

# **Ofcom broadcast bulletin**

**Issue number 56  
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## Contents

Introduction	3
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### Standards cases

In Breach	4
-----------	---

Resolved	9
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### Fairness and Privacy cases

Upheld/Upheld in part	17
-----------------------	----

Broadcasting Code Guidance Update	23
-----------------------------------	----

Not Upheld	36
------------	----

Other programmes not in breach/outside remit	57
--	----

## Introduction

Ofcom's Broadcasting Code took effect on 25 July 2005 (with the exception of Rule 10.17 which came into effect on 1 July 2005). This Code is used to assess the compliance of all programmes broadcast on or after 25 July 2005. The Broadcasting Code can be found at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>

The Rules on the Amount and Distribution of Advertising (RADA) apply to advertising issues within Ofcom's remit from 25 July 2005. The Rules can be found at <http://www.ofcom.org.uk/tv/ifi/codes/advertising/#content>

The Communications Act 2003 allowed for the codes of the legacy regulators to remain in force until such time as Ofcom developed its own Code. While Ofcom has now published its Broadcasting Code, the following legacy Codes apply to content broadcast before 25 July 2005.

- Advertising and Sponsorship Code (Radio Authority)
- News & Current Affairs Code and Programme Code (Radio Authority)
- Code on Standards (Broadcasting Standards Commission)
- Code on Fairness and Privacy (Broadcasting Standards Commission)
- Programme Code (Independent Television Commission)
- Programme Sponsorship Code (Independent Television Commission)
- Rules on the Amount and Distribution of Advertising

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).

## Standards cases

### In Breach

#### Brand New You

Five, 19 May, 2 and 9 June 2005, 20:00

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#### Introduction

*Brand New You* was a series which featured women who were given the opportunity to be transformed by the surgeons, dentists and stylists who tend to Hollywood's rich and famous and undergo the full LA makeover experience. We received five complaints about these programmes. Three viewers complained that the programmes contained scenes of cosmetic surgery that were too graphic to be scheduled in a pre-watershed time slot. Two viewers objected to scenes of nudity.

#### Response

Five said that each programme was preceded by a continuity announcement that warned of "scenes of invasive total body surgery" that were "definitely not for the squeamish". This reflected its view that while the programme was not unsuitable for children and therefore appropriate for a pre-watershed slot, some of the content may not be to all viewers' taste. Five did not believe that the short scenes of surgery in the wider context of the general scenes from the operating theatre were beyond the bounds of generally accepted standards of taste and decency or of viewers' expectations. Furthermore, in considering the suitability of the programmes for a family audience (and in particular whether large numbers of children may be expected to be watching) Five pointed out that across the series, the average child audience was six per cent.

Five were satisfied that the footage in each of the programmes was editorially justified by the context of the programme. Care was taken to ensure that images were not gratuitous and were no more explicit than similar programmes. The announcement at the beginning of the programme served as an adequate warning to squeamish viewers that they may wish to avoid the programme. Five did not believe that the fact that some viewers do not enjoy images of surgery makes this type of footage suitable only for a post-watershed slot; nor that the small number of children watching the programme would have been harmed or distressed by images from the operating table.

#### Decision

Broadcasters may make programmes about any issue they choose, but it is expected that broadcasters will ensure that the treatment of subjects will comply with the Code.

The programmes featured scenes of women as they were being assessed for, or undergoing surgery. Naturally, these included shots of their bodies. However the partial nudity was relevant to the context, non-sexual and justified. This element of the complaints was not in breach of the Code.

It was clear that cosmetic surgery would take place from the beginning of the programmes: an information announcement prior to transmission noted that the content included scenes of invasive total body surgery and indicated that some of the

material was not for the squeamish. The scenes of surgery included footage of:

- extensive and close up facial surgery (involving the lifting of skin away from the face and the insertion and manipulation of instruments in a lower facelift and a forehead lift),
- breast augmentation via the abdomen (which showed surgical scissors cutting up under the flesh through the body), and
- a tummy tuck in which an amount of flesh was clearly lifted out of the body and discarded on a trolley.

While these images were in themselves editorially justified and contextualised within a documentary concerning plastic surgery which contained a journey narrative, we were concerned about the time of transmission.

While the vast majority of the shots used in the programme were acceptable for the time of broadcast, the particular scenes of surgery referred to above were unexpected before the watershed. This footage was clearly recognisable in the context of a human body and was graphic and filmed close-up. We accept that not all children would necessarily find such shots disturbing in the context of elective surgery for cosmetic purposes, particularly where the surgeon and narrator are commentating and explaining what is occurring and where further viewing will demonstrate that no 'harm' comes to the person. However there are children who would be disturbed and upset by the shots outlined above. We consider this to be different to an adult displaying "squeamishness".

For this reason we consider that some of the operating theatre scenes were unsuitable for transmission pre-watershed and were in breach of the Code.

**Elements of these programmes were in breach of Section 1.2 (Family Viewing and the Watershed) of the Programme Code**

**The original decision to find these programmes in breach was appealed by the broadcaster, leading to a review. This finding is the result of that review.**

## Sahara

BBC2, 26 December 2005, 09:30

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### Introduction

This series followed Michael Palin as he travelled across the Sahara. In this edition, during a moment of exasperation, the presenter swore (“fucking”). A viewer said that although the language had been edited from the programme’s soundtrack, it was still included in the subtitles.

The series was first shown on BBC1 in 2002. During the original broadcast of this edition at 19:00, the word complained of was not edited from the programme’s soundtrack and the former Broadcasting Standards Commission (BSC) found the programme in contravention of its Code on Standards (Bulletin 63 March 2003).

In July 2004, Ofcom received a complaint about similar language used in the subtitles of *Outtake TV* (broadcast at 20:30), although it had been edited from the soundtrack. Following that complaint, the BBC informed us that it had tightened its procedures to ensure that only programmes passed as suitable for transmission (known as “T-status”) were sent for subtitling. In addition, it had been agreed that subtitlers would alert transmission and question the inclusion of any strong language in pre-watershed programmes. In light of the BBC’s actions in this case, Ofcom considered the matter resolved (Bulletin 20 October 2004).

In view of the previous compliance issue, and the apparent similarity between the current complaint and that of *Outtake TV*, we asked the BBC for its comments on this programme, taking into account the associated matters.

### Response

The BBC said that the language was included in the subtitles as a result of an error. Although it regretted the offence the complainant was caused, the BBC said that there was no parallel between what happened on this occasion and the previous cases referred to.

The original complaint about *Sahara* was not about language in the subtitles but in the programme’s soundtrack. Editing the programme to obscure the swearword was consequently the responsibility of the production team, not the Access Services team (who deal with subtitles).

The BBC said that its guidelines stated that if editing was done on a master transmission tape (that had passed ‘T-status’ (transmission status)) then the ID number on the tape and all associated paperwork had to be changed.

However on this occasion, the procedure was not followed. The edit was not drawn to the attention of the subtitling department. The f-word had now been removed from the relevant subtitling file. No files now contained the offending word.

In the case of *Outtake TV*, the error resulted from confusion over whether the version of the programme sent for subtitling was ‘T-status’.

## **Decision**

Rule 1.14 of the Broadcasting Code requires that “The most offensive language must not be broadcast before the watershed....”.

We accept that this was an error and understand the BBC’s explanation of how it occurred.

Given that the BBC has its own internal guidelines, it is of concern that these were not followed – particularly as the programme required editing as the result of a previous upheld complaint. The BBC notes that the complaint in relation to the 2002 edition related to the use of the word in the soundtrack, not the subtitles. However, we would have expected corrective action to deal with subtitling as well as with the soundtrack.

We welcome the BBC’s assurance that the word “fuck” had now been edited from all remaining tapes and the subtitle files. However we consider that this occurrence was in breach of Rule 1.14 of the Broadcasting Code.

### **Breach of Rule 1.14**

## **Bollywood FM**

*4 January 2006, 23:55*

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### **Introduction**

Bollywood FM was granted a 28 day Restricted Service Licence in Leeds from 25 December 2005 to 21 January 2006.

A listener complained that one of the presenters used an offensive Punjabi word in a late night show.

### **Response**

We wrote to the station on three separate occasions requesting a recording of the relevant content. Our final letter was sent by recorded delivery. The broadcaster failed to supply the recording we requested or to reply to any of our enquiries.

### **Decision**

It is a condition of a licence that the licensee makes recordings of its output, retains them for 42 days and provides Ofcom with any recordings we request. We are extremely concerned that the licensee failed to acknowledge receipt of our letters which made clear how serious this matter is.

The failure to supply recordings or to respond to correspondence from Ofcom is a serious and significant breach of a licence and will be held on record and taken into account should the licensee make any future licence applications.

### **Breach of Condition 8 of the Restricted Service Licence (Retention and production of recordings)**

## Resolved

### **Richard and Judy**

*Channel 4, 23 January 2006, 17:00*

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#### **Introduction**

This programme featured a regular update item on the developments in the *Big Brother* house. In this item, one of the participants said "fuck". Although this had been bleeped in the soundtrack, the accompanying subtitles still contained the word.

One viewer complained that the broadcast of this word in the subtitles was unacceptable before the watershed.

#### **Response**

Channel 4 said that *Richard and Judy* was a fast-paced programme - the stenographer creating the subtitles had been taking down the soundtrack of the programme at speeds of more than 200 words per minute. In endeavouring to keep up with the dialogue, the stenographer had unfortunately, on this occasion, anticipated the soundtrack and typed "fuck", although in fact, the word had been covered by a bleep in the soundtrack. The stenographer had realised the error and had made the following clear apology at the end of the programme, in subtitles:

*'We apologise for the earlier strong language'.*

The broadcaster also said that the wrong electronic dictionary (enabling the stenographer to create subtitles at speed) was used. This dictionary allowed strong language and was designed for *Big Brother* post-watershed programming.

