remarks in text wishing that the customer “gets cancer” had the potential to cause serious or widespread offence against generally accepted standards. Ofcom considered that it was unacceptable for the text jockey, representing the Licensee, to make comments of this nature. The material therefore breached Rule 4.2 of the BCAP Code.

Ofcom was concerned that the text jockey considered these comments acceptable for broadcast despite previous compliance training and his previous and extensive experience as a moderator.

Breach of BCAP Rule 4.2

In Breach

Bombardier's sponsorship of Primetime

Dave, June to September 2012, various dates and times

Introduction

A total of 13 complainants contacted Ofcom about a sponsorship credit broadcast on Dave which appeared to link the alcohol brand Bombardier with a sexual act.

Dave is a well established television channel which attracts a predominately male adult audience. It airs programmes such as *Mock the Week*, *Top Gear*, *Peep Show* and *Have I got News for You*.

Wells Bombardier is an English beer, produced by Wells and Young Brewery. The beer is promoted in an advertising campaign featuring the Bombardier character who is very similar to the "Lord Flashheart" character from the comedy series *Blackadder*. The characters of both Lord Flashheart and the Bombardier are played by comedian Rik Mayall. The Bombardier is portrayed as a legendary soldier, successful on the battlefield and with women. Both the beer and the character of the Bombardier are described in this campaign by the tagline 'English, ever reliable and damn tasty'.

The same character also featured in the Bombardier sponsorship campaign on Dave. The credit complained about was called 'The Sweet Kiss of Summer!' ("the 'summer kiss' credit"). It showed the Bombardier seated and partially covered by a blanket on a battlefield. The Bombardier then looked at the camera and said: "*Ah, the sweet kiss of Summer*" followed by a woman appearing from the Bombardier's lap under the blanket, at which point the Bombardier looked at her and said: "*hello Summer*". The woman looked at the Bombardier, smiled and laughed and went back under the blanket into the Bombardier's lap. The implication was that the woman had been performing oral sex on the Bombardier.

Ofcom considered that the sponsorship credit raised issues warranting investigation under Rule 9.17 of the Code which states:

"Sponsorship must comply with both the content and scheduling rules that apply to television advertising."

The BCAP Code¹ sets out the rules that apply to all advertisements and states at Rule 19.6:

"Advertisements must not link alcohol with sexual activity, sexual success or seduction or imply that alcohol can enhance attractiveness. That does not preclude linking alcohol with romance or flirtation."

We therefore sought formal comments from the UKTV Network operated by UK Channel Management Limited ("UKTV" or "the Licensee") on how this credit complied with the relevant rules.

¹ The BCAP Code is available at: <http://bcap.org.uk/The-Codes/BCAP-Code.aspx>

Response

The Licensee said that it was mindful of the rules surrounding the advertising of alcoholic products. However it stated that the Bombardier sponsorship credits “were in no way insinuating the Bombardier’s success with women, or his courageousness on the battlefield, are linked to the consumption of alcohol”.

The Licensee explained that the character of the Bombardier was portrayed as a charismatic rogue and his characteristics used to comic effect “without it ever being suggested he needs to consume any alcohol: he is a caricature, an embodiment of the brand, and this was regarded as a perfect fit for the Primetime strand of the programming on Dave”.

UKTV argued that the primary focus of the sponsorship credits was the Bombardier character himself, how the scripts link him to the sponsored content and how the tagline ‘English, ever reliable and damn tasty’ linked to the channel.

The Licensee submitted that the ‘summer kiss’ credit was a visual play on words and was clearly intended to be humorous. Further UKTV argued that Dave attracts an adult male audience who it believed would consider the credits to be “...amusing, ridiculous, cartoonish moments...”. In its view the treatment of this sponsorship credit is “utterly fantastical and removed from reality and features an already established character that exists as a symbol for values of the brand”.

UKTV noted that rules about the advertising of alcohol serve to protect vulnerable viewers, but that it did not consider the audience would take the situation seriously and link the behaviour displayed by the Bombardier with the consumption of alcohol.

UKTV observed that in the ‘summer kiss’ credit the Bombardier is fully clothed and there is no movement under the blanket to demonstrate or suggest any sexual activity. It stated that while “there are many inferences...we do not feel that there is a “link” that alcohol has played a part.” UKTV noted that neither character is seen consuming or interacting with alcohol, and suggested “that it is difficult to determine a link [to sexual activity] without any references to alcohol”,

In addition, UKTV stated that the Bombardier sponsorship was post-9pm and that the ‘summer kiss’ credit was given a further timing restriction “due to the risqué content of the script”, and that the earliest broadcast was at 10pm on 22 July.

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 which is to ensure “that unsuitable sponsorship is prevented”.

