

# **Ofcom Broadcast Bulletin**

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# Contents

<u>Introduction</u>	4
<b>Standards cases</b>	
<u>In Breach</u>	
<b>Steve Penk at Breakfast</b> <i>The Revolution 96.2 FM, 14 January 2010, 06:00</i>	5
<b>Sponsorship of TEENick by 0800 Reverse</b> <i>Nickelodeon, 7 September 2009 to 15 March 2010, various dates and times</i>	12
<b>Your Health</b> <i>Sunrise TV, 28 December 2009, 15:15</i>	19
<b>Tritio Mattra</b> <i>Channel i, 4 December, 12:00</i>	
<b>Lux Super Star</b> <i>Channel i, 29 December, 16:00</i>	21
<b>Good Copy, Bad Copy</b> <i>Sky Arts 1, 3 February 2010, 11:30</i>	23
<b>Provision of recordings – various programmes</b> <i>Radio Holy Ramadan FM; 21, 24 and 29 August 2009 and 1, 2, 6 and 16 to 21 September 2009, various times</i>	24
<b>Associated Note to Broadcasters</b>	25
<u>Resolved</u>	
<b>5 Live Breakfast - live performance by Rage Against the Machine</b> <i>BBC Radio 5 Live, 17 December 2009, 09:00</i>	26
<b>Fairness &amp; Privacy cases</b>	
<u>Partly Upheld</u>	
<b>Complaint by Ms Georgette Dede Djaba</b> <i>Straight Talk, Voice of Africa Radio, 18 January 2009 (and repeated on 21 January 2009 and on or about 7 May 2009)</i>	29
<u>Not Upheld</u>	
<b>Complaint by Mr Eoin Murray</b> <i>Cowboy Builders, Five, 22 January 2009</i>	38

**Complaint by Paris Smith Solicitors  
on behalf of Mr Massoud Yeganegy  
and Roxan Construction Limited**

*Inside Out, BBC1 South, 21 January 2009*

69

**Other programmes not in breach**

87

## Introduction

The Broadcast Bulletin reports on the outcome of investigations into alleged breaches of those Ofcom codes which broadcasting licensees are required to comply. These include:

- a) Ofcom's Broadcasting Code ("the Code") which took effect on 16 December 2009 and covers all programmes broadcast on or after 16 December 2009. The Broadcasting Code can be found at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>.

Note: Programmes broadcast prior to 16 December 2009 are covered by the 2005 Code which came into effect on 25 July 2005 (with the exception of Rule 10.17 which came into effect on 1 July 2005). The 2005 Code can be found at [http://www.ofcom.org.uk/tv/ifi/codes/bcode\\_2005/](http://www.ofcom.org.uk/tv/ifi/codes/bcode_2005/).

- b) the Code on the Scheduling of Television Advertising ("COSTA") which came into effect on 1 September 2008 and 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://www.ofcom.org.uk/tv/ifi/codes/code\\_adv/tacode.pdf](http://www.ofcom.org.uk/tv/ifi/codes/code_adv/tacode.pdf).
- c) other codes and requirements that 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://www.ofcom.org.uk/tv/ifi/codes/>

From time to time adjudications relating to advertising content may appear in the Bulletin in relation to areas of advertising regulation which remain with Ofcom (including the application of statutory sanctions by Ofcom).

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.

## Standards cases

### In Breach

#### Steve Penk at Breakfast

*The Revolution 96.2 FM, 14 January 2010, 06:00*

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#### Introduction

The Revolution 96.2 FM (“The Revolution”) is a contemporary-music radio station broadcasting to the Oldham area of Greater Manchester. Steve Penk broadcasts an early morning show every weekday on this station.

During the first hour of this edition of *Steve Penk at Breakfast*, it was reported that traffic on the local M60 motorway had been heavily disrupted due to police attending an incident. The presenter asked the production team to find out what had caused the disruption. It was then reported that the incident was caused by a woman threatening to jump from a motorway bridge (“the M60 Incident”)<sup>1</sup>.

We noted that between 06:58 (the time when the programme first reported that a woman was threatening to jump from the bridge) and 08:34, Steve Penk made the following references to the M60 Incident.

[Presenter Steve Penk (“P”) and the News Editor (“N”)]:

At 07:02:

N: *“Parts of the M60’s closed this morning due to a serious incident. A woman’s threatening to jump from the bridge above the carriageway, anti-clockwise between Junctions 21 and 19, near Heaton Park.”*

P: *“No, is that what it is?”*

N: *“It is. Yes.”*

P: *“Threatening to jump?”*

N: *“Yes, She’s been there since half-past three this morning.”*

P: *“No.”*

N: *“Yes. Emergency services...”*

P: *“So hold on, this could go on right through the peak rush hour then?”*

N: *“It could do.”*

P: *“So the M60 could be closed for hours.”*

N: *“Oh, don’t say that, hopefully not.”*

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<sup>1</sup> According to later news reports, the woman in question did subsequently jump onto the M60 but survived, sustaining minor injuries.

P: *"Well, it could be."*

N: *"It could be. It's anti-clockwise between Junctions 21 and 19 near Heaton Park."*

P: *"Oh dear."*

N: *"So don't go that way, if you normally do."*

P: *"OK."*

At 07:29

P: *"This morning, M60 anticlockwise. It's still closed because of a serious police incident between Junction 21 Hollingwood and Junction 19 Heaton Park. A diversion is in operation. We're hearing that it's somebody threatening to jump from one of the bridges, which is why the police have had to close the motorway. So, if you're wondering what the serious police incident is. That's what it is. It's the threat of a jumper. Clockwise between the same junctions one lane is closed, and the matrix sign is set to 30 miles per hour due to this same incident"*

At 07:33 the following exchange ("the 07:33 Exchange") was broadcast:

P: *"Why don't they just suddenly inflate a giant bouncy castle below this woman?"*

N: *"Er...they could do maybe. I think they're trying to... talk to her."*

P: *"Get a load of mattresses..."*

N: *"Yeah...I think they're trying to get her away from the side rather than tell her to go for it..."*

P: *"Right...how inconsiderate though."*

N: *"I knew you were going to say that." [LAUGHTER]*

P: *"Why do it in the middle of the rush hour? If you're going to do it, do it at midnight, when it doesn't inconvenience so many other people trying to get to work."*

N: *"Well apparently she's been there since half three, so..."*

P: *"Well...[INAUDIBLE]... midnight then."*

N: *"Well, I don't know, ask her?"*

P: *"Am I not being sympathetic enough?"*

N: *"Not really."*

P: *"Well I'm only saying what everybody else is thinking."*

- N: *"I know, but it's a very sensitive subject."*
- P: *"All those trying to get to work right now thinking, Ohhhh, come on!!"*
- N: [LAUGHTER] *"You've got to approach this with care."*
- P: *"Right, okay then."*
- N: *"You need to be sensitive."*
- P: *"People trying to get to work, a living to earn..."*
- N: [LAUGHTER] *"I do kind of agree with you, but erm, yeah, you need to be sensitive about it."*
- P: *"Yeah, you do....we have a responsibility."*
- N: *"We do, yes. So hopefully it'll all be sorted."*
- P: *"Exactly, exactly, you know, hopefully it will be."*
- N: *"...and they'll be able to get her down."*
- P: *"Inconsiderate though..."*
- N: *"Without any bouncy castles, or mattresses involved..."* [LAUGHTER]
- P: *"Just wheel in a giant trampoline."*
- N: [LAUGHTER] *"I don't think they'll do that either."*
- P: *"Video it and send it to Harry Hill, it's a win-win situation isn't it?"*
- N: *"Maybe, yes."*

At 07:52:

- P: *"Now this incident on the M60 is causing an absolute nightmare. M60 anti-clockwise, closed. This is because of a serious police incident: it's a woman threatening to jump from one of the bridges. [References to traffic disruption]. Trust me: the M60 right now – a no-no. Clockwise on the M60 between the same junctions, one lane is closed and matrix signs set to 30 miles per hour because of the same incident. It's just not great."*

Later on in the programme at 08:02 Steve Penk mentioned on air that the broadcaster had received two requests from people stuck on the motorway: for the song *Jumping Jumping* by Destiny's Child; and for *Jump* by Van Halen.

At 08:28, Steve Penk read out a number of texts he had received from listeners on the theme: *"Things you are fed up with"*. In this segment of the programme, he said the following:

*"So, the question this morning: 'Things you're fed up with'...Loads coming through: Amy says: 'Penkie, I'm fed up of cleaning my pet rabbit's cage every single week'. There are certain things in life that, you know, you can only do it*

*so many times, it drives you nuts. Tony Mack says: 'Penkie. I'm fed up of the health and safety jobsworths, all those health and safety people, and the do-gooders'. I'm with you there, Tony, 100%. I'm with you. Now who else? Ant says: 'Steve, I'm fed up of whinging customers going on about the snow. Ant says: 'Just get on with it!'"*

Steve Penk then immediately played the song *Jump* which contains the chorus:

*"Ah, I might as well jump. Jump!  
Might as well jump.  
Go ahead jump. Jump!  
Go ahead, jump!"*

At 08:32:

P: *"One here from Al: 'I'm absolutely fed up of going to work. I've been thinking long and hard about it, driving in this morning, and I feel like Michael Douglas in that film 'Falling Down.' You know when he goes to the fast-food joint, and they won't serve him breakfast'. We've all have mornings like that. We all have a 'Michael Douglas' moment. They'll be a lot of people right now, stuck on the M60, who are having a 'Michael Douglas' moment. Thinking to themselves: 'Do you know what? I'm just going to leave the car here, and going."*

At 08:34:

P: *"Now, M60 this morning. It's a car park. It's closed because of a serious police incident between Junction 21, Broadway and Junction 19, Heaton Park. [References to traffic disruption]. The incident by the way is some woman threatening to jump off one of the bridges".*

At 08:52:

P: *"M60 anti-clockwise is closed this morning because of a serious police incident this morning between Junction 21, Broadway and Junction 19, Heaton Park. [References to traffic disruption]. It's just a nightmare. [References to traffic disruption].*

Ofcom received 57 complaints that, given the circumstances, the broadcast was offensive and insensitive. Complainants variously considered the playing of the song *Jump*: "showed complete lack of sensitivity to a horrific personal tragedy"; was insensitive to those who had been affected by suicide; stigmatised people who have mental health problems; and that the broadcaster empathised with the motorists inconvenienced by the M60 Incident, whilst not empathising with the woman who was threatening to jump on to the M60 on the morning in question.

Ofcom asked The Revolution 96.2 FM ("The Revolution") for its comments under Rule 2.3 (offensive content must be justified by the context) of the Code.

## **Response**

The Revolution explained the sequence of events in relation to this particular matter.

- from 06:34 onwards various listeners alerted the broadcaster that the M60 had been closed;

- shortly before 07:00, the station received “an unconfirmed report from a listener that the incident involved a woman threatening to jump from a bridge”. The broadcaster’s News Editor immediately contacted Greater Manchester Police who confirmed that “this was the case”;
- The Revolution said that it then sought guidance from the police on “how we should handle the story and they were advised that it would be quite appropriate to report the full facts, which we duly did”;
- the broadcaster said it was then “inundated with messages from listeners stuck in the traffic” and according to the Revolution “the anger and frustration of listeners whose plans for the day had been thrown into disarray was palpable”;
- at 08:00 and 08:14, two listeners sent text messages to the station, asking Steve Penk to play the track “*Jump*” by Van Halen. According to The Revolution, Steve Penk “thought very carefully about [these requests] and took the view that playing the track – and making a point of it – would have been insensitive, cheap and likely to cause offence”. However, the broadcaster continued “Steve’s intent was to ‘subliminally’ demonstrate to [the listeners] and [their] fellow sufferers that he had empathy with their predicament without causing widespread upset amongst the wider audience”. The presenter therefore played the track “*Jump*” at 08:28. However, The Revolution said “no obvious reference was made to its significance”.

In its comments, the broadcaster considered the above events to be “an excellent example of entertaining, engaging and highly interactive local radio presented by an ‘edgy’ but warm presenter totally ‘in tune’ with his audience”. The Revolution added that it considered that the presenter’s decision to play the track “*Jump*” was “dangerous” but the broadcaster considered that Steve Penk had shown professionalism by resisting any temptation to link the track being played with the M60 Incident. In addition, in relation to the 07:33 Exchange, the broadcaster said that “Steve Penk’s irreverence was balanced by the comments made by our News Editor who was clearly attempting to remain respectful of the woman’s plight”.

The Revolution noted that the playing of the track “*Jump*” received coverage in the national press a few days after the broadcast. The broadcaster said that in light of the publicity that the incident had attracted in the press, in his show broadcast on 19 January 2010, Steve Penk decided to apologise “to anyone who had been upset or offended by the episode”.

In summary, The Revolution said: “We acknowledge the issue of suicide is a sensitive area and, with the benefit of hindsight, Steve Penk accepts that it may have been inappropriate to attempt to derive humour from a serious incident which could, potentially, have ended in tragedy”. However, the broadcaster said that the station had received many messages of support from listeners in this matter.

## Decision

Comedy and entertainment has a long tradition of tackling challenging and sensitive subjects as well as ‘pushing boundaries’. In fact, no subject matter – including suicide – should be considered to be off limits. It is important and necessary, in line with freedom of expression<sup>2</sup>, that broadcasters can explore such issues. In this respect,

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<sup>2</sup> As enshrined in Article 10 of the European Convention on Human Rights.

Ofcom must regulate potentially offensive material in “the manner that best guarantees an appropriate level of freedom of expression”<sup>3</sup>. This is the broadcasters’ right to impart information and the listeners’ right to receive it. Ofcom must therefore seek an appropriate balance between its statutory duty to adequately protect members of the public from offensive material on the one hand, and the broadcaster’s right to freedom of expression on the other, taking into account such matters as context. Broadcasters are free to include treatments, comedic or otherwise, of any issue, so long as they comply with the Code.

The fact therefore that material may be offensive to some is not, in itself, a breach of Ofcom’s Code because the Code does not prohibit the broadcasting of offensive material – to do so would be considered an inappropriate restriction on a broadcaster’s and the audience’s freedom of expression. What the Code requires is that, in applying generally accepted standards, broadcasters must ensure that offensive material is justified by the context. Rule 2.3 states:

“In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language...”

Ofcom recognises that many radio stations broadcast ‘DJ-led’ early morning programmes presented by popular presenters with a loyal listenership. In most circumstances, The Revolution’s audience would have a good understanding of the irreverent content included in *Steve Penk at Breakfast*. Steve Penk is well-known for his style of humour, which he uses when broadcasting to, and interacting with, his listeners. The audience of *Steve Penk at Breakfast* is encouraged to contact the presenter, while the programme is on air, to make song requests and give their thoughts on a range of issues, including events in the local news.

As referred to above, while suicide itself can be a sensitive issue, this does not mean it cannot be a subject for comedy. In particular, humour often arises from black comedy and pathos, even when such humour is being displayed contemporaneously with events going on elsewhere. However, in general, the humour involved will tend to have a lesser potential to cause offence, the greater the time that has elapsed since the event which is the object of the humour has taken place. Whether a comedic treatment of an event and/or person complies with the Code depends on the context.

Throughout this programme there were repeated references to the M60 Incident. Ofcom recognises that the main reason for this repetition was the need to inform the audience about the traffic jam on the motorway. In some cases however – as set out above - the potential suicide attempt was discussed in a light-hearted manner even though it was an on-going and live incident at the time. While some listeners may have been frustrated to be caught in traffic (and contacted the station) most would have been aware that, in real time as the programme was being aired, there was a woman considering suicide. Under such circumstances, and given this context, Ofcom does not consider that the broadcaster applied generally accepted standards by, during the 07:33 Exchange, making references to “a giant bouncy castle”, “mattresses” and “a giant trampoline”.

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<sup>3</sup> Section 3(4)(g) of the Communications Act 2003

Ofcom noted that the News Editor countered to some extent the offence that could have been caused by Steve Penk's comments. However her comments were not, in our view, enough to lessen sufficiently the potential for offence being caused, especially as the News Editor appeared to laugh at times at some of the comments made by Steve Penk during the 07:33 Exchange. The comments were not made in isolation or in the context of a comedy sketch or performance, but came directly off the back of a serious news item. Further, such comments as "*Video it and send it to Harry Hill, it's a win-win situation isn't it?*" added to the overall inappropriateness of the content – given it was an unfolding news item about a serious matter. At the time of these remarks, listeners would not have been aware of whether the woman was about to or had jumped, and if so, whether she had died. We noted during the 07:33 Exchange Steve Penk made repeated references, which he intended to be humorous, to the M60 Incident. We considered the cumulative effect of these repeated references would have increased the potential for offence in this case.

Complainants objected to Steve Penk playing the track "*Jump*". There is no absolute prohibition on a broadcaster playing any particular song, as long as in doing so, the broadcaster complies with the Code. Ofcom recognised that the playing of this track had the potential to be tasteless and insensitive. This is in light of the serious nature of the M60 Incident, and the fact that Steve Penk had announced on air at 08:02 that he had received a request for this particular song. We noted that Steve Penk played the track nearly half an hour after announcing the song request, and he made no explicit reference to the M60 Incident, either before or after the track was played. However, given the fact that listeners over the course of the programme had been aware of Steve Penk's continuing comedic references to the M60 Incident, including his reading out the song request for the song "*Jump*", we considered that the words Steve Penk used to introduce the song ("*Just get on with it!*") may well have been construed by listeners as a direct link to the song request at 08:02 to play the song "*Jump*". We considered, therefore, that this would have compounded the potential offence that would already have been likely to have been caused by the 07:33 Exchange, and the song request for "*Jump*".

We note that the station acknowledges that in hindsight "it may have been inappropriate to attempt to derive humour from a serious incident which could, potentially, have ended in tragedy".

Ofcom considered that the manner in which the potential suicide attempt was discussed on air on balance breached generally accepted standards and has therefore recorded a breach of the Code.

### **Breach of Rule 2.3**

## In Breach

### Sponsorship of *TEENick* by 0800 Reverse

*Nickelodeon, 7 September 2009 to 15 March 2010, various dates and times*

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#### Introduction

0800 Reverse is a reverse charge service that allows telephone calls to be made to landlines. Although the service is free to the caller and uses a freephone prefix (0800), charges are applied to the account of the person accepting the call.

Three viewers complained about sponsorship credits for this service around programmes on Nickelodeon, a children's channel. The sponsored programming was in a strand of programming under the name *TEENick*, aimed primarily at girls aged nine to twelve.

The credits contained animated images of the words "*OUT OF CREDIT!*", a mobile phone and a collage effect of different images, ending with the words "*0800 REVERSE – STAY CONNECTED TO HOME*".

The voiceover said "*No credit? No problem!...TEENick sponsored by 0800 Reverse*".

The complainants objected that the 0800 Reverse service is expensive for the recipient and that no call costs were indicated in the credits. In the complainants' view the cost might not be appreciated by teenagers and younger viewers and that the sponsorship was therefore unsuitable. One complainant said, in part: "As this programming is aimed at teenagers I believe this to be inappropriate. Teenagers are not of an age to make an informed decision regarding this service."

0800 Reverse's website indicates that, for example, a call under 30 seconds long from a mobile to a BT landline will cost the recipient £3.99. Every additional 30 seconds or fraction of a 30 second period will cost an additional 60p.

Ofcom noted that the Advertising Standards Authority (ASA) has twice upheld<sup>1</sup> complaints about television advertising for 0800 Reverse in which costs – though present in text – were not sufficiently legible. These complaints were upheld under the Broadcast Committee of Advertising Practice (BCAP) Television Advertising Standards Code ("the Advertising Code")

Sponsorship credits must conform to the requirements of the Broadcasting Code ("the Code") and, by virtue of Rule 9.3 of the Code, to the requirements of the Advertising Code. The Advertising Code contains particular, and detailed, rules on misleadingness and on advertising to children.

Ofcom sought Nickelodeon's comments on the sponsorship credits under Rule 9.3 of the Code, with reference to Rules 5.1.1 and 5.1.2 (misleadingness), and Rule 7.1.1 (children's inexperience) of the Advertising Code. These rules state:

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<sup>1</sup> See [http://www.asa.org.uk/Complaints-and-ASA-action/Adjudications/2007/1/0800-Reverse-Limited/TF\\_ADJ\\_42109.aspx](http://www.asa.org.uk/Complaints-and-ASA-action/Adjudications/2007/1/0800-Reverse-Limited/TF_ADJ_42109.aspx) and [http://www.asa.org.uk/Complaints-and-ASA-action/Adjudications/2007/10/0800-Reverse-Pty-Ltd/TF\\_ADJ\\_43341.aspx](http://www.asa.org.uk/Complaints-and-ASA-action/Adjudications/2007/10/0800-Reverse-Pty-Ltd/TF_ADJ_43341.aspx)

“Sponsorship on radio and television must comply with both the advertising content and scheduling rules that apply to that medium”.  
(Rule 9.3 of the Code)

“No advertisement may directly or by implication mislead about any material fact or characteristic of a product or service”.  
(Rule 5.1.1 of the Advertising Code)

“No advertisement may mislead by omission about any material fact or characteristic of a product or service or advertiser”.  
(Rule 5.1.2 of the Advertising Code)

“Advertising must not take advantage of children’s inexperience or their natural credulity and sense of loyalty”.  
(Rule 7.1.1 of the Advertising Code)

## Response

Nickelodeon explained that in light of recent scrutiny of sponsorship credits by Ofcom, and a number of Ofcom published decisions in relation to the requirement to ensure sponsorship credits do not contain advertising messages<sup>2</sup>, it had sought to minimise the amount of product information so as to avoid the credits adopting advertising-like qualities.

The broadcaster pointed out that the credits contained little information about the product and that the primary aim of the credits was to highlight the sponsorship arrangement.

Nickelodeon referred to the guidance notes to Section Nine of the Code<sup>3</sup>, which states in relation to the content of sponsorship credits, that “...pricing information included in a sponsorship bumper will normally be considered to be an advertising message”.

Nickelodeon said that had pricing text been included, the sponsorship credits would have resembled advertising. Further, the information would have had to be given great prominence as the credits were each only 10 seconds long, in which case the credits would in the broadcaster’s view have inevitably been deemed to be advertising.

Nickelodeon argued that as it considered that no text information could be included in the sponsorship credits, for the reasons given above, the ASA’s decisions were not relevant.

Generally, the broadcaster said that the sponsorship credits were not misleading. The 0800 prefix indicates that the call is free to the person dialling. The person receiving the call is told the name of the caller, asked whether they wish to accept the

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<sup>2</sup> See Rule 9.13 of the Code: “Sponsorship must be clearly separated from advertising. Sponsor credits must not contain advertising messages or calls to action. In particular, credits must not encourage the purchase or rental of the products or services of the sponsor or a third party.”

<sup>3</sup> See [http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/section9\\_2009.pdf](http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/section9_2009.pdf)

call and told that a charge will apply. No call can be connected without the recipient's permission.

Nickelodeon said that the service is aimed at allowing children to make contact with parents. Nickelodeon considered 0800 Reverse appropriate as a sponsor of TEENick, a programme block designed for girls of nine to twelve years of age. The broadcaster did not believe that this age range of children "...has particular financial independence and would, in all likelihood, have to rely on their parents/guardians for mobile phone credit. The significant factor in whether to use the service would be that the child has no credit but still needs to make a call." It considered that the service was, therefore, invaluable for children who need to contact home and could provide peace of mind for parents and guardians.

For the reasons detailed above, Nickelodeon did not consider the sponsorship to breach the Code.

## Decision

Ofcom acknowledged that Nickelodeon had omitted price information from the sponsorship credits in good faith, to ensure that they remained distinct from advertising, and were therefore compliant with Rule 9.13 of the Code.<sup>4</sup>

As noted by the broadcaster, Ofcom's guidance on the application of Rule 9.13 of the Code states that price information in sponsorship credits will normally be considered to amount to an advertising message. However, and importantly, the guidance goes on to state the following:

"Mandatory price information (such as the cost of premium rate services) is acceptable provided it does not form part of an advertising message. Any price information that is not mandatory will normally be considered an advertising message".

'Mandatory' in this context will generally mean either that a pricing disclosure is required by statutory provision or through a recognised code of practice. Such mandatory price information is permitted in sponsorship credits to ensure viewers are adequately protected from potential harm, and to ensure compliance with relevant advertising regulations. However, to ensure compliance with Rule 9.13 of the Code, such pricing information must not form part of an advertising message (for example, the pricing information could not be described in a promotional way, e.g. "*only* £1 a call").

Ofcom considers that decisions made by the enforcers of such codes about products or services are mandatory. As the ASA regulates the content of broadcast advertising on behalf of Ofcom, its decisions should therefore be regarded as mandatory in this respect.

In its two previous adjudications regarding advertisements for 0800 Reverse, the ASA considered the pricing information was not sufficiently legible or prominent and therefore judged that the advertisements were misleading. These decisions are in Ofcom's view sufficient to demonstrate that price disclosures should have been treated as necessary in credits for the 0800 Reverse service.

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<sup>4</sup> See footnote 2.

As such, Ofcom found that the omission of the pricing information had the potential to mislead viewers about the service, namely that it involves a significant cost to the recipient which should have been made clear. Ofcom therefore found the sponsorship credits in breach of Rules 5.1.1 and 5.1.2 of the Advertising Code.