This was a case of genuine human error rather than a failing in compliance procedures or the broadcaster's technical procedures. All the necessary precautions had been put in place to attempt to avoid the transmission of any strong language. The production company providing the subtitling has reminded its team of the need to be careful to avoid such slips.

Channel 4 has already apologised directly to the complainant.

#### **Decision**

On this occasion, the swearing occurred as a result of a human error during a live programme. The broadcaster had also provided an apology before the end of the programme. In these circumstances, we consider the matter resolved. However we welcome the fact that the production company providing the subtitling has reminded its team of the need for care.

#### **Complaint resolved**

## **News**

*Five, 25 January 2006, 17:30*

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### **Introduction**

A viewer complained that in an item about the military regiment that Prince Harry was reported to be joining, it was stated that the unit had served in many combat areas, including Iraq and Kosovo. To illustrate Kosovo on the studio graphics, a representation of the Albanian flag was used. The viewer felt this implied that Kosovo was either the same territory as Albania, or part of that territory, which is untrue.

### **Response**

Five said that the use of the Albanian flag in this instance was a genuine mistake. It had amended its records so that a similar error did not occur in the future. It apologised for any offence caused to viewers.

### **Decision**

We welcome Five's recognition of the error, its apology and subsequent action. We consider the matter resolved.

### **Complaint resolved**

## **ITV News**

*ITV1, 24 January 2006, 18:30 and 22:30*

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### **Introduction**

Five viewers complained about reports on *ITV News* programmes, which highlighted the Government's proposals to change the delivery of long-term incapacity benefit. Some of the complainants (who were also claiming this benefit) said *ITV News* had implied that anyone on incapacity benefit was "a scrounger", and they did not believe the overall tone showed "due impartiality". Other complainants said that *ITV News* had stated – inaccurately – that anyone on incapacity benefit also had their rent and council tax paid by the state.

### **Response**

On the issue of "due impartiality", ITN, who provide the news programmes for ITV, said the report accurately reflected Government concern about the problem of "dependency culture", as suggested by a sharp rise in the number of people claiming incapacity benefit. The report made it clear that doctors' leaders maintained that 90 per cent of claims were genuine. Nevertheless, the thrust of the report was clearly about the campaign to identify *improper* claims and about the notion of dependency. This was a question of editorial discretion and not bias.

ITV pointed out that the initial report was followed by a separate report from Scotland about the challenges facing an individual on long-term benefit. This meant the overall output was not one-sided, as suggested by the complainants.

ITN accept that the statement suggesting claimants on incapacity benefit have their rent and council tax paid was incorrect. It said the report should have made it clear that some, not all, received these additional benefits. This would be made clear when *ITV News* returns to the story in future.

### **Decision**

We understand the concerns expressed by genuine claimants that the report might have created a suggestion that people on incapacity benefit were "scroungers". However, the approach adopted by *ITV News* accurately reflected the story of the day, which was an announcement about proposals to create a new unit to check on claimants to ensure they are still ill and measures to reduce the growing level of long-term dependency on incapacity benefit, and to reduce "dependency culture".

*ITV News* was not wholly accurate in its assertion that all those claiming incapacity benefit automatically received benefits for their rent and council tax paid – this would depend on the circumstances of any particular case. We welcome that ITV will make the situation clear when it returns to the issue in future. In these circumstances, we consider the matter resolved.

### **Not in breach/Resolved**

## **Celebrity Weakest Link**

*BBC1, 14 January 2006, 18:45*

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### **Introduction**

A viewer complained that during this edition of the *Weakest Link*, one of the celebrity contestants had a large logo on a t-shirt which read "FREEZE MOFO". This prompted the viewer's son, who is learning to read, to ask what MOFO (an abbreviation of 'motherfucker') meant. The viewer considered the logo inappropriate for broadcast at that time.

### **Response**

The BBC regretted the difficult situation the viewer was put in. However, from its research, it appeared that the viewer's experience of watching with his son was not widely shared. Children formed the smallest audience category. The BBC had only received two complaints directly – it suspected that this apparent lack of concern may have in part resulted from the remoteness of the abbreviation from its origins, and its comparative lack of familiarity.

Even so, the fact that the logo was allowed to appear in the programme was an oversight which the BBC regretted. The BBC offered an apology to the complainant and stated that, in future, clothing worn by contributors would be more rigorously checked. Additionally, this edition will be re-edited so that, in any future transmission, the wording would not be legible.

### **Decision**

We note that the BBC said that children formed the smallest audience category. However this was a programme broadcast pre-watershed. We acknowledge that the abbreviation may not be widely understood but its derivation is considered to be highly offensive. We welcome the steps taken by the BBC to prevent similar occurrences and to ensure the logo is illegible in repeats of the programme. In view of the action taken by the BBC, we consider the matter resolved.

### **Complaint resolved**

## **Bobby Bossman**

*Sunrise Radio, 24 December 2005, 19:45*

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### **Introduction**

This show (broadcast on Christmas Eve) featured a comedy item called 'Silent (but deadly) Night'. It featured a sampled recording of people breaking wind to the tune of the traditional Christmas Carol.

One person complained that this was unacceptable, especially during the Christmas period.

### **Response**

Sunrise Radio said that the presenter broadcast a personal apology the following day (Christmas Day). Whilst he did not mention the complainant by name, he said that he was heartily sorry to have offended him. He said that it had only been a bit of fun, but that he did not like upsetting even one listener.

### **Decision**

In the light of the on-air apology, we did not feel, on this occasion, that we needed to intervene further. For practising Christians, carols are an important part of the Christmas religious festival. It is important that broadcasters are aware of the particular religious sensitivities of all communities, especially at times of celebration or commemoration of the important festivals in those communities' calendars.

### **Complaint resolved**

## **Today**

*BBC Radio 4, 23 December 2005, 06:00*

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### **Introduction**

A listener complained about a comment made by a contributor during a discussion about the presence of troops in Iraq in which he referred to “a nigger in the woodpile”.

### **Response**

The BBC said that the comment was used in a live interview about the continuing presence of British troops in Iraq. Its occurrence in this context was perhaps even less to be expected than in many others. The production team had to make a spot decision on how it should be handled. While there was no intervention from the presenter at the time, a subsequent apology was made. It was felt that an immediate action by the presenter would have sounded heavy-handed in this context and would have risked throwing off course an informed contribution to the programme on a subject of great concern to many people. A statement, however, was read out within the hour: “Earlier in the programme, one of our contributors used a phrase which many of you found offensive. Following your calls and e-mails, he wishes us to make clear that he apologises for using the phrase and any offence caused.”

### **Decision**

We note that the comment was used by a contributor to the programme rather than a presenter or reporter. Nevertheless such phraseology is no longer considered acceptable. However in view of the action taken by the broadcaster, we consider the matter resolved.

### **Complaint resolved**

## **The Chris Moyles Show**

*BBC Radio 1, 18 November 2005, 08:30*

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### **Introduction**

Chris Moyles, during his breakfast show, handed over the presentation to a female news presenter. During the handover he referred to the presenter as a “slut” and then went on to make other comments about her as he attempted to defend his comment. Four listeners complained that this was offensive.

### **Response**

The BBC said that it regretted the offence to these listeners. It said that barbed banter was a trademark of the presenter and his show. He was himself often on the receiving end of personal comments from other members of the team and this was part of the light-hearted atmosphere that the team sought to create. The exchange between Chris Moyles and the news presenter was the culmination of a fortnight of backchat, in the course of which she had shown herself well able to respond firmly. On this occasion, other members of the team spoke up in her defence, and Chris Moyles included an element of apology in his later comments.

Even so, the Executive Producer and Head of Department both had conversations with the presenter subsequently, and reminded him of the need to avoid comments which risk causing listeners more offence than amusement.

### **Decision**

Banter between studio team members is a key part of this show and usually clearly comes across as good-humoured. However, care should be taken to avoid language and comments that might cause even regular listeners offence. In view of the BBC's apology and the reminder to the presenter, we consider the matter resolved.

### **Complaints resolved**

## **Promotions for Sunday Surgery**

*BBC Radio 1, 19-21 September 2005, various times*

### **Retraction by the BBC**

Ofcom's finding in Bulletin 53 concerning Radio 1's *Promotions for Sunday Surgery* referred to the fact that the BBC's response to Ofcom stated that the promotions for this programme were aimed at reaching the 9/10-14 age category.

Whilst accepting Ofcom's finding, the BBC wishes to retract this part of its statement. The BBC wishes it to be known that the trails were in fact not aimed particularly at children aged 9/10-14 age but principally at Radio 1's core audience of 15-24 year olds.

## Fairness and Privacy Cases

### Upheld/Upheld in Part

#### Ms B

*Central News*, ITV1 (Central), 2 August 2005

**Summary:** Ofcom has upheld this complaint of unwarranted infringement of privacy and partly upheld this complaint of unfair treatment. This regional news item reported an attack on Ms B that occurred as she walked through her local park with a friend.

Ms B complained that the broadcast was unfair in that it: did not include a description of her attackers (which according to her, was a requirement of her agreeing to take part); and, included “body shots” of her without her consent.

Ms B also complained that the use of “body shots” in the programme unwarrantably infringed her privacy.

Ofcom found the following:

- a) The omission of a description of Ms B’s attackers in the programme did not result in the unfair treatment of Ms B in the programme. In Ofcom’s opinion, the omission of this information was unlikely to have affected viewers’ understanding of Ms B and the incident in a way that was unfair to Ms B.
- b) While there was no evidence that the programme makers sought to mislead Ms B when seeking her consent to participate in the programme, in Ofcom’s view, they failed to provide her with sufficient information about the likely degree of her identifiability in the programme to ensure that the consent she provided to contribute to the programme was in fact informed consent. This was unfair.
- c) In Ofcom’s view, it should have been sufficiently clear to the programme makers (given the serious and sensitive subject matter and the pre-filming discussions between Ms B and the programme makers about camera angles) that Ms B had serious concerns about being identifiable in the programme. Ofcom concluded that the range of shots used in the broadcast, provided viewers with personal identifying information about Ms B which her voice, and information about the location alone, would not have provided. Ofcom noted the programme had included full-body walking shots at close range identifying Ms B’s height, posture, gait, physical form, hair colour and skin tone, all of which would have made Ms B readily identifiable to those who knew her. Ofcom concluded that this amounted to an infringement of Ms B’s privacy in the programme as broadcast. Further, in Ofcom’s view, there appeared to be no justification for such an infringement and it was therefore unwarranted.