Rule 9.17 of the Code states that sponsorship must comply with both the content and scheduling rules that apply to television advertising. Rule 19.6 of the BCAP Code requires that advertisements must not link alcohol with sexual activity, sexual success or seduction, or imply that alcohol can enhance attractiveness.

In this case, we noted the Licensee’s argument that the Bombardier character was not seen consuming alcohol in the ‘kiss of summer’ credit. However, Rule 19.6 of the BCAP Code does not refer specifically to the consumption of alcohol but requires that advertisements must not link alcohol to sexual activity.

Whilst we accepted that the focus of the credit was the Bombardier character, Ofcom considered that this character, the Bombardier brand and Bombardier beer are clearly linked. The character and the product share the same name, and as the Licensee itself acknowledged, the character is presented as symbolising and embodying the brand.

Ofcom concluded therefore that in this sponsorship credit the Bombardier character was intrinsically linked with an alcoholic drink, irrespective of the fact that the characters in the credit were not shown to be consuming alcohol.

Ofcom also considered that the appearance of the woman from under the blanket in the Bombardier's lap, and the script of this credit clearly implied that the woman had been performing oral sex on the Bombardier.

As such, Ofcom considered that this credit linked sexual activity with an alcoholic drink, in breach of Rule 9.17, with reference to Rule 19.6 of the BCAP Code.

Breach of Rule 9.17 of the Code, with reference to Rule 19.6 of the BCAP Code

Resolved

Currys' and PC World's sponsorship of Ian Wright's Rock N Roll Football

Absolute Radio, 8 June to 1 July 2012, various times

Introduction

Absolute Radio ("Absolute") is a national radio station providing a rock-oriented service serving 25-44 year-olds. The licence for Absolute is held by TIML Radio Limited ("TIML" or "the Licensee").

Ian Wright's Rock N Roll Football was broadcast every day throughout the Euro 2012 football tournament and was sponsored by Currys and PC World ("the sponsor"). Sponsorship credits, which were broadcast in and around the programme and during promotional trails, included (amongst other promotions) the following offer:

"Don't miss any of the action this Summer with a 60" LED Superscreen Sharp TV, now available under £1,000 at Currys PC World."

A listener contacted Ofcom after finding he was unable to purchase the television for under £1,000.

Ofcom therefore considered that the material raised issues warranting investigation under the following Code rule:

Rule 10.7 "Commercial references in programming must comply with the advertising content and scheduling rules that apply to radio broadcasting."

The advertising content and scheduling rules that apply to radio broadcasting are set out in the BCAP Code¹. Ofcom therefore considered that the material also raised issues warranting investigation under the following BCAP Code rules:

Rule 3.1 "Advertisements must not materially mislead or be likely to do so."

Rule 3.2 "Advertisements must not mislead consumers by omitting material information...", where "Material information is information that consumers need in context to make informed decisions about whether or how to buy a product or service..."

Rule 3.9 "Broadcasters must hold documentary evidence to prove claims that the audience is likely to regard as objective and that are capable of objective substantiation. The ASA may regard claims as misleading in the absence of adequate substantiation."

Rule 3.10 "Advertisements must state significant limitations and qualifications..."

¹ The Advertising Standards Authority and Broadcast Committee of Advertising Practice ("BCAP") regulate the content of broadcast advertising, under a Memorandum of Understanding with Ofcom. Specifically, BCAP supervises and reviews the codes that govern the regulation of broadcast advertising. The regulation of commercial references on radio, including sponsorship credits, remains with Ofcom, as such references form part of radio broadcasters' editorial content (i.e. they are not spot advertisements).

TIML told Ofcom that Absolute had obtained clearance of the sponsorship credit from the Radio Advertising Clearance Centre (“RACC”) – the radio industry body that approves radio advertising before broadcast. We therefore asked TIML, RACC and the sponsor for their comments on how they considered the sponsorship credit complied with Rule 10.7 of the Code and Rules 3.1, 3.2, 3.9 and 3.10 of the BCAP Code.

Response

Currys and PC World confirmed that the television promoted in the sponsorship credit was available for £999 (i.e. “...under £1,000...”) from 2 May 2012 to 16 May 2012 and from 2 June 2012 to 12 June 2012.

The sponsor added that, due to an “internal communication error”, it had changed the price of the promoted television “when it should have remained static for the duration of the sponsorship promotion” (i.e. 8 June to 1 July 2012). It added that this was first brought to its attention, by Absolute, on 6 July 2012, when Ofcom had received the listener’s complaint and by which time the sponsorship agreement had ended. Noting that “errors of this type are extremely rare”, the sponsor acknowledged that it was fully responsible in this instance and assured Ofcom that “appropriate lessons [had] been learnt to avoid any repetition.”

TIML confirmed that the offer was promoted in sponsorship credits (in promotional trails, programme credits and live reads during a broadcast competition) a total of 88 times between 8 June 2012 and 1 July 2012. It also confirmed that only six of these credits were broadcast between 8 June and 12 June, when the offer was valid.