Furthermore, Ofcom took into account the age range of the intended audience (nine to twelve) and the fact that, in the absence of any pricing information, the freephone prefix of the service had the potential to mislead younger viewers that the service may be free. Therefore Ofcom also found the sponsorship credits in breach of Rule 7.1.1 of the Advertising Code.

Accordingly, the sponsorship credits were also in breach of Rule 9.3 of the Code.

### **Breaches of Rules 5.1.1, 5.1.2 and 7.1.1 of the BCAP Television Advertising Standards Code**

#### **Breach of Rule 9.3 of the Code**

## In Breach

### Your Health

*Sunrise TV, 28 December 2009, 15:15*

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#### Introduction

Sunrise TV is a general entertainment channel for the UK Asian community. *Your Health* is a regular phone-in programme, broadcast in Hindi and provides homeopathic advice.

A viewer was concerned that a presenter and studio guest “were ... extensively advertising the [guest’s] clinics in Luton and Birmingham and giving details of their opening times.”

Ofcom noted from a translation of the broadcast that the studio guest initially said that he provided home visits. He later asked a viewer who had been put through to the studio to call Sunrise TV again (off-air) for his contact telephone number, so he could discuss the matter raised by the caller in more detail and decide whether it was most appropriate for him to make a home visit or for the caller to seek other advice.

The guest also stated on-air the opening times of his Luton clinic and reiterated that he made home visits. He added that, although he was not at that clinic every day, there was always somebody there to handle calls. He then told viewers that he was at his Birmingham clinic from midday on Thursdays.

We therefore sought the broadcaster’s comments with regard to the following Code rules:

- 10.3 – Products and services must not be promoted in programmes. This rule does not apply to programme-related material. (See Rule 10.6); and
- 10.4 – No undue prominence may be given in any programme to a product or service.

#### Response

Sunrise TV acknowledged that the programme’s presenter and regular “expert” always needed to exercise “caution and discretion” when dealing with callers. It added that, “sometimes, in order that accurate advice [was ultimately] given”, personal information was required. Callers were therefore advised to call the studio to obtain the expert’s contact number, as this protected their privacy.

The broadcaster said that the location and opening times of the expert’s clinics had been provided following on from a previous caller, “who had commented about how difficult it was to get in touch with [him].” It added that “the presenter led a brief discussion allowing [the expert] to explain that he was not always available personally because he operated out of two centres and undertook other visits.”

Sunrise TV stated that it did not believe the programme breached the Code. It considered that “the show [recognised] boundaries in terms of the personal information ... suitable for broadcast, in order that participants in the programme [were] protected from giving information, which in hindsight, they may not wish to be

broadcast.” The broadcaster said this relied on the presenter and the expert exercising judgement and providing an optional avenue for callers to follow up.

Sunrise TV added that the programme had created significant interest from viewers, some of whom had chosen to follow up their interest. It considered that viewers’ interests were “central to the credibility of the programme and to provide them with background information regarding the operation of [the expert’s] Clinics was necessary, given the comment from the caller.”

The broadcaster said that Sunrise TV recognised its obligations both under the Code and to its viewers, adding that it believed “the principles applied by the Ofcom Code to protect viewers interests [were] consistent with its own desire to provide programmes that address the needs of the Asian audience in a contemporary format.”

### **Decision**

The Code prohibits broadcasters from promoting, or giving undue prominence to, products and services in programmes. This is to ensure, among other things, that there is clear separation between programmes and advertising.

Where editorially justified, programmes may refer to products and/or services. In the context of a phone-in programme in which a studio guest is speaking in the capacity of an expert, there is clear editorial justification for introducing that guest to the audience and referring to their field of work or expertise, or their affiliation to a particular company or institution. However, special care needs to be taken to ensure there is sufficient editorial justification to include further detailed references to those interests within the programme.

In this instance the studio guest broadcast details of his private homeopathic practice and invited callers to call the studio (off-air) for his contact details – in Ofcom’s view, indirectly soliciting a private consultation.

Ofcom noted Sunrise TV’s point that the guest had detailed the availability of his services at clinics in Luton and Birmingham in response to a caller’s comment concerning how difficult it was to contact him. Ofcom also noted that, later in the broadcast, the guest offered to give advice to a caller, if they stayed on the line in the commercial break that was to follow (as opposed to soliciting indirectly a private consultation).

Nevertheless, the guest stated at the outset of the programme that he provided free home visits, which Ofcom considered promotional, and for which there appeared to be no editorial justification. Further, in Ofcom’s view, there appeared to be little editorial justification for promoting the locations and hours of his private surgeries.

The programme therefore promoted, and gave undue prominence to, the studio guest’s private clinics, in breach of Rules 10.3 and 10.4 of the Code.

### **Breaches of Rules 10.3 and 10.4**

## In Breach

### **Tritio Mattra**

*Channel i, 4 December 2009, 12:00*

### **Lux Super Star**

*Channel i, 29 December 2009, 16:00*

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#### **Introduction**

Channel i is a Bangladesh language television station licensed for UK broadcast. The channel takes much of its content from its parent company, Channel i in Bangladesh, although the UK-based channel is a stand-alone organisation.

Ofcom received a complaint that *Tritio Mattra*, a discussion programme, incorporated visual references to the company Grameen Phones, within the body of the broadcast: the company's name and logo were on the set behind and in front of the panellists as well as being included in captions indicating the names of the participants.

Separately, Ofcom was contacted by a viewer about *Lux Super Star*, a model talent show, which included visual references to Lux within the programme. The references took the form of branding on set, behind and in front of the judges, as well as on a large screen behind the presenter and models.

Ofcom noted that in both cases the companies in question were credited in the broadcasts as sponsoring the programmes. Ofcom therefore asked Channel i to comment under Rule 9.5 of the Code which states:

“There must be no promotional reference to the sponsor, its name, trademark, image, activities, services or products or to any of its other direct or indirect interests. There must be no promotional generic references. Non-promotional references are permitted only where they are editorially justified and incidental.”

In our initial correspondence with Channel i, the broadcaster informed us that the content of these programmes (and others) was re-transmitted from its Bangladeshi parent company without being checked to ensure compliance with the Code.

Ofcom expressed its concern about this situation and also asked Channel i to comment further about the suitability of its compliance procedures.

#### **Response**

Channel i said that while the programmes included sponsor credits, these had not been arranged by the UK licensed broadcaster, but by its Bangladesh-based parent company. Channel i in the UK said it did not receive any revenue or payment for the sponsor references within either programme. However, it acknowledged the programmes should not have included the references to the sponsor.

The broadcaster also said it did not edit any of the programmes, but recorded the live feed from Channel i in Bangladesh and re-broadcast it for its UK audience. Channel i said it had made arrangements for its compliance to be handled by a third-party company, but said ongoing difficulties with the channel's launch led to this arrangement being terminated. The broadcaster said following this, Channel i complied its own output, checking some – though not all – of its programmes.

Having been informed of the channel's obligations under its Ofcom licence to ensure sufficient compliance measures are in place to properly check and edit programmes, Channel i said these programmes (and others identified by the channel) are now being checked prior to broadcast to obscure any similar commercial references. The broadcaster also said additional compliance staff had been employed to ensure its content complies with the Code.

### **Decision**

The Code states that a sponsored programme is a programme that has had some or all of its costs met by a sponsor with a view to promoting its own or another's name, trademark, image, activities, services, products or any other direct or indirect interest.

While Channel i in the UK did not benefit from these sponsor arrangements as they took place with its Bangladeshi parent company, this would not have been known to UK viewers and both programmes appeared to be sponsored. Therefore Section Nine of the Code applies.

Rule 9.5 of the Code prohibits any promotional reference to the sponsor, its name, trademark, image, activities or products. This rule also prevents non-promotional sponsor references within the programme that are not editorially justified and incidental. In this case, the sponsor references in *Tritio Mattra* and *Lux Super Star* had resulted from the sponsorship arrangement that had been put in place in Bangladesh. The references could therefore not be described as incidental. Further, Ofcom could not find any editorial justification for the inclusion of the references. Both programmes were therefore in breach of Rule 9.5.

Furthermore, Ofcom was particularly concerned that Channel i had not checked the programmes before broadcasting them. We note that the broadcaster had initially made arrangements for a third party to conduct its compliance checks, but this arrangement had to be cancelled. However, Channel i admitted that, when it started to comply its own output, it did not check that all its programmes were complying with the Code.

The station took its output from Channel i in Bangladesh, where different broadcast regulations apply. Channel i in the UK should have been aware of this and its compliance obligations as required by its Ofcom licence to broadcast.

We note the measures the broadcaster has now put in place after these matters were brought to its attention. Ofcom expects the broadcaster to be more vigilant in ensuring compliance with the Code and does not expect any similar recurrences in the future.

### **Breach of Rule 9.5**

## In Breach

### Good Copy, Bad Copy

*Sky Arts 1, 3 February 2010, 11:30*

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#### Introduction

*Good Copy, Bad Copy* was a documentary about the impact that technological advances, such as file sharing, have had on copyright legislation and enforcement.

During the programme the following extract from a letter was shown on a computer screen and voiced in a computerised voice:

*"...go fuck yourself"*

Ofcom received one complaint from a viewer who considered this language to be inappropriate given the programme's morning scheduling. Ofcom asked the broadcaster to comment with regard to Rule 1.14 (the most offensive language must not be broadcast before the watershed).

#### Response

Sky explained that in line with its procedures the programme was reviewed prior to transmission. The reviewer had identified a number of instances of offensive language in the programme and these were 'bleeped' out in preparation for its broadcast. Unfortunately, the sequence highlighted by the complainant went undetected and so was included in the version that went to air due to human error.

The broadcaster apologised for this mistake and has made its compliance staff aware of the issue and emphasised the need for vigilance when reviewing material for broadcast. It also masked the offending phrase and visuals for future broadcasts of this programme.

#### Decision

Ofcom research indicates that the word "fuck" and its derivatives are an example of the most offensive language. Rule 1.14 states that the most offensive language must not be broadcast before the watershed.

Ofcom noted Sky's apology and the reminders issued to its compliance staff. In this case, however, Ofcom was concerned that Sky's compliance procedures did not pick up the obvious use of the word "fuck" (broadcast in sound and appearing on-screen for approximately three seconds) in this pre-recorded programme. Ofcom has therefore found the broadcast in breach of Rule 1.14.

#### Breach of Rule 1.14

## In Breach

### Provision of recordings – various programmes

*Radio Holy Ramadan FM; 21, 24 and 29 August 2009 and 1, 2, 6 and 16 to 21 September 2009, various times*

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#### Introduction

Radio Holy Ramadan FM was a radio service in Bradford, broadcast for a month during Ramadan (from 21 August 2009 to 21 September 2009) and provided under a restricted service licence held by an individual (“the licensee”).

Ofcom received two complaints alleging that Radio Holy Ramadan FM promoted products and services in programming (editorial) on six occasions, contrary to the requirements of the Code.

Despite Ofcom’s request for copies of the recordings of the relevant broadcasts, these were not produced to Ofcom.

Given the nature of the allegations and the potential implications – if the allegations were founded – for the service to affect competition (for advertising revenue) within the local radio market, Ofcom also requested recordings of other material, broadcast on 17 and 18 September 2009, in order to monitor a selection of output of the service, Radio Holy Ramadan FM.

However, despite representations on the licensee’s behalf asserting that these recordings had been sent to Ofcom, neither of them was received.

In the light of this, Ofcom subsequently requested recordings of material broadcast on 16, 19, 20 and 21 September 2009.

However, again, none of these were received.

We therefore sought the licensee’s comments with regard to its obligations under condition 8(2) of its licence to broadcast, which states:

“...the licensee shall:

- (a) make and retain, for a period of 42 days from the date of its inclusion therein, a recording of every programme included in the Licensed service together with regular time reference checks;
- (b) at the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction.”

#### Response

After Ofcom first requested the recordings relating to the complaints we had received, a representative of the licensee said he had despatched them.

After the request for recordings of material broadcast on 17 and 18 September 2009, the licensee’s representative again said he had despatched them. He added that he had also re-despatched Radio Holy Ramadan FM’s original (logged) recordings, in response to Ofcom further pursuing the material in question.

In relation to Ofcom's final request to produce recordings of material broadcast on 16, 19, 20 and 21 September 2009, the licensee's representative made no comment on his failure to provide these.

Finally, the licensee's representative told us that he was out of the country and would contact us on his return to the UK. However, he provided no date (or likely date) for his return and we have heard nothing further from him (or the licensee).

## **Decision**

It is a condition of all radio licences that the licensee adopts procedures for the retention of recordings and produces recordings to Ofcom forthwith on request.

In this case, Ofcom made a number of requests for recordings of the Radio Holy Ramadan FM service over a period of three months. However, they were not produced to Ofcom in accordance with the licensee's obligations.

In response to the communication from the licensee's representative, when he was abroad, Ofcom extended its deadline for the production of the required recordings by a further fortnight. We asked him to ensure that, if necessary, he arranged for someone else involved with the licensed service to make arrangements for the recordings to be produced on the licensee's behalf. However, despite this, no recordings were received.

All Ofcom's requests for recordings were made during the 42 day period in which the licensee was obliged under his licence to retain recordings. However, none of the recordings requested by Ofcom have ever been produced and the licensee has failed to provide any evidence of their despatch to Ofcom.

The licensee's representative has not commented on the matter of the repeated failure to produce recordings to Ofcom, with regard to licence condition 8.

Given the absence of any recordings, Ofcom has been unable to assess the material broadcast by Radio Holy Ramadan FM against the requirements of the Code. This failure to provide recordings was a serious breach of licence condition, which will be held on record (see note to broadcasters, below).

## **Breach of Licence Condition 8, Part 2 General (Retention and Production of recordings)**

### **Note to Broadcasters:**

Ofcom is entitled to take a licensee's record into account when considering any future application for a broadcasting licence by a person who has previously been a licensee (or any other person or body with whom that person is associated). This is because, when considering whether to grant a broadcasting licence, Ofcom takes into account, on the basis of all the information available, the applicant's ability to comply with all relevant licence conditions.

## Resolved

### 5 Live Breakfast – live performance by Rage Against the Machine

*BBC Radio 5 Live, 17 December 2009, 09:00*

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#### Introduction

Radio 5 Live's *Breakfast* programme is broadcast on weekdays between 06:00 and 10:00 and features news, sport, weather and money reports. This edition of the programme included a live interview with the United States alternative rock band Rage Against the Machine. At approximately 09:00, the band were interviewed in a live link with the United States. The band were on the programme to discuss a Facebook campaign to make their song 'Killing In The Name', which was originally released in 1992, Christmas number one in the UK. The campaign was set up to protest against the success of *X Factor* singles in the UK Christmas charts and prevent recent *X Factor* winner, Joe McElderry, from reaching number one. After the interview the band performed the song live. During the performance the band's singer, Zack de la Rocha, repeated the phrase "*Fuck you, I won't do what you tell me*" four times before the song was faded out by the show's producers.

While the song was being faded out presenter Shelagh Fogarty was heard saying:

*"Get rid of it".*

She then said:

*"Sorry, we needed to get rid of that because that suddenly turned into something we were not, well we were expecting it and asked them not to do it, but they did it anyway – so buy Joe's record."*

Ofcom received a complaint from a listener who considered this language was offensive and unsuitable for the time of transmission. Ofcom asked the BBC for its comments on the programme with regards to Rule 2.3 (material that may cause offence must be justified by the context).

#### Response

The BBC accepted that the language used by the band "was neither appropriate nor justified on a morning programme on Radio 5 Live". It stated that presenter Shelagh Fogarty apologised at the time the language was broadcast and this apology was repeated later in the programme by her co-presenter, Nicky Campbell. In addition the editor of the programme issued a further public apology on his blog and a full apology was given to the 32 people who complained directly to the BBC.

Although the BBC accepted that the language was inappropriate for broadcast at this time, it highlighted that the band agreed to give a rare interview to the programme to discuss the campaign against the Joe McElderry single. It continued that "the producers were aware that the [original version of the] song contained very strong language." The live nature of the programme was explained to the band members and their representatives on three separate occasions before the broadcast. The BBC had asked the band and its management for an assurance that they would

change the original lyrics and not use strong language on-air. It said that a specific assurance was given by the band on each occasion.

The BBC said that “in the live interview beforehand, the band members responded to Mr Campbell’s questions in a considered and measured manner” and gave no indication that they would not respect their assurances to not swear. In addition, “the first few f-words were in fact changed when the band performed live”.

The broadcaster said that while it accepted there was a degree of risk in asking the band to perform live, reasonable steps were taken to minimise this risk. It added that “there was considerable public interest in the battle for the Christmas number one and it was felt that a rare opportunity to hear the band play live was editorially justified”. The BBC said that Radio 5 Live is a news, sport and entertainment station aimed at adults of all ages and backgrounds.

## **Decision**

Ofcom research<sup>1</sup> on offensive language identified that “fuck” and its derivatives were considered by audiences to be among the most offensive language.

Ofcom considered whether the offensive language used in the broadcast was justified by the context. In judging context, Ofcom took into account factors such as the nature of the service and programme, the fact that it was a live broadcast, the time of broadcast, and audience expectations.

Ofcom first noted that Radio 5 Live is a news, sport and entertainment station aimed at adults and that the performance by Rage Against the Machine was broadcast at 09:00 during school term time. Ofcom therefore considered that children were not particularly likely to have been listening to this broadcast. Ofcom took account however of the broadcaster’s admission that the programme “was neither appropriate nor justified on a morning programme on Radio 5 Live”.

Ofcom acknowledges that there was editorial justification for having the band on the programme, given the well publicised story concerning the Facebook campaign to get their song ‘Killing In The Name’ to Christmas number one. Ofcom also acknowledges that the producers took measures before the live performance to prevent strong language from being broadcast. Further, Ofcom notes that during the interview with the band and the first section of the song performance, the band had refrained from using strong language and this therefore gave comfort to the producers that they would comply with the BBC’s requests not to do so. Ofcom also took into account that the apologies made during the programme would have gone some way in mitigating any offence caused of the language used.

Ofcom considered, however, that the language was likely to have gone beyond the expectations of the audience for a programme of this type and at this time. It was concerned that the programme’s producers were well aware in advance that the original lyrics contained very strong language. In addition, the very nature of the song was about refusing to conform to society’s expectations, as suggested through the lyrics “*Fuck you, I won’t do what you tell me*”. Yet despite this, the band’s singer was able to repeat the lyrics “*Fuck you, I won’t do what you tell me*” four times before the song was faded out by the producer. This last point is of particular concern in view of

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<sup>1</sup> “Language and Sexual Imagery in Broadcasting: A Contextual Investigation”, September 2005

the fact that the producers had full control over the output since it was provided over a live feed from the United States.

However, given the measures taken by and assurances given to the broadcaster before the broadcast, the conduct of the band during the interview and start of the song performance, and the apologies issued, we consider that on balance this particular case should be resolved.

Ofcom recognises that it is important that broadcasters are able to exercise the editorial freedom to transmit material live that has an element of risk attached. There could be a disproportionate restriction on broadcasters' and viewers' freedom of expression<sup>2</sup> if broadcasters were required, when transmitting live, only to interview individuals or broadcast material where there was perceived to be absolutely no risk of offensive language being used. However, when broadcasting live, a careful balance needs to be struck between a programme's editorial freedom to feature material where there is an acceptable risk it might potentially contain offensive content, and a requirement to take all appropriate measures to minimise or avoid unnecessary offence being caused.

Broadcasters should note, for example, that when appropriate before live interviews and performances, it is important for them properly to brief interviewees about the need to avoid offensive language, they must be vigilant during the broadcast itself for any potential breaches of the Code and where necessary take timely action during the broadcast to prevent them. In addition, broadcasters should consider carefully whether it would be appropriate to pre-record material or interviews where there is a material risk of breaching the Code if the output were broadcast live.

## **Resolved**

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<sup>2</sup> As enshrined in Article 10 of the European Convention on Human Rights.

## Fairness and Privacy Cases

### Partly Upheld

#### Complaint by Ms Georgette Dede Djaba

*Straight Talk, Voice of Africa Radio, 18 January 2009 (and repeated on 21 January 2009 and on or about 7 May 2009)*

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**Summary:** Ofcom has upheld part of this complaint of unfair treatment and unwarranted infringement of privacy made by Ms Djaba.

This edition of the current affairs talk show was broadcast shortly after Presidential elections in Ghana and featured live discussion between the studio guests, Ms Georgette Djaba and Mr Kwame Agbodza, who were affiliated with opposing Ghanaian political parties. Listeners also phoned in to give their views. During the programme, Ms Djaba and Mr Agbodza argued on a number of occasions and could be heard continuing to argue in the background.

Ms Djaba complained that she was treated unfairly and that her privacy had been unwarrantably infringed in the programme as broadcast.

In summary, Ofcom found the following:

- Although Ms Djaba did not appear to have received prior information about the subject of the programme or the identity of the other studio guest, this did not result in unfairness to her.
- The derogatory comments made by Mr Agbodza that Ms Djaba's father was a "thief" were unfair to Ms Djaba both in the live programme broadcast on 18 January 2009 and in the repeats broadcast on 21 January 2009 and on or about 7 May 2009.
- Ms Djaba's privacy was not infringed by the broadcast of the background commotion in the studio, as no information of a sensitive or personal nature about Ms Djaba was broadcast and, as a result, Ms Djaba had no legitimate expectation of privacy in relation to the information broadcast.
- Ms Djaba had no legitimate expectation of privacy in relation to an allegation of criminal behaviour made against her father and her privacy was not therefore infringed by the broadcast of that information.

#### Introduction

On 18 January 2009, Voice of Africa Radio ("VOAR") broadcast an edition of *Straight Talk*, its live current affairs talk show which invites listeners to phone in and contribute to studio discussions. The programme was broadcast again on 21 January 2009 and on or about 7 May 2009.

This edition of the programme paid tribute to the first legally elected Prime Minister of the Republic of the Congo, Mr Patrice Lumumba, on the 49th anniversary of his murder. The programme also discussed current affairs in Africa and, following the recent Presidential elections there, in Ghana in particular. Mr John Atta Mills of the

National Democratic Congress (“NDC”) had just been elected President of Ghana, taking over from the former New Patriotic Party (“NPP”) President.

The programme was hosted by founder and director of VOAR, Mr Space Attuquaye Clotley, and his guests in the studio were Mr Kwame Agbodza and Ms Georgette Dede Djaba, both of whom have Ghanaian origins, but have differing political affiliations. Ms Djaba is a member of the UK branch of the NPP and Mr Agbodza is a member of the NDC.

The programme started with a tribute to Mr Patrice Lumumba and with news from Africa. There then followed discussions with the studio guests with input from listeners, most of whom supported the views of one or other of the studio guests and a number of whom expressed their views in robust and personal terms.

During the discussion, a heated exchange took place between Mr Agbodza and Ms Djaba in which Mr Agbodza claimed that Ms Djaba’s family stole money from Ghana, an allegation vehemently denied by Ms Djaba.

Later in the programme, Mr Agbodza and Ms Djaba argued again on a number of occasions and their arguments could be heard continuing in the background.

Ms Djaba complained to Ofcom that she was treated unfairly in the programme and that her privacy was unwarrantably infringed in the programme as broadcast.

## **The Complaint**

### **Ms Djaba’s case**

In summary, Ms Djaba complained that she had been treated unfairly in the programme as broadcast in that:

- a) The producer of the programme, Mr Clotley, failed to provide Ms Djaba with the topics of conversation in advance, despite her request for the information and his promise to provide them. He also failed to provide her with the name of the other studio guest, so she was unable to prepare by researching his background and political affiliations.
- b) She was insulted, humiliated and discriminated against. In particular, Ms Djaba said that:
  - i) Mr Agbodza called her “*insane*” and her father a “*thief*”.
  - ii) Mr Agbodza and unscreened callers insulted, denigrated and publicly humiliated her.
  - iii) Mr Agbodza used language that was discriminatory to her and Mr Clotley treated her less favourably than Mr Agbodza. Both of them on grounds of her gender, political beliefs, tribal affiliations and disability.
  - iv) No adequate steps were taken by Mr Clotley (who was laughing and making fun of the situation) to moderate or control the programme, intervene, demand an apology or retraction from Mr Agbodza or warn Mr Agbodza and callers that her privacy was being infringed and that there was no need for personal insults.
- c) Ms Djaba did not consent to the programme being repeated, in fact she specifically asked for it not to be broadcast again.

In summary, Ms Djaba complained her privacy had been unwarrantably infringed in the programme as broadcast in that:

- d) Mr Clotley did not inform Ms Djaba that her microphone was on at all material times and that listeners could hear what appeared to be a commotion in the studio.
- e) Mr Agbodza made personal, negative references about Ms Djaba and her father, including referring to her as “insane” and her father as a “thief”.

By way of background, Ms Djaba said that she appeared as a guest on the programme as a social commentator and had a reasonable expectation that private and family matters would remain private.

### **Voice of Africa Radio’s case**

In summary, VOAR responded to Ms Djaba’s complaint as follows:

VOAR said that it wished to apologise to Ms Djaba for how she felt about her encounter with Mr Agbodza.

VOAR said that it believed that Ms Djaba was treated fairly and in accordance with Ofcom’s guidelines. VOAR said that the presenter and the producer had tried to calm the situation both on air and in the studio by playing music and jingles. VOAR said that Ms Djaba had also appeared on *Straight Talk* the week before, on 11 January 2009, and became involved in arguments on that occasion as well.