#### Introduction

This regional news item reported on an attack on Ms B that occurred as she walked through her local park with a friend. The item highlighted the shortage of police in the Oxfordshire area at the time of the attack. Viewers were told that the victim was too afraid to be identified. The item was filmed in the park where the attack took place

and included an interview with Ms B and walking shots of Ms B and an unnamed friend.

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

## **The Complaint**

### **Ms B's case**

#### Fairness

In summary Ms B complained that she was treated unfairly in the programme as broadcast in that:

- a) she contributed to the item on the understanding that it would include a description of her attackers. The item did not include a description of her attackers despite assurances it would, given by three different members of the production team on separate occasions; and
- b) body shots were shown without her consent. The production team promised to use only leg shots when filming her and her friend walking through the park.

#### Privacy

- c) Ms B complained that her privacy was unwarrantably infringed in the programme as broadcast in that the use of body shots made her identifiable to people who knew her and to her attackers.

### **ITV's case**

In summary ITV said that unfortunately communication between the team members themselves and between each of them and Ms B was less than perfect. It was never the team's intention to treat Ms B unfairly, however, Central News fully recognised that there were highly regrettable misunderstandings which resulted in distress being caused to Ms B. Central News apologised unreservedly for any distress it may have unintentionally caused. ITV said that Ms B's complaint had led to the news team reviewing some of their own processes and communications.

In response to the Ms B's specific points raised in the complaint, ITV responded as follows:

#### Fairness

- a) In relation to the news team's dealings with the complainant, ITV said that Ms B agreed with a programme team member to contribute to a recorded interview on the basis she would not be identified. Though unable to recall the details of their conversation this team member accepted that it was most likely that it was agreed that descriptions of the attackers would be included. The journalist who conducted the interview confirmed that Ms B requested inclusions of the descriptions in the report. The journalist had Ms B record the descriptions of the attackers, but did not guarantee that the descriptions would be included, since she would not be editing the interview or scripting the final item. The journalist made clear, in an overnight briefing note to a programme team member and the sub-editor responsible for the editing, that Ms B was keen to

see descriptions included. During the editing stage the sub-editor recalled that Ms B asked him if a description could be included in the piece. The sub-editor recalled that he told Ms B that he would use his best endeavours, but that it was obviously important to report the details of what happened, and within a relatively short piece there may not be time. Ms B appeared to understand and accept this. He was certain that he did not guarantee inclusion.

ITV submitted that there were very likely two misunderstandings: Ms B believed that she had agreed inclusion of descriptions as a condition or pre-requisite to being interviewed; and, in handling the item, the three news personnel did not understand the interview or report to be conditional on that inclusion.

In its dealings with Ms B Central News never sought to mislead her. Central News maintains they did not treat her unfairly in the making of the programme and that broadcast of the item did not constitute material unfairness to her.

- b) In response to Ms B's complaint about the type of shots used, ITV said that after considering different camera angles, it was explained to Ms B that "walking" feet and back shots (or leg and body shots) would not identify her. The recording of "walking" shots took place on this basis. ITV believed the shots were used in good faith.

#### Privacy

- c) In response to the complaint of unwarranted infringement of privacy, ITV said the team clearly understood Ms B's wish not to be identified. The production team member and the journalist both recalled discussing this with Ms B and the journalist made this clear in block capitals in the overnight briefing note. ITV said Central News honoured the obligation to not make Ms B's identity known as use of "walking shots" did not constitute identification of Ms B.

#### **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 in programmes and unwarrantable infringement of privacy in both the making and broadcast of the programme included in such services.

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

In the circumstances of this case Ofcom found the following:

#### Fairness

- a) Ms B complained that the broadcast was unfair in that it did not include a description of her attackers, which according to her, was a requirement of her agreeing to take part in the news item. The broadcaster refuted that such a guarantee was given to Ms B.

However, Ofcom noted that ITV accepted that there was a miscommunication

between the various members of the programme making team and that a misunderstanding had occurred as to whether it was agreed with Ms B that a description of her attackers would be included in the programme.

Having regard to the evidence provided by the parties on this point, there appeared to be different recollections of the pre-transmission discussions and Ofcom was not able to resolve the conflicts between the parties' respective accounts of those discussions and the basis on which Ms B had agreed to participate in the programme.

However, Ofcom considered it was apparent that there was, at the very least, a difference in expectation about what would appear in the news item and welcomed the fact that, as a result of this complaint, action was being taken by the programme makers to review their internal processes.

Having established the conflict of evidence about the making of the programme, Ofcom's function is to consider whether Ms B was treated unfairly in the programme itself. It is not within Ofcom's remit to adjudicate on complaints of unfairness in the making of a programme unless that alleged unfairness results in unfair treatment of the complainant in the programme as broadcast.

In this case, Ofcom concluded that the omission of a description of Ms B's attackers in the programme did not result in the unfair treatment of Ms B in the programme. In Ofcom's opinion, the omission of this information was unlikely to have affected viewers' understanding of Ms B and the incident in a way that was unfair to Ms B.

Consequently, Ofcom did not uphold this part of the complaint.

- b) Ms B also complained that the use of 'body shots' in the programme as broadcast was unfair as they were used without her consent. ITV maintained that Ms B gave consent for "walking shots" and the shots were used in good faith.

Again, Ofcom's function was to consider whether, notwithstanding any conflicts in evidence, Ms B was treated unfairly in the programme as a result of ITV using particular shots of her.

In reaching a finding Ofcom noted that the discussions between programme makers and Ms B about which camera angles would be best, arose out of Ms B's wish that she should not be able to be identified in the programme. Ofcom noted that in ITV's statement, it was acknowledged that they understood Ms B's wish not to be *identified*. This was also acknowledged in the programme itself which stated that Ms B was "too scared to be identified".

It was also clear to Ofcom from Ms B's complaint that she had concerns about appearing in the programme in a way which made her *recognisable* or *identifiable*. In particular she said in her complaint that she had not wanted to be interviewed on camera because she had not wanted to be "identified". She further said that she agreed to be interviewed on camera only after being informed that steps could be taken so that she would not be "recognised".

Ofcom recognises that there is a distinction between an individual being specifically *identified* in a programme (for instance, by being named) and being rendered *identifiable* in a programme. However, it considers that if it is

apparent that a contributor has concerns about protecting their identity in a programme and the programme maker agrees to take steps to protect their identity, it is important that the contributor is given sufficient information to be able understand in advance what is actually meant. This includes the degree of protection that will result from any steps taken. In some circumstances it may be sufficient to ensure that the contributor is simply not specifically *identified*. In other (more sensitive) circumstances, it may be necessary to ensure that they are not rendered *identifiable* to a particular person or persons, including their own family or friends.

In Ofcom's view, it should have been sufficiently clear to the programme makers (given the obviously serious and sensitive subject matter and the pre-filming discussions between Ms B and the programme makers about camera angles) that Ms B had serious concerns about being *identifiable* in the programme. In this case, it was not sufficient for the programme makers to assume that Ms B recognised the fine distinction between being *identified* and being *identifiable*. It was clear from Ms B's complaint (see quotes above) that not being *identifiable* was fundamental to her decision to participate and she would not have consented to participating in the programme had she known that she would be *identifiable*.

After viewing the item, Ofcom concluded that the programme did not sufficiently protect Ms B's identity. In particular, the range of shots used, provided viewers with personal identifying information about Ms B, which her voice and information about the location alone, would not have provided. Ofcom noted that the programme included full-body walking shots at close range identifying Ms B's height, posture, gait, physical form, hair colour and skin tone, all of which would have made Ms B readily identifiable to those who knew her.

While there was no evidence that the programme makers sought to mislead Ms B when seeking her consent to participate, in Ofcom's view, they failed to provide her with sufficient information about the likely degree of her identifiability in the programme to ensure that the consent she provided to contribute to the programme was in fact **informed** consent. This was unfair.

Consequently, Ofcom upheld this part of the complaint.

### Privacy

- c) Ms B complained that her privacy was unwarrantably infringed in the programme as broadcast, in that the use of body shots made her identifiable to people who knew her and to her attackers.

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 the unwarranted infringement of privacy, Ofcom will therefore, where necessary, address itself to two distinct questions: First, has there been an infringement of privacy? Second, if so, was it warranted?

As outlined above at finding (b), there were areas of clear conflict between the parties' accounts of pre-transmission discussions. However, in Ofcom's view (for the reasons outlined above at finding (b)) it should have been sufficiently clear to the programme makers (given the obviously serious and sensitive subject matter and the pre-filming discussions between Ms B and the programme makers about camera angles) that Ms B had serious concerns

about being *identifiable* in the programme. In this case, it was not sufficient for the programme makers to assume that Ms B recognised the fine distinction between being *identified* and being *identifiable*.

Ofcom considered that the range of shots used made Ms B *identifiable* to those who knew her (see finding (b)). In these circumstances, Ofcom concluded that Ms B's privacy was infringed in the programme as broadcast and as, in Ofcom's view there appeared to be no justification for such an infringement, it was found to be unwarranted.

The complaint of unwarranted infringement of privacy was upheld.

**The complaint of unfair treatment was partly upheld. The complaint of unwarranted infringement of privacy was upheld.**

## Broadcasting Code Guidance Update

The guidance to 7.7 has been replaced by the following:

### **Practice to follow 7.7 Guarantees given to contributors relating to protection of identity**

Complaints in this area may arise through a lack of understanding about what was actually agreed in the first instance.