The Licensee added that Absolute had “acted in a responsible manner at all times and relied in good faith on the representation concerning price that was made by the sponsor via the agency”:

- having “specifically asked the sponsor’s agency to confirm that the promotional price applied to all televisions in stock and that no terms and conditions applied that would need to be mentioned on air”;
- having received confirmation from the agency that no such limitations or terms and conditions were required; and
- having sought central clearance of the offer (as part of a commercial reference) from the RACC.

Nevertheless, TIML apologised for the broadcast of sponsorship credits when the promoted offer was invalid, adding that, to avoid recurrence, it would “brief all clients and agencies.” It also assured Ofcom that, as a result of this investigation, it had “implemented an additional internal procedure to ensure that regular checks are made of an advertiser’s website during a promotional period in order to further verify the availability and accuracy of any offers.”

RACC said that, if an advertiser promoted a product at a particular price, it assumed the product would be available at that price, adding that “it would be impractical ... to ask every advertiser in these circumstances to demonstrate in advance that this [was] the case.”

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 standards objectives, including “that generally accepted standards are applied to the contents of ... radio services so as to provide adequate protection for members of the public from the inclusion in such services of ... harmful material.”

This is reflected in, among other rules:

- Rule 10.7 of the Code, which requires that commercial references in radio programming comply with the advertising content and scheduling rules that apply to radio broadcasting;
- Rule 3.1 of the BCAP Code, which states that advertisements must not materially mislead or be likely to do so;
- Rule 3.2 of the BCAP Code, which specifically requires that advertisements do not mislead consumers by omitting material information;
- Rules 3.9 of the BCAP Code, which requires broadcasters to hold documentary evidence to prove claims that the audience is likely to regard as objective (and that are capable of objective substantiation); and
- Rule 3.10 of the BCAP Code, which requires that advertisements state significant limitations and qualifications.

On radio, a sponsorship credit is a form of commercial reference, as set out in Section Ten of the Code. In this instance, Ofcom considered that, on 82 occasions when the offer of “a 60” LED Superscreen Sharp TV” for “under £1000 at Currys PC World” was broadcast in a commercial reference, but was actually unavailable from the retailer (i.e. between 13 June 2012 and 1 July 2012), listeners were likely to have been misled.

However, Ofcom noted that:

- an internal communications error by the sponsor appeared to have been the principal cause of listeners being misled;
- any resultant material harm to listeners was likely to have been limited to inconvenience, rather than financial detriment; and
- the Licensee:
 - had sought and received an assurance of the offer’s validity from the sponsor prior to Absolute’s broadcast of the commercial reference, as required by Rule 3.9 of the BCAP Code;
 - had apologised to Ofcom for having misled any listeners; and
 - will take appropriate action to minimise recurrence, by:
 - briefing all its clients/agencies; and

- implementing regular checks on a sponsor's website, to verify the accuracy and availability of relevant broadcast promotional offers.

Having taken account of all the circumstances in this particular instance, Ofcom therefore considers the matter resolved.

Resolved

Advertising Scheduling cases

In Breach

Advertising minutage

ARY QTV, 26 May 2012, 06:00

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.”

Ofcom received a complaint about advertising scrolling across the bottom of the image seen on screen during this broadcast on ARY QTV. Such advertising is permitted in television programmes provided it is kept distinct from editorial content. Scrolling advertising is subject to COSTA and must not exceed the 12 minute allowance in a single clock hour.

After reviewing this output, Ofcom noted that ARY QTV broadcast 45 minutes and 27 seconds of advertising in a clock hour.

Ofcom considered the case raised issues warranting investigation in respect of Rule 4 of COSTA and therefore sought comments from ARY Network Limited (“the Licensee”) about how this material complied with this rule.

Response

The Licensee said its technical team detected this incident, which was caused by a “system malfunction”, and immediately notified management. It said that the error was then rectified as soon as possible.

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 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 its licensees’ compliance with COSTA.

Ofcom considered this to be a serious breach of Rule 4 of COSTA given that the advertising allowance in this clock hour was exceeded by 33 minutes at 27 seconds.

In Broadcast Bulletin 199¹, Ofcom recorded a breach of Rule 4 of COSTA for the broadcast of a scrolling message on ARY QTV which resulted in over 52 minutes of advertising content being broadcast in a clock hour. Ofcom is particularly concerned

¹ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb199/obb199.pdf>

that another significant breach of Rule 4 has occurred owing to the same error and therefore puts the Licensee on notice that it will consider the imposition of a statutory sanction in the event of a recurrence.

Breach of Rule 4 of COSTA

Fairness and Privacy cases

Not Upheld

Complaint by Mrs Sandra Geddes

The Secret Millionaire, Channel 4, 11 June 2012

Summary: Ofcom has not upheld this complaint of unwarranted infringement of privacy in the obtaining of material included in the programme and in the programme as broadcast made by Mrs Sandra Geddes.