VOAR said that it was unfortunate for Ms Djaba to say that she was denied knowledge of the topics or the guests on the show. VOAR asked, if that had been the case, as a leading legal practitioner, why did she participate in the programme? VOAR said that Ms Djaba had been under no obligation to participate in the programme whatsoever.

VOAR denied Ms Djaba’s complaint of discrimination. VOAR said that it had over 15 female presenters, 5 female staff and regular female guests every day in its studio and on air. VOAR also said that *Straight Talk* had regular female guests and that, as a truly Pan-African organisation, tribalism and nationalism were never and would never be part of VOAR’s makeup. VOAR also denied that Mr Clotley and Mr Agbodza had made fun of Ms Djaba on grounds of disability.

### **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.

Ms Djaba’s complaint was considered by Ofcom’s Executive Fairness Group. In reaching its decision, Ofcom considered all the relevant material provided by both

parties. This included a recording of the programme as broadcast and both parties' written submissions. In its considerations, Ofcom took account of Ofcom's Broadcasting Code ("the Code").

### *Fairness*

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 the Code. Ofcom had regard to Rule 7.1 when reaching its decisions on the individual heads of complaint detailed below.

- a) Ofcom first considered the complaint that Ms Djaba was not provided with the topics of conversation or the name of the other studio guest in advance, so she was unable to prepare by undertaking research.

Ofcom took account of Practice 7.3 of the Code which provides, amongst other things, that where a person is invited to make a contribution to a programme, they should normally be told what the programme is about, why they have been asked to contribute, the areas of questioning and the nature of other likely contributions.

Ofcom noted that in response to the complaint, VOAR did not deny that Ms Djaba had not been informed of the topics of conversation beforehand or the name of the other studio guest.

Ofcom therefore proceeded to consider whether VOAR's failure to comply with the provisions of Practice 7.3 resulted in unfairness to Ms Djaba in the programme as broadcast.

Ofcom noted that Ms Djaba would have wished to research the proposed main topic of conversation for the programme, Mr Lumumba, and would also have wanted to have undertaken some background research on the other studio guest on the programme, Mr Agbodza. However, as a result of VOAR's failure to inform her of the main topic for the programme or who the other studio guest would be, she was unable to do so.

Ofcom took the view that Ms Djaba was well informed about both UK and Ghanaian politics and noted that she described herself in the programme as a social commentator, that she is a practising solicitor, has previously stood as a candidate in UK local elections and is an active member of the UK branch of the NPP. Ofcom therefore considered that Ms Djaba was an experienced advocate and not unfamiliar with the sort of robust political debate that ensued in the programme. Ofcom also noted that Ms Djaba had appeared on a previous edition of *Straight Talk* and so was aware of the nature and format of the programme and generally what to expect, albeit not the specific topics of the programme broadcast on 18 January 2009. In the circumstances, Ofcom considered that if Ms Djaba thought that she would be seriously disadvantaged by the lack of information provided by VOAR, she could have decided not to appear on the programme that day.

In any event, having listened to the programme, Ofcom noted that while initially there were a number of questions about Mr Lumumba, the topic of conversation for most of the part of the programme for which Ms Djaba was present related to Ghana and the situation following the recent Presidential elections there. In Ofcom's view, Ms Djaba demonstrated that she was well informed about Ghana

and Ghanaian politics and she was able to converse robustly and eloquently on that topic.

Taking all the above factors into account, while Ofcom considers that it would have been preferable for VOAR to have provided Ms Djaba with the information she requested to enable her to prepare more thoroughly for the programme, Ms Djaba did not appear to be disadvantaged in debating the issues that arose during the course of the programme. In Ofcom's view therefore, the lack of prior information from VOAR did not result in unfairness to Ms Djaba.

- b) Ofcom next considered Ms Djaba's complaint that she was treated unfairly as she was insulted, humiliated and discriminated against in the programme.

Ofcom considered each of the instances of unfairness specified by Ms Djaba in her complaint at sub-heads i) to iv) below. In relation to each of the sub-heads and the programme overall, Ofcom took particular account of whether the broadcast programme was consistent with the broadcaster's obligation to ensure that material facts had not been presented in a way which was unfair (as outlined in Practice 7.9 of the Code).

- i) Ofcom considered the complaint that Mr Agbodza called Ms Djaba "*insane*" and her father a "*thief*".

On listening to the programme, Ofcom did not find that the programme as broadcast included a remark by Mr Agbodza that Ms Djaba was "*insane*".

However, in relation to the complaint that Mr Agbodza called Ms Djaba's father a "*thief*", Ofcom noted that the following exchange occurred between Ms Djaba and Mr Agbodza approximately an hour and three quarters into the programme:

Mr Agbodza: *"You are in this country because you think this is better than your country. So the caller who said you are not an African is right."*

Ms Djaba: *"I'm here because I came as a refugee. Rawlings sent me here OK. I came as a refugee. We were tortured."*

Mr Agbodza: *"No, no, your parents stole money. Your parents stole money."*

Ms Djaba: *"Stole where? Stole where?"*

Mr Agbodza: *"From Ghana."*

Ms Djaba: *"What money?"*

Mr Agbodza: *"From Ghana."*

Ms Djaba: *"Rawlings apologised to my Dad in 1999."*

Mr Agbodza: *"I wasn't there."*

Ms Djaba: *"We've never stolen any money."*

Mr Agbodza: *"You stole money. You stole money."*

Ms Djaba: *"Tell me what we stole."*

Mr Agbodza: *"You are a product of their booty. You are a product of their booty."*

Ms Djaba: *"Rawlings confiscated our assets for 30 years and gave them back."*

Mr Agbodza: *"How did your father come about those assets?"*

Ms Djaba: *"He is a businessman."*

Mr Agbodza: *"A businessman – Oh, so that's it is it – Business! Business! Listen, I'm not interested in this crap. Can we go on the programme?"*

- Ms Djaba: *"This is the problem with the NDC. You confiscated people's assets. I said Rawlings said sorry. Why don't you ask him?"*
- Mr Agbodza: *"I don't remember Rawlings saying sorry."*
- Ms Djaba: *"Ring him now and ask. He said sorry."*
- Mr Agbodza: *"We are talking about Congo."*
- Ms Djaba: *"... I've not been personal. How dare you say my father's a thief? ... You're a damn fool. You said my father stole money from Ghana. When? When? ...  
... My father's helped Ghana."*
- Mr Agbodza: *"The first time I heard of you ... on radio I had an impression that you have a problem. I want to give you ...  
You do not have any right to tell me what I said."*

In Ofcom's view, the derogatory comments made by Mr Agbodza went well beyond robust political debate and such strong personal comments made about Ms Djaba and her family by Mr Agbodza were unfair to her. Ofcom took account of the fact that *Straight Talk* was a live programme, however, in transmitting a live programme, Ofcom considered that it was incumbent on VOAR to have clear and effective measures in place to ensure no unfairness resulted either to callers to the programme or to the studio guests. Ofcom took the view that the statements made by Mr Agbodza were unambiguous references to alleged theft by Ms Djaba's father, and it noted that Mr Agbodza was allowed to repeat the allegation a number of times without any intervention from Mr Clotey or anyone else at VOAR.

Given that Mr Agbodza was able to make these comments uncorrected, Ofcom considered that VOAR did not have systems in place to ensure that Ms Djaba was not treated unfairly in the programme and that the presenter did nothing to moderate the exchange. In Ofcom's view this represented a serious failure on the part of VOAR to ensure that its broadcast did not result in unfairness to Ms Djaba.

In all these circumstances, Ofcom found that the inclusion of this allegation of theft in the programme broadcast on 18 January 2009 without VOAR providing any basis for it was unfair to Ms Djaba.

Ofcom noted that the unedited programme was broadcast by VOAR on at least two further occasions, on 21 January 2009 and on or about 7 May 2009, despite Ms Djaba's request that the programme should not be re-broadcast. Ofcom found that the inclusion of the allegation in those repeats was unfair to Ms Djaba and steps could and should have been taken to edit the programme prior to its re-broadcast.

- ii) Ofcom considered the complaint that Mr Agbodza and unscreened callers insulted, denigrated and publicly humiliated Ms Djaba.

Ofcom noted that robust views were aired by callers to the programme and by both the studio guests, however, in Ofcom's view, with the exception of the exchange referred to at sub-head i) above, the comments did not insult, denigrate or publicly humiliate Ms Djaba and went no further than might have been expected in a live political phone-in debate. Ofcom noted that while a number of callers to the programme took issue with Ms Djaba and her views many of the callers were supportive of her.

As a result, Ofcom was satisfied that Ms Djaba was not treated unfairly in this respect.

- iii) Ofcom considered the complaint that Mr Agbodza used language that was discriminatory to Ms Djaba and that Mr Clotley treated her less favourably than Mr Agbodza. Both of them on grounds of her gender, political beliefs, tribal affiliations and disability.

While Ofcom noted that there were robust exchanges of views between the studio guests, in Ofcom's view, Ms Djaba was not treated less favourably than Mr Agbodza. Ofcom took into account that both studio guests were provided with opportunities to express their views and respond to points made by the other studio guest and/or callers to the programme. Ofcom also took into account that both studio guests were provided with an opportunity to sum up at the end of the programme. While Ofcom noted that the exchanges were often heated and that tempers appeared to flare, Ofcom did not identify any instance of discrimination against Ms Djaba by Mr Clotley or Mr Agbodza on grounds of her gender, political beliefs, tribal affiliations or disability.

Ofcom was therefore satisfied that Ms Djaba was not treated unfairly in this respect.

- iv) Ofcom considered the complaint that no adequate steps were taken by Mr Clotley (who was laughing and making fun of the situation) to moderate or control the programme, intervene, demand an apology or retraction from Mr Agbodza or warn Mr Agbodza and callers that Ms Djaba's privacy was being infringed and that there was no need for personal insults.

With the exception of the incident considered by Ofcom at sub-head i) above, in Ofcom's view, while there was certainly a lively debate both in the studio and from callers to the programme, Ofcom did not consider that it went further than might have been expected in a programme of that nature. Ofcom also noted that Mr Clotley did take steps to moderate on a number of occasions and that when things got particularly heated in the studio, station idents and/or advertisements were broadcast. In addition, while Ofcom noted that Mr Clotley did laugh at the fact that a concerned listener had apparently called the police to the studio, in Ofcom's view he had not generally been making fun of the situation.

Ofcom was satisfied therefore that Ms Djaba was not treated unfairly in this respect.

- c) Ofcom next considered Ms Djaba's complaint that she did not consent to the programme being repeated, in fact she specifically asked for it not to be broadcast again.

Ofcom noted that there is no general requirement for broadcasters to obtain the consent of participants before re-broadcasting programmes and that it would not be unfair, per se, for a programme to be re-broadcast without the consent of and/or against the specific wishes of a participant. In this case, Ofcom was not informed of any agreement entered into by Ms Djaba that there would be no repeats of the programme nor how the repeats resulted in unfairness to her. Ofcom was satisfied therefore that repeating the programme, even against Ms Djaba's wishes, was not unfair.

Ofcom then considered whether the re-broadcast of any of the content of the programme resulted in unfairness to Ms Djaba. As noted at decision heads a) and b) above, with the exception of the decision at head b)i) above, in Ofcom's view, the content of the programme did not result in unfairness to Ms Djaba either when the programme was broadcast live or when it was re-broadcast on 21 January 2009 and on or about 7 May 2009.

Ofcom was satisfied therefore that, other than already noted at decision head b)i) above, Ms Djaba was not treated unfairly in this respect.

### *Privacy*

In Ofcom's view, the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about unwarranted infringement of privacy in relation to the broadcast of a programme, Ofcom must consider two distinct questions. First, has there been an infringement of privacy? Secondly, if so, was it warranted? This is in accordance with Rule 8.1 of the Code which states:

"Any infringement of privacy in programmes or in connection with obtaining material included in programmes must be warranted".

- d) Ofcom considered Ms Djaba's complaint that Mr Clotey did not inform her that her microphone was on at all material times and that listeners could hear what appeared to be a commotion in the studio.

In considering whether or not Ms Djaba's privacy had been infringed in relation to the broadcast of the vocal arguments between her and Mr Agbodza that could be heard continuing in the background, Ofcom took account of the fact that the definition of surreptitious recording in the Code includes a party deliberately continuing a recording when the other party thinks that it has come to an end. Ofcom also took account of Practice 8.13 of the Code which states that surreptitious recording should only be used where it is warranted.

Ofcom first determined whether Ms Djaba had a legitimate expectation of privacy in relation to information included in the background commotion and broadcast in the programme. In Ofcom's view, if Ms Djaba legitimately expected that on occasions throughout the programme her microphone was switched off, then she would have had a legitimate expectation that private information, that is information of a personal or sensitive nature, disclosed on such occasions would not be broadcast unless it could be picked up on other open microphones in the studio. Ofcom had insufficient evidence to determine whether VOAR deliberately continued to record and broadcast what Ms Djaba said when she thought her microphone was switched off and therefore whether VOAR had surreptitiously recorded Ms Djaba's words. However, in Ofcom's view, as no information of a personal or sensitive nature about Ms Djaba was disclosed in the broadcast of the background commotion, Ofcom concluded that Ms Djaba did not have a legitimate expectation of privacy in relation to the broadcast of the background commotion.

Having concluded that Ms Djaba did not have a legitimate expectation of privacy in this regard, Ofcom found that her privacy was not infringed in the programme as broadcast. It was therefore not necessary for Ofcom to further consider whether any infringement of privacy was warranted or not.

Ofcom concluded therefore that Ms Djaba's privacy was not unwarrantably infringed in the programme as broadcast in this regard.

- e) Ofcom considered Ms Djaba's complaint that Mr Agbodza made personal, negative references about her and her father, including referring to her as "*insane*" and her father as a "*thief*".

As set out at decision head b)i) above, Ofcom could find no reference to the word "*insane*" in the programme as broadcast.

In considering whether or not Ms Djaba's privacy had been infringed in relation to the allegation of theft against her father, Ofcom first determined whether she had a legitimate expectation of privacy in relation to the allegation made in the programme as broadcast.

Ofcom considered that allegations of criminal behaviour are not a private matter and such an allegation against Ms Djaba's father would not relate to Ms Djaba's private life. For this reason, Ofcom concluded that Ms Djaba did not have a legitimate expectation of privacy in relation to the disclosure in the broadcasts of the allegation of criminal behaviour by her father.

Having concluded that Ms Djaba did not have a legitimate expectation of privacy in this regard, Ofcom found that her privacy was not infringed in the programme as broadcast. It was therefore not necessary for Ofcom to further consider whether any infringement of privacy was warranted or not.

Ofcom concluded therefore that Ms Djaba's privacy was not unwarrantably infringed in the programme as broadcast in this regard.

**Accordingly, Ofcom has upheld part of Ms Djaba's complaint of unfair treatment and unwarranted infringement of privacy in the broadcast of the programme. The broadcaster has been found in breach of Rule 7.1 of the Code.**

## Not Upheld

### Complaint by Mr Eoin Murray

*Cowboy Builders, Five, 22 January 2009*

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

The programme investigated building work that Mr Murray and his workers had undertaken on properties in the South West of England. Criticisms were made about Mr Murray and the standard of his work. Opinions from various building experts who inspected one of Mr Murray's sites were included in the programme to illustrate the presenters' conclusions that Mr Murray was a "cowboy builder".

In summary Ofcom found the following:

- The broadcaster took reasonable steps to satisfy itself that material facts were not omitted or misrepresented in such a way as to be unfair to Mr Murray. Viewers' opinion of him would not have been significantly altered by including other material about Mr Murray's building work or by including more details about the various disputes he had had with his clients.
- Mr Murray was given many opportunities to respond to the allegations in the programme but failed to provide a written response within a reasonable timescale. It was therefore fair for the programme makers to obtain a response by way of a doorstep interview.
- The result of Mr Murray's interview was fairly represented in the programme.
- The interview with the owners of a timber merchants was not unfairly edited as their dealings with Mr Murray both personally and in respect of credit were unsatisfactory and this was fairly summarised in the programme.

### Introduction

On 22 January 2009, Five broadcast an episode of its series *Cowboy Builders*, in which the programme's presenters Ms Melinda Messenger and Mr Dom Littlewood report on people who have experienced problems with workmen. In the series, Ms Messenger, a property developer, focuses on the makeover of the properties featured and Mr Littlewood, a "consumer champion", confronts the builders in question and tries to resolve the disputes. The programme was introduced:

*"It's time to run the cowboys out of town".*

The programme featured three couples; Mr and Mrs Wozencroft, Mr and Mrs Manley and Mr and Mrs Arnold, all dissatisfied with the work of the same builder, Mr Eoin Murray. Mr and Mrs Wozencroft hired Mr Murray to build a rear extension to their house and the work was left unfinished due to a dispute over money and the standard of workmanship. Mr Manley was unhappy with the anti-slip pathway built by Mr Murray which was intended to assist him due to the loss of his legs whilst on duty in Iraq, and Mr and Mrs Arnold employed Mr Murray to build their loft conversion resulting in disputes over time and money.

As part of the investigation into Mr Murray's business practices Mr Littlewood interviewed Mr Murray's former sales manager about Mr Murray's approach to business finances as well as owners of a building supplies company and a timber company Mr Murray had dealt with. All three were very critical of Mr Murray.

Mr Littlewood said in the programme that the programme makers had written to Mr Murray in order to meet him but Mr Murray had not taken up their offer. In order to put the allegations to Mr Murray, Mr Littlewood explained that he had arranged to meet him on the pretence of obtaining a building quote. Mr Littlewood was shown hiding in a room then surprising Mr Murray, questioning him about some of the issues raised in the programme and asking him to waive the £27,000 that he was still trying to obtain from Mr and Mrs Wozencroft. Mr Littlewood summarised responses he had received from Mr Murray throughout the programme, and footage of Mr Murray being interviewed appeared toward the end of the programme.

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

### **The Complaint**

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

- a) The programme was ill-researched, imbalanced and inaccurate. Mr Murray said that material facts were omitted in the programme in a way that was unfair to Mr Murray. In particular:

In relation to Mr and Mrs Wozencroft:

- i) The work was not completed as Mr and Mrs Wozencroft owed him money. They did not pay him £78,000 as stated in the programme. There were further inaccuracies in the programme about monies owed. Had Mr and Mrs Wozencroft paid him, the leaking flat roof would have been rectified and the alleged tanking problem would be non-existent.
- ii) The description of the tanking problem in the programme was not accurately presented. The expert report that Mr Murray had obtained said the damp problems were more likely to have come from the flat roof than from a failure in applying the tanking.
- iii) Criticisms of the electric work carried out at Mr and Mrs Wozencroft's home were incorrect. For example, the claim in the programme that an isolating switch on the "damp and dangerous wall" was potentially live was a gross misrepresentation of the truth, because Mr Wozencroft knew there was no fuse in the fuse box.
- iv) Mr Wozencroft was aware that the sanitary ware and units in the utility room and kitchen were not included in the written and agreed contract, but this was presented inaccurately in the programme as another criticism of Mr Murray's work.
- v) Criticisms of the joist work and partition work were incorrectly portrayed. The programme makers knew of these inaccuracies prior to broadcast, but exaggerated faults and did not present the full picture.

- vi) Criticisms of the flat roof work were unfairly portrayed in that it was implied that Mr Murray had used the incorrect finish on the roof when, according to the contract, Mr and Mrs Wozencroft were to finish this part of the work themselves with specialist tile work. The suggestion in the programme that it was dangerous because of the lack of balustrade was exaggerated as it was kept safe by two lockable patio doors; there was no danger to the children or reason for them to go near to or on the balcony.

In relation to Mr and Mrs Arnold:

- vii) Mr and Mrs Arnold's project was described as "*yet another unfinished project*" but it was finished by Mr Murray with the filming taking place in the actual room he had built and completed. This was not mentioned.
- viii) With respect to the "*dangerous windows*" and the claim that because of these the project had not been "signed off" by the Building Inspector, the window installation company repeatedly attempted to carry out remedial works but there were at least five failed appointments and the company could not gain access to do the work. Mr Murray wrote to Mr and Mrs Arnold to this effect but this was omitted from the programme.
- ix) The roof work was completed in seven weeks not four months, as reported in the programme. Proof of this was at the local Building Control offices.
- x) The programme did not mention that Mr and Mrs Arnold's ability to pay Mr Murray was under question. They stated in the programme that they had the money and suggested that this was proved by a bank statement. In fact the bank statement shown in the programme was 18 months old and in reality, a payment had to be made by Mr Arnold's father and the offer of a motor home given because of Mr and Mrs Arnold's financial difficulties. These facts were omitted.

In relation to Mr and Mrs Manley:

- xi) A reference by Mr and Mrs Manley to Mr Murray's aggression and bad language was taken out of context. Mr Murray regretted comments he made but they were spoken after Mr Manley had been very aggressive with his family. Mr Manley was banging his fists on the table and shouting when Mr Murray "blurted out" his comment.
- xii) The pathway that was criticised was just a small part of a much larger job for Mr and Mrs Manley which they were entirely satisfied with, but this was not mentioned in the programme. Furthermore, the insurance company that paid for the pathway works has never taken action against Mr Murray for any "faulty" work he carried out.

In relation to the building suppliers:

- xiii) The interview with building suppliers who said they refused to deal with Mr Murray because of his poor business record was incorrect as he had invoices dated from 2005 to 2008, which proved he was not cut off from trading with them.
- b) Mr Murray was not offered an appropriate opportunity to respond. He had agreed to a controlled interview with his solicitor but was "doorstepped" for an interview

instead. There were implications that he was a violent and dangerous man as Mr Littlewood had a security guard on hand when he surprised Mr Murray with this interview, under the guise of obtaining a building quote. In tricking him, the implication was that Mr Murray was hard to get hold of and uncooperative.

- c) The programme was unfairly edited. In particular:
- i) Mr Murray's opportunity to respond to the accusations made about him was unfairly edited. Despite answering all of the questions asked of him in a 50 minute interview it was reduced to three minutes in the programme as broadcast. This resulted in his responses to the accusations and inaccuracies not being fully explained.
  - ii) The interview with the owners of the timber company was unfairly edited in that the positive points that were made were omitted from the programme. The claim that he still owed them over £16,000 was inaccurate as this was brought about by their supply of sub standard timber, resulting in cost to Mr Murray to remedy the job.

### **Five's First Statement**

In summary, Five responded to Mr Murray's complaint of unfair treatment as follows:

- a) In response to Mr Murray's complaint that he was portrayed unfairly in the programme, Five said that:

#### Mr and Mrs Wozencroft

- i) In response to the complaint that the work was not completed as Mr and Mrs Wozencroft owed him money, they did not pay him £78,000 and there were further inaccuracies in the programme about monies owed, Five said the contract was based on a quote for £78,940 plus VAT, the work was to be completed within 12 weeks, i.e. by December 2007, and Mr Murray would be paid every two weeks, 'based on a measure of works completed as agreed'. Five said that Mr and Mrs Wozencroft had receipts from Mr Murray for £78,000 and copies were provided to Ofcom. Mr Murray's email to Mr and Mrs Wozencroft of 5 February 2008 confirmed that £75,000 had been paid to him and on 8 February 2008, an additional £3000 was paid by Mr and Mrs Wozencroft for which they received a receipt from Mr Murray's son.

Five said that by June 2008, a dispute had developed between Mr and Mrs Wozencroft and Mr Murray which led to him withdrawing his workers from the project. There appeared to be problems emerging from the work and there was disagreement between what Mr Wozencroft believed Mr Murray had assured him about work done free of charge (by way of compensation because of defects), and that which was to be charged as 'extras'. Five said that Mr Murray had insisted that an additional £27,499.95 was needed to complete the job which included outstanding VAT and a price for extras that needed to be done. This was disputed by Mr Wozencroft which led to the work coming to a standstill and no further money being paid. The allegation that Mr Murray was pursuing Mr and Mrs Wozencroft for an additional £27,000 was made clear in the programme and this was not disputed by Mr Murray in his interview with Mr Littlewood, although Mr Murray said this was in respect of "work done", despite the conflicting opinions of both parties.

With regard to Mr Murray's assertion that had he been paid the outstanding money he would have rectified the problems that emerged with the flat roof and the alleged tanking problem, Five said that Mr Murray should have remedied the problems with the flat roof anyway under basic principles of contract law. It said that the standard of Mr Murray's work was so poor that there were a number of life threatening faults which should have been rectified regardless of any further money being paid. Five said that it was unrealistic for Mr Murray to suggest that the tanking and other problems with the work were caused by Mr and Mrs Wozencroft's failure to pay the extra £27,000. It said that Mr Murray had been given an opportunity to respond to the disputes regarding money to be included in the programme in Five's letter to him dated 27 November 2008. However, Mr Murray failed to respond.

Five said that the programme accurately reflected the facts of the situation and Mr Murray's response when interviewed by Mr Littlewood. It said that Mr Murray was given adequate opportunity to respond and that there was no omission of material facts in a way which was unfair to him.

- ii) In response to the complaint that the description of the tanking problem was not accurately presented, Five said it was made clear in the programme that the flat roof was a cause of the damp problems and that the tanking installed by Mr Murray was inadequate and also an additional cause. Damp test meter readings were taken by the programme's expert builder and featured in the programme and it was found that many of the areas of high damp readings were in parts of the property not under the flat roof. Some of the readings were on the back wall of the playroom away from the flat roof, indicating that the roof could not have been the sole cause of the damp. Subsequent to a specialist damp proofing report obtained by the programme makers, Five said it was evident that the tanking system on the walls and floors was non-existent or severely failing and the consequences of this were pointed out in the programme as potentially '*alarming*' to the whole construction.