If a contributor has concerns about protecting their identity and the programme maker agrees to take steps to protect their identity, it is important that the contributor is given sufficient information to be able to understand in advance what steps the programme maker proposes to take, including the degree of protection that will result from any steps taken.

In some circumstances it may be sufficient to ensure that the contributor is simply not specifically identified (e.g. by being named). In other (more sensitive) circumstances, it may be necessary to ensure that they are not rendered identifiable to a particular person or persons, including their own family or friends (e.g. as a result of the broadcast of certain images, the divulging of personal details or characteristics etc).

It should not be assumed that a contributor will necessarily appreciate the fine distinction between not identifying them in the programme and making sure they are not identifiable. Programme makers should judge the sensitivity of the particular circumstances when considering what level of protection is appropriate to protect a participant's identity.

To reduce the possibility of any subsequent misunderstanding, television programme makers should ensure participants understand exactly how their image and voice will be disguised (e.g. by using an actor's voice or by blurring, pixilation or silhouetting).

## **Complaint by Radio Carmarthenshire**

*Y Byd Ar Bedwar, S4C, 1 February 2005*

**Summary:** Ofcom has partly upheld this complaint of unfair treatment. Radio Carmarthenshire complained that it was treated unfairly in this edition of S4C's current affairs series. The programme looked at an alleged lack of commitment to Welsh language broadcasting by Welsh radio stations, focusing in particular on Radio Carmarthenshire. The station was criticised for having insufficient Welsh language programming and footage was included of a protest that took place at Radio Carmarthenshire's premises.

Ofcom concluded that:

- a) Given that the position and views of Steffan Cravos were made clear in the programme there was no reason why S4C should not have included him in it.
- b) While there was no problem with S4C going ahead with the programme, despite Radio Carmarthenshire's refusal to take part, they were nevertheless required to ensure the programme treated the station fairly in accordance with the requirements of the ex-BSC Fairness and Privacy Code. The programme lacked balance in a number of respects, the cumulative effect of which was to give an unfair impression of Radio Carmarthenshire's Welsh output and its obligations.
- c) There was no unfairness to Radio Carmarthenshire in showing footage of a protest at its premises in the programme.
- d) An exercise to monitor the station's Welsh output was carried out by the programme makers but unfairness was caused due to a failure to put it into context by explaining the important distinction between the licence application and the Promise of Performance (against which the station's compliance is measured).
- e) The failure to make clear the distinction between the licence application and the Promise of Performance resulted in an unfair impression being given that Radio Carmarthenshire was failing to adhere to a requirement to broadcast around 30% of its output in Welsh, since in fact no such obligation exists.

### **Introduction**

This edition of *Y Byd Ar Bedwar* looked at an alleged lack of commitment to Welsh language broadcasting by Welsh radio stations, focusing in particular on Radio Carmarthenshire. The station was criticised for having insufficient Welsh language programming. The programme compared Radio Carmarthenshire's actual output with that as outlined in its application for a licence.

The programme included a contribution from Mr Steffan Cravos, a member of *Cymdeithas yr Iaith* (the Welsh Language Society) who was critical of Radio Carmarthenshire's output. Mr Cravos was, at the time of broadcast, facing charges relating to the criminal damage to the premises of Radio Carmarthenshire and assault on a member of staff.

It also included footage of a protest that took place at Radio Carmarthenshire's premises.

Radio Carmarthenshire complained that it was treated unfairly in the programme as broadcast.

## **Complaint**

### **Radio Carmarthenshire's case**

In summary, Radio Carmarthenshire complained that it was treated unfairly in that:

- a) The main narrative of the programme was provided by Mr Cravos, who was due to stand trial on charges of criminal damage to the premises of Radio Carmarthenshire and assault on a member of its staff.
- b) The programme was biased, with the only balance being provided by vox pop interviews with listeners. Radio Carmarthenshire declined to take part in the programme as it felt that the agenda of the programme was to portray the station in a negative light.
- c) Footage of the programme makers trespassing on Radio Carmarthenshire's property was shown without permission. It was also inappropriate for the programme to include footage of protesters sticking stickers to Radio Carmarthenshire's property, since this action was subject to legal proceedings by the time of the broadcast.
- d) The programme's main body of evidence regarding the level of Welsh language programming on Radio Carmarthenshire was a "survey" conducted in conjunction with Cymdeithas yr Iaith, the Welsh Language Society. The conclusions of the survey were presented in a misleading fashion and without any context. Radio Carmarthenshire is regulated by Ofcom against what its Promise of Performance says and is fully compliant with its obligations.
- e) The programme quoted selectively from Radio Carmarthenshire's application for a licence, in which Radio Carmarthenshire expressly said it would never have a "percentage of Welsh" policy.

### **S4C's case**

S4C said, in summary, that:

- a) Although Mr Cravos was the main voice who spoke out against Radio Carmarthenshire, he did not provide the main narrative, nor was he the only person to speak out against the station on the programme. The programme makers were aware that the programme was a means for him to air his views, but considered that this was reasonable for a number of reasons. He had worked as a radio DJ himself, so understood the demands, pressures and commercial realities of running a radio station. He is the lead vocalist in a Welsh band and has concerns that there are fewer outlets willing to give airtime to new bands than used to be the case. He is a leading member of Cymdeithas yr Iaith's campaign for Radio Carmarthenshire's output to be more Welsh. As a result, Mr Cravos is someone who is likely to be listened to by many who could

influence the fate and financial success of Radio Carmarthenshire and the shape of commercial radio in Wales for many years to come. Although Mr Cravos was, at the time of broadcast, facing charges of criminal damage and assault, this was made clear in the programme and the footage in the programme carried with it no risk of prejudicing any forthcoming trial.

- b) The programme makers did not set out to examine the issues with any preconceived agenda or objective other than to inform and entertain viewers on a topic that had already excited a great deal of interest in Carmarthenshire. The future of the Welsh language and culture is a subject close to the hearts of many S4C viewers and a matter of public interest to the people of Wales. The most effective way for Radio Carmarthenshire to deal with matters raised in the programme would have been for the managing director to have explained his position in an interview. He was given every opportunity to do so but declined. It would have been much easier to achieve balance in the programme if Radio Carmarthenshire had provided an interview. In the event, the programme makers were left to do their best to balance the criticism without a contribution from the station. The programme carried vox pop interviews with a number of local people who were happy with the service provided by Radio Carmarthenshire. It also reported the station's own research findings that the majority of people in the area would be more likely to listen to the station if there were no Welsh language output on it at all. This clearly demonstrated that there were two schools of thought.
- c) There was no trespassing on Radio Carmarthenshire's premises. The journalist entered through the front door, which was unlocked and wide open. When asked to leave, she did so. There was no bar to her using the footage obtained in the programme. The use of footage of protesters sticking stickers to Radio Carmarthenshire's premises was not unfair and could not have prejudiced any trial, as the programme makers knew the protesters would not deny what the footage showed them doing.
- d) There was no survey. The programme makers carried out an exercise involving the monitoring of every second of the station's transmission over a 24 hour period. This was not carried out in conjunction with Cymdeithas yr Iaith. The monitoring provided a set of statistics that were reported factually and in the context of Radio Carmarthenshire's broadcast licence, so that the station's actual output could be compared with the commitments made. It was entirely fair to judge Radio Carmarthenshire against its own promises.
- e) The programme's commentary was based on Radio Carmarthenshire's local radio licence application, not the Promise of Performance. The reporting reflected the fact that the station did not have a "percentage of Welsh" policy. The relevant extract says "We have worked out that over a 24 hour period, we would normally expect around 30% of our programming to be in Welsh..." The station had therefore clearly set itself a benchmark of around 30% Welsh language output. The programme makers' research showed that the station was falling very short of that mark. It was fair to point this out to viewers in a factually accurate and understandable way.

## Radio Carmarthenshire's response

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*In response to S4C's statement, Radio Carmarthenshire said:*

- b) Balance could have been achieved in a number of ways. There could have been a narrative demonstration that the station was over-delivering against its Ofcom obligations and illustrating the high level of Welsh language broadcasting on the station. All the complaints about Radio Carmarthenshire were generated by Cymdeithas yr Iaith, while the majority of "normal listeners" are entirely satisfied with the station and do not consider the language to be an issue.
- e) The programme stated incorrectly that Radio Carmarthenshire "promised bilingual broadcasting" It also failed to distinguish between the station's licence application and its Promise of Performance, although there was a key distinction between them in terms of the station's legal and regulatory obligations.

## S4C's response

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S4C said in response:

- b) In additions to the vox pops, the programme makers paraphrased some of what the managing director of Radio Carmarthenshire told them on the phone.
- e) It is clear from the Licence Application and the Promise of Performance that Radio Carmarthenshire promised bilingual broadcasting

## Decision

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

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

- a) The Fairness Committee noted that it was clear from the outset of the programme, particularly to viewers living in Carmarthenshire and also to Welsh speakers in general, that Mr Cravos is associated with Cymdeithas yr Iaith. His stance in relation to Radio Carmarthenshire and his background were made clear to viewers, as was the fact that there were criminal charges pending against him. He was entitled to express his views and since his position and views were made clear, the Fairness Committee considered there was no reason why S4C should not have included him in the programme.
- b) The Fairness Committee noted that the programme makers sought a contribution from Radio Carmarthenshire, but that the station declined. There was no problem with S4C going ahead with the programme without a

contribution from anyone at Radio Carmarthenshire, but S4C was nevertheless required to ensure the programme treated Radio Carmarthenshire fairly in accordance paragraphs 2 and 7 of the ex-BSC Fairness and Privacy Code. In the Fairness Committee's view, the vox pop interviews, some of which were favourable to Radio Carmarthenshire, and the references to comments by the managing director of the station went some way to provide Radio Carmarthenshire's side of the story. However, these were outweighed in the programme by the misleading presentation of information.