Mrs Geddes was briefly shown in the programme riding her mobility scooter in the area of Croydon where the “secret millionaire” was going to live. Only the back of Mrs Geddes was shown in the programme as broadcast and no other information about her, such as her name or address, was given in the programme.

Ofcom found that Mrs Geddes did not have a legitimate expectation of privacy in relation to the obtaining of material included in the programme or in the programme as broadcast. This is because she was filmed on a public street and not engaged in any activity which could be reasonably be regarded as particularly private or sensitive. In addition, the programme did not reveal any particularly private or personal information about Mrs Geddes.

Introduction

On 11 June 2012, Channel 4 broadcast an edition of *The Secret Millionaire*, a programme in which a wealthy individual spends a week living undercover in a less affluent area of the country. At the end of the week, the wealthy individual reveals their true identity and decides who, out of the individuals and organisations they have come into contact with during the course of their stay, to donate significant sums of their own money to. In this particular episode, Mr Bobby Dudani, a multi-millionaire who made his fortune through a chain of computer stores called “Computer Exchange”, visited Croydon - an area badly affected by the summer riots of 2011.

The relevant section of the programme showed Mr Dudani arriving in the New Addington area of Croydon where he was to live for a week. The commentary in this section explained that New Addington was a large estate:

“Originally built in the 1930's to re-house London's slum dwellers. Today it's as big as a town with more than 20,000 inhabitants. In the part of the estate Bobby [Dudani] will be staying in, just under 50% of the population is under 25”.

Footage of the New Addington estate in Croydon was used to accompany this commentary. This included footage of the complainant Mrs Geddes on her mobility scooter moving away from the camera so that only her back and the rear of her mobility scooter were visible. She was the only person visible in this footage. The footage was approximately seven seconds in duration.

Following the broadcast of the programme, Mrs Geddes complained to Ofcom that her privacy had been unwarrantably infringed in connection with obtaining material included in the programme and in the programme as broadcast.

Summary of the complaint and the broadcaster's response

Mrs Geddes complained her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme in that:

- a) She was filmed without her knowledge or consent whilst using her mobility scooter.

In response, Channel 4 said that they did not consider that Mrs Geddes had a legitimate expectation of privacy. They added that on the day of filming the film crew were filming openly on a public street in New Addington, which included wide shots of the street and pavement. Channel 4 said that Mrs Geddes did not appear to be at all concerned or unhappy with the presence of the cameraman when she drove past him on the public pavement. Channel 4 also stated that, regardless of whether or not Mrs Geddes was aware of the camera, the filming did not intrude on her privacy because it took place on a public street and they did not film her face, and therefore Channel 4 did not consider that Mrs Geddes consent was required.

Mrs Geddes complained that her privacy was unwarrantably infringed in the programme as broadcast in that:

- b) Footage of her was used in the programme without her knowledge or consent.

In response, Channel 4 said that the programme makers chose to include a wide shot of a public street which briefly featured Mrs Geddes (who in any event could not be identified because her face was not shown) driving away from the camera on her mobility scooter. Therefore, in Channel 4's view, consent to use this footage was not required as the filming was conducted in an open and public street. Channel 4 also said that the programme as broadcast did not reveal the identity of the complainant because the shot of her was fleeting, brief and purely incidental.

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 connection with the obtaining of material 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 carefully considered all the relevant material provided by both parties. This included a recording, a copy of the unedited footage and both parties' written submissions.

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. 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.

- a) Ofcom considered Mrs Geddes' complaint that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme in that she was filmed without her knowledge or consent whilst using her mobility scooter.

In considering this part of the complaint, Ofcom had regard to Practice 8.5 of the Code which states that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted. Ofcom also took into account Practice 8.4 which states that broadcasters should ensure that words, images or actions filmed or recorded in a public place are not so private that prior consent is required from the individual concerned, unless broadcasting without their consent is warranted.

Ofcom first assessed the extent to which Mrs Geddes had a legitimate expectation of privacy in relation to the filming of her. The Code states that legitimate expectations of privacy will vary according to the nature of the information or activity 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. The Code also acknowledges that 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.

Ofcom viewed the unedited footage provided to it by the broadcaster. This showed a wide angled shot of Mrs Geddes as she rode towards the camera on her mobility scooter. The camera turned around to capture footage of the housing estate and then filmed the back of Mrs Geddes as she rode away from the camera until she turned into the housing estate and out of view from the camera. Mrs Geddes was the only person in the street for most of the period that she was filmed, although at one point a car was seen to pass her by and a few pedestrians were also seen to walk past in the background.