Having taken advice from independent experts, Five asserted that the description of the tanking problem in the programme was accurate and that Mr Murray was not treated unfairly in this regard. Mr Murray failed to provide any evidence he said he had to dispute the programme's allegations. In any event, Five said that Mr Murray was responsible for both elements of the project, and therefore the damp problems were caused by his poor workmanship either way.

- iii) In response to the complaint that criticisms made of the electric work were incorrect, Five said that each of the allegations made in the programme was accurate, highlighted by clips showing exposed wires with visible damp issues. The independent electrician hired by the programme makers concluded that exposed live wires were potentially fatal and he was duty bound to make the cables safe having seen them. Five said a full electrical survey it had carried out concluded that the overall assessment of the electrical works was "unsatisfactory". With regard to Mr Murray's reference to the isolating switch that had no fuse in the fuse box so could not be "live", Five said that Mr Wozencroft had stated in the programme that he did not know whether the electrics in the extension were live, which was the case at the time. In conclusion, Five said that the programme's criticisms of the electrical work carried out were fair and accurate.

- iv) In response to the complaint that the sanitary ware and units in the utility room and kitchen were not included in the written and agreed contract but that this was presented inaccurately as a criticism of Mr Murray's work, Five denied this. It said there was no suggestion in the programme that Mr Murray was responsible for these areas and he was not treated unfairly in this regard.
- v) In response to the complaint that criticisms of the joist and partition work were incorrectly portrayed, Five said that any criticisms made of this work were an accurate reflection of the true picture. The programme makers instructed structural engineers to inspect the extension after their builder discovered that the first floor of the extension was not properly supported. Five said the surveyor's concern that the extension might have to be demolished and the conclusion that this did not in the event need to happen was made clear in the programme, as was the fact that the first floor of the extension needed to be properly supported. Five said that according to the surveyors, the quality of the workmanship was "very poor" and a summary of their findings was included fairly in the programme.

Five said that the allegations made in the programme about the joists were accurate, based on the evidence of structural engineers. It said Mr Murray was offered an opportunity to respond to the allegations when asked about these in his interview with Mr Littlewood. However, as he denied the allegations without any supporting evidence, this was not included in the programme. Five said Mr Murray was made aware that his comments would not be included in their letter to him of 27 November 2008, which set out the allegations and responses that were to be included in the programme, but he failed to reply.

- vi) In response to the complaint that criticisms of the flat roof work were unfairly portrayed in that it was implied that Mr Murray had used the incorrect finish on the roof when according to contract Mr Wozencroft was to finish this part of the work himself, the programme's inclusion of comments by its builder that the wrong type of felt had been used and that any installation of tiles or further finishing would not have rectified this was accurate. With regard to the complaint that the dangers of lack of balustrade were exaggerated as it was kept safe by two lockable patio doors, Five said there was no exaggeration of the position as the contract stated that the balcony would be fitted with rails that met safety standards and Mr Murray had failed to provide these. It was therefore irrelevant that there were lockable patio doors in place.

#### Mr and Mrs Arnold

- vii) In response to the complaint that this was described as "yet another unfinished project", Five said that the programme did not refer to the project in this way. Mr and Mrs Arnold said that the roof was exposed to the elements for four months, they were unhappy with Mr Murray working for them, that he was aggressive towards Mrs Arnold and her mother and that even though they paid Mr Murray £23,500, Building Control failed the work. Therefore this head of complaint was unfounded and it was not unfair to Mr Murray not to point out in the programme that filming took place in a room that Mr Murray had built and completed.
- viii) In response to the complaint that the programme's claim that "dangerous windows" caused the project to fail Building Regulations and that the programme omitted to mention the window company's attempts to carry out

remedial works, Five said the programme made clear that the Building Inspector's reasons for not passing the work included unsafe windows. Five said the programme did not state that the dangerous windows alone were the reason the project was not "signed off" by the Building Inspector. Five said that Mr Murray did not make the programme makers aware of his claim that the window installation company could not gain access to the house to carry out remedial works prior to broadcast of the programme, despite being given ample opportunity to do so and being made fully aware of the allegations to be made about him in the programme.

- ix) In response to the complaint that the roof work was completed in seven weeks not four months, as reported in the programme, and that proof of this was at the local Building Control offices, Five said that the programme makers were informed on 13 March 2009 by the Devon Building Control Partnership that they had no record of how long Mr and Mrs Arnold's roof was left off for and as far as they were concerned this was still an unfinished project. Five noted that in Mr Murray's invoice to Mr and Mrs Arnold dated 19 January 2006, that is, four months after Mr Arnold said Mr Murray took the roof off, Mr Murray stated that his men would return to site to complete the roof and windows to the dormer the following week, which indicated the roof work could not have been completed within seven weeks as Mr Murray claimed.
- x) In response to the complaint that the programme did not mention that Mr and Mrs Arnold's ability to pay Mr Murray was under question, that the bank statement shown in the programme was 18 months old, that Mr Arnold's father had to pay and that a motor home was offered in part payment, Five said that it was made clear in the programme that according to Mr Murray any delays were caused by Mr and Mrs Arnold not having enough money to pay for the job. As regards Mr Arnold's father having to pay Mr Murray, Five said this was Mr Arnold's money not his father's and that's why this matter was not included in the programme. With regard to Mr Murray's claim that the motor home had to be offered in payment because of Mr and Mrs Arnold's financial difficulties, according to the original building quote provided by Mr Murray it was always intended that the van would form part of the payment for the works. As such, this did not provide evidence of any financial difficulties on the part of Mr and Mrs Arnold. Five said therefore that the payment terms were irrelevant.

#### Mr and Mrs Manley

- xi) In response to the complaint that a reference by Mr and Mrs Manley to Mr Murray's aggression and bad language had been taken out of context in the programme, Five said that Mr and Mrs Manley's statements in the programme indicated that Mr Murray made this comment on the telephone. Although Mr Murray was fully aware that this comment would be referred to in the programme by way of the programme makers' letter to Mr Murray dated 27 November 2008, he had failed to explain what he now alleged was the context of the comment (i.e. that it was made in Mr and Mrs Manley's home following an argument), until after the programme had been broadcast. Five said that had Mr Murray made his side of the story clear before broadcast, this could have been included in the programme, if appropriate. Five said that even if the programme was inaccurate in this regard, Mr Murray clearly made a highly inappropriate and offensive comment to Mr Manley which would not be acceptable in any circumstances.

xii) In response to the complaint that the pathway was criticised but was part of a much larger job for Mr and Mrs Manley which they were entirely satisfied with, Five said that Mr and Mrs Manley were unhappy with a number of other aspects of Mr Murray's work, but these additional complaints were not included in the programme. With regard to the assertion by Mr Murray that the insurance company that paid for the pathway works had never taken action against him for any "faulty" work he carried out, Five said the reason the company did not ultimately issue proceedings against Mr Murray was that, given the costs involved in relation to the amount claimed, they took a commercial decision not to pursue the claim. Five said that, in any event, the allegation in the programme that the anti-slip pathway laid by Mr Murray's workers was not adequate was the truth. However, the programme did include Mr Murray's explanation that he had to lay the path in bad weather, even though he advised against it, that he apologised for the work and that he offered to pay for a specialised company to fix it.

### The Building Suppliers

xiii) In response to the complaint that the building suppliers' claim in their interview that they refused to deal with Mr Murray because of his poor business record was incorrect because Mr Murray had invoices dating from 2005 to 2008 which proved he was not cut off from trading with them, Five said that Mr Murray had failed to produce any proof of invoices to support his claim before the programme was broadcast. It said that according to the timber suppliers interviewed in the programme, they last traded with him in April 2006 when he was trading as Sovereign Property Designers. They briefly traded with Mr Murray when trading as Thistle Building and Design Services but quickly fell out with him and instructed their lawyers to pursue Mr Murray for outstanding monies.

b) In response to the complaint that Mr Murray was not offered an appropriate opportunity to respond, and that he had agreed to a controlled interview with his solicitor but was "doorstepped" for an interview instead, Five said it issued Mr Murray with repeated requests for a response to the allegations that were to be made in the programme, but Mr Murray did not provide any substantive response or even indicate when he would be in a position to respond. The programme makers took the view that as serious allegations were being made against Mr Murray and he appeared unwilling to cooperate with their reasonable enquiries, he should be interviewed without further warning. Mr Murray consented to this interview and was questioned for more than 50 minutes. Five said that at no stage did Mr Murray agree to a controlled interview with his solicitor and there is no correspondence or evidence of phone conversations to prove this.

With regard to the complaint that there was an implication that Mr Murray was a violent and dangerous man as Mr Littlewood had a security guard on hand when he surprised Mr Murray with this interview, Five said that it was the programme makers' standard procedure to have a security guard present. Mr Murray was not seen acting aggressively or in an intimidating way and viewers were told that the security guard was there as a precaution only. Therefore Five said there was no implication that Mr Murray was violent or dangerous. Five said that if the implication in tricking Mr Murray to meet Mr Littlewood was that he was uncooperative and hard to get hold of, the programme makers had made numerous attempts to get a substantive response from Mr Murray but he was not forthcoming, so it was not unfair to portray Mr Murray in this way.

- c) i) In response to the complaint that Mr Murray's opportunity to respond to the accusations made about him was unfairly edited, Five said that all relevant points and comments made by Mr Murray in his interview and letters were used in the programme, either in the form of clips from the interview or in the commentary. Furthermore Five said that Mr Murray was made aware by letters sent what was to be included in the programme and declined to respond.
- ii) In response to the complaint that the interview with the owners of the timber yard was unfairly edited in that positive points that were made were unfairly omitted from the programme, Five said that the detail contained in the programme was an accurate reflection of the responses given by the owners of the timber yard during the interview. This was that Mr Murray wound up his business and did not pay the £16,000 that he owed them, that he was intimidating and that they would not do business with him again. Five said it was not unfair to Mr Murray not to include a point made by one of the timber yard owners that Mr Murray had only ever been pleasant to her as the point she was making during the interview was that Mr Murray was an unpleasant man who was rude, intimidating and scary and that she had experienced this first hand when listening to calls between Mr Murray and her father. It was further explained by the owners of the timber yard that, in relation to the £16,000 owed to them, which Mr Murray claimed was in respect of defective timber, only a small amount of the timber supplied to Mr Murray was defective and this was worth less than £100. In any event, Five said that Mr Murray failed to provide a response to the allegations regarding the suppliers that he was told would be included in the programme in their letter to him dated 27 November 2008. If he had, the programme makers could have made reference to this in the programme.

### **Mr Murray's Comments**

- a) i) Mr Murray said that the programme claimed that Mr and Mrs Wozencroft had paid £78,000 to him to build their extension; however, he said this was incorrect as they had not paid the contract value of the extension of £78,000 plus the VAT. They had only paid £68,000 plus VAT and outstanding from the contract was £15,000 plus VAT plus payment for the extras. Therefore he said it was incorrect to say that "Murray claims they owe him another £27,000 for additional works that weren't included in the original quote". With regard to the leaking flat roof, Mr Murray said that Mr Wozencroft had agreed to complete some of the work from the original quotation to keep the cost down and one such area was the completion of the flat roof to be tiled by Mr Wozencroft; he said this was not mentioned in the programme.
- ii) Mr Murray said that even though the programme said that water was leaking through the flat roof due to the incorrect felt finish being laid, in fact the leak was due to lead flashing not having been fitted because Mr Wozencroft had refused to pay for works already done and Mr Murray's builders had to stop the job. He said an offer given to Mr Wozencroft to return for one day to fit the flashing was refused. Mr Murray said the presenter's statement that "*damp is seeping into the extension through the ground*" was not proven. Furthermore, the programme makers had not taken sufficient steps to prove that the damp proof membrane (the tanking) had failed or taken into account that water was seeping in from one corner of the extension from above (due to the lead flashing problem). In addition, he said even if the tanking had failed there

were other methods of correcting the fault that were less drastic than the “sensationalised ripping out” of the walls.

- iii) Mr Murray said the socket that the presenters drew attention to next to the damp wall was not a socket but a 45amp isolator switch which was not connected to the fuse box so there were no live switches to be concerned about. He said that the presenter stating that it was illegal not to have certificates for the electrical work was incorrect because these are only issued on completion of works and the job was not finished due to non-payment of the bill. Mr Murray said his electrician confirmed that no wires were left bare, and as approximately five months had elapsed since Mr Murray’s workers left the site, anyone could have removed protection. Therefore, he said, the broadcaster had no proof that Mr Murray’s workers left the bare wiring or if it may have been left unprotected by someone else.

Mr Murray said the accusation in the programme of mixed wiring was incorrect. The switch that was mentioned in the programme was a 3 core and earth fan supply cable, switched via an isolating switch outside the room, as per wiring regulations.

- iv) Mr Murray supplied documentation to confirm he was not responsible for the sanitary ware.
- v) Mr Murray said that the programme’s claim that *“the wooden framework holding up the internal walls of the extension is damp and decomposing”* could not have been the case as the wooden timbers supplied by the timber company featured in the programme were treated. Furthermore he said that the criticism that the steel supports which were holding the building up were not waterproofed and were rusting was alarmist, as steels do not require waterproofing when fitted in a dry environment. In any event he said the rust was due to water seeping in from above due to the lack of lead flashing. Mr Murray said the programme drew attention to one joist that was not attached to the steel. This joist was not part of the load bearing structure but instead a packer for the staircase and therefore not required to sit on the steel. The other three joists were attached correctly and were part of the load bearing structure, quite clearly seen in the programme.
- vi) Mr Murray said that the allegation in the programme that the mineral felt used to seal the flat roof of the balcony was *“completely wrong”* was incorrect. Mr Wozencroft was aware that he had agreed to finish off the balcony himself.

#### Mr and Mrs Arnold

- vii) No comment.
- viii) Mr Murray said that the loft conversion did not fail building regulations as stated in the programme. There were a few items the Building Inspector said needed to be altered and Mr Murray had fixed some of these. However, as Mr Murray (and the window company) had been denied access to the loft by Mr and Mrs Arnold he was unable to secure the final sign off certificate. In any event, Mr Murray said that it was the responsibility of the home owner to acquire this document and that Five had Mr Murray’s supporting evidence in this regard.

- ix) Mr Murray said the time the roof was off was proved by the time line entered into the Building Inspector's diary, which said that the roof insulation was completed just over six weeks after the project was started (the insulation cannot be completed without the roof construction first being completed). Mr Murray said that the broadcaster had copies of documents and the time schedule and could easily have verified matters by telephoning the Building Control offices. Mr Murray said the detail in the programme regarding storms causing the tarpaulin to lift off was over dramatised, as this was unforeseen circumstances and Mr Murray was not alerted to the problem and therefore could not have done anything about it.
- x) Mr Murray said he only received £21,149.98 (comprising cash, the value of a motor home and a payment from Mr Arnold's father), not the £23,500 stated in the programme. The old bank statement shown in the programme had no bearing on the funds Mr Arnold had access to during the job.

#### Mr and Mrs Manley

- xi) Mr Murray said that Mr Manley had been aggressive to him on three or four occasions in the lead up to his comment to Mr Manley and had complained to the insurance company who had employed him to carry out the works. Mr Murray said the comment was in fact made after Mr Manley had got aggressive in front of his wife and children who had all got upset and left the room, and not over the telephone as claimed in the programme. Mr Murray telephoned Mr Manley to apologise the next day but this was not included in the programme.
- xii) Mr Murray said there is no evidence to show that the concrete on the pathway was not strong enough as stated in the programme. That aside, Mr Murray said he had advised that the pathway not be laid at the time due to adverse weather conditions; however, Mr Manley and the insurance company insisted it was done at the time.

#### The Building Suppliers

- xiii) Mr Murray provided invoices to support his claim that the timber supplier had continued to trade with him.
- b) Mr Murray said that he had been in communication with the programme makers from the start and at no point had he ever refused to respond to a question or an interview. Mr Murray said there was a letter supplied by his solicitor requesting a meeting. With regard to the implication that Mr Murray was hard to get hold of, which necessitated him being doorstepped for an interview, Mr Murray said that he had been contacted by telephone and letter several times at his office so this suggestion was false. He said that the programme makers would have had ample opportunity to put forward the truth rather than the allegations made in the programme. Mr Murray said the programme makers refused Mr Murray's request to view the programme pre-broadcast. He said that blatant lies were told about him by builders and programme staff and claims aired about him in the programme were the result of a personal vendetta against him from a disgruntled employee and a client he was suing for non-payment.
- c) i) Mr Murray said it was intimated in his interview that if he agreed to write off the £27,000 owed to him by Mr and Mrs Wozencroft the programme would not be put to air. However, in the programme as broadcast the editing of his

interview suggested he was admitting fault and agreeing to the programme makers' terms.

- ii) With regard to the claim in the programme that Mr Murray still owed the owners of the timber company £16,000, Mr Murray said that it was agreed between the factoring company and the owners that this would be written off as the wood supplied was unfit for use. Furthermore he said they continued to do business with him right up to the time when the programme was broadcast.

#### **Five's final response:**

- a) i) Five said in a letter dated 20 June 2008 from Mr Murray to Mr Wozencroft, he confirmed that the total paid to date by them was £75,000. In addition, in his email of 5 February 2008 he also confirmed that the balance outstanding under the contract was £3,940 + VAT (i.e. that £75,000 of the total contract price of £78,940 + VAT had been paid). Five also said that the programme contained a clear explanation from Mr Murray openly admitting to pursuing Mr and Mrs Wozencroft for an additional £27,000 and explained that this was "*for the work done*". Therefore, Five said that the programme was not misleading in respect of the £27,000 Mr Murray was pursuing. Taking the programme as a whole, it was clear to viewers that the additional £27,000 was for work done under the contract, as well as for additional work not included in the original quote.
- ii) Five responded to Mr Murray's assertion that the programme makers did not take sufficient steps to prove the tanking had failed and that, even if it had, there would be other methods of correcting the fault (e.g. "*pumping a chemical through minor holes around the concrete blockwork or digging a trench down to the bottom of the footings around the outside of the building and render proofed/damp proofed*"). Five said their specialist damp proofing expert inspected the property and confirmed in writing that the tanking system on the walls and floors was non-existent or severely failing and also set out the remedial action required as a result. It said that Mr Murray's evidence post broadcast relied on a letter from structural waterproofing consultants who did not inspect the property but based their opinion solely on a viewing of the programme.

In response to Mr Murray's alternative remedies, Five said that although pumping a chemical through the concrete blockwork is a method that could have been used, Five's damp proofing expert confirmed that it would not have been appropriate in these circumstances. It would have been more expensive than the remedial works they had recommended. In addition there was no guarantee that this method would be successful because they would not have been able to ascertain whether there would have been an appropriate void to pump the chemical into. Furthermore, digging a trench around the outside of the building would not have been possible: in order to access the original rear wall of the property builders would have had to have dug under the extension and through the foundations of the property because it had been extended to the rear. This clearly was not a feasible option and Five said it was nonsensical for Mr Murray to suggest that it might be. The programme makers had clear confirmation from an independent damp expert that the tanking had definitely failed.

Five said that the programme's conclusion that the tanking had failed was not reached as a result of the moisture readings taken on the walls and rusting steel columns. The moisture readings taken were from all over the lower floor, including readings taken in the far back corner of the playroom which were ten times greater than acceptable levels and the locations at which these readings were taken were not located near to the flat roof that Mr Murray suggested was the sole source of damp.

Five said that not all of the problems found during the inspection were shown on the programme; Ms Messenger simply referred to the damp readings and rusting steels as evidence of the damp problem, which the programme made clear may stem from leaks in the roof of the extension from the flat roof as well as the failed tanking. Therefore, Mr Murray was incorrect when he stated that the programme makers did not consider that water was seeping in from one corner of the extension from above.

Finally, Five said that although the programme's damp proofing expert recommended removing the floor tiles, as was reported in the programme, ultimately this was not necessary. On further inspection of the property, they came up with an alternative solution (called a water management system) which meant the tanking could be completed without removing the floor. Five did not consider that it was unfair to Mr Murray not to explain this in the programme. The central allegation contained in the programme, namely that the tanking installed by Mr Murray had failed and had to be completely replaced, was accurate.

With regard to the reference in the programme about damp and decomposing timbers and Mr Murray's claim that the timbers were treated and therefore could not have been decomposing, Five said that Mr Murray's builders had encased the bases of the timber in the ground in concrete and because concrete contains a chemical that decays timber, timber should never be encased in concrete in this way without a membrane between the timber and the concrete (regardless of whether the timber is treated).

- iii) Five had confirmation from two sources that there were serious issues with the electrics and were satisfied that the programme was not misleading in this regard.

With regard to the reference by Ms Messenger that *"Not only is that a worry for your safety, but it's illegal because all the electrics should have a Part P certificate at this point in time and if you don't have that, then I think that is something that we should get checked out for you as a priority"*, and Mr Murray's assertion that this statement was incorrect because the job was not finished, Five agreed that a Part P certificate would not have been issued until completion. However, it said the point the programme was trying to make was that Mr and Mrs Wozencroft had never seen any documentation to prove that the electrician used by Mr Murray was properly qualified. When Ms Messenger said that all electrics at this point in time should have a Part P certificate, she meant all electrics in 2008, not necessarily electrics at this particular stage of completion. Five said this information was simply provided for the benefit and education of viewers.

In response to Mr Murray's assertion that five months had elapsed since he had left the site, and that *"anyone could have removed protection, and Five had no proof that we left them, or did someone else remove the protection?"*,

Five said this should be ignored. Five said the electrician used by Mr Murray had a criminal record, for amongst other things stealing, and that his statement that the electrics were left in a good state should not be relied upon. It also pointed out that in Mr Murray's letter of 20 June 2008, Mr Murray confirmed that *"to make the site safe"* he wanted to finish the electrics and plumbing, indicating in writing the electrics were not in a safe condition. Mr Murray did not return to site and did not therefore complete the electrics and plumbing. Therefore, the letter from Mr Murray's electrician could not be correct when it stated that *"there were no wires left exposed or in a dangerous state...I am satisfied that everything was left in a safe condition and that there was nothing wrong with any of my work"*.

- iv) No further comments were made.
- v) Five said that according to Mr Murray, the steels shown on the programme did not require waterproofing when they were fitted in a dry environment and the visible rust was caused by water coming in from above (due to the lead flashing issue). Mr Murray's expert suggested that water was not present for sufficient duration or quantity to cause any more than surface rusting and that the corrosion experienced would not have affected the capacity of the steels. Five said however, the programme did not suggest that this might be the case, it simply stated that the steels were starting to corrode, which they visibly were. The rust was caused by the high moisture content. The fact that the steels were rusting from the bottom suggested that the failed tanking was the principal cause.

With regard to the unattached joist referred to in the programme, Five said that it was part of a "triple joist", which in itself showed that it was constructed with the intention of bearing more weight than just holding up the staircase; a triple joist would not be required if the joist was required only to hold up the staircase. In reality, the joist was there to support the weight of the partition wall above it, which in turn had to support the weight of the roof joists. As such, it was part of the load bearing structure. Therefore, the explanation given in the programme was accurate.

- vi) Five said the programme did not suggest that Mr Murray should have tiled the balcony, it simply commented that the specification and installation was *"all wrong"*, which was a justifiable comment in the circumstances. It said whether or not the material used was applied or was acceptable and whether or not Mr Wozencroft had agreed to tile the roof was largely irrelevant. The roof installed by Mr Murray at the property was not watertight. Mr Murray's former employee confirmed in writing that it was agreed that the roof would be watertight. According to Five's builder, the roof leaked because it was poorly installed, regardless of the finish used and regardless of whether Mr Wozencroft was responsible for the tiling. Five also said that although it would have been possible for Mr Wozencroft to tile the roof at a later date, it would not make the roof watertight. Therefore, it said the agreement in respect of the tiling was irrelevant: either way the roof was not watertight, which was provided for in the contract.

With regard to Mr Murray's suggestion that the roof was leaking because the lead flashing had not yet been fitted (because Mr Wozencroft was refusing to pay for work already completed and that Mr Murray intended to fit it once payment had been made), Five said this was the first time that Mr Murray had raised the issue of lead flashing. Furthermore, Mr and Mrs Wozencroft

informed Five they had no recollection of any such offer to fix the lead flashing. Five's expert roofer confirmed that if the roof was fitted properly, it should have been bonded to the wall. Therefore, there should be no water ingress, especially within such a short period of time. In any event, the lead flashing was generally done at the pre-render stage and when Five's experts saw the roof, it was already rendered and therefore the lead flashing should already have been fitted.

#### Mr and Mrs Arnold

vii) No further comment.

viii) Five said they had confirmation from Mr Arnold that that no appointments were ever made. Mr Arnold said he did not reply to Mr Murray because he had already submitted a complaint about Mr Murray to Trading Standards and he considered the contents of a letter from Mr Murray about failed appointments to be untrue. Five said that Mr Murray did not name the window company in his letter, his complaint, or his response and it had, therefore, been unable to contact the window company to obtain independent confirmation of Mr Murray's explanation.

ix) Five referred to a letter dated 7 July 2009 that Mr Murray had supplied (subsequent to the broadcast of the programme) as proof from the relevant Building Control office about the length of time the roof was off but pointed out that it did not expressly state for how long the roof was removed. Mr Murray said that the roof was removed on 6 October 2005 but provided no evidence to prove this was the date. Five said that according to Mr Arnold, the roof was removed before this date.