The cumulative effect of this was to cause distortion in the programme, giving an unbalanced impression of Radio Carmarthenshire's Welsh output and its obligations, and resulting in unfairness in the programme as broadcast. In particular, the Fairness Committee noted the following examples:

- A reference to the managing director "and another man from England" gave the false impression that the managing director was himself English and not Welsh.
  - This, together with the use of a still photograph of him with a voiceover referring to him being "quite aggressive and anti-Welsh", added to the impression that the station was overly English.
  - The programme failed to make clear the distinction between Radio Carmarthenshire's application for a licence and its Promise of Performance (see paragraph e) below) and therefore gave an inaccurate impression of the station's Welsh language requirements, for example by suggesting that all presenters were supposed to be bilingual.
  - A section in the programme dealing with the complaints of a former presenter (albeit on another station) about employment issues was not relevant to the programme's stated aim of looking at how much Welsh there was on Radio Carmarthenshire and compounded the lack of balance.
- c) It is not Ofcom's role to consider whether there was any trespass or any criminal activity by protesters at Radio Carmarthenshire's premises. However the Fairness Committee was able to consider whether unfairness in the programme resulted from including this footage. The Fairness Committee concluded that this was not the case as the circumstances of the protest were clearly explained in the programme.
- d) The programme referred to Ofcom monitoring the service and immediately followed this with commentary about the monitoring exercise that was conducted by S4C. This juxtaposition combined with the lack of a proper explanation of how it was carried out and could have caused viewers to believe that Ofcom would have monitored the output in the same way and reached the same conclusions as S4C. The programme also failed to put the results of the monitoring exercise into context by making clear the distinction between the application proposals and the licence commitments in the Promise of Performance (see paragraph e) below).
- e) The programme referred to a broken promise that around 30% of Radio Carmarthenshire's service would be in Welsh and included a quotation from part of the application for a licence. In doing so, S4C failed to make clear the important distinction between the licence application and the station's Promise of Performance. The Promise of Performance (agreed with the Radio Authority and now replaced by the station's Format) forms a part of the radio licence and

sets out the programme format commitments. Whilst this is based on the proposals made in the licence application, there is an important distinction between the proposals in the licence application and the requirements agreed with the regulator, Ofcom, in the Promise of Performance. Radio Carmarthenshire's Promise of Performance requires that "a reasonable commitment" to Welsh language programming should manifest itself across the week. There is no licence requirement for presenters to be bilingual. Furthermore, the programme selectively referred to the licence application by omitting to mention that, when it referred to the figure of "around 30%", Radio Carmarthenshire had also said that, although it recognised a vocal minority wanted a fixed percentage, it did not believe the answer to a commitment to Welsh programming lay in a "dogmatic must be adhered to percentage". This approach was taken through to the commitment described in the Promise of Performance. Consequently, the Fairness Committee found that the programme gave the impression that Radio Carmarthenshire was failing to comply with a requirement to broadcast around 30% of its output in Welsh, which did not in fact exist. This resulted in unfairness to Radio Carmarthenshire in the programme as broadcast.

**Accordingly, the Fairness Committee found that there was some unfairness to Radio Carmarthenshire in the programme. Paragraphs b), d) and e) were upheld. Paragraphs a) and c) of the complaint were not upheld.**

## Cwyn gan Radio Sir Gâr

*Y Byd Ar Bedwar, S4C, 1 Chwefror 2005*

**Crynodeb:** Mae Ofcom wedi cynnal yn rhannol y gŵyn hon yn ymwneud â thriniaeth annheg. Cwynodd Radio Sir Gâr iddo gael ei drin yn annheg yn y rhifyn hwn o gyfres materion cyfoes S4C. Roedd y rhaglen yn edrych ar ddiffyg ymrwymiad honedig gan orsafoedd radio yng Nghymru i ddarlledu yn y Gymraeg, gan ganolbwyntio'n benodol ar Radio Sir Gâr. Beirniadwyd yr orsaf am ei harlwy annigonol o raglenni Cymraeg, a chynhwyswyd lluniau o brotest a gynhaliwyd yn adeilad Radio Sir Gâr.

Daeth Ofcom i'r casgliad:

- a) O gofio bod safbwynt a barn Steffan Cravos wedi'u cyfleu yn glir yn y rhaglen, nid oedd unrhyw reswm pam na ddylai S4C fod wedi'i gynnwys ynddi.
- b) Er nad oedd problem o ran S4C yn bwrw ymlaen â'r rhaglen, er gwaetha'r ffaith bod Radio Sir Gâr wedi gwrthod cymryd rhan, roedd yn ofynnol iddynt serch hynny i sicrhau bod y rhaglen yn trin yr orsaf yn deg yn unol â gofynion Cod Tegwch a Phreifatrwydd yr hen Gyngor Safonau Darlledu. Roedd diffyg cydbwysedd yn y rhaglen o ran nifer o agweddau, ac effaith gronnus y rheiny oedd rhoi argraff annheg o allgynnyrch Cymraeg Radio Sir Gâr a'i rwymedigaethau.
- c) Nid oedd unrhyw annhegwch i Radio Sir Gâr o ran dangos ar y rhaglen lluniau o brotest yn ei adeilad.
- ch) Cynhaliwyd ymarferiad i fonitro allgynnyrch Cymraeg yr orsaf gan wneuthurwyr y rhaglen, ond achoswyd annhegwch oherwydd methiant i'w roi mewn cyd-destun drwy esbonio gwahaniaeth pwysig rhwng y cais am drwydded a'r Addewid Perfformiad (y caiff cydymffurfiaid yr orsaf ei fesur yn ei erbyn).
- d) Arweiniodd y methiant i nodi'r gwahaniaeth clir rhwng y cais am drwydded a'r Addewid Perfformiad at argraff annheg yn cael ei rhoi bod Radio Sir Gâr yn methu cadw at ofyniad i ddarlledu rhyw 30% o'i allgynnyrch yn Gymraeg, gan nad oes unrhyw rwymedigaeth felly yn bodoli mewn gwirionedd.

### Cyflwyniad

Roedd y rhifyn hwn o Y Byd Ar Bedwar yn edrych ar ddiffyg ymrwymiad honedig gan orsafoedd radio yng Nghymru i ddarlledu yn Gymraeg, gan ganolbwyntio'n benodol ar Radio Sir Gâr. Cafodd yr orsaf ei beirniadu am fod ag arlwy annigonol o raglenni Cymraeg. Roedd y rhaglen yn cymharu allgynnyrch gwirioneddol Radio Sir Gâr â hynny a amlinellwyd yn ei gais am drwydded.

Roedd y rhaglen yn cynnwys cyfraniad gan Mr Steffan Cravos, aelod o Gymdeithas yr Iaith, a oedd yn feirniadol o allgynnyrch Radio Sir Gâr. Roedd Mr Cravos, pan ddarlledwyd y rhaglen, yn wynebu cyhuddiadau'n ymwneud â difrod troseddol i adeilad Radio Sir Gâr ac o ymosod ar aelod o staff.

Roedd hefyd yn cynnwys lluniau o brotest a gynhaliwyd yn adeilad Radio Sir Gâr.

Cwynodd Radio Sir Gâr iddo gael ei drin yn annheg yn y rhaglen fel y cafodd ei darlledu.

## **Cwyn**

### **Achos Radio Sir Gâr**

Yn gryno, cwyn Radio Sir Gâr oedd iddo gael ei drin yn annheg oherwydd:

- a) Roedd prif naratif y rhaglen yn cael ei ddarparu gan Mr Cravos, a oedd i sefyll o flaen ei well ar gyhuddiadau o ddifrod troseddol i adeilad Radio Sir Gâr ac o ymosod ar aelod o'i staff.
- b) Roedd y rhaglen yn rhagfarnllyd, gyda chyfweliadau â gwrandawyr yn gofyn am eu barn yn darparu'r unig gydbwysedd. Gwrthododd Radio Sir Gâr â chymryd rhan yn y rhaglen, gan ei fod yn teimlo mai agenda'r rhaglen oedd portreadu'r orsaf mewn ffordd negyddol.
- c) Cafodd lluniau o wneuthurwyr y rhaglen yn tresbasu ar eiddo Radio Sir Gâr eu dangos heb ganiatâd. Roedd yn amhriodol hefyd i'r rhaglen gynnwys lluniau o brotestwyr yn gosod sticeri ar eiddo Radio Sir Gâr, gan fod y gweithredu hwn yn destun achos cyfreithiol erbyn i'r rhaglen gael ei darlledu.
- ch) Prif gorff tystiolaeth y rhaglen mewn perthynas â lefel y rhaglenni Cymraeg ar Radio Sir Gâr oedd "arolwg" a gynhaliwyd ar y cyd â Chymdeithas yr Iaith. Cafodd casgliadau'r arolwg eu cyflwyno mewn modd camarweiniol a heb unrhyw gyd-destun. Mae Radio Sir Gâr yn cael ei reoleiddio gan Ofcom yn erbyn yr hyn a ddywed ei Addewid Perfformiad, ac mae'n cydymffurfio'n llawn â'i rwymedigaethau.
- d) Dyfynnodd y rhaglen yn ddetholus o gais Radio Sir Gâr am drwydded, lle dywedodd Radio Sir Gâr yn benodol na fyddai fyth ganddo bolisi "canran Cymraeg".