Ofcom considered that Mrs Geddes was filmed on a public street and was not engaged in any activity which could be reasonably considered as giving rise to a legitimate expectation of privacy. Ofcom noted that Mrs Geddes had said that she had been filmed without her knowledge. In addition, Channel 4 had said that the film crew had been filming openly and that (from the unedited footage) it did not appear that Mrs Geddes gave any indication that she was at all concerned or unhappy with the presence of the cameraman when she rode past. Ofcom further observed that the film crew took no express steps to draw to Mrs Geddes' attention the fact that they were filming her or to obtain her consent. However, Ofcom considered that, in the circumstances, it may have been reasonable for the broadcaster to have assumed that Mrs Geddes was aware of being filmed and did not object to this. Although Mrs Geddes was identifiable from some of the footage, the shots taken were wide shots which depicted the general local area and did not zoom in on her.

Taking all the above factors into account, Ofcom took the view that Mrs Geddes did not have a legitimate expectation of privacy in relation to the filming of her on a public road and when she was not engaged in any activity which could be reasonably be regarded as private or sensitive. For this reason, Ofcom did not consider that Mrs Geddes' consent to be filmed in such circumstances was required. Given this conclusion, it was not necessary for Ofcom to consider whether any intrusion into Mrs Geddes' privacy was warranted.

Ofcom's decision therefore is that there was no unwarranted infringement of Mrs Geddes' privacy in the obtaining of material included in the programme.

- b) Ofcom next considered the Mrs Geddes' complaint that her privacy was unwarrantably infringed in the programme as broadcast in that footage of her was used in the programme without her knowledge or consent.

In considering this aspect of the complaint, Ofcom took into account Practice 8.6 of the Code which states that if the broadcast of the 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.

Ofcom considered the extent to which Mrs Geddes had a legitimate expectation of privacy in relation to the footage of her which was broadcast in the programme without her knowledge or consent.

The programme included footage of the back of Mrs Geddes riding her mobility scooter on a public street away from camera. This footage was shown in the programme for approximately seven seconds and was used to accompany the narrator's description of the estate in which this episode's "secret millionaire" was going to be living. Although the programme did reveal that the footage was of the area "*New Addington in Croydon*", no other identifying information such as Mrs Geddes' name, address or any other information which could be regarded as sensitive or personal to Mrs Geddes was disclosed in the programme. In addition, Mrs Geddes' face was not shown in the programme as broadcast, as only shot of the back of Mrs Geddes riding away from the camera was included. However, Ofcom did acknowledge that a limited number of people from the area may have identified the person on the mobility scooter as being Mrs Geddes.

Ofcom took into account the factors and the circumstances in which Mrs Geddes was filmed, as set out in head a) above. Ofcom considered that the programme as broadcast did not reveal anything particularly private or sensitive about Mrs Geddes, or show her engaged in any confidential or sensitive activity which would give rise to a legitimate expectation of privacy regarding any of the footage of her that was broadcast.

Consequently, Ofcom concluded that Mrs Geddes did not have a legitimate expectation of privacy in relation to the broadcast of this footage and therefore Mrs Geddes' consent was not required. In light of this conclusion, it was not necessary for Ofcom to consider whether or not any infringement of Mrs Geddes' privacy was warranted.

Accordingly, Ofcom has not upheld Mrs Geddes' complaint of unwarranted infringement of privacy in connection with the obtaining of material included in the programme and in the programme as broadcast.

Other Programmes Not in Breach

Up to 17 September 2012

Programme	Broadcaster	Transmission Date	Categories
Heart FM Breakfast	Heart FM	08/08/2012	Age discrimination/offence

Complaints Assessed, Not Investigated

Between 4 and 17 September 2012

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
4thought.tv	Channel 4	23/08/2012	Nudity	1
5th Gear	Discovery Channel	10/09/2012	Generally accepted standards	1
9/11: The Miracle Survivor (trailer)	Channel 4	n/a	Generally accepted standards	1
Accused	BBC 1	04/09/2012	Violence and dangerous behaviour	2
Advertisement for Pop Junior CD	Tiny Pop	31/08/2012	Generally accepted standards	1
Alan Carr: Chatty Man	Channel 4	16/09/2012	Animal welfare	1
All Star Mr and Mrs	STV	12/09/2012	Materially misleading	1
Audition	Film 4	22/08/2012	Generally accepted standards	1
Batman (Trailer)	Channel 5	08/09/2012	Offensive language	1
BBC News	BBC News Channel	09/09/2012	Outside of remit / other	1
BBC News	BBC Radio 4	07/09/2012	Outside of remit / other	1
BBC News at Six	BBC 1	07/09/2012	Privacy	1
BBC World News	BBC World News	17/08/2012	Due impartiality/bias	1
Big Time Rush	Nickelodeon	12/09/2012	Offensive language	1
Bombardier's sponsorship of Dave	Dave	23/07/2012	Generally accepted standards	1
Bombardier's sponsorship of Dave	Dave	23/08/2012	Generally accepted standards	1
Breakfast	BBC 1	03/09/2012	Outside of remit / other	1
C4's 30 Greatest Comedy Shows	Channel 4	25/08/2012	Generally accepted standards	1
Celebrity Juice (trailer)	ITV2	11/09/2012	Scheduling	1
Celebrity Juice (trailer)	ITV2	n/a	Scheduling	1
Channel 4 News	Channel 4	31/08/2012	Religious/Beliefs discrimination/offence	1
Channel S News	Channel S	10/07/2012	Due impartiality/bias	1
Cherry Healey: How to Get a Life	BBC 3	29/08/2012	Nudity	1
Come Fly with Me	BBC 1	31/08/2012	Transgender discrimination/offence	1
Competitions via ITV.com	ITV	n/a	Competitions	1
Coronation Street	ITV1	09/09/2012	Offensive language	1
Coronation Street	ITV1	10/09/2012	Sexual material	1
Dance Moms	TV3 Sweden	01/09/2012	Under 18s in programmes	1
Daybreak	ITV1	10/09/2012	Generally accepted standards	4