In response to Mr Murray's suggestion that insulation could not have been completed without the roof first being completed, and that the roof must have been completed when the Building Inspector visited on 25 November 2005, Five did not agree with Mr Murray's analysis of the letter dated 7 July 2009 from Building Control. Five's expert concluded that Building Control's letter in respect of the inspection on 22 November 2005 was too vague to determine whether the roof was on or off by this date. Furthermore a letter supplied by Mr Murray subsequent to the broadcast regarding hire of a crane on 27 October 2005 also failed to prove that the roof work was completed in seven weeks. In any event, Five said that Mr Murray made a comment about the roof being off for five weeks and this was included in the programme. It would therefore have been clear to viewers that Mr and Mrs Arnold's and Mr Murray's accounts differed and Five did not believe this would have affected viewers' opinion of Mr Murray in a way which was unfair to him.

x) No further comment.

#### Mr and Mrs Manley

xi) Five referred to Mr Murray's email to the insurance company on 29 November 2007 (provided as evidence but subsequent to the broadcast) in which he complained about Mr Manley, who he said was abusive and insulting towards him. It did not consider that this email supported Mr Murray's assertion that his own offensive comment was made to Mr Manley's face following an argument. It said the comment was made over the telephone in direct response to Mr Manley calling Mr Murray "a cowboy". Five said that whether

Mr Manley had been abusive towards Mr Murray in the past was irrelevant. The programme accurately reported Mr Murray's comment which would not be an acceptable comment to make under any circumstances.

- xii) Five did not dispute that Mr Murray carried out other work at Mr and Mrs Manley's home, as well as the pathway. However, it said Mr and Mrs Manley were not satisfied with the other work carried out by Mr Murray and Five had nothing further to add in this regard.
  - xiii) Five said that the timber suppliers had taken cash for payment for goods since the incident referred to in the programme. The documents supplied by Mr Murray subsequent to the broadcast from the timber suppliers headed "Sales Order" for the period July – December 2005, were irrelevant because Five did not deny the timber suppliers traded with Sovereign Property Designers Ltd, Mr Murray's old company. The documents provided by Mr Murray from March 2007 – November 2008 were "Sales Orders" but the timber suppliers had confirmed that they were nothing more than cash receipts from purchases made from them. Five said the buyers were not named on these documents and they did not prove that the timber suppliers had traded with Mr Murray.
- b) Mr Murray had not provided a copy of his solicitor's letter in which he allegedly requested a meeting.

The programme makers wrote to Mr Murray on 3 September, 24 September and 27 November 2008 and Mr Murray did not provide any substantive response or even indicate when he would be in a position to respond. With regard to Mr Murray's request for a copy of the programme prior to broadcast in order to rectify any inaccuracies, Five said he had ample opportunity to respond to their letter of 27 November 2008, which set out a full list of the allegations being made in the programme and exactly what would be included by way of response from Mr Murray. Mr Murray failed to respond to this letter and still continues to fail to provide any explanation as to why he did not respond.

- c) i) The extract of the interview in the programme fairly reflected what was agreed, namely that Mr Murray would not pursue Mr and Mrs Wozencroft for the extra £27,000 provided Mr Wozencroft left Mr Murray and his company alone.
- ii) Five said it disputed the evidence supplied by Mr Murray subsequent to broadcast that proved that the credit management company dealing with the account of the timber suppliers had written off the £16,000 bill as a result of supply of wood being unfit for use.

Mr Murray did not provide any evidence in support of his assertion that it was agreed that the £16,000 would be written off prior to broadcast of the programme, and the dates on the letters that Mr Murray supplied did not appear to tally. According to the timber suppliers only £100 worth of the timber supplied was substandard and the bill also covered the supply of insulation and other materials. Therefore, Mr Murray could not be correct when he claimed that the amount was written off because the timber was all substandard.

## 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.

Where there appears to have been unfairness in the making of the programme, this will only result in a finding of unfairness, if Ofcom finds that it has resulted in unfairness to the complainant in the programme as broadcast.

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.

Mr Murray's complaint was considered by Ofcom's Executive Fairness Group. In reaching its decision, Ofcom considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript, recordings and transcripts of unedited material and both parties' written submissions and supporting material. In its considerations, Ofcom also took account of Ofcom's Broadcasting Code, ("the Code").

Before it went on to consider the individual heads of Mr Murray's complaint, Ofcom first looked into the question of the opportunity afforded Mr Murray to respond to the allegations made in the programme.

Ofcom noted the programme makers' intentions, as expressed in their letters to Mr Murray dated 3 and 24 September 2008, to make serious allegations against Mr Murray. The allegations included: that he had been paid a substantial amount of money for works carried out on various houses and the work was sub-standard and dangerous; that he was intimidating; and that he had liquidated various companies and tried to avoid paying bills. It was therefore, in fairness to Mr Murray, incumbent upon the programme makers to give him an appropriate and timely opportunity to respond to the intended allegations. Ofcom noted that Mr Murray did not appear to have responded to any of the allegations in these letters, or to have taken steps to arrange a concrete date for an interview, and so a doorstepped interview<sup>1</sup> took place with him on 4 October 2008. Mr Murray followed this up in a letter to the programme makers dated 10 October 2008, which reiterated the points he had made in his recorded interview and included further information that did not address the specific allegations due to be made in the broadcast. Subsequently, in a letter from the programme makers to Mr Murray dated 27 November 2008 the programme makers outlined the precise allegations to be made in the programme as broadcast along with an outline of how they intended to present the responses that had been obtained so far from Mr Murray. Ofcom took note that on the evidence before it, Mr Murray had not responded in writing to this letter (see also head b) below).

In Ofcom's view, the steps taken by the programme makers above constituted an appropriate opportunity for Mr Murray to respond. Having established that Mr Murray was given an appropriate opportunity to respond, Ofcom next considered the key allegations made about Mr Murray in the programme as broadcast.

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<sup>1</sup> Meaning of "doorstepping": Doorstepping in this case is the filming or recording of an interview or attempted interview with someone without any prior warning.

In considering these Ofcom took into account that its remit is to consider and adjudicate on complaints of unfair treatment and is not required to resolve conflicts of evidence as to the nature or accuracy of particular accounts of events but to adjudicate on whether the complainant has been treated unfairly in the programme as broadcast through the misrepresentation or omission of material facts.

- a) Ofcom first considered the complaint that the programme was ill-researched, imbalanced and inaccurate and that material facts were omitted in a way that was unfair to Mr Murray.

Ofcom considered whether the programme makers' actions ensured that the programme as broadcast avoided unjust or unfair treatment of Mr Murray, as set out in Rule 7.1 of the Code. In particular, Ofcom considered whether the broadcaster took reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that is unfair to an individual (as set out in Practice 7.9 of the Code). Taking this practice into account, Ofcom first addressed separately each of Mr Murray's individual points of complaint under this head concerning the programme's treatment of him.

#### Mr and Mrs Wozencroft

- i) Ofcom considered the complaint that the work was not completed as Mr Murray was owed money, that they did not pay him £78,000 as stated in the programme and that, had he been paid, the leaking flat roof would have been rectified and the alleged tanking problem non-existent.

Ofcom noted the programme's commentary:

*"Sadly the man they paid £78,000 to build it (the extension) turned their lives upside down ... The extension was badly built and dangerous and the builder won't finish it unless they pay more money... In order to pay him David and Lara borrowed £78,000. Now Murray claims they owe him another £27,000 for additional works that weren't in the original quote".*

Ofcom considered the allegations made in the programme and the material relied on by the broadcaster in relation to monies paid or owed. The programme's commentary correctly said that Mr Murray wanted payment of a further £27,000, as he confirmed in untransmitted material from his doorstep interview, and that Mr Murray had withdrawn his workers from the job as monies owing had not been paid. The programme also said that Mr Murray had offered to put right the problems at Mr and Mrs Wozencroft's house but that they had rejected this offer.

Ofcom noted from the submissions before it that there was some disagreement about what extra work was to be done free of charge (by way of compensation because of some defects) and what was to be charged as extras; that the broadcaster had provided copies of receipts and letters that indicated £78,000 had been paid to Mr Murray by Mr and Mrs Wozencroft; and that it was unclear whether the contract price included VAT.

Ofcom takes the view that the programme made clear that, irrespective of the precise amounts, a substantial amount of money had been paid by Mr and Mrs Wozencroft, the extension was of poor quality, and Mr Murray was still asking for additional sums of money. Ofcom noted that, when given an

opportunity to respond to these allegations, Mr Murray did not deny the last claim but said that he had offered to return to site to put right the problems but that he had been refused. This was reflected in the programme. It was made clear to viewers that, despite a considerable sum having been paid, the work that had been done was sub-standard and there were still disagreements about sums owed. Ofcom considered that it was not incumbent on the programme makers to speculate about what might have happened if Mr Murray had been paid what he felt he was owed, but noted that the programme included his explanation that he offered to come back and put the work right.

Ofcom was satisfied that Mr Murray's response to this allegation was fairly reflected in the programme, and considers it was not unreasonable for the programme makers to include the allegation in the programme in light of the fact that, having been given a further opportunity to respond in the letter dated 27 November 2008, Mr Murray had provided no further information. Ofcom considered that the programme makers had given Mr Murray appropriate and timely opportunities to respond to exactly what the programme proposed to allege as far as monies paid or owed. Given the factors detailed above, Ofcom concluded that the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Mr Murray. Ofcom therefore found no unfairness to Mr Murray in this regard and has not upheld this head of complaint.

- ii) Ofcom then went on to consider the complaint that the description of the tanking problem in the programme was not accurately presented and that the expert report that Mr Murray had obtained said the damp problems were more likely to have come from the flat roof than from a failure in applying the tanking.

Ofcom noted from the programme commentary that damp patches had begun to appear all over the extension and could be an indication of more serious problems below the surface. The programme said that when it rained the flat roof leaked water straight onto the electrics into the cloak room and utility room; that the *"specification and installation is all wrong"*; and that the tanking was *"failing badly"*. The programme said that to fix it, it was necessary to *"tear down"* all the internal walls and *"rip up the floor"* to install a new waterproof membrane.

Ofcom noted that the programme's expert evidence, relied upon in making the allegations in the programme, was based on its experts' inspection of the property. The experts used by the programme included damp proofing and roofing companies who confirmed that the condition of the work was unsatisfactory. Ofcom then noted that the allegations made in the programme had been outlined to Mr Murray in the programme makers' letter of 27 November 2008 and Mr Murray had failed to respond to that letter. However, the programme included Mr Murray's comment from his interview to camera that *"the tanking has been carried out as per the manufacturers' recommendations of the materials used and as per the structural engineer's drawings"*.

Ofcom took note that the programme experts had made an on-site assessment. Moreover, they gave Mr Murray an opportunity to respond, in particular by way of the final letter dated 27 November 2008, and had included in the programme the comments he had made on this subject in his

recorded interview. In the absence of any further evidence from Mr Murray, Ofcom was satisfied that the broadcaster had taken reasonable steps to ensure that it was not presenting these facts in the programme in way that was unfair to Mr Murray. Ofcom has not upheld this head of complaint.

- iii) Ofcom then went on to consider the complaint that criticisms of the electric work carried out at Mr and Mrs Wozencroft's house were incorrect and that an isolating switch on the damp and dangerous wall described as potentially live was a gross misrepresentation of the truth because Mr Wozencroft knew there was no fuse in the fuse box.

Ofcom first noted the allegations made in the programme. Mr Wozencroft said: "we have water leaking onto the room as well...where it's running down...right next to the socket here...we don't know if it's been connected, we don't know whether it's live or anything else...we don't know what the state of the electrics are inside the property at all". The programme also said that the electrics were wired incorrectly, that there were exposed wires, and that no certificates had been provided with regard to the electrics (a Part P certificate). Furthermore, that the house was unsafe despite promises made by Mr Murray that the site was safe for Mr Wozencroft's children.

Ofcom took note that there was a conflict of opinion as to the state of the electrics. For example, in a letter from Mr Murray to Mr and Mrs Wozencroft dated 20 June 2008, he mentioned making "*the site safe*". However, in his complaint he said that the example of a danger used in the programme was not in fact a danger as there was no fuse in the fuse box, indicating it was safe. Ofcom also noted that the programme reported Mr Murray's comment from his interview that as far as he was concerned there were "*no exposed cables whatsoever hanging out of that building*".

As explained above, it is not Ofcom's remit to resolve conflicts in evidence or accounts of events but to adjudicate on whether the complainant has been treated fairly in the programme as broadcast. In respect of the general state of the electrics, Ofcom examined the programme and the evidence obtained by the broadcasters prior to transmission. Expert assessment appeared to show that the electrics were in a poor and unfinished state, as claimed in the programme. The programme made it clear that Mr Wozencroft did not know if the electrics were live. Mr Murray was given sufficient opportunity to put his views across before the programme was broadcast. He failed to respond in writing or provide any other evidence on the subject of the electrics prior to the programme's broadcast despite being aware that the electrics were a subject that was to be raised in the programme. That said, his recorded response was included in the programme.

Ofcom took note of Ms Messenger's comment about the Part P certificate which is normally issued on completion of electric works: "*Not only is that a worry, for your safety, but it's illegal because all the electrics should have a Part P certificate at this point in time and if you don't have that, then I think that is something that we should get checked out for you as a priority*". Ofcom noted Mr Murray's explanation, subsequent to the broadcast programme, that these certificates are not issued until the completion of electric works and that as work was unfinished there was no reason for a Part P certificate to have been applied for at this stage. Ofcom recognised that Ms Messenger's statement may have been misleading. However, within the context of the overall poor condition of the electrics, it was not a significant factor for Ofcom

to consider in terms of unfairness to Mr Murray and any further clarification would not have further affected viewers' impression of him, as the electric work did appear to be poorly carried out.

Taking into account the factors detailed above, Ofcom was satisfied that material facts were not presented or omitted in a way that was unfair to Mr Murray. Ofcom has therefore not upheld this head of complaint.

- iv) Ofcom next considered the complaint that Mr Wozencroft was aware that the sanitary ware and units in the utility room and kitchen were not included in the written and agreed contract, but that this was presented inaccurately in the programme as another criticism of Mr Murray's work.

Ofcom considered what had been included in the programme with regard to this head of complaint. It noted that the programme made no reference to the sanitary ware or units and that only images of unfinished work in the bathroom and other rooms that related to other aspects of the unsatisfactory build were shown. In these circumstances it was not necessary to further consider this head of complaint and it has not been upheld.

- v) Ofcom then considered the complaint that criticisms of the joist work and partition work were incorrectly portrayed and that the programme makers knew of these inaccuracies prior to broadcast but exaggerated faults and did not present the full picture. Ofcom firstly took note of the allegations made in the programme. The commentary said that: *"The wooden frame work holding up the internal walls of the extension is damp and decomposing"* and that some of the steel supports holding the building up had not been waterproofed and were rusting. It also said that the first floor wasn't supported properly and that the four joists bolted together should have been coming into a steel, but they were cut short and were not sitting on the steel or properly attached to it. The programme also said that they needed to properly support the first floor of the extension, that there were major weaknesses in vital areas of the build and that Five's structural engineer was not impressed with the poorly supported floor but thought most of the extension was solid enough to salvage.

Ofcom noted from the unedited material of Mr Murray's interview that he was offered an opportunity to comment on structural aspects of the build and that he was told in his interview that a surveyor had inspected the work and had said that the wall was not properly supported. Mr Murray's response in his interview was a denial that anything was wrong and an assertion that a building inspector had inspected the structure of the extension. However, subsequent to his interview he had failed to provide evidence to support his claim. Ofcom also noted that, in the programme makers' letter to Mr Murray of 27 Nov 2008, he was informed that his response in respect of the joist work was not going to be reflected in the programme, and he did not take this opportunity to comment further on the subject.

Ofcom again noted that there was a difference of opinion between Mr Murray and the broadcaster about the joist work. As detailed earlier it is not for Ofcom to resolve conflicts of evidence or particular accounts of events but to adjudicate on whether the complainant has been treated fairly in the programme as broadcast. Taking into account the factors detailed above, in Ofcom's view the programme makers had given Mr Murray an opportunity to respond to the allegations and to support his claims, but he had failed to

respond beyond a denial of the allegation, or to provide any supporting evidence to contradict the programme's expert. Ofcom was therefore satisfied that the programme's portrayal of the joist and partition work was fairly presented and based on the evidence available to the programme makers when editing the final version of the programme for broadcast. Given the opportunities provided to Mr Murray by the programme makers to correct or otherwise provide evidence to counter the allegations to be made in the programme, Ofcom was satisfied that the facts as known to them at the time were presented fairly. Ofcom therefore found no unfairness to Mr Murray in this regard.

- vi) Ofcom next considered the complaint that criticisms of the flat roof work were unfairly portrayed with regard to the finish used, and that there were exaggerations of safety with regard to the lack of balustrade, when according to contract Mr and Mrs Wozencroft were to finish this part of the work themselves.

Ofcom took note of comments made in the programme. It said Mr and Mrs Wozencroft had not been able to enjoy their balcony because *"it doesn't actually have any balustrade around it...so therefore we've got no protection for our children at the moment"*. Ms Messenger added that *"Even more terrifying is the fact that when it rains, the flat balcony roof leaks water straight onto the electrics into the cloakroom and utility room below"*. With regard to the finish on the flat roof, the programme said that the *"standard roof felt"* used was *"completely wrong...specification and installation is all wrong"*, that there were *"huge water problems"* coming into the roof, and that a roofing inspector had said the work had not been done properly. Finally the programme included a comment from Mr Murray's interview that *"it was always the intention that the roof would be looked at, at a later date when we had some reasonable weather"*.

Ofcom noted from Mr Murray's complaint that he had objected to the fact that the programme said the flat roof was not watertight as he had used the incorrect finish on it when in fact according to contract Mr Wozencroft was to finish this part of the roof himself with specialist tile work which would have made it watertight and that it was therefore not his fault as was claimed/implied. Ofcom then noted what the programme had alleged, namely that the standard roof felt used was *"completely wrong"* and that *"specification and installation was all wrong"*.

Ofcom noted the programme said that the flat roof was leaking. This was a matter of fact, irrespective of any agreement that tiles were to be fitted later. Although Mr Murray claimed, subsequent to the broadcast of the programme, that the leaks were due to lead flashing not being finished on the roof, he did not make this information available to the programme makers at the time of broadcast. Ofcom noted that the programme's expert had said that the whole specification and installation of the roof was wrong, aside from the felt finish, and that in any event the lead flashing should have been fitted at an earlier stage of the job rather than as a last addition to the work. Ofcom also noted that the contract said that the roof would be left watertight. It noted too that the programme included Mr Murray's comment from his interview with Mr Littlewood that it was his intention to look at the roof again at a later date.

In Ofcom's view, based on the evidence before the programme makers at the time the programme was broadcast, it was not unfair for the programme to

have said that the flat roof was not watertight as this was factually correct. However, we acknowledged that the programme had omitted one aspect of Mr Murray's response to this allegation, namely that he was not responsible for this because Mr Wozencroft had agreed to finish the roof himself. We recognised that issues regarding lead flashing had only been raised by Mr Murray after the programme had been broadcast and therefore could not have been included by the programme makers, although we noted, as previously detailed, that Mr Murray was given several opportunities to respond to the allegation in the programme and was made aware of these allegations in the letter dated 27 November 2008.

We considered whether the omission of Mr Murray's assertion that Mr Wozencroft would finish the roof resulted in unfairness to Mr Murray. We noted that the programme makers' expert described the initial work on the roof as sub-standard and that he considered the roof had been incorrectly installed from the beginning. We therefore concluded that viewers' impression of Mr Murray's work on the roof would not have been significantly affected by learning that there was some dispute over who was responsible for making the roof watertight in the final stages.

Taking account of all the factors as detailed above, Ofcom took the view that the broadcaster had taken reasonable steps to satisfy itself that it had portrayed the facts in a fair manner and did not omit material facts that the broadcaster had in its possession at the time of broadcast so as to cause unfairness to Mr Murray.

Ofcom then considered Mr Murray's complaint that the dangers of lack of balustrade were exaggerated in the programme because it was kept behind two lockable patio doors. Ofcom noted that the programme made clear that the lack of balustrade prevented Mr Wozencroft and his family from enjoying the balcony. Ofcom took the view that it was a reasonable comment for the programme to make given that the roof was left in an unfinished state, which was not denied by Mr Murray. Ofcom considered that it was irrelevant whether or not access to the roof was through two lockable patio doors. The relevant issue was in Ofcom's view the fact that there was a lack of balustrade which prevented Mr Wozencroft and his family from enjoying the balcony as there was no guardrail at the edge of the roof. In any event, Ofcom noted the programme makers' letter of 27 November 2008 to Mr Murray which stated that the programme would include a point about the balcony being left without a safety balustrade meaning there was no protection for the children. Mr Murray failed to address this before the programme was broadcast.

Taking account all the factors detailed above, Ofcom was satisfied that the programme's portrayal of this aspect of the building project was presented fairly and that material facts were not presented, disregarded or omitted in a way that was unfair to Mr Murray.

It has not upheld this head of complaint.

#### Mr and Mrs Arnold

- vii) Ofcom then went on to consider the complaint that Mr and Mrs Arnold's loft conversion was described as "*yet another unfinished project*" despite it being finished. Ofcom noted that the programme did not describe or refer to the

project in this way but did refer to problems with the loft conversion. These are dealt with below under heads viii) to x). As the programme did not describe the project in the terms Mr Murray alleges, it was not necessary to further consider this head of complaint and it has not been upheld.

- viii) Ofcom next considered the complaint regarding the reference to dangerous windows and the claim that because of these the project had not been signed off by the building inspector, whereas the window installation company repeatedly attempted to carry out remedial works but there were at least five failed appointments and the company could not gain access to do the work.

Ofcom first noted what was broadcast in the programme. The commentary said that: *“Building regs failed the loft extension on amongst other things, unsafe windows, and not enough head height on the stairs”*; and the programme included Mr Murray’s comment from his interview that he *“did absolutely nothing wrong”*.

Ofcom also examined the written submissions from the parties. It considered that there was no evidence offered to it to corroborate Mr Murray’s assertion that five failed appointments had occurred. Mr Murray did not provide the programme makers with the name of the window company concerned, which meant that they were unable to contact the company to verify whether or not the appointments had been missed. In any event, Ofcom took the view that the programme made clear that unsafe windows were just one of the reasons that Building Regulations failed the loft extension.

Taking into account the factors detailed above, in respect of this head of complaint, Ofcom was satisfied that the broadcaster had taken reasonable steps to satisfy itself that material facts were not omitted or misrepresented in a way that was unfair to Mr Murray.

- ix) Ofcom next considered the complaint that the roof work was completed in seven weeks not four months as reported in the programme and that proof was at the local Building Control office.

Ofcom took note of what was included in the programme. Mr Littlewood said that it was normal during a loft conversion for the roof to be exposed for four or five weeks but that Mr and Mrs Arnold said their roof was off for four months during the worst storms of the winter of 2005. This resulted in father and son climbing on the roof to tie up the tarpaulin that was in place in the worst of weathers. The programme also included Mr Murray’s comment from his interview that *“the roof was only off for five weeks not the four months the Arnolds say”*.

In this regard, there appeared again to be a conflict in the accounts of those concerned as to how long the roof was off. Ofcom considered the evidence on which the broadcaster was relying to support the claims made in the programme before its broadcast. It had relied on the testimony of Mr and Mrs Arnold. Mr Murray had provided some evidence after transmission that he believed proved the roof was off for a shorter period of time than the four months stated in the programme; this evidence appeared open to interpretation. In any event, Ofcom considered that Mr Murray had the opportunity to provide this evidence to the programme makers prior to broadcast of the programme but failed to do so. Ofcom also noted that the broadcaster had in fact included his interview comments in the programme.

Taking into account the factors detailed above, Ofcom was satisfied that the broadcaster had taken sufficient steps to satisfy itself that material facts had not been presented in a way that was unfair to Mr Murray. The programme fairly reflected the interview response they had from Mr Murray at the time of broadcast. Ofcom has therefore not upheld this head of complaint.

- x) Ofcom next considered the complaint that the programme did not mention that Mr and Mrs Arnold's ability to pay Mr Murray was under question and that facts about their finances were omitted.

Ofcom took note of what was included in the programme. It said that about £23,500 had been paid by Mr and Mrs Arnold to Mr Murray and that Mr Arnold had re-mortgaged to pay for the work and a bank statement was shown as evidence that he had enough money up front. The programme also included Mr Murray's comments from his interview that *"delays were caused by them not having enough money to pay for the job in the first place"*.

Ofcom noted the impression in the programme that availability of funds was a point of contention and that the programme makers used the bank statement to "prove" that Mr Arnold had the money up front to pay for the works. From the evidence before Ofcom the use of this statement in the programme had the potential to mislead viewers, because in reality not all of these funds were used to pay for the extension and the bank statement did not cover the period when the building work was taking place. From the material available to Ofcom it was clear that some of the cost was met by the value of a motor home offered in payment to Mr Murray which was agreed to in the original building quote.

Nevertheless, Ofcom observed from the material before it that Mr Murray had been paid a substantial sum by Mr and Mrs Arnold for the job, albeit according to him a slightly lower sum than expected (due to the motor home being sold at a reduced rate which in any event was out of the hands of Mr and Mrs Arnold). We considered that any discrepancy in the precise sums would not have materially affected viewers' likely opinion of the situation, namely that Mr and Mrs Arnold were unhappy with the build and with Mr Murray himself. In Ofcom's view, the fact that the bill was not entirely met by funds from the bank loan had been omitted from the programme, but although the programme did not reflect the reality of the situation exactly, Mr Murray had nevertheless been paid, and this was accurately reflected in the programme. Also included in the programme was his own view of the situation given in his interview (that the delays in the build had been caused by the couple's inability to pay).