### **Achos S4C**

Dywedodd S4C, i grynhoi:

- a) Er mai Mr Cravos oedd y prif lais a siaradodd yn erbyn Radio Sir Gâr, nid ef oedd yn darparu prif naratif y rhaglen, ac nid ef ychwaith oedd yr unig un i siarad yn erbyn yr orsaf ar y rhaglen. Roedd gwneuthurwyr y rhaglen yn ymwybodol bod y rhaglen yn gyfrwng iddo leisio'i farn, ond roeddent o'r farn fod hyn yn rhesymol, a hynny am nifer o resymau. Roedd wedi gweithio fel DJ radio ei hun, ac felly roedd yn deall gofynion, pwysau a realiti masnachol rhedeg gorsaf radio. Mae'n brif leisydd mewn band Cymraeg, ac mae ganddo bryderon bod llai o allfeydd sy'n barod i roi amser i fandiau newydd ar yr awyr nag yr arferai fod. Mae'n aelod blaenllaw o ymgyrch Cymdeithas yr Iaith am i allgynnyrch Radio Sir Gâr fod yn fwy Cymraeg. O ganlyniad, mae Mr Cravos yn rhywun y mae'n debygol y caiff ei wrando arno gan lawer un a allai ddylanwadu ar dynged a llwyddiant ariannol Radio Sir Gâr a ffurf radio masnachol yng Nghymru am flynyddoedd lawer i ddod. Er bod Mr Cravos, pan ddarlledwyd y rhaglen, yn wynebu cyhuddiadau o ddifrod troseddol ac o ymosod, esboniwyd

hyn yn glir yn y rhaglen ac nid oedd unrhyw risg ynghlwm wrth y lluniau yn y rhaglen o niweidio unrhyw achos prawf i ddod.

- b) Nid aeth gwneuthurwyr y rhaglen ati i archwilio'r materion gydag unrhyw agenda neu amcan rhagdybiedig ac eithrio i roi gwybodaeth i wylwyr neu'u difyrru ar destun a oedd eisoes wedi ennyn llawer iawn o ddi-ddordeb yn Sir Gâr. Mae dyfodol iaith a diwylliant Cymru yn destun sy'n agos at galon llawer o wylwyr S4C ac yn fater diddordeb cyhoeddus i bobl Cymru. Y ffordd fwyaf effeithiol i Radio Sir Gâr fod wedi delio â materion a godwyd yn y rhaglen fyddai i'r cyfarwyddwr rheoli fod wedi cael mynegi'i safbwynt mewn cyfweiliad. Rhoddwyd pob cyfle iddo wneud hynny, ond gwrthododd. Byddai wedi bod yn llawer haws cyflawni cydbwysedd yn y rhaglen pe bai Radio Sir Gâr wedi rhoi cyfweiliad. Fel y bu hi, gadawyd i wneuthurwyr y rhaglen wneud eu gorau i gydbwysu'r feirniadaeth heb gyfraniad gan yr orsaf. Roedd y rhaglen yn cynnwys cyfweiliadau holi barn â nifer o bobl leol a oedd yn hapus â'r gwasanaeth sy'n cael ei ddarparu gan Radio Sir Gâr. Adroddodd hefyd am ganfyddiadau ymchwil yr orsaf ei hun, sef y byddai mwyafrif y bobl yn yr ardal yn fwy tebygol o wrando ar yr orsaf pe na bai unrhyw allgynnyrch Cymraeg arni o gwbl. Dangosodd hyn y glir bod dwy garfan o feddylwyr.
- c) Ni fu unrhyw dresbasu ar eiddo Radio Sir Gâr. Aeth y newyddiadurwraig i mewn drwy ddrws y ffyrnt; nid oedd ar glo ac roedd yn llydan agored. Pan ofynnwyd iddi adael, gwnaeth hynny. Nid oedd unrhyw rwystr iddi rhag defnyddio'r lluniau a gafwyd ar y rhaglen. Nid oedd defnyddio'r lluniau o brotestwyr yn gosod sticeri ar adeilad Radio Sir Gâr yn annheg ac ni allai fod wedi niweidio unrhyw achos, gan y gwyddai gwneuthurwyr y rhaglen na fyddai'r protestwyr yn gwadu'r hyn yr oedd y lluniau yn eu dangos yn gwneud.
- ch) Ni fu unrhyw arolwg. Cynhaliodd gwneuthurwyr y rhaglen ymarferiad a oedd yn cynnwys monitro bob eiliad o ddarllediad yr orsaf dros gyfnod o 24 awr. Ni wnaethpwyd hyn ar y cyd â Chymdeithas yr Iaith. Darparodd yr ymarferiad monitro set o ystadegau a gafodd eu hadrodd yn ffeithiol ac yng nghyd-destun trwydded ddarlledu Radio Sir Gâr, fel bod modd cymharu allgynnyrch gwirioneddol yr orsaf â'r ymrwymadau a wnaed. Roedd yn gwbl deg barnu Radio Sir Gâr yn erbyn ei addewidion ei hun.
- d) Roedd sylwebaeth y rhaglen wedi'i seilio ar gais Radio Sir Gâr am drwydded radio lleol, nid yr Addewid Perfformiad. Roedd yr adroddiad yn adlewyrchu'r ffaith nad oedd gan yr orsaf bolisi "canran Cymraeg". Dywed y darn perthnasol "We have worked out that over a 24 hour period, we would normally expect around 30% of our programming to be in Welsh..." Roedd yr orsaf felly yn amlwg wedi gosod meincnod iddi hi ei hun i gynhyrchu rhyw 30% o raglenni Cymraeg. Dangosodd ymchwil gwneuthurwyr y rhaglen bod yr orsaf yn brin iawn o gyrraedd y marc hwnnw. Roedd yn deg nodi hyn i wylwyr mewn modd a oedd yn ffeithiol gywir ac yn ddealladwy.

Ymateb Radio Sir Gâr

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*Mewn ymateb i ddatganiad S4C, dywedodd Radio Sir Gâr:*

- b) Gellid fod wedi cyflawni cydbwysedd mewn nifer o ffyrdd. Gellid fod wedi cynnwys arddangosiad naratif bod yr orsaf yn gor-gyflawni yn erbyn ei rhwymedigaethau i Ofcom, a chan ddangos y lefel uchel o ddarlledu Cymraeg ar yr orsaf. Cafodd yr holl gŏynion am Radio Sir Gâr eu gwneud gan Gymdeithas yr Iaith, tra bod mwyafrif y “gwrandawyr normal” yn gwbl fodlon â'r orsaf ac nid ydynt yn ystyried bod yr iaith yn broblem.
- d) Datganodd y rhaglen yn anghywir bod Radio Sir Gâr “wedi addo darlledu'n ddwyieithog”. Methodd hefyd wahaniaethu rhwng cais yr orsaf am drwydded a'i Haddewid Perfformiad, er bod gwahaniaeth allweddol rhyngddynt o ran rhwymedigaethau cyfreithiol a rheoleiddiol yr orsaf.

## Ymateb S4C

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Mewn ymateb dywedodd S4C:

- b) Yn ychwanegol at farn y bobl, fe wnaeth gwneuthurwyr y rhaglen aralleirio rhywfaint o'r hyn a ddywedodd rheolwr gyfarwyddwr Radio Sir Gâr wrthynt ar y ffôn.
- d) Mae'n amlwg o'r Cais am Drwydded a'r Addewid Perfformiad bod Radio Sir Gâr wedi addo darlledu'n ddwyieithog.

## Penderfyniad

Mae dyletswyddau statudol Ofcom yn cynnwys, yn achos yr holl wasanaethau teledu a radio, cymhwyso safonau sy'n rhoi diogelwch digonol i aelodau'r cyhoedd a phawb arall rhag triniaeth annheg ac achosion o amhariadau direswm ar breifatrwydd mewn rhaglenni a gynhwysir mewn gwasanaethau felly.

Wrth gyflawni'i ddyletswyddau, mae Ofcom yn ystyried yr angen i sicrhau bod y safonau hyn yn cael eu cymhwyso mewn modd sy'n gwarantu orau lefel briodol o ryddid mynegiant. Mae rhwymedigaeth ar Ofcom hefyd i ystyried ymhob achos egwyddorion sy'n gofyn i weithgareddau rheoleiddiol fod yn dryloyw, yn atebol, yn gymesur, yn gyson ac wedi'u targedu'n unig at achosion lle mae angen gweithredu.

- a) Nododd y Pwyllgor Tegwch ei bod yn glir o gychwyn y rhaglen, yn enwedig i wylwyr yn byw yn Sir Gaerfyrddin ac i siaradwyr Cymraeg yn gyffredinol hefyd, bod Mr Cravos yn gysylltiedig â Chymdeithas yr Iaith. Cafodd ei safbwynt mewn perthynas â Radio Sir Gâr, a'i gefndir, ei gyfleu'n glir i wylwyr, yn ogystal â'r cyhuddiadau troseddol a oedd yn sefyll yn ei erbyn. Roedd hawl ganddo fynegi'i farn, a chan y cyflëwyd ei safbwynt a'i farn yn glir, roedd y Pwyllgor Tegwch o'r farn nad oedd unrhyw reswm pam na ddylai S4C ddim fod wedi'i gynnwys yn y rhaglen.
- b) Nododd y Pwyllgor Tegwch bod gwneuthurwyr y rhaglen wedi gofyn am gyfraniad gan Radio Sir Gâr, ond bod yr orsaf wedi gwrthod. Nid oedd problem o ran S4C yn bwrw ymlaen â'r rhaglen heb gyfraniad gan unrhyw un yn Radio Sir Gâr, ond roedd yn ofynnol i S4C serch hynny i sicrhau bod y rhaglen yn trin Radio Sir Gâr yn deg yn unol â pharagraffau 2 a 7 Cod Tegwch a Phreifatrwydd yr hen Gyngor Safonau Darlledu. Ym marn y Pwyllgor Tegwch, aeth y cyfweiliadau holi barn, rhai ohonynt yn ffafriol i Radio Sir Gâr, a'r cyfeiriadau at sylwadau gan reolwr gyfarwyddwr yr orsaf, rywfaint o'r ffordd i roi

ochr Radio Sir Gâr o'r stori. Fodd bynnag, cafodd y rhain eu gorbwysu yn y rhaglen trwy gyflwyno gwybodaeth yn gamarweiniol.