Deh Tari Ate Shabab Guru	Sikh Channel	19/07/2012	Religious/Beliefs discrimination/offence	3
Digital on-screen graphics	Various	n/a	Outside of remit / other	1
Dinner Date	ITV1	15/08/2012	Generally accepted standards	1
Doctors	BBC 1	31/08/2012	Generally accepted standards	1
EastEnders	BBC 1	11/09/2012	Materially misleading	3
Economic Edge	Bloomberg	17/08/2012	Undue prominence	1
Embarrassing Bodies	Really	10/09/2012	Generally accepted standards	1
Estings promotion	E4	30/08/2012	Generally accepted standards	1
Fleabag Monkeyface	CITV	23/08/2012	Generally accepted standards	1
Fleabag Monkeyface (trailer)	CITV	23/08/2012	Generally accepted standards	1
Flybe's sponsorship of Channel 4 Weather	Channel 4	05/09/2012	Sexual orientation discrimination/offence	1
Geoff Lloyd's Hometown Show	Absolute Radio	12/09/2012	Generally accepted standards	1
Good Cop	BBC 1	30/08/2012	Violence and dangerous behaviour	1
Good Cop	BBC 1	06/09/2012	Generally accepted standards	1
Haven Holidays' sponsorship of New Sanctuary	Watch	29/06/2012	Materially misleading	1
Hollyoaks	E4	10/09/2012	Violence and dangerous behaviour	1
Huntingdon Community Radio	Huntingdon Community Radio	24/08/2012	Format	1
Idris Elba's How Clubbing Changed the World	Channel 4	24/08/2012	Drugs, smoking, solvents or alcohol	1
Inspector George Gently	BBC 1	16/09/2012	Religious/Beliefs discrimination/offence	1
International Football	ITV1	15/08/2012	Promotion of products/services	4
Islam: The Untold Story	Channel 4	28/08/2012	Religious/Beliefs discrimination/offence	286
Islam: The Untold Story	Channel 4	14/09/2012	Outside of remit / other	5
ITV News and Weather	ITV1	03/09/2012	Fairness	1
ITV News at Ten and Weather	ITV1	03/09/2012	Disability discrimination/offence	1
ITV News at Ten and Weather	ITV1	12/09/2012	Generally accepted standards	1
Judge Dredd 3D competition	Absolute Radio	09/09/2012	Violence and dangerous behaviour	1
Live Show	Sikh Channel	14/08/2012	Religious/Beliefs discrimination/offence	1
London 2012 Paralympics Games (trailer)	Channel 4	05/09/2012	Materially misleading	1
London 2012 Paralympics Games 2012	Channel 4	05/09/2012	Outside of remit / other	1
London 2012 Paralympics Games 2012	Channel 4	06/09/2012	Advertising minutage	2