Taking into account all the factors detailed above, Ofcom was satisfied that the broadcaster had taken sufficient steps to satisfy itself that material facts had not been presented or omitted in a way that was unfair to Mr Murray. It has not upheld this head of complaint.

#### Mr and Mrs Manley

- xi) Ofcom next considered the complaint that a reference by Mr Manley to Mr Murray's aggression and bad language was taken out of context and that Mr Murray regretted comments he made but they were spoken after Mr Manley had been very aggressive with his family.

Ofcom noted what was included in the programme. Mr Manley said that Mr Murray needed to “*sort out*” the work on his pathway and said that he was “*like a cowboy*”. Mr Manley said that in reply, Mr Murray had said “*you’ve lost your legs but you don’t have to lose your manners*” to which Mr Manley replied “*is this how you treat your customers?*” and that “*the phone line went dead and that’s the last I have heard of him*”. From this comment, Ofcom took the view that viewers would have understood that this conversation had taken place over the telephone.

Ofcom noted from unedited material that Mr Murray had been questioned about the anti-slip pathway by Mr Littlewood, and that he did not deny making the personal comment about Mr Manley. Mr Murray defended himself in the interview by saying this was a result of Mr Manley’s aggression but he provided no further detail or context to the remark being made. Ofcom then noted that Mr Murray was again given an opportunity to respond to the programme makers’ letter of 27 November 2008 which outlined exactly what was to be included in the programme. The letter said that the programme would say, “*When Mr Manley complained to you, your response to him was “you may have lost your legs but you don’t have to lose your manners” and then hung up the telephone*”. We noted that Mr Murray had failed to respond to this letter, despite being given an opportunity to do so.

Therefore, in Ofcom’s view, it was not unfair for the programme makers to have included the information it had to hand when broadcasting the programme, namely that Mr Murray had made a rude comment to Mr Manley, which Mr Murray did not deny. The broadcaster could be satisfied that reasonable steps had been taken to ensure that material facts had not been presented inaccurately so as to cause unfairness to Mr Murray in the programme as broadcast. Furthermore, Ofcom considers that it would not have materially affected viewer’s opinion of Mr Murray to have known that the words were spoken face to face rather than by way of telephone call. Ofcom has therefore not upheld this head of complaint.

- xii) Ofcom then considered the complaint that the pathway that was criticised in the programme was just a small part of a much larger job for Mr and Mrs Manley which they were entirely satisfied with, but that this was not mentioned in the programme; furthermore that the insurance company that paid for the pathway works had never taken action against Mr Murray for any “*faulty*” work he carried out.

Ofcom firstly considered what had been included in the programme as broadcast. It said that an anti-slip pathway needed to be built outside Mr Manley’s house as he had lost both legs while on duty in Iraq and was using prosthetic legs to walk, and that this was a specialist job and needed to be done correctly. The programme also alleged that the pathway that Mr Murray laid was condemned by independent experts as the concrete wasn’t strong enough and the top was incorrectly applied “*rendering the crucial anti-slip surface ineffective*”, and that it had cost Mr and Mrs Manley’s insurance company over seven thousand pounds to make the pathway safe. The programme also included Mr Murray’s comments from his interview:

*“Murray has since said that he had to lay the path in bad weather even though he advised against it. He has apologized for the work and said that*

*he offered to pay for a specialist company to fix it but the Manleys say they knew nothing about this offer."*

Ofcom noted from the evidence before it that the pathway did in fact need to be re-built and acknowledged that in the circumstances of this case it was important for the work to be done correctly. It also noted that there was a difference between Mr Manley's account of matters and Mr Murray's. As previously stated, it is not Ofcom's duty to decide in matters of differing accounts as to who is right or wrong. Nor is it the role of Ofcom to speculate about the reasons why the insurance company may have decided not to pursue matters with Mr Murray over the reconstruction of the pathway. However, in our view the programme made clear the material facts of this case, that is: that the pathway had to be re-built; and that it cost more than the original price because the insurance company had to employ a specialist to re-do the work that Mr Murray had carried out. The fact that it was part of a much bigger job, satisfactory or otherwise, was, in Ofcom's view, irrelevant as this information was unlikely to have materially affected viewers' opinion of Mr Murray's work on the pathway.

Ofcom considered that the broadcaster had taken sufficient measures (including giving a summary of Mr Murray's response to the allegations) to ensure that material facts had not been presented or omitted in a way that was unfair to Mr Murray.

Ofcom has not upheld this head of complaint.

### The Building Suppliers

xiii) Ofcom then went on to consider the complaint that the building suppliers' claim in their interview that they refused to deal with Mr Murray because of his poor business record was incorrect because Mr Murray had invoices dating from 2005 to 2008 which proved he was not cut off from trading with them. In considering this head of complaint Ofcom first considered what had been included in the programme as broadcast. The programme included the building suppliers' comments that Mr Murray was very good at convincing them to give him credit, making promises of payment but never paying and eventually liquidating his business to avoid payment. It also included personal remarks about Mr Murray: that he was a "*plausible character*" and people got "*sucked in*", but that he "*was rude and intimidating*". They stated that "*he certainly won't be getting materials from us and that's final, that's the end of it...we will never see a penny of our money*".

Ofcom noted from the submissions before it that subsequent to the broadcast of the programme Mr Murray had provided copies of invoices that he believed proved the suppliers had continued to trade with him. However, it appeared that there was some dispute that these were in fact proof of his trading, and some may have been receipts for cash sales rather than evidence of materials supplied on account. This did not provide any evidence that the inclusion of comments in the programme by the building suppliers that they would not deal with Mr Murray again were inaccurate. In any event, Ofcom noted that Mr Murray had not supplied any of this proof, genuine or otherwise, when offered an opportunity to do so by the programme makers before the programme was broadcast, in particular in the programme makers' letter of 27 November 2008. In these circumstances, Ofcom was satisfied that the broadcaster had taken reasonable steps to satisfy itself that facts as

broadcast in the programme were not presented inaccurately that were materially misleading so as to be unfair to Mr Murray.

Ofcom has accordingly not upheld this complaint.

- b) Ofcom then went on to consider the complaint that Mr Murray was not offered an opportunity to respond; that, despite agreeing to a controlled interview with his solicitor, he was doorstepped for an interview, where the presence of a security guard implied that he was a violent and dangerous man; and that in tricking him the suggestion was that he was hard to get hold of and uncooperative.

In considering this head of complaint, Ofcom had regard to Practice 7.11 of the Code which states that “if a programme alleges wrongdoing or incompetence or makes other serious allegations, those concerned should normally be given an appropriate and timely opportunity to respond”. The guidance that accompanies Practice 7.11 of the Code, also states that “an individual needs to be given sufficient information concerning the arguments and evidence included in the programme to enable them to respond properly”. It goes on to explain that “the programme should fairly represent the substance of any response but it is not normally necessary, in the interests of fairness, to reproduce it in its entirety”. Ofcom also had regard to Practice 8.11 of the Code which states that “doorstepping for factual programmes should not take place unless a request for an interview has been refused or it has not been possible to request an interview, or there is good reason to believe that an investigation will be frustrated if the subject is approached openly, and it is warranted to doorstep”.

Ofcom considered that serious allegations were going to be made in the planned programme and therefore an “appropriate and timely” opportunity to respond to the allegations should normally be given by the broadcaster. Ofcom first considered the steps the broadcaster took to help to ensure that Mr Murray had been offered this opportunity.

On the evidence before Ofcom, this took the form of a series of exchanges of correspondence leading up to Mr Murray’s doorstepped interview.

On 3 September 2008 the programme makers wrote to Mr Murray explaining they were making a new television series with the working title of *Cowboy Builders*, of which one episode centred on allegations about him and that they wished to offer him an interview on camera to give him “*an opportunity to respond to these allegations in the interests of accuracy and in order that the programme fairly reflect(ed) your position*”. It outlined the criticisms they planned to include, in particular those of Mr and Mrs Wozencroft, Mr and Mrs Arnold, former employees and suppliers. The letter also mentioned the programme makers’ investigation of Mr Murray’s liquidation of various companies and gave Mr Murray seven days to respond, that is, by 10 September 2008.

A series of further exchanges took place including a letter dated 15 September 2008 from Mr Murray’s solicitors that said it was Mr Murray’s “*intention to respond substantively to the defamatory allegations set out in the letter of 3 September 2008 (...) in due course*”.

On 24 September 2008 a further letter was sent by the programme makers to Mr Murray outlining further issues regarding damp proof and structural problems at Mr and Mrs Wozencroft’s house that had arisen since its initial letter of 3 September 2008, made apparent after examination by their damp proof and

structural engineer experts. Again it asked for Mr Murray's response and offered a period of seven days to respond. It concluded that if a response was not received by 2 October 2008 it would "*reluctantly be forced to conclude that your client does not wish to provide a response*". In these circumstances and in the absence of any response, a doorstepped interview took place with Mr Murray on 4 October 2008. Mr Murray then provided a written response dated 10 October 2008.

Ofcom then noted a final letter from the programme makers dated 27 November 2008 outlining exactly what allegations were to be made in the programme and how they intended to reflect Mr Murray's responses. The letter offered him an opportunity to make any further comments with a final deadline of 5 December 2008.

As detailed above, it is clear that the programme makers provided several opportunities to Mr Murray to give his response either by way of letter or filmed interview. Ofcom noted that Mr Murray wrote of his intention to respond "*in due course*" in a letter dated 15 September 2008, but that there did not appear to be any evidence that a date for a formal interview was suggested or set. As the programme makers' attempts to obtain a response to allegations in connection with their investigations appear to have been frustrated by Mr Murray's lack of action, Ofcom considered that it was reasonable for the programme makers to have concluded that a doorstepped interview was an appropriate step for them to have taken to ensure he had been given an opportunity to put his views across. Ofcom noted that the interview was extensive and covered a wide range of subjects, only some of which were relevant to the allegations that were eventually included in the broadcast programme. In any event, the programme makers had advised Mr Murray on two previous occasions the basis of the intended allegations to be made in the programme, so that the substance of the questioning in his interview would not have been completely unexpected.

In terms of the implication that Mr Murray was a violent and dangerous man, Ofcom considered the presence of the security guard at the doorstepped interview, and the relevant reference by Mr Littlewood when the guard was shown on screen:

*"I don't think Murray will be aggressive on camera, but my team aren't taking any chances."*

In Ofcom's view, this reference could have implied uncertainty about Mr Murray's disposition. However, given that the decision to have a security guard present at the interview was based on the comments that participants in the programme had made up to that point, and the difficulty that the programme makers had experienced in contacting Mr Murray, Ofcom considered that the reference was more likely to be understood as an explanation of why the security guard was present. In the event, Mr Murray was interviewed in a calm and reasoned manner and the security guard was redundant, all of which was clearly reflected in the broadcast programme. Revealing the presence of the security guard in the programme as broadcast was therefore unlikely, in our view, to have unfairly created the impression that Mr Murray was a violent and dangerous man.

Ofcom concluded, therefore, that the programme makers had taken extensive steps to ensure that Mr Murray was given an opportunity to respond to the programme's allegations. We did not consider that giving Mr Murray a further opportunity to respond in the form of a doorstepped interview, or revealing the

presence of a security guard at that interview in the programme as broadcast, resulted in unfairness to him. Ofcom has not upheld this head of complaint.

c) Ofcom next considered the complaint that the programme was unfairly edited in that:

i) Mr Murray's interview to camera was unfairly edited. Despite answering all of the questions asked of him in a 50 minute interview it was reduced to three minutes in the programme as broadcast. This resulted in his responses to the accusations and inaccuracies not being fully explained.

Ofcom took into account Rule 7.1 of the Code and Practice 7.6 which states that when a programme is edited, contributions should be represented fairly.

Ofcom firstly considered the responses Mr Murray had given that were included in the programme. At three points in the programme, a summary of his comments was provided by Mr Littlewood. These were in respect of: Mr Manley's anti-slip pathway; the time the roof was off at Mr and Mrs Arnold's house and their alleged dispute with monies; and Mr Murray's opinion on the situation at Mr and Mrs Wozencroft's build (as detailed in heads i, v, ix, x and xii). It also noted that footage from his filmed interview was included towards the end of the programme and this amounted to around three minutes.

Ofcom notes that deciding what to include or exclude from a programme is a matter of editorial discretion, provided the broadcaster complies with its obligation to ensure that the programme as broadcast does not result in unfairness. In this particular case, as outlined earlier, Mr Murray's responses were fairly included in the programme as broadcast, as appropriate to the subject matter in the broadcast programme. The broadcaster was entitled to edit the responses it had in its possession provided that this did not result in unfairness. As outlined in head a) above, Ofcom found that the broadcaster had acted reasonably in this regard. Taking into account these factors Ofcom found that Mr Murray's opportunity to respond to the programme's allegations was fairly summarised in the programme as broadcast and it has not upheld this head of complaint.

ii) Finally Ofcom considered the complaint that the interview with the timber suppliers was unfairly edited in that positive points made were omitted from the programme. The claim that he still owed them over £16,000 was inaccurate as this was brought about by their supply of sub-standard timber, resulting in cost to Mr Murray to remedy the job.

Ofcom firstly considered what had been reflected in the programme. The Timber Suppliers said that he was very good at "*spinning out*" promises of payment, but that payment was never made and then Mr Murray would wind his business up still owing the money. Mr Murray owed them over £16,000. They also said he was a very plausible character and people got "*sucked in*" but that he could really shout, was rude and intimidating and quite scary. They also said they did not want to supply materials to him as they "*would never see a penny of our money*".

Ofcom then viewed the unedited material to assess whether the programme fairly reflected the substance of the interview. It noted one of the timber yard owners said that "*he's never, ever shouted or been rude to me*", and that this statement had not been included in the programme. Ofcom also noted that

the same person had then said that that she'd "*seen the bad side of him*" and that she'd "*never heard a man shout like he could shout*".

Ofcom considered that the overall substance of the unedited interview was that the timber yard owners had been caught out financially many times by Mr Murray, and that he was rude, intimidating and scary. Only one comment, as detailed above, suggested that Mr Murray could be pleasant.

Ofcom considered whether the failure to include an isolated, positive comment would have the potential to mislead viewers and lead to unfairness to Mr Murray. Ofcom took into account that the same person also said Mr Murray was intimidating and she had heard him shout and that the positive comment was only a small part of an extended interview which focused in the main on Mr Murray's poor credit record and his persuasive and sometimes forceful ways of working.

Finally, Ofcom noted that, in the programme makers' letter of 27 November 2008, it was outlined to Mr Murray that he would be described as "scary, rude and intimidating" by the building suppliers and Mr Murray failed to respond to that letter.

Taking into account all the factors as detailed above, in the circumstances Ofcom considered it was not unfair not to include this one point given the general message of the interview as a whole.

With regard to any inaccuracy in respect of the outstanding £16,000, Ofcom considered what had been broadcast in that regard. The programme said that Mr Murray had "*took us for £16,079.50*". Ofcom then looked at the evidence before it. It noted Mr Murray had not provided any material to prove that the timber suppliers had agreed to write off the debt because it was for substandard timber. It also noted that in submissions provided after the programme was broadcast, that dates on the letters did not appear to tally. The timber suppliers had said that only a small proportion of this unpaid amount was in respect of substandard timber.

As before, Ofcom noted there was a difference in the accounts of Mr Murray and the timber suppliers as to what the £16,000 bill was for. It is not for Ofcom to decide in matters of conflicts of evidence but only to decide whether any unfairness has been caused as a result of broadcast programmes. In this case, the programme makers' letter of 27 November 2008 clearly outlined that the programme would say that Mr Murray owed the timber suppliers over £16,000 and this was not disputed prior to the programme's broadcast despite the opportunity afforded to Mr Murray to do so. Taking into account these circumstances, it is Ofcom's view that it was not unfair for the programme makers to include this allegation in the edited interview with the timber yard owners that appeared in the programme as broadcast. Ofcom concluded that the interview had not been edited in such a way as to cause unfairness to Mr Murray and we have not upheld this head of complaint.

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

## Not Upheld

### Complaint by Paris Smith Solicitors on behalf of Mr Massoud Yeganegy and Roxan Construction Limited

*Inside Out, BBC1 South, 21 January 2009*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment made by Paris Smith Solicitors on behalf of Mr Massoud Yeganegy and Roxan Construction Limited.

BBC1 South broadcast an edition of its regional current affairs programme, *Inside Out*, which included a report about a struggling local Cuban-themed bar, Havana. The report looked specifically at the publicans who ran the bar, and the problems they were having with their new landlords, Mr Yeganegy's company Roxan Construction Limited.

In summary, Ofcom found the following:

- The report did not unfairly present Mr Yeganegy as an unscrupulous property owner using underhand tactics, as these were clearly presented as the views of the publicans.
- The report did not "personalise" the issues unfairly by referring to the landlord and tenants – both limited companies – by their individual names throughout.
- The report presented specific facts about the dispute accurately and fairly, and the broadcaster took reasonable steps to satisfy itself of the accuracy of factual allegations.
- The complainants were given an opportunity to respond. Their response was then presented fairly throughout the report.
- The report fairly presented both sides of a dispute over negotiations to sell the bar's tenancy to Roxan Construction Limited.

#### Introduction

On 21 January 2009, BBC1 South broadcast an edition of *Inside Out*, a regional current affairs and investigative programme. The programme included a report about a Cuban salsa bar named "Havana" in Southsea, Portsmouth. The reporter said that the bar had been "*losing all its trade to the city centre*" and that "*To make matters worse, the publicans are now in a bitter dispute with their landlord*".

The report set out some of the problems that were causing the business, run by publicans, Mr Ali Nazaripour and Mr Kamal Behdoost ("the tenants"), to struggle.

The reporter explained that:

*"Salsa night aside, the pub is often very quiet. So, 20 months ago, the brewery decided to sell the building to a high-profile property developer: Massoud Yeganegy."*

Mr Yeganegy is the Managing Director of Roxan Construction Limited ("Roxan"), the company which bought the bar. The programme included footage showing the

reporter using a laptop computer to view the Roxan website, and focusing on the company logo and a number of website images of Mr Yeganegy.

The report outlined a number of disputes between the tenant and landlord, including aborted negotiations to buy out the tenancy leasehold; a rent increase; the price of the insurance premium and an interim schedule of dilapidations.

The report ended with Mr Behdoost saying that the stress of running the business, these experiences and their toll on his private life could force him to quit.

Paris Smith Solicitors ("Paris Smith") complained to Ofcom on behalf of Mr Yeganegy and Roxan that they were treated unfairly in the programme.

## **The Complaint**

### **Mr Yeganegy and Roxan's case**

In summary, Paris Smith complained on behalf of Mr Yeganegy and Roxan that they were treated unfairly in the programme as broadcast in that:

a) Mr Yeganegy and Roxan were portrayed as unscrupulous property owners as a result of the inclusion of a number of untrue, unfair claims about them. In particular:

i) The report portrayed the Mr Yeganegy as an unscrupulous property owner attempting to force tenants in a public house out of those premises "*by underhand tactics and legal threats*" so that "*he does not have to buy them out*".

By way of background, Paris Smith said that the tenants, Mr Behdoost and Mr Nazari-pour, were still in possession of the property and trading and there were no court proceedings against them seeking possession.

ii) No mention was made at any time during the report that the landlord and tenant of the property were both limited companies. The report sought to personalise the issues as between the personalities involved.

iii) Irrelevant footage from a previous television programme was used to support the view that Mr Yeganegy is a "*high profile property developer*" who was not prepared to take part in the report.

iv) The programme makers unfairly portrayed the negotiations by presenting the tenants' point of view, irrespective of the material provided to them on Roxan's behalf by Paris Smith.

The report suggested that the tenants believed Mr Yeganegy had offered them £200,000 to buy out their lease following his purchase of the freehold. The tenants believed this offer was subsequently withdrawn. Paris Smith disputed this account, saying that the only negotiations to acquire the leasehold resulted in offers which were rejected by the tenants.

By way of background, Paris Smith said the programme makers were made aware of the sequence of events in its letter to them dated 5 December 2008, sent before the programme was broadcast.

- v) The report unfairly gave the impression that the landlord was planning to redevelop the building by including the tenants' view that this was the reason for the landlord's behaviour. Roxan has no current intention to redevelop the public house site and the programme makers were made well aware of this from Paris Smith's letter to them dated 5 December 2008.
- vi) The report included the false allegation that "*the first thing Mr Yeganegy did was to demand an increase in rent from £35,000 to £65,000 to bring us to our knees and to ruin the business*". This allegation was included despite the alternative explanation provided by Paris Smith in its letter to the programme makers dated 5 December 2008. The programme makers made no reference to these facts. Additionally, the rent was subject to an independent rent review and the allegation that it was an underhand tactic was wrong.
- vii) The report unfairly implied that the landlord asked the tenants for "*double the amount of insurance*" as another "*underhand [tactic] or legal threat*" to seek to obtain possession of the premises from the tenants without paying them.

By way of background, Paris Smith said that it had informed the programme makers that the tenant was mistakenly invoiced for an incorrect amount and was now actually charging a substantially reduced insurance premium. This fact was made very clear to the programme makers prior to the broadcast but was not mentioned at any time during the report.

- viii) The report unfairly implied that when Mr Yeganegy served a schedule of dilapidations containing an expensive list of minor faults, he did so to put pressure on the tenants.

By way of background, Paris Smith said the programme makers omitted to make clear that the schedule was drawn up by a firm of independent chartered surveyors and it included only items of repair which could be legitimately included in a schedule served part way through the lease. It also omitted to say that Portsmouth City Council had already made complaints about the state of the building and parts of it being used for unauthorised purposes. These facts were presented to the programme makers in the letter dated 5 December 2008 but were ignored.

### **The BBC's case**

In summary, the BBC responded to the complaint of unfair treatment made on Mr Yeganegy's and Roxan's behalf by Paris Smith as follows:

- i) The BBC addressed the complaint that the report portrayed the Mr Yeganegy as an unscrupulous property owner attempting to force tenants in a public house out of those premises "*by underhand tactics and legal threats*" so that "*he does not have to buy them out*".

The BBC said that the programme did not state that Mr Yeganegy was trying to force out the tenants. Rather it reported that this was the view of the tenants:

*"They believe he's trying to force them out...using underhand tactics and legal threats so he doesn't have to buy them out of their tenancy."*

The BBC said that it was important to note, in this respect, that this report was about a dispute between tenants and landlord which threatened to lead to the

closure of a highly individual and unusual entertainment pub in Portsmouth. It was this that gave the story strong local interest. The BBC said that in reporting a dispute, the rival claims of those involved have necessarily to be ventilated and in this case both sides of this particular claim were: the tenants' claim that Mr Yeganegy was using underhand tactics and Mr Yeganegy's claim that this was not so. What support there was for the rival claims was also incorporated: on the tenants' side an idea of some of the changes brought in after Mr Yeganegy bought the freehold of the property (for instance the rent increase from £35,000 to £65,000 per annum) and the legal communications from Paris Smith which gave rise to their belief that they were being pressurised, and on Mr Yeganegy's side the not unconvincing argument that:

*"It's in (Roxan Construction's) interest to receive a rental income. Market conditions and the fact that the building is listed mean that it is not presently economic to develop."*

Overall, therefore, the BBC said that it did not agree that the programme adopted the view expressed by the publicans and was thus unfair to the complainants. The BBC said that the programme merely set out the two sides of a dispute the unfolding of which was of considerable local interest.

- ii) The BBC responded to the complaint that no mention was made at any time during the report that the landlord and tenant of the property were both limited companies and that it sought to personalise the issues as between the personalities involved.

It said that it did not understand how the portrayal of this dispute in terms of the individuals involved may have resulted in unfairness to Mr Yeganegy unless he was arguing that it was unfair to associate him with the actions of the company that he controlled. The BBC noted that he did not argue this and added that correspondence to the tenants from Roxan was personally signed by Mr Yeganegy.

- iii) In response to the complaint that irrelevant footage from a previous television programme was used to support the view that Mr Yeganegy was a "high profile property developer" who was not prepared to take part in the report, the BBC replied as follows:

The BBC said that it did not accept that use of this footage, from *Homes Under The Hammer*, resulted in any unfairness to Mr Yeganegy. In the clip used Mr Yeganegy was asked "You're a bit of a property developer, aren't you?" He replied "Yes, that's right".

Whatever the impression given by this, the BBC said that it saw no unfairness in presenting a description of Mr Yeganegy to which he himself had assented.

The BBC said that it did not accept that the content of the footage portrayed Mr Yeganegy unfairly. It said that it was a fact that Mr Yeganegy was not prepared to be interviewed for *Inside Out*, and unfairness could hardly result from conveying or reinforcing a truth.

- iv) In response to the complaint that the programme makers unfairly portrayed the negotiations by presenting the tenants' point of view, irrespective of the material provided to them on Roxan's behalf by Paris Smith, the BBC replied as follows:

The BBC said that, as it had pointed out in its letter of 15 December 2008 to Paris Smith in response to their letter of 5 December 2008, options for the purchase of the tenancy were set out in a letter from Roxan to the tenants on 15 March 2007. The second option suggested by Roxan was purchase of the tenancy for £200,000 without conditions. The tenants believed that agreement was reached on this option at a subsequent meeting and that it was sealed with a handshake.