Effaith gronnus hyn oedd achosi afluniad yn y rhaglen, gan roi argraff anghybwys o allgynnyrch Cymraeg Radio Sir Gâr a'i rwymedigaethau, ac arwain at annhegwch yn y rhaglen fel y cafodd ei darlledu. Yn benodol, nododd y Pwyllgor Tegwch yr enghreifftiau canlynol:

- Fe wnaeth cyfeiriad at y rheolwr gyfarwyddwr "a dyn arall o Loegr" roi argraff ffug bod y rheolwr gyfarwyddwr ei hun yn Sais ac nid yn Gymro.
  - Roedd hyn, ynghyd â'r defnydd o ffotograff llonydd ohono gyda throsalais yn cyfeirio ato fel "eithaf ymosodol a gwrth-Gymreig", yn ychwanegu at yr argraff fod yr orsaf yn or-Seisnig.
  - Methodd y rhaglen â gwneud y gwahaniaethu clir rhwng cais Radio Sir Gâr am drwydded a'i Addewid Perfformiad (gweler paragraff d) isod) ac felly rhoddodd argraff anghywir o ofynion Cymraeg yr orsaf, er enghraifft, trwy awgrym bod holl gyflwynwyr yr orsaf i fod yn ddwyieithog.
  - Nid oedd rhan o'r rhaglen a oedd yn delio â chwynion cyn gyflwynydd (er mai ar orsaf arall oedd hynny) ynghylch materion cyflogaeth yn berthnasol i nod ddatganedig y rhaglen, sef edrych ar faint o Gymraeg oedd ar Radio Sir Gâr, ac ychwanegodd at y diffyg cydbwysedd.
- c) Nid rôl Ofcom yw ystyried a fu unrhyw dresbasu neu weithgarwch troseddol gan brotestwyr yn adeilad Radio Sir Gâr. Fodd bynnag, roedd y Pwyllgor Tegwch yn gallu ystyried a wnaeth annhegwch yn y rhaglen ddeillio o gynnwys y lluniau hyn. Daeth y Pwyllgor Tegwch i'r casgliad na wnaeth, gan fod amgylchiadau'r brotest wedi'u hesbonio'n glir yn y rhaglen.
- ch) Cyfeiriodd y rhaglen at ymarferiad Ofcom i fonitro'r gwasanaeth, a dilynwyd hyn ar unwaith gan sylwebaeth am yr ymarferiad monitro a gynhaliwyd gan S4C. Gallai'r cyfodiad hwn â'r diffyg esboniad priodol o'r modd y'i cynhaliwyd, fod wedi peri i wylwyr gredu y byddai Ofcom wedi monitro'r allgynnyrch yn yr un modd ac wedi dod i'r un casgliadau ag S4C. Hefyd, methodd y rhaglen â rhoi canlyniadau'r ymarferiad monitro mewn cyd-destun trwy wneud y gwahaniaethu clir rhwng cynigion y cais ac ymrwymadau'r drwydded yn yr Addewid Perfformiad (gweler paragraff d) isod).
- d) Cyfeiriodd y rhaglen at dor-addewid y byddai rhyw 30% o wasanaeth Radio Sir Gâr yn Gymraeg, a chynhwysodd ddyfyniad o ran o'r cais am drwydded. Wrth wneud hynny, methodd S4C â gwneud y gwahaniaethu pwysig rhwng y cais am drwydded ac Addewid Perfformiad yr orsaf. Mae'r Addewid Perfformiad (a gytunwyd gyda'r Awdurdod Radio ac erbyn hyn, Fformat yr Orsaf sydd wedi cymryd ei le) yn rhan o'r drwydded radio, ac mae'n nodi'r ymrwymadau o ran fformat rhaglenni. Er bod hyn yn seiliedig ar y cynigion a wnaed yn y cais am drwydded, mae gwahaniaethu pwysig rhwng y cynigion yn y cais am drwydded a'r gofynion a gytunwyd gyda'r rheoleiddiwr, Ofcom, yn yr Addewid Perfformiad. Mae Addewid Perfformiad Radio Sir Gâr felly yn gofyn y dylai "ymrwymiad rhesymol" i raglenni Cymraeg ddod yn amlwg ar draws yr wythnos. Nid oes unrhyw ofyniad trwydded i gyflwynwyr fod yn ddwyieithog. Hefyd, cyfeiriodd y rhaglen yn ddetholus at y cais am drwydded drwy hepgor sôn, pan gyfeiriodd at y ffigur o "ryw 30%", bod Radio Sir Gâr wedi dweud hefyd, er ei fod yn cydnabod bod lleiafrif llafar eisiau canran benodol, nad oedd yn credu bod yr ateb i ymrwymiad i raglenni Cymraeg mewn "canran ddogmatig y mae'n rhaid

cadw ati". Mabwysiadwyd yr ymagwedd hon drwodd i'r ymrwymiad a ddisgrifiwyd yn yr Addewid Perfformiad. O ganlyniad, canfu'r Pwyllgor Tegwch bod y rhaglen wedi rhoi'r argraff fod Radio Sir Gâr yn methu â chydymffurfio â gofyniad i ddarlledu rhyw 30% o'i allgynnyrch yn Gymraeg, ac nad oedd gofyniad felly'n bodoli mewn gwirionedd. Arweiniodd hyn at annhegwch i Radio Sir Gâr yn y rhaglen fel y cafodd ei darlledu.

**Yn unol â hynny, canfu'r Pwyllgor Tegwch bod rhywfaint o annhegwch i Radio Sir Gâr yn y rhaglen. Cafodd paragraffau b), ch) a d) eu cynnal. Ni chafodd paragraffau a) ac c) y gŵyn eu cynnal.**

## Not Upheld

### **Complaint by Mr Trevor Powell on his own behalf and on behalf of Hands on Hideaway**

*Keri Jones Show, Radio Pembrokeshire, 7 August 2005*

**Summary:** Ofcom has not upheld this complaint of unfair treatment. Mr Trevor Powell complained that he and his business, Hands on Hideaway, were treated unfairly in Radio Pembrokeshire's morning programme. This programme included a reference to an earlier programme, broadcast on 4 August 2005, in which Mr Powell was interviewed, having contacted the station about the lack of support he felt he was receiving for his new local business, an activity centre for children. In the programme broadcast on 7 August 2005, the presenter said that he had received an email from "Sandy", a listener who said that she had visited Hands on Hideaway with a group of children and had decided to book another session. The booking was cancelled by the centre, because of "misdemeanours" on the previous visit, including sand being put out of the sandpit. The group was upset, would not be going back again and Sandy said the centre was unlikely to get support with such an attitude. The presenter said "What do you reckon Trevor? What do you reckon if you've been there?" During a subsequent programme, broadcast on 9 August 2005, the presenter updated the story and included extensive reference to a response from Mr Powell.

Ofcom concluded that:

- a) The presenter referred to there having been "several misdemeanours" on the group's first visit to Hands on Hideaway and said that these "included" problems with the sandpit and the gravel path. It was clearly implied, therefore, that there were other problems with the group's first visit in addition to those mentioned on air.
- b) Although Mr Powell was not contacted specifically in relation to the programme broadcast on 7 August 2005, he instigated the story of problems at Hands on Hideaway with his appearance on the programme broadcast on 4 August 2005. While it might have been preferable for the station to have sought Mr Powell's input into the programme broadcast on 7 August 2005, Ofcom took the view that it would have been clear to listeners that "Sandy" was one listener, giving her personal opinion of her dealings with Hands on Hideaway, having heard the earlier piece.
- c) Ofcom noted that, having invited a response from Mr Powell at the end of the programme broadcast on 7 August 2005, the presenter then included in the programme broadcast on 9 August 2005 a lengthy explanation of the information provided to him by Mr Powell the day after the programme on 7 August 2005. In the circumstances of this case and in view of the on-going nature of discussions and themes on many local radio broadcasts, this represented an appropriate opportunity for Mr Powell to respond to Sandy's comments.

### **Introduction**

This Radio Pembrokeshire programme, on 7 August 2005, included a reference to an earlier broadcast, in which Mr Trevor Powell was interviewed in a news item. Mr Powell had contacted the radio station and was interviewed in this earlier news item

about the lack of support he felt he was receiving for his new local business, an activity centre for children. In the programme, broadcast on 7 August 2005, the presenter said that he had received an email from "Sandy", a listener who said that she had visited Hands on Hideaway with a group of children and had decided to book another session. The booking was cancelled by the centre, because of "misdemeanours" on the previous visit, including sand being put out of the sandpit. The group was upset, would not be going back again and said the centre was unlikely to get support with such an attitude. The presenter said "What do you reckon Trevor? What do you reckon if you've been there?" During a subsequent programme, broadcast on 9 August 2005, the presenter updated the story and included extensive reference to a response from Mr Powell.

## **Complaint**

### **Mr Powell's case**

In summary, Mr Powell complained that he and his business were treated unfairly in that:

- a) It was alleged that the group was banned for merely putting sand out of the sandpit, when the problems were more extensive than that.
- b) The complaint about Hands on Hideaway was broadcast without any research or reference to Mr Powell's side of the story.
- c) The presenter challenged Mr Powell to respond to Sandy's story, but then left the building without giving him an opportunity to respond until a later date.