London 2012 Paralympics Games 2012	Channel 4	n/a	Advertising minutage	1
London 2012 Paralympics Games 2012	Channel 4	n/a	Outside of remit / other	2
London 2012 Paralympics Games 2012 Tonight: Swimming, Wheelchair Basketball and Table Tennis	Channel 4	30/08/2012	Generally accepted standards	1
London 2012 Paralympics Games Breakfast Show	Channel 4	05/09/2012	Disability discrimination/offence	2
London 2012 Paralympics Games Closing Ceremony	Channel 4	29/08/2012	Religious/Beliefs discrimination/offence	1
London 2012 Paralympics Games Closing Ceremony	Channel 4	09/09/2012	Advertising scheduling	1
London 2012 Paralympics Games Closing Ceremony	Channel 4	09/09/2012	Generally accepted standards	1
London 2012 Paralympics Games Closing Ceremony	Channel 4	09/09/2012	Scheduling	1
London 2012 Paralympics Games Opening Ceremony	Channel 4	29/08/2012	Advertising scheduling	32
London 2012 Paralympics Games Opening Ceremony	Channel 4	29/08/2012	Disability discrimination/offence	1
London 2012 Paralympics Games Opening Ceremony	Channel 4	29/08/2012	Outside of remit / other	17
London 2012 Paralympics Games Opening Ceremony	Channel 4	29/08/2012	Television Access Services	1
London 2012 Paralympics Games	Channel 4	30/08/2012	Outside of remit / other	1
London 2012 Paralympics Games	Channel 4	31/08/2012	Advertising scheduling	1
London 2012 Paralympics Games	Channel 4	31/08/2012	Outside of remit / other	1
London 2012 Paralympics Games	Channel 4	01/09/2012	Outside of remit / other	1
London 2012 Paralympics Games	Channel 4	n/a	Outside of remit / other	1
London 2012 Paralympics Games Tonight	Channel 4	01/09/2012	Disability discrimination/offence	1
London 2012 Paralympics Games Tonight: Athletics, Swimming and Wheelchair Basketball	Channel 4	31/08/2012	Advertising minutage	1
London 2012 Paralympics Games Tonight: Swimming, Athletics and Wheelchair Basketball	Channel 4	02/09/2012	Advertising scheduling	1
London 2012 Paralympics Games Tonight: Swimming, Athletics and Wheelchair Basketball	Channel 4	02/09/2012	Disability discrimination/offence	1
Lorraine	ITV1	06/09/2012	Competitions	1
Lorraine's Fast, Fresh and Easy Food	BBC 2	17/09/2012	Outside of remit / other	1
Midsomer Murders (trailer)	ITV1	15/09/2012	Scheduling	1
Most Haunted	Pick TV	30/08/2012	Scheduling	1
Most Haunted	Pick TV	n/a	Scheduling	1
Mrs Biggs	ITV1	05/09/2012	Advertising minutage	1

New Tricks	BBC 1	27/08/2012	Generally accepted standards	1
News	Cool FM	11/09/2012	Due accuracy	1
News programming	BBC 1, BBC News 24, Sky News	n/a	Due impartiality/bias	1
News programming	Various	n/a	Due impartiality/bias	1
Newsround	CBBC	17/09/2012	Offensive language	1
NFL Monday Night Football	BBC Red Button	18/09/2012	Outside of remit / other	1
One Foot in The Grave	Gold	06/09/2012	Offensive language	1
Only Fools and Horses	Gold	n/a	Outside of remit / other	1
Panorama (trailer)	BBC 1	09/09/2012	Offensive language	1
Paranormal Witness (trailer)	Really	21/08/2012	Scheduling	1
Phones 4U's sponsorship of Films on 4	Film 4	07/09/2012	Generally accepted standards	1
Phones 4U's sponsorship of Sky Atlantic	Sky Atlantic	n/a	Generally accepted standards	1
Political advertising	n/a	n/a	Advertising content	1
Press Preview	Sky News	11/09/2012	Generally accepted standards	1
Programming	Sikh Channel and Sangat TV	n/a	Religious/Beliefs discrimination/offence	1
Programming	Talksport	n/a	Outside of remit / other	1
Project Runway	FashionOne	13/09/2012	Offensive language	1
Question and Answer	Ramadan TV	15/08/2012	Religious/Beliefs discrimination/offence	1
RDS Traffic Updates	Radio Cambridgeshire	n/a	Outside of remit / other	1
RDS Traffic Updates	Radio Suffolk	n/a	Outside of remit / other	1
RDS Traffic Updates	Three Counties Radio	n/a	Outside of remit / other	1
Red or Black?	ITV1	01/09/2012	Competitions	1
Rip Off Britain	BBC 1 Wales	12/09/2012	Outside of remit / other	1
Roy	BBC 1	13/09/2012	Disability discrimination/offence	1
Sexcetera	Pick TV	n/a	Sexual material	1
Shaheedi Smagam	Sikh Channel	16/07/2012	Religious/Beliefs discrimination/offence	11
Shooting Stars	Dave	22/07/2012	Offensive language	1
Sikh Channel	Sikh Channel	16/07/2012	Religious/Beliefs discrimination/offence	2
Sikh Channel	Sikh Channel	19/07/2012	Religious/Beliefs discrimination/offence	1
Sikh Channel	Sikh Channel	22/07/2012	Religious/Beliefs discrimination/offence	1
Sikh Channel Reports	Sikh Channel	04/08/2012	Religious/Beliefs discrimination/offence	1
Sinbad	Sky1	09/09/2012	Scheduling	1
Sky News	Sky News	13/09/2012	Generally accepted standards	1
Sky News at 5 with Andrew	Sky News	02/09/2012	Generally accepted	1