The BBC said that the fact that agreement was reached was supported by a letter from Paris Smith, on behalf of Mr Yeganegy, to the tenants on 28 March 2007 and before the verbal agreement was reached, which said:

“If we do not hear from you by Monday 16 April 2007 we may assume that you are not interested in our offer and we would withdraw our offer to purchase the freehold.”

The BBC said that as Roxan did go ahead with the purchase of the freehold, it was reasonable to take this as supportive of the tenants' claim that agreement had been reached.

The BBC said that the tenants had said that subsequently, however, in a telephone conversation, Mr Yeganegy attempted to modify the terms of the agreement to make the purchase of the tenancy subject to planning permission being obtained to develop the property. This had formed option A in a letter of 15 March 2007, though with a higher price, £300,000 attached, to reflect the added value of the tenancy. The BBC said that the tenants felt that Mr Yeganegy was now trying to obtain the enhanced tenancy for the lower price. His insistence on this new condition represented, effectively, a withdrawal of the original agreed price. The BBC said that the claim in the programme, therefore that the offer of £200,000 for the tenancy was withdrawn was accurate and fair.

- v) The BBC then turned to the complaint that the report unfairly gave the impression that the landlord was planning to redevelop the building by including the tenants' view that this was the reason for the landlord's behaviour.

The BBC said that the complainants had provided no basis for the claim that it reflected unfairly upon Mr Yeganegy to suggest that he intended to redevelop the pub once he had obtained vacant possession. In any case, it was clear from the letter of 15 March 2007 to the tenants, signed by Mr Yeganegy, that this was precisely what was intended at the time that he was proceeding to purchase the freehold to the property. The letter, explaining the terms of option A to resolve the purchase of the tenancy, said:

“We pay you £300,000 to surrender the lease, with £150,000 of this to be released to you as soon as we complete the purchase and you hand over to us all accommodation above the pub to enable us to apply for Planning Permission for residential apartments...

...if it is apparent after the duration of the 6 month period, that there is no market for the letting of the pub and basement, we would not pay the remaining £150,000 and we would convert the pub and basement into flats.”

The BBC said that it was clear from this that Mr Yeganegy's intention was that the property above the pub would be developed as soon as he obtained possession and that the pub itself would be subsequently developed if he failed to let it out within six months. It may well have been that, at the date of the complaint, Roxan

had “no current intention to develop the public house site...”, but this was certainly not the case at the time in question. In the circumstances the BBC did not believe that any unfairness could attach to the impression that the landlord was planning to redevelop the building.

- vi) The BBC then responded to the complaint that the report included the false allegation that *“the first thing Mr Yeganegy did was to demand an increase in rent from £35,000 to £65,000 to bring us to our knees and to ruin the business”* despite the alternative explanation provided by Paris Smith in its letter to the programme makers dated 5 December 2008. The programme makers made no reference to these facts. Additionally, the rent was subject to an independent rent review and the allegation that it was an underhand tactic was wrong.

The BBC said that the explanation provided by the complainants for the proposed increase in rent was that the rent which had been charged by the brewery who previously owned the pub was discounted because of the tied nature of the pub tenancy. With that tie to the brewery now broken, the complainants said, the tenants were free to negotiate improved terms with other suppliers and presumably had done so. In the circumstances, the complainants argued, Mr Yeganegy was free to seek a higher rent and would be doing so through an independent arbitrator.

The BBC again pointed out that this report concerned a dispute between two parties where it was necessary to put both sides of the dispute. The claim that the increased rent demand was an attempt to bring the business to its knees was put by one of the protagonists and was not endorsed by the programme. It was immediately followed by the following commentary about Mr Yeganegy:

*“He says that he’s entitled to increase the rent because the pub is now a free house and under the rent review process a fair rent will be set by an independent arbitrator.*

*He also denies trying to force the publicans out of their pub. In a statement his solicitor said:*

*‘Our client has no wish to develop the property at the present time and indeed it’s in its interest to continue to receive a rental income. Market conditions and the fact that the building is listed mean that it is not presently economic to develop.’”*

The BBC said that it believed that this fairly represented the position expressed by Paris Smith in their letter of 5 December 2008 in the context of setting out both sides of the dispute. The BBC did not believe that this reflected unfairly upon Mr Yeganegy.

- vii) The BBC then responded to the complaint that the report unfairly implied that the landlord asked the tenants for *“double the amount of insurance”* as another *“underhand tactic or legal threat”* to seek to obtain possession of the premises from the tenants without paying them.

The BBC said that it was not the case that the point made by Paris Smith in its letter of 5 December 2008 was not reflected in the programme. The claim about the insurance premium increase was made by Mr Behdoost and was plainly his perception of the situation. He said:

*“He also asked for double the amount of insurance that he’d paid for the building. So he paid £2,300 and he demanded £5,200 for the insurance of the building.”*

The BBC said that these comments were supported by correspondence between the tenants and Mr Yeganegy’s solicitors, Paris Smith. On the 6th September 2007, Paris Smith wrote demanding payment of an insurance invoice of £5271.84 which had been issued on 7 August 2007. They wrote:

*“We are instructed that our client requires immediate payment of this invoice in default of which we have instructions to commence winding up proceedings against your client.”*

The BBC said that Mr Behdoost and Mr Nazaripour had previously been paying their insurance in monthly instalments and they said that the demand for an immediate payment of more than £5,000 caused them considerable distress. Several months later, they discovered that Mr Yeganegy had actually paid £2,355 for the insurance. The invoice for Mr Yeganegy’s insurance was dated 6 August 2007 which was the day before he invoiced the tenants for more than double that amount.

The BBC said that Mr Behdoost’s comments were followed immediately by commentary saying:

*“Mr Yeganegy says the insurance is an accounting error which has been corrected.”*

The BBC reiterated its belief that presenting, in a neutral fashion, the views of the two sides in the dispute reflected unfairly upon Mr Yeganegy.

- viii) The BBC then turned to the complaint that the report unfairly implied that when Mr Yeganegy served a schedule of dilapidations containing an expensive list of minor faults, he did so to put pressure on the tenants.

The BBC said that the programme makers had taken advice on this matter from an expert in property litigation at a major law firm, who said that interim (that is, during the lifetime of a lease) dilapidation orders were only supposed to be used for serious repairs that needed to be fixed urgently, rather than cosmetic repairs. He also said that such orders were, on occasion, misused by landlords who wanted to put pressure on their tenants. The BBC said that this view was confirmed by another expert from a major property consultancy, who told the programme makers that interim orders were intended for emergency repairs that had to be fixed immediately to prevent long term damage to the building - a leaking roof, for instance, which could affect the value of the property. The second expert said that minor internal or cosmetic repairs should not be included.

The BBC said that Mr Yeganegy’s interim dilapidation order identified 115 separate repairs, most of which were minor or cosmetic. In the circumstances, and considered alongside the pattern of behaviour exhibited by Mr Yeganegy and Roxan, the BBC did not believe that it was unfair to record the tenants’ view that the dilapidation order was served in the form that it was in order to put pressure on the tenants.

## Mr Yeganegy and Roxan's response

In summary, Paris Smith commented on behalf of Mr Yeganegy and Roxan in response to heads a)iv) and a)viii) of the BBC's statement, as follows:

- iv) Paris Smith first turned to the BBC's statement in response to the complaint that the programme makers unfairly portrayed the negotiations by presenting the tenants' point of view, irrespective of the material provided to them on Roxan's behalf by Paris Smith.

Paris Smith said that any offers which Roxan made for the leasehold were subject to contract and in any event were not withdrawn by them but were actually refused by the tenants who asked for a higher price. In support of their negotiating position the tenants produced an unsigned contract for an alleged alternative purchaser for a higher price drawn by solicitors who actually denied knowledge of that other transaction. Paris Smith said that the BBC was well aware of this, and referred to its letter of the 16 December 2008.

- viii) Paris Smith then turned to the BBC's statement in response to the complaint that the report unfairly implied that when Mr Yeganegy served a schedule of dilapidations containing an expensive list of minor faults, he did so to put pressure on the tenants.

Paris Smith said that the programme failed to state (as clearly indicated in correspondence received by the programme makers before the broadcast) that any schedule of dilapidations was presented against the background that Portsmouth City Council were complaining of the building as a listed building falling into disrepair and that part of it had been subject to unauthorised use as a car wash. Paris Smith said that the BBC said in its first statement that it had taken advice from solicitors, but it did not say when such advice was given or whether it was taken before the programme nor did it provide a copy of it. Paris Smith said that Mr Yeganegy's and Roxan's position was then, and had always been, on advice which the company received from its surveyors that an interim schedule of dilapidations was perfectly acceptable to ensure that basic maintenance to the listed building (which was suffering particularly from external disrepair and redecoration) should be resolved. Paris Smith said that it was a matter of record now that the tenants never responded to the schedule and that no repairs have been undertaken.

## The BBC's final statement

In summary and in response to the Paris Smith's second set of comments made on behalf of Mr Yeganegy and Roxan, the BBC said the following:

- iv) The BBC said that it did not accept that the offer of £200,000 for unconditional sale of the lease was rejected by the tenants; it believed that it was entirely fair to say, as the programme did, that the offer was effectively withdrawn by Mr Yeganegy. The BBC said that the following chronology confirmed this view:
- 15 March 2007 In a letter, Mr Yeganegy offered two options: £300,000 for the freehold (sic) subject to conditions or £200,000 for an unconditional sale.
  - 16 March 2007 Mr Kamal Behdoost wrote to Mr Yeganegy saying, "As you were well aware since negotiations began, we require the sum of £350,000 for the unconditional surrender of the lease".

- 28 March 2007 Mr Yeganegy replied stating that as the tenants had, in effect, rejected option A the only option still under discussion was his offer of £200,000 for an unconditional sale. He set a deadline of 16 April 2007 saying that: "If we do not hear from you we may assume you are not interested in our offer and we would withdraw our offer to purchase the freehold."
- 13 April 2007 Mr Behdoost and Mr Nazaripour met Mr Yeganegy at his office and agreed a price of £200,000 for an unconditional sale. The deal was settled with a handshake. Nothing, however, was put in writing.
- 3 May 2007 The tenants were told that contracts had been exchanged. This supported the tenants' claim that agreement had been reached: the letter of 28 March 2007 said that the purchase would not proceed unless there was agreement.
- 9 May 2007 Mr Yeganegy called Mr Behdoost by telephone and revised his offer, saying that the offer of £200,000 was now dependent on planning permission. Mr Behdoost told Mr Yeganegy that he believed Mr Yeganegy had reneged upon their agreement and that they would expect considerably more if the agreement was contingent upon planning permission. They believed that by this action Mr Yeganegy was withdrawing the unconditional offer upon which they believed they had agreed. The only basis upon which they understood, and could have understood, Mr Yeganegy to be withdrawing this offer was that he believed that the price for unconditional sale was too high.
- 18 May 2007 A fax from Roxan confirmed that contracts had been exchanged "recently".
- 4 June 2007 Mr Yeganegy wrote to Mr Behdoost and Mr Nazaripour. He confirmed that there was a telephone conversation on 9 May 2007 in which a "subject to planning permission" offer was rejected. It was only rejected, however, because it was being offered in place of the previously agreed offer which had been withdrawn. After considering a further option put forward by the tenants, Mr Yeganegy then stated that Roxan had decided to rescind its decision to make any offer at all for the lease.

The BBC said that it was clear from this that Roxan's decision, conveyed on 4 June 2007, that it would not buy the freehold (sic) at all, which the complainants claim was the material decision and was not taken on grounds of price, actually came later than its earlier decision, conveyed on 9 May 2007, to withdraw the offer of £200,000 for unconditional sale which the tenants believed had been agreed upon. These were two separate decisions and it was the £200,000 offer that was explicitly referred to in the programme which said:

*"At first it seemed like good news for Ali and Kamal because Mr Yeganegy said that he would buy them out. He offered the publicans £200,000 to give up their tenancy but shortly after he bought the pub the offer was withdrawn.*

*Mr Yeganegy says he pulled out because Ali and Kamal were asking for an unrealistic price, but they think it's a calculated ploy."*

The BBC said that it did not believe that this gave rise to any unfairness.

- viii) The BBC then responded to the complainants' claim that the programme was unfair in that it failed to state that the schedule of dilapidations was presented against the background that Portsmouth City Council were complaining of the building as a listed building falling into disrepair and that part of it had been subject to unauthorised use as a car wash.

The BBC said that in December 2008, the programme makers had contacted the Conservation Office at Portsmouth Council. This was prior to transmission but after receipt of a letter from the complainants alleging that the Council had expressed concerns that this listed building was being allowed to fall into disrepair. The BBC said that the Council's Conservation Officer had told the programme makers that the Council had not raised any concerns about the listed building. The Council's only enforcement action had concerned the car park being used for a carwash but this had been discontinued several months earlier. The Conservation Officer had said that he might contact the owners in the future to talk about improving the appearance of the building, but he had not done so at that point. The BBC said that the programme makers therefore took the view that it would be incorrect to suggest that the schedule of dilapidations had been served against a background of pressure from Portsmouth City Council. They also concluded that the issue with the car wash was not directly relevant as this particular activity had ended many months before.

On the question of legal advice regarding the schedule of dilapidations, the BBC said that it believed that it was immaterial to the complaint when, or indeed whether, advice was taken although, as a matter of fact, it was taken before the programme. The BBC argued that the issue at hand was whether the programme accurately reflected the legal situation in relation to schedules of dilapidation, if inaccuracy on this point might have resulted in unfairness. The BBC referred to its first statement where it stated its belief that the programme was accurate in this respect and that there was no consequent unfairness.

## **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.

Where there appears to have been unfairness in the making of the programme, this will only result in a finding of unfairness, if Ofcom finds that it has resulted in unfairness to the complainant in the programme as broadcast.

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.

Paris Smith's complaint on behalf of Mr Yeganegy and Roxan was considered by Ofcom's Executive Fairness Group. 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, both parties' written submissions and supporting documents.

- a) Ofcom considered the complaint that Mr Yeganegy and Roxan were portrayed as unscrupulous property owners as a result of the inclusion of a number of untrue, unfair claims about them.

In considering this part of the complaint Ofcom took account of Rule 7.1 of the Ofcom Broadcasting Code (the “Code”), which states that broadcasters must avoid unfair treatment of individuals and organisations in programmes, and Practice 7.9, which states that broadcasters should take reasonable care to ensure that material facts have not been presented or omitted in a way that is unfair.

- i) Ofcom first addressed the complaint that the report portrayed Mr Yeganegy as an unscrupulous property owner who used “*underhand tactics and legal threats*” so that “*he does not have to buy [the publicans] out*”.

Ofcom noted that the report initially stated that Mr Nazaripour and Mr Behdoost were in a “*bitter dispute with their landlord*.” The report went on to explain that Mr Yeganegy had initially offered to buy their tenancy but that had not happened. The programme stated:

*“... they think it’s a calculated ploy. They believe he’s trying to force them out instead, using underhand tactics and legal threats so he doesn’t have to buy them out of their tenancy.”*

Details of the landlord’s dealings with the tenants were then given in the report. These included three key areas: a potential rent increase; an error in insurance payment calculations; and the issue of an interim dilapidation order requiring the publicans to carry out minor repairs which a surveyor hired by Roxan valued at £55,000. Statements from Mr Yeganegy’s solicitor, Paris Smith, addressing these three areas were read out or paraphrased throughout (see also heads a) vi) to viii) below).

In relation to the above statement from the publicans, the programme’s commentary said:

*“He also denies trying to force the publicans out of their pub. In a statement, his solicitors said: ‘Our client has no wish to develop the property at the present time, and indeed it’s in its interest to continue to receive a rental income’.”*

The presenter then stated:

*“... everything Mr Yeganegy has done has been completely legal, and that’s the frustration for Ali and Kamal.”*

Ofcom considered that the programme was describing a dispute between two parties. There was no suggestion that the landlord was acting illegally – indeed the programme explicitly stated that actions taken were legal – and the notion that Roxan was employing “*underhand tactics*” was clearly presented as the opinion of the two publicans. The programme included the landlord’s statement on not redeveloping the property at the present time.

Taking all of these factors into account, Ofcom concluded that the programme makers had taken reasonable care to satisfy themselves that they were presenting the actions of Roxan and Mr Yeganegy in a fair manner. The

references to “*underhand tactics and legal threats*” were clearly presented as the opinion of the publicans and the report did not result in unfairness to either Roxan or Mr Yeganegy in this respect.

- ii) Ofcom then went on to consider the complaint that the issues were “personalised” in the report because no mention was made that both the landlord and tenants were limited companies.

Ofcom noted that the report introduced the landlord, Mr Yeganegy, with a sequence that featured his website and indicated the name of his company. Ofcom also noted that correspondence between the two parties was personally addressed to and signed by Mr Yeganegy, and that he was the managing director of Roxan.

Ofcom noted that the report did not indicate that the tenants, Mr Behdoost and Mr Nazaripour, were a limited company.

Ofcom then considered whether the omission of this last fact and the use of personal, rather than company names, resulted in unfairness to Mr Yeganegy and Roxan. Ofcom noted that no specific reference was made to either of the parties’ legal status, and in as far as the parties in this story were “personalised”, they were treated in the same way. Ofcom considered that the people named were central to the actions described in the programme and key figures in the two companies involved. It also considered that the use of personal names did not affect the material facts of the dispute. Ofcom therefore concluded that no adverse impression was created as a result of the use of personal names when referring to both parties, and that the approach taken by the programme makers was a stylistic editorial decision that did not result in any material unfairness to Mr Yeganegy or Roxan.

- iii) Ofcom next went on to consider whether the use of footage of Mr Yeganegy from a previous television programme unfairly portrayed him as a “*high profile property developer*” unwilling to take part in this report.

In considering this complaint, Ofcom also had regard for Practice 7.8, which requires that material for one programme and broadcast in another should only be re-used in a way that does not cause unfairness.

Ofcom noted that the sequence in question showed Mr Yeganegy being interviewed and answering “*Yes, that’s right,*” to the question “*You’re a bit of a property developer, aren’t you?*” Ofcom also noted that the programme stated that Mr Yeganegy “*didn’t want to be interviewed for this programme.*”

Ofcom noted that the footage used came from a property-themed programme, *Homes Under The Hammer*, which related instances of properties sold at auction and redeveloped. The clip from that programme was used to provide background details about the landlord, Roxan, and its Managing Director, Mr Yeganegy. Ofcom therefore considered that it was relevant to the current report and was used in an appropriate context and not for a significantly different purpose.

Ofcom also noted that Mr Yeganegy had declined to take part in the programme himself, and considered that the statement in the programme (that he “*didn’t want to be interviewed*”) accurately reflected this decision. However, Ofcom took note that the programme went on to include his

response, based on the comments provided through his solicitors, Paris Smith, to each of the issues raised by his tenants and programme makers, and indicate that his point of view had been given by his solicitors.

Ofcom concluded therefore that viewers were unlikely to believe that Mr Yeganegy was not prepared to co-operate with the report, and would have understood that he merely preferred not to be interviewed personally.

Accordingly, Ofcom found that the inclusion of previously used footage in the report did not result in unfairness to Mr Yeganegy.

- iv) Ofcom next went on to consider whether the programme makers had unfairly portrayed the negotiations regarding the purchase of the lease on the bar, and ignored material provided to them on Roxan and Mr Yeganegy's behalf by Paris Smith.

In assessing this complaint, Ofcom took into account both the programme itself and the background information submitted by the BBC and by Paris Smith.

Ofcom noted that the report stated:

*“At first it seemed like good news for Ali and Kamal because Mr Yeganegy said that he would buy them out. He offered the publicans £200,000 to give up their tenancy but shortly after he bought the pub the offer was withdrawn. Mr Yeganegy says he pulled out because Ali and Kamal were asking for an unrealistic price ...”*

Ofcom sought to establish whether the programme makers had taken reasonable care to satisfy themselves that they had not omitted or misrepresented any material facts in respect of the offer to buy the tenancy.

Ofcom noted that options for the purchase of the tenancy were set out in a letter from Roxan to the tenants on 15 March 2007 and that the second option suggested in this letter was the purchase of the tenancy for £200,000 without conditions. Ofcom also noted that the tenants believed that an agreement was reached on this option at a subsequent meeting and that it was sealed with a handshake.

Ofcom noted that a letter from Paris Smith, on behalf of Mr Yeganegy, to the tenants on 28 March 2007 and before the alleged verbal agreement, said:

*“If we do not hear from you by Monday 16 April 2007 we may assume that you are not interested in our offer and we would withdraw our offer to purchase the freehold.”*

Ofcom noted that the BBC therefore argued that as Roxan did go ahead with the purchase of the freehold, it was reasonable to take this as supportive of the tenants' claim that agreement had been reached.

Ofcom also understood that the tenants had informed the BBC about a telephone conversation in which Mr Yeganegy later attempted to modify the terms of the agreement to make the purchase of the tenancy subject to planning permission being obtained to develop the property. This had formed option A in a letter of 15 March 2007, though with a higher price (£300,000)

attached to reflect the added value of the tenancy. Ofcom noted that it was the tenants' belief that Mr Yeganegy was now trying to obtain the enhanced tenancy for the lower price and that his insistence on this new condition represented a withdrawal of the original agreed price.

Ofcom also took into account the chronology submitted by the BBC to support its argument. This chronology showed that the telephone call in which the tenants believed Roxan had "withdrawn" the original offer was alleged to have taken place on 9 May 2007, while the landlord's letter documenting the decision not to buy the lease was dated 4 June 2007.

Ofcom also took account of the argument put by Paris Smith on the complainant's behalf: that an offer was never made formally and could not therefore be withdrawn. Ofcom also noted that Paris Smith informed the BBC, prior to the report's broadcast, of their client's interpretation of the publicans' refusal of their initial tentative offer. Furthermore, Ofcom noted that additional correspondence from the tenants (a letter dated 16 March 2007) contained references to other buyers, whose interest Roxan and Mr Yeganegy believed to be exaggerated or even invented.

From the responses submitted by the BBC and Paris Smith, Ofcom noted that the situation was obviously complex and that there was some considerable debate as to who was responsible for the breakdown in negotiations over Roxan's potential purchase of the tenancy (although neither party disputed the initial £200,000 offer). The decision of how to present these complexities in a short current affairs report was an editorial one, but nevertheless one that could potentially result in unfairness.

It appeared to Ofcom that some of the negotiations were played out in the correspondence between the publicans and the landlord (and his solicitors), but also that some had taken place in person or over the telephone. As there was no record of these latter negotiations, it was impossible for the programme makers to be certain which of the parties' interpretations of events was correct. It did appear, in Ofcom's view, that the terms of Roxan's offer had changed, as had the tenants' own counter-offer, but the evidence did not appear to incontrovertibly support either party's interpretation.

Ofcom's role in circumstances such as these is limited to establishing whether this situation was fairly portrayed, or whether it resulted in unfairness to Roxan and Mr Yeganegy. Ofcom is not required to resolve conflicts of evidence as to the nature or accuracy of particular accounts of events but rather to adjudicate on whether the complainant has been treated unfairly in the programme as broadcast. In this case, it needed to consider both the presentation of the dispute in the programme as broadcast, and the steps taken by the broadcaster to satisfy itself that it had obtained and included relevant facts in the programme.

Ofcom first looked at the actions taken by the BBC. It appeared to Ofcom that the BBC had taken the following steps: it had obtained correspondence relating to the negotiations over the tenancy, which could be interpreted as indicating that the landlord had withdrawn its offer; and the broadcaster had compiled a chronology of events to attempt to untangle the issues at hand.

Ofcom also noted, as above, that the programme presented the tenants' view of the dispute (that *"the offer was withdrawn"*); and the landlord's view that *"Ali and Kamal were asking for an unrealistic price"*.

Ofcom therefore concluded that, although brief, the programme's reference to this dispute made clear that the two parties differed in their interpretation and fairly reflected Roxan's explanation for the breakdown in negotiations. It considered that it was the responsibility of the broadcasters to ensure that they achieved fairness in their summary of events but that viewers were unlikely to expect a detailed breakdown of the history of the dispute in a short current affairs report. Ofcom was therefore satisfied that the programme makers had taken reasonable care to obtain factual material relating to the case, and present the material facts of this complex issue as accurately as possible. Ofcom concluded that the report did not portray the negotiations in an unfair way.

- v) Ofcom then went on to consider the complaint that the report unfairly implied that the landlord was planning to redevelop the building by including the tenants' view that this was behind the landlord's behaviour.

Ofcom first noted that the programme made several references to the redevelopment of the Havana pub and the building in which it is located. The presenter stated that:

*"Mr Yeganegy buys properties at auction and then redevelops them and it was clear that he had similar plans for the pub"*.

The programme then went on to give the tenants' view of the landlord's actions and behavior towards them following his decision (for whatever reason) not to buy the lease on their pub: *"they think it's a calculated ploy"*.

The programme then included the landlord's response to this allegation:

*"He also denies trying to force the publicans out of their pub. In a statement his solicitor said: 'Our client has no wish to develop the property at the present time and indeed it's in its interest to continue to receive a rental income. Market conditions and the fact that the building is listed mean that it is not presently economic to develop.'"*

Ofcom also took into account the letter submitted by the BBC, sent to the tenants on 15 March 2007 and set out in their response above, which appeared to indicate an original intention by the landlords to develop the building into apartments.