Wilson			standards	
Special Documentary	Sangat TV	24/06/2012	Religious/Beliefs discrimination/offence	1
Special Documentary	Sangat TV	24/06/2012	Religious/Beliefs discrimination/offence	1
Special Documentary / Sikh Youth Show	Sangat TV	10/06/2012	Religious/Beliefs discrimination/offence	1
Special Documentary / Sikh Youth Show	Sangat TV	10/06/2012	Religious/Beliefs discrimination/offence	1
Studio 66	Studio 66 TV2	03/09/2012	Generally accepted standards	1
Studio 66 Days	Studio 66 TV1	04/09/2012	Participation TV - Offence	1
Super Scoreboard	Clyde 1	14/08/2012	Due impartiality/bias	1
Super Tiny Animals	ITV2	03/09/2012	Animal welfare	2
Talk Talk's sponsorship of The X Factor	ITV1	08/09/2012	Under 18s in programmes	2
Television X	Television X	n/a	Participation TV - Protection of under 18s	1
The Bachelor	Channel 5	24/08/2012	Materially misleading	1
The Best of Steve Allen	LBC 97.3 FM	22/04/2012	Disability discrimination/offence	1
The British (Trailer)	Sky1	n/a	Materially misleading	1
The Chase	ITV1	14/09/2012	Animal welfare	1
The Chase	ITV1	14/09/2012	Outside of remit / other	1
The Chase	ITV1	16/09/2012	Outside of remit / other	1
The Daily Show (trailer)	Comedy Central	29/08/2012	Sexual material	1
The Inbetweeners	Channel 4	09/09/2012	Generally accepted standards	1
The Jonathan Ross Show	ITV1	08/09/2012	Animal welfare	1
The Last Leg with Adam Hills	Channel 4	30/08/2012	Disability discrimination/offence	1
The Last Leg with Adam Hills	Channel 4	30/08/2012	Generally accepted standards	1
The Last Leg with Adam Hills	Channel 4	31/08/2012	Disability discrimination/offence	1
The Last Leg with Adam Hills	Channel 4	31/08/2012	Generally accepted standards	1
The Last Leg with Adam Hills	Channel 4	01/09/2012	Disability discrimination/offence	12
The Last Leg with Adam Hills	Channel 4	02/09/2012	Disability discrimination/offence	1
The Last Leg with Adam Hills	Channel 4	04/09/2012	Disability discrimination/offence	1
The Last Leg with Adam Hills	Channel 4	06/09/2012	Disability discrimination/offence	1
The Million Pound Drop Live	Channel 4	14/09/2012	Outside of remit / other	1
The One Show	BBC 1	14/09/2012	Sexual orientation discrimination/offence	1
The One Show	BBC 1	n/a	Participation TV - Offence	1
The Revolution Will be Televised	BBC 3	12/09/2012	Sexual orientation discrimination/offence	1
The X Factor	ITV1	01/09/2012	Competitions	1

The X Factor	ITV1	01/09/2012	Generally accepted standards	1
The X Factor	ITV1	08/09/2012	Gender discrimination/offence	1
The X Factor	ITV1	08/09/2012	Race discrimination/offence	6
The X Factor	ITV1	08/09/2012	Offensive language	1
The X Factor	ITV1	09/09/2012	Disability discrimination/offence	1
The X Factor	ITV1	15/09/2012	Outside of remit / other	1
There's No Taste Like Home	ITV1	09/09/2012	Offensive language	1
This Morning	ITV1	14/09/2012	Due accuracy	1
Ummah Channel	Ummah Channel	n/a	Charity appeals	1
Waterloo Road	BBC 1	30/08/2012	Television Access Services	1
Waterloo Road	BBC 1	13/09/2012	Scheduling	1
Xtra Factor	ITV2	26/08/2012	Generally accepted standards	1
You've Been Framed!	ITV1	08/09/2012	Generally accepted standards	1
ZingZillas	CBeebies	14/09/2012	Generally accepted standards	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 20 September and 3 October 2012.

Programme	Broadcaster	Transmission Date
999: What's Your Emergency?	Channel 4	10 September 2012
Adrian Flux Insurance's sponsorship of Classic Car Rescue	Channel 5	1 October 2012
Big Wednesday with Shawn	Phonic FM	12 September 2012
Good Cop (trailer)	BBC 1 HD	6 August 2012
Revealed	Channel 5	11 September 2012
Sikh Channel	Sikh Channel	9, 15 and 17 July 2012
Qatar Airways' sponsorship of Sky Weather	Sky News	n/a
Sports Disasters	CBS Reality	2 September 2012
Studio 66 Nights	Studio 66 TV1	13 September 2012
Takbeer TV	Takbeer TV	9 and 16 June, and 3 July 2012
The Valleys (trailer)	MTV Base	14 September 2012

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/>.