Ofcom considered that it was the responsibility of the broadcaster to present the matter of dispute fairly. It concluded that the programme makers had taken steps to obtain material facts and contact Roxan and Mr Yeganegy for a response. The programme included the landlord's response to this allegation – namely, that there was no longer any intention to redevelop – in the programme. By taking these steps, Ofcom was satisfied that the programme makers had taken reasonable care to satisfy themselves that the facts of the landlord's original intentions to redevelop were presented fairly. Additionally, it was satisfied that the idea that the landlord's actions were a *"ploy"* was clearly presented as the view of the publicans.

Ofcom therefore found no unfairness to Roxan or Mr Yeganegy on this point.

- vi) and vii) Ofcom considered together complaints that the programme had unfairly included the false allegations that the landlord had increased the rent in order to “*ruin the business*”, and had requested “*double the insurance*” as an “*underhand tactic*”, despite the alternative explanation provided by the complainants.

Ofcom noted that the programme included, in relation to the rent increase, Mr Nazaripour’s comment:

*“The first thing Mr Yeganegy of Roxan Construction did, he demanded an increase of rent from £35,000 to £65,000 to bring us to our knees and ruin the business.”*

After this comment was made, Ofcom noted that the programme went on to paraphrase the response to this allegation provided by Mr Yeganegy and Roxan:

*“He says he’s entitled to increase the rent because the pub is now a freehouse and, under the rent review process, a fair rent will be set by an independent arbitrator”.*

The programme also went on to include the complainant’s assertion that there was no current intention to redevelop the property (as detailed in head a) v) above).

In respect of the insurance payment request, Ofcom noted that the programme included an exchange on the subject. Mr Behdoost described the new landlord’s insurance charge:

*“He also asked for double the amount of insurance that he paid for the building. So he paid £2,300 and he demanded £5,200 for the insurance of the building.”*

Following this statement, the programme gave Mr Yeganegy’s explanation: “*Mr Yeganegy says the insurance was an accounting error, which has been corrected.*”

Ofcom also noted that the BBC had obtained documentary evidence of the rent increase and erroneous insurance payment request to support the factual assertions made by Mr Behdoost.

Ofcom considered that the BBC had taken reasonable steps to obtain evidence of the accuracy of the claims regarding rent and insurance. It also considered that the programme makers had asked for an explanation from Roxan and Mr Yeganegy regarding the rent increase and erroneous insurance payment request, and that the explanations provided were both fairly reflected in the programme. Finally, as in decision head a) i), Ofcom took the view that the references to “*underhand tactics*” and “*legal threats*” did not result in unfairness to the complainants in this report because they were clearly presented as the opinions of the tenants.

Ofcom therefore concluded that no unfairness was caused by including the tenants' allegations relating to rent and insurance payments in the programme.

- viii) Finally, Ofcom considered the complaint that the programme unfairly suggested that the schedule of dilapidations was served by Mr Yeganegy in order to put pressure on the tenants.

In considering this complaint, Ofcom once again had regard to Practice 7.9 of the Code, as detailed above.

Ofcom noted that the programme stated:

*"By sticking to the exact letter of the law, he [the landlord] can make their lives very difficult indeed";* and

*"The landlord has now ordered Ali and Kamal to repair the pub. He's only supposed to serve an interim dilapidation order if the building has major structural problems. But his surveyors have made an expensive list of minor faults."*

The programme then went on to state *"Mr Yeganegy says that interim dilapidation orders are not limited to serious structural problems"* and then quoted the following from the landlord's statement:

*"The survey has revealed a number of instances of damp within the premises, the cause of which the poor condition of the exterior. The tenant has an obligation under the lease to undertake appropriate works of repair and maintenance and has failed to do so."*

Ofcom also noted that, as background to the complaint, Roxan and Mr Yeganegy explained that the schedule only included items of repair that an independent chartered surveyor had considered could legitimately be included in a schedule served part way through the lease. It also noted that the programme made no reference to Portsmouth City Council's complaints about the building and unauthorized use of some of its parts, which the complainants insisted was key to the serving of the dilapidation order.

Ofcom then considered whether the BBC, in presenting the issues surrounding the dilapidation order, had taken reasonable care to obtain all of the relevant facts and reflect them fairly in the programme, without omitting facts that may have been material.

Ofcom first considered the steps taken by the BBC to obtain relevant facts. Ofcom noted that it obtained correspondence relating to the dilapidation order. It also contacted Portsmouth City Council, and was told that the council's concerns related only to the inappropriate use of a car park and that the council had not contacted the publicans about any other matter. Additionally, Ofcom noted that the BBC also took legal and other expert advice on when such orders could be served, which indicated that they were normally only appropriate when major structural repairs were required.

Ofcom also took note that this advice had not been provided to Mr Yeganegy or Paris Smith prior to the broadcast, but considered that the broadcaster was under no obligation to provide the complainants with all of the supporting

evidence it had gathered in support of allegations made; it was required merely to ensure that any material facts were presented fairly in the programme as broadcast

On balance, Ofcom concluded that the programme makers had taken reasonable care to obtain and substantiate the relevant facts in this case. Furthermore, in order to satisfy themselves that they had all of the relevant facts, the BBC had also obtained an explanation from Mr Yeganegy and Roxan for the dilapidation order being served, and had reflected this explanation fairly in the programme. Ofcom noted that the programme did not include background information about the council's unrelated complaints, but did not consider that this amounted to an omission of a material fact.

In conclusion, therefore, Ofcom found that the programme's presentation of the facts surrounding the issue of the interim dilapidation order did not result in any unfairness to Mr Yeganegy and Roxan.

**Accordingly Ofcom has not upheld Paris Smith's complaint on behalf of Mr Yeganegy and Roxan Construction of unfair treatment in the broadcast of the programme.**

## Other Programmes Not in Breach

Up to 22 March 2010

Programme	Transmission Date	Broadcaster	Categories	Number of complaints
Adrian Durham	26/02/2010	Talksport	Crime (incite/encourage)	2
Afternoon Play	11/03/2010	BBC Radio 4	Offensive Language	1
Alan Carr: Chatty Man	11/03/2010	Channel 4	Generally Accepted Standards	8
All Star Family Fortunes	20/02/2010	ITV1	Generally Accepted Standards	1
All Star Mr & Mrs	13/02/2010	ITV1	Generally Accepted Standards	1
All Star Mr & Mrs	20/02/2010	ITV1	Generally Accepted Standards	1
Angela and Friends	23/02/2010	Sky1	Generally Accepted Standards	1
Angela and Friends	01/03/2010	Sky1	Violence	1
Antiques Road Trip	10/03/2010	BBC 2	Religious Offence	1
Archer (trailer)	02/03/2010	Fiver	Sex/Nudity	2
Assault on Precinct 13	13/03/2010	E4	Animal Welfare	1
B&Q's sponsorship of Relocation, Relocation	03/02/2010	Channel 4	Sponsorship	1
Balls of Steel	24/01/2010	4Music	Generally Accepted Standards	1
BBC News	06/03/2010	BBC 1	Religious Issues	1
Big Deal Live!	19/10/2009	Big Deal	Use of Premium Rate Numbers	1
Breakfast	05/03/2010	BBC 1	Offensive Language	1
Brit Cops: Frontline Crime	14/03/2010	Virgin 1	Offensive Language	1
Call Collymore	28/02/2010	Talksport	Generally Accepted Standards	1
Canada's Next Top Model	16/02/2010	Livingit	Generally Accepted Standards	1
Caribbean Cops	25/02/2010	Virgin 1	Violence	1
Channel 4 News	25/02/2010	Channel 4	Due Impartiality/Bias	1
Channel 4 News	25/02/2010	Channel 4	Inaccuracy/Misleading	1
Channel 4 News	03/03/2010	Channel 4	Offensive Language	1
Channel 4 News	04/03/2010	Channel 4	Due Impartiality/Bias	1
Channel 4 News	08/03/2010	Channel 4	Violence	1
Club Paradiso Evening Chat	19/12/2009	Club Paradiso	Sex/Nudity	1
Coach Trip	10/03/2010	Channel 4	Animal Welfare	4
Come Dine with Me	27/02/2010	Channel 4	Animal Welfare	1
Come Dine With Me	17/03/2010	More 4	Generally Accepted Standards	3
Come Dine with Me	27/02/2010	Channel 4	Offensive Language	1
Come Dine with Me Extra Portions	01/03/2010	Channel 4	Offensive Language	1
Come Dine with Me Extra Portions	11/03/2010	Channel 4	Sex/Nudity	1
Come Dine with Me Extra Portions	15/03/2010	Channel 4	Generally Accepted Standards	1

Coronation Street	19/02/2010	ITV1	Crime (incite/encourage)	31
Coronation Street	19/02/2010	ITV1	Dangerous Behaviour	1
Coronation Street	01/03/2010	ITV1	Inaccuracy/Misleading	1
Coronation Street	08/03/2010	ITV1	Inaccuracy/Misleading	1
Coronation Street	08/03/2010	ITV1	Sex/Nudity	2
Coronation Street	12/03/2010	ITV1	Inaccuracy/Misleading	1
Coronation Street	22/02/2010	ITV1	Generally Accepted Standards	4
Coronation Street	04/03/2010	ITV1	Information/Warnings	11
Coronation Street	08/03/2010	ITV1	Generally Accepted Standards	4
Coronation Street Omnibus	07/03/2010	ITV1	Commercial References	1
Crufts 2010	11/03/2010	More 4	Due Impartiality/Bias	1
Crufts 2010	13/03/2010	More 4	Inaccuracy/Misleading	5
Daddy Ernie	09/03/2010	Choice FM	Generally Accepted Standards	1
Dancing on Ice	21/02/2010	ITV1	Generally Accepted Standards	17
Dancing on Ice	28/02/2010	ITV1	Advertising	1
Dancing on Ice	14/03/2010	ITV1	Generally Accepted Standards	1
Dancing on Ice	07/03/2010	ITV1	Generally Accepted Standards	1
Dancing on Ice: The Skate Off	21/03/2010	ITV1	Generally Accepted Standards	1
Darksiders sponsorship of Stargate	16/02/2010	Sky1	Other	1
Deal or No Deal	24/02/2010	More 4	Generally Accepted Standards	1
Death Wish 2	05/03/2010	ITV1	Violence	1
Dickinson's Real Deal	04/03/2010	ITV1	Generally Accepted Standards	1
Dirty, Sexy, Funny: Olivia Lee (trailer)	24/02/2010	Comedy Central	Sex/Nudity	1
Dispatches: Cameron Uncovered (trailer)	02/03/2010	Channel 4	Due Impartiality/Bias	1
Early Bird	20/02/2010	Tease Me TV (Freeview)	Sex/Nudity	1
East Enders	19/02/2010	BBC 1	Generally Accepted Standards	1
EastEnders	09/02/2010	BBC 1	Sex/Nudity	1
EastEnders	25/02/2010	BBC 1	Animal Welfare	12
EastEnders	02/03/2010	BBC 1	Generally Accepted Standards	1
EastEnders	11/03/2010	BBC 1	Generally Accepted Standards	3
EastEnders	16/03/2010	BBC 1	Dangerous Behaviour	1
Eastenders Live: The Aftermath	19/02/2010	BBC 3	Generally Accepted Standards	2
Embarrassing Bodies	14/03/2010	Channel 4	Sex/Nudity	3
Embarrassing Bodies	12/03/2010	Channel 4	Generally Accepted Standards	1
Embarrassing Bodies (trailer)	16/02/2010	Channel 4	Sex/Nudity	1

Embarrassing Bodies (trailer)	19/02/2010	Channel 4	Sex/Nudity	1
Embarrassing Bodies (trailer)	17/02/2010	Channel 4	Sex/Nudity	1
Emmerdale	11/02/2010	ITV1	Suicide/Self Harm	3
Emmerdale	25/02/2010	ITV1	Violence	1
Emmerdale	01/03/2010	ITV1	Violence	5
Emmerdale	01/03/2010	ITV1	Substance Abuse	1
Emmerdale	12/03/2010	ITV1	Animal Welfare	5
FA Cup Live	14/02/2010	ITV1	Offensive Language	2
FA Cup Live	07/03/2010	ITV1	Generally Accepted Standards	1
FA Cup Live	06/03/2010	ITV1	Offensive Language	1
Family Guy	11/03/2010	BBC 3	Generally Accepted Standards	1
Five Days	03/03/2010	BBC 1	Offensive Language	2
Five Days	05/03/2010	BBC 1	Dangerous Behaviour	1
FlashForward	30/11/2009	Five	Flashing images	1
FlashForward (trailer)	28/11/2009	Five	Flashing images	1
Friday Night with Jonathan Ross	19/02/2010	BBC 1	Generally Accepted Standards	1
George Galloway	12/03/2010	Talksport	Due Impartiality/Bias	2
Gillette Soccer Saturday	27/02/2010	Sky Sports 1	Offensive Language	1
Girls of the Playboy Mansion	13/03/2010	E! Entertainment	Sex/Nudity	1
GMTV	28/01/2010	ITV1	Inaccuracy/Misleading	77
GMTV	11/03/2010	ITV1	Generally Accepted Standards	7
GMTV	19/03/2010	ITV1	Substance Abuse	1
GMTV	01/03/2010	ITV1	Generally Accepted Standards	1
GMTV	10/03/2010	ITV1	Generally Accepted Standards	1
GMTV: LK Today	25/02/2010	ITV1	Due Impartiality/Bias	1
Good Morning Manchester	11/12/2009	DM Digital	Advertising	1
Granada News and Weather	21/03/2010	ITV1 Granada	Generally Accepted Standards	1
Grand Designs	06/03/2010	More 4	Offensive Language	1
Greek	06/03/2010	BBC 2	Sex/Nudity	1
Happy Gilmore	21/02/2010	Five	Offensive Language	1
Harry Hill's TV Burp	07/03/2010	ITV1	Sex/Nudity	1
Harry Hill's TV Burp	27/02/2010	ITV1	Generally Accepted Standards	2
Harry Hill's TV Burp	13/03/2010	ITV1	Generally Accepted Standards	1
Hell's Kitchen USA	15/03/2010	ITV2	Generally Accepted Standards	1
Holby City	09/03/2010	BBC 1	Religious Offence	1
Hollyoaks	15/03/2010	Channel 4	Violence	1
Home Video Heroes	18/03/2010	Virgin 1	Animal Welfare	1
Inside Out	15/02/2010	BBC 1 East	Generally Accepted	2

		Midlands	Standards	
InTOCZEKated	24/01/2010	BCB 106.6FM (Bradford)	Due Impartiality/Bias	1
ITV News	02/02/2010	ITV1	Generally Accepted Standards	2
ITV News	01/03/2010	ITV1	Due Impartiality/Bias	1
ITV News at Ten	04/03/2010	ITV1	Due Impartiality/Bias	1
Jeremy Clarkson Meets the Neighbours	20/02/2010	Dave	Generally Accepted Standards	1
Jo Frost: Extreme Parental Guidance	09/03/2010	Channel 4	Generally Accepted Standards	1
Jo Frost: Extreme Parental Guidance	09/03/2010	Channel 4	U18's in Programmes	1
Justice For James?: Tonight	11/03/2010	ITV1	Due Impartiality/Bias	1
Ken Livingstone	10/03/2010	LBC 97.3FM	Elections/Referendums	1
Kev Seed	08/03/2010	Wish FM	Sex/Nudity	1
Khushiyan	09/12/2009	Sunrise TV	Suicide/Self Harm	2
Kia Motors' sponsorship of CSI	24/02/2010	Five	Generally Accepted Standards	1
Kia Motors' sponsorship of CSI	02/03/2010	Five	Generally Accepted Standards	2
Kia Motors' sponsorship of NCIS	05/03/2010	Five	Generally Accepted Standards	1
Law and Order: UK	09/03/2010	ITV1	Generally Accepted Standards	1
Live from Studio Five	23/02/2010	Five	Generally Accepted Standards	1
London Tonight	15/03/2010	ITV1 London	Generally Accepted Standards	1
London Tonight	16/03/2010	ITV1 London	Due Impartiality/Bias	1
Loose Women	09/02/2010	ITV1	Due Impartiality/Bias	15
Loose Women	24/02/2010	ITV1	Inaccuracy/Misleading	1
Louis Theroux	06/03/2010	BBC 2	Generally Accepted Standards	1
Married Single Other	08/03/2010	ITV1	Generally Accepted Standards	8
Midsomer Murders	11/02/2010	ITV1	Violence	1
Midsomer Murders	06/03/2010	ITV1	Offensive Language	3
Mike Parry and Andy Townsend	15/03/2010	Talksport	Crime (incite/encourage)	1
Milkshake	10/03/2010	Five	Generally Accepted Standards	1
Money to Burn: Tonight	25/02/2010	ITV1	Inaccuracy/Misleading	1
Naughty Naughty Pets	21/02/2010	CITV	Offensive Language	1
New You've Been Framed!	27/02/2010	ITV1	Generally Accepted Standards	1
News	09/03/2010	Metro Radio	Generally Accepted Standards	1
News at Ten	22/12/2009	ITV1	U18's in Programmes	8
One Born Every Minute	16/03/2010	Channel 4	Generally Accepted Standards	1
Petrie Hosken	24/02/2010	LBC 97.3FM	Due Impartiality/Bias	1
Piers Morgan on Las Vegas	02/01/2010	ITV1	Generally Accepted Standards	1

Piers Morgan's Life Stories: Gordon Brown	14/02/2010	ITV1	Due Impartiality/Bias	34
Pineapple Dance Studios	04/03/2010	Sky1	Generally Accepted Standards	1
Press Preview	03/03/2010	Sky News	Generally Accepted Standards	1
Press Preview	10/03/2010	Sky News	Generally Accepted Standards	7
Private Lives: Growing up Little	21/02/2010	CBS Reality	Offensive Language	1
Procol and Candor Solicitors	08/02/2010	ITV4	Advertising	1
Programme	20/02/2010	Peace FM community station	Generally Accepted Standards	1
Psychic Interactive	11/03/2010	Psychic TV	Sex/Nudity	1
Question Time	11/03/2010	BBC 1	Generally Accepted Standards	1
Racing Live	22/02/2010	At The Races	Generally Accepted Standards	1
Radio Hartlepool	12/02/2010	Radio Hartlepool	Commercial References	1
Radio XL	26/02/2010	Radio XL	Due Impartiality/Bias	1
Relic: Guardians of the Museum	18/03/2010	BBC 1	Exorcism/Occult/Paranormal	1
Renault's sponsorship of Films on 4	28/02/2010	Channel 4	Generally Accepted Standards	1
Rihanna "Rude Boy"	19/03/2010	BBC Radio 1	Generally Accepted Standards	1
Rihanna "Rude Boy"	08/03/2010	Red Dragon FM	Generally Accepted Standards	1
Rosemary and Thyme	15/03/2010	ITV1	Offensive Language	7
Rosemary and Thyme	17/03/2010	ITV1	Offensive Language	1
Saturday Kitchen Live	06/03/2010	BBC 1	Harm/Food	1
Saturday Kitchen Live	20/03/2010	BBC 1	Generally Accepted Standards	1
Scott Mills	11/03/2010	BBC Radio 1	Generally Accepted Standards	1
Scrubs	24/02/2010	E4	Sex/Nudity	1
Sex: The Revolution	26/02/2010	Yesterday	Sex/Nudity	1
Sexcetera	05/03/2010	Livingit	Sex/Nudity	1
Shameless	23/02/2010	Channel 4	Sex/Nudity	1
Shameless	16/03/2010	Channel 4	Generally Accepted Standards	1
Shameless	10/03/2010	Channel 4	Sex/Nudity	1
Simon Mayo Drivetime	24/02/2010	BBC Radio 2	Animal Welfare	3
Six Nations Rugby Union	20/03/2010	BBC 1	Offensive Language	1
Six Nations Rugby Union	20/03/2010	BBC 1	Generally Accepted Standards	1
Skins	25/02/2010	E4	Suicide/Self Harm	3
Skins	11/03/2010	E4	Violence	16
SMart!	03/03/2010	BBC 1	Sex/Nudity	1
South Park	20/03/2010	Comedy Central	Generally Accepted Standards	1

Sport Relief 2010	19/03/2010	BBC 2	Generally Accepted Standards	1
Star Awards	14/02/2010	Star Plus	Commercial References	1
Stargate Universe	28/02/2010	Sky 2	Violence	1
Stewart Nicholson	28/02/2010	Peak FM	Generally Accepted Standards	1
Sunday Live	14/03/2010	Sky News	Inaccuracy/Misleading	1
Sunrise	02/02/2010	Sky News	Violence	1
Sunrise	17/03/2010	Sky News	Inaccuracy/Misleading	1
Supernatural	21/02/2010	Living TV	Competitions	1
T4	06/03/2010	Channel 4	Sex/Nudity	1
The Alan Titchmarsh Show	03/02/2010	ITV1	Substance Abuse	1
The Alan Titchmarsh Show	24/02/2010	ITV1	Sex/Nudity	11
The Alan Titchmarsh Show	03/03/2010	ITV1	Commercial References	1
The Alan Titchmarsh Show	11/03/2010	ITV1	Sex/Nudity	15
The Alan Titchmarsh Show	11/03/2010	ITV1	Generally Accepted Standards	1
The Alan Titchmarsh Show	11/03/2010	ITV1	Offensive Language	1
The Alan Titchmarsh Show	12/03/2010	ITV1	Animal Welfare	2
The Alan Titchmarsh Show	11/03/2010	ITV1	Due Impartiality/Bias	1
The Bible: A History	21/02/2010	Channel 4	Generally Accepted Standards	10
The Bible: A History	28/02/2010	Channel 4	Sex/Nudity	1
The Big Questions	07/03/2010	BBC 1	Religious Offence	1
The Brit Awards	16/02/2010	ITV1	Offensive Language	10
The Brit Awards	16/02/2010	ITV1	Generally Accepted Standards	3
The Brit Awards	16/02/2010	ITV1	Generally Accepted Standards	1
The Brit Awards	16/02/2010	ITV1	Generally Accepted Standards	1
The Brit Awards	16/02/2010	ITV1	Generally Accepted Standards	1
The Brit Awards	16/02/2010	ITV1	Generally Accepted Standards	1
The Brit Awards	16/02/2010	ITV1	Generally Accepted Standards	1
The Brits Encore	16/02/2010	ITV2	Substance Abuse	6
The Bubble	12/03/2010	BBC 2	Generally Accepted Standards	1
The Gadget Show	15/02/2010	Five	Due Impartiality/Bias	1
The Gadget Show	08/03/2010	Five	Crime (incite/encourage)	2
The Good Wife	01/03/2010	Channel 4	Advertising	1
The Hour	22/02/2010	STV	Generally Accepted Standards	1
The House On Carroll Street	26/02/2010	Turner Classic Movies	Sex/Nudity	1
The Jeremy Kyle Show	08/03/2010	ITV1	Generally Accepted Standards	2
The Jeremy Kyle Show	09/03/2010	ITV1	Generally Accepted Standards	1
The Lady and the Revamp (trailer)	17/03/2010	Channel 4	Offensive Language	1
The Last Detective	13/02/2010	Alibi	Sex/Nudity	1

The Legend of Dick and Dom	14/03/2010	BBC 2	Generally Accepted Standards	1
The Morning Line	06/03/2010	Channel 4	Advertising	1
The Morning Show	19/02/2010	Radio Hartlepool	Due Impartiality/Bias	1
The One Show	14/01/2010	BBC 1	Flashing images	1
The Political Slot	04/03/2010	Channel 4	Inaccuracy/Misleading	1
The Secret Millionaire (trailer)	28/02/2010	Channel 4	Sex/Nudity	1
The Simpsons	07/03/2010	Channel 4	Offensive Language	1
The Simpsons	16/03/2010	Channel 4	Sex/Nudity	1
The Weakest Link	04/03/2010	BBC 1	Religious Offence	1
The Wild Gourmets	01/03/2010	Channel 4	Animal Welfare	1
The Wright Stuff	05/03/2010	Five	Generally Accepted Standards	1
The Wright Stuff	10/03/2010	Five	Generally Accepted Standards	1
The Wright Stuff	16/03/2010	Five	Crime (incite/encourage)	3
The Wright Stuff	19/02/2010	Five	Offensive Language	1
This Morning	04/03/2010	ITV1	Generally Accepted Standards	1
This Morning	12/03/2010	ITV1	Generally Accepted Standards	1
This Morning	26/02/2010	ITV1	Due Impartiality/Bias	1
Tom and Jerry Kids	22/02/2010	Cartoonito	Offensive Language	1
Top Gear	05/03/2010	BBC 3	Offensive Language	1
Toyota Avensis' sponsorship of ITV Mystery Drama	14/03/2010	ITV1	Generally Accepted Standards	1
Trevor McDonald Meets David Cameron	14/03/2010	ITV1	Due Impartiality/Bias	1
UK Border Force	11/03/2010	Sky2	Generally Accepted Standards	1
Underbelly (trailer)	07/03/2010	STV	Generally Accepted Standards	1
What Katie Did Next	11/03/2010	ITV2	U18's in Programmes	2
What Katie Did Next	25/02/2010	ITV2	Dangerous Behaviour	1
What Katie Did Next	04/03/2010	ITV2	Dangerous Behaviour	1
Who Made Me Fat?	01/03/2010	BBC 1	Offensive Language	1
Wife Swap USA	21/02/2010	E4	U18's in Programmes	1
Zimbabwe's Forgotten Children	01/03/2010	BBC 4	Generally Accepted Standards	1