### **Radio Pembrokeshire's case**

Radio Pembrokeshire said, in summary, that:

- a) In her email to the programme, Sandy said that Mr Powell's comments on the earlier programme about lack of local support were "ironic", since he had then effectively turned trade away through his decision to ban children who kicked sand. In a conversation after the programme broadcast on 7 August 2005, Mr Powell told the presenter, Mr Keri Jones, that he had actually cancelled the group's next booking, rather than banning them. The kicking of sand was one of a number of reasons for his decision to cancel the group's next visit, but that there were other factors as well. Mr Powell told Mr Jones that Sandy had been selective in what she had said in her email.
- b) The programme broadcast on 7 August 2005 was a response to a programme broadcast on 4 August 2005, in which Mr Powell spoke of his concerns about lack of support for Hands on Hideaway. He had approached Radio Pembrokeshire and instigated the story. In his conversation with Mr Powell the following day, Mr Jones explained to Mr Powell that the story, as broadcast on 7 August 2005, did not come out of the blue, but was a listener response to the story he had himself instigated.
- c) At the end of the programme broadcast on 7 August 2005, Mr Jones invited Mr Powell to respond. He had not called by the end of the programme and Mr

Jones had left the building at the end of his programme. When Mr Powell contacted the news team, he was informed that Mr Jones would call him the following day. They did have a conversation the following day. At the end of this conversation Mr Powell said that he wanted a letter he had written to Ofcom and copied to Radio Pembrokeshire read out in full or in part and that it should be stated that damage was more extensive than just sand out of the sandpit. Mr Jones then read out the letter the following morning.

## **Decision**

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

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

- a) Ofcom noted that, in the programme broadcast on 7 August 2005, the presenter referred to there having been "several misdemeanours" on the group's first visit to Hands on Hideaway and said that these "included" problems with the sandpit and the gravel path. It was clearly implied, therefore, that there were other problems with the group's first visit in addition to those mentioned on air. Ofcom considered that the situation was fairly explained to listeners and therefore there was no unfairness to Mr Powell.
- b) Although Mr Powell was not contacted specifically in relation to the programme broadcast of 7 August 2005, he instigated the story of problems at Hands on Hideaway with his appearance during the programme of 4 August 2005. While it might have been preferable for the station to have sought Mr Powell's input into the programme of 7 August 2005, Ofcom took the view that it would have been clear to listeners that "Sandy" was one listener, giving her personal opinion of her dealings with Hands on Hideaway, having heard the earlier piece. This was not unfair to Mr Powell.
- c) Ofcom noted that, having invited a response from Mr Powell at the end of the programme broadcast on 7 August 2005, the presenter then included in the programme broadcast on 9 August 2005 a lengthy explanation of the information provided to him by Mr Powell the day after the programme broadcast on 7 August 2005. In the circumstances of this case and in view of the on-going nature of discussions and themes on many local radio broadcasts, this represented an appropriate opportunity for Mr Powell to respond to Sandy's comments.

Accordingly, Ofcom found that there was no unfairness to Mr Powell or to Hands on Hideaway in the programme.

**The complaint of unfair treatment was not upheld.**

## **Complaint by Mr Cyril Bache**

*Toughest Villages in Britain, Sky One, 1 November 2004*

**Summary:** Ofcom has not upheld this complaint of unfair treatment about this programme which looked at a number of British villages that, it was alleged, had reputations for toughness. One of the villages featured in the programme was Highley in Shropshire. Mr Cyril Bache complained that he had been misled into giving an interview and that the programme misrepresented his views.

Ofcom found no unfairness to Mr Bache by including him in the programme as broadcast or in the presentation of his contribution in the programme as broadcast.

Specifically, Ofcom took the view that Mr Bache provided no evidence that he had been misled. In addition, the programme makers appeared to have taken reasonable steps to inform Mr Bache of the likely nature and content of the programme.

Ofcom also considered that the programme would have been unlikely to have led viewers to consider that Mr Bache was not entirely genuine and sincere in making his contribution to the programme. Mr Bache was shown simply to make straightforward comments about the possible perception of Highley and the steps that had been taken to attract visitors.

### **Introduction**

This programme looked at a number of British villages that, it was alleged, had reputations for toughness. One of the villages featured in the programme was Highley in Shropshire. Mr Cyril Bache, a parish councillor and resident of Highley, was featured in the programme. He was shown explaining how Highley once had a negative reputation for being a mining village and how it was trying to improve its image to attract visitors.

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

### **The Complaint**

#### **Mr Bache's case**

In summary, Mr Bache said that he was not told the programme's title or informed about the nature of its content. Although he had signed a release form, it contained no information as to the title of the programme or what the rest of the content was to be. Mr Bache said that the programme misrepresented him and presented his comments about Highley's reputation unfairly.

#### **BSkyB's case**

In summary, BSkyB responded by saying that Mr Bache was made aware of the programme title. The release form that he signed bore the programme's title, *Britain's Toughest*. This was in the middle of the form, in bold, as a stand-alone line of text. BSkyB provided Ofcom with the original release form signed by Mr Bache.

The programme makers said that all interviewees for the programme, including Mr Bache, were made aware that the reason for filming was that Highley was an ex-mining community with a tough spirit and full of tough characters. This together with

the programme title on the release form was sufficient to inform Mr Bache of the nature and content of the programme. Mr Bache gave his contribution freely and willingly and the programme did not misrepresent him or his views.

### **Mr Bache's comments**

Ofcom invited Mr Bache to comment on the difference between his recollection of what information was on the release form and that of the programme makers. He was also invited to comment on what BSkyB claimed was said to him by the programme makers on the day of filming.

Mr Bache said that he had signed a release form but that it was folded in such a way that only the lower part of the form was exposed. He would not have seen the stand-alone text due to the form being folded. Mr Bache also said that the programme makers had not made him aware of the reason for filming. He had agreed to be interviewed to provide information about the village, but he would not have contributed if he had known the purpose of the filming.

### **BSkyB's response**

In its final response, BSkyB said that the programme makers were adamant that Mr Bache was not presented with a folded release form to sign. Mr Bache was given the opportunity to read the form which had the title of the programme on it.

### **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 in 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, consistent and targeted only at cases in which action is needed.

In this case Ofcom considered the following:

Broadcasters should ensure that all programme makers understand the need to be straightforward in their dealings with potential participants in factual programmes, in particular by making clear, wherever practicable, the nature of the programme and its purpose.

It was clear from the written submissions before Ofcom that Mr Bache genuinely believed that he was misled about the nature and likely content of the programme. It was equally clear from the written submissions that the programme makers did not believe that they misled Mr Bache.

Ofcom is not fact finding tribunal and was not able to resolve the conflict (referred to above) between the parties' accounts of events at the time filming took place. Ofcom's function was to consider whether, notwithstanding this conflict, Mr Bache was treated unfairly in the programme through his inclusion and/or presentation of his contribution.

Ofcom found no unfairness to Mr Bache by including him in the programme as

broadcast or in the representation of his contribution in the programme.

Specifically, Ofcom noted that Mr Bache had provided no evidence that he had been misled other than making the submission that the original release form signed by him and provided to Ofcom was folded in such a way that only the lower part of the form was exposed. Also, the programme makers appeared to have taken reasonable steps to inform Mr Bache of the likely nature and content of the programme with the release form signed by Mr Bache clearly bearing the programme title "Britain's Toughest...". In the circumstances, Ofcom took the view that it would have been reasonable to expect Mr Bache to be able to take a view on the likely nature and content of the programme. It was also open to Mr Bache if he had been in any way concerned when asked to sign the release form, to ask the programme makers for further information.

Ofcom also considered that the programme would have been unlikely to have led viewers to consider that Mr Bache was not entirely genuine and sincere in making his contribution to the programme. Mr Bache was shown simply to make straightforward comments about the possible perception of Highley and the steps that had been taken to attract visitors.

**The complaint of unfair treatment was not upheld.**

## **Complaint by Birnberg Peirce and Partners (Solicitors) on behalf of Ms Jane Andrews**

*Lady Jane, ITV1, 14 October 2003*

**Summary:** Ofcom has not upheld this complaint of unfair treatment and unwarranted infringement of privacy from Birnberg Peirce and Partners (Solicitors) on behalf of Ms Jane Andrews about Lady Jane broadcast by ITV1 on 14 October 2003. The programme documented the life of Ms Jane Andrews and examined events surrounding the murder of her boyfriend Mr Thomas Cressman. Ms Andrews was found guilty of his murder and was sentenced to life imprisonment on 16 May 2001.

Ofcom found the following:

- The nature and likely content of the programme were made clear to Ms Andrews well before the programme was broadcast.
- The programme makers were entitled to rely on the decision of the courts and were not obliged, in the interests of fairness, to offer an alternative interpretation of the available evidence.
- The programme's presentation of events was straightforward, factual and in no way gratuitous and did not unfairly represent Ms Andrews' character and life history. On the evidence available to us, we considered that the programme makers appeared to have taken all reasonable care to satisfy themselves that all material facts had been considered before transmission.
- The programme's presentation of contributions from Mr Gil Hancox and Ms Lucinda Ellery, both friends of Ms Andrews, did not result in unfairness to Ms Andrews.
- In all the circumstances of this case, namely a trial that has been very widely reported both at the time and since, ensuring that details of the crime and surrounding events remained firmly in the public domain, Ofcom considered that revisiting the events did not infringe Ms Andrews' privacy.

### **Introduction**

This programme documented the life of Ms Jane Andrews and examined events surrounding the murder of her boyfriend Mr Thomas Cressman. Ms Andrews was found guilty of his murder and was sentenced to life imprisonment on 16 May 2001. During sentencing the judge stated that Ms Andrews had struck Mr Cressman first with a cricket bat and then stabbed him with a knife, leaving him to die.

The programme included interviews with those involved directly in the case including DCI Jim Dickie who headed the Metropolitan Police's investigation.

It included contributions from friends of Ms Andrews, Mr Gil Hancox and Ms Lucinda Ellery and other people who knew Ms Andrews and Mr Cressman. It also included dramatised sequences.

Birnberg Peirce and Partners (Solicitors) complained that Ms Andrews was treated unfairly and that her privacy was unwarrantably infringed in the programme as broadcast.

## Complaint

### **Birnberg Peirce and Partners' Case (on behalf of Ms Andrews)**

- a) The programme makers failed to provide Ms Andrews with an opportunity to contribute to the programme.
- b) The programme makers failed to provide Ms Andrews with an opportunity to respond to evidence contained in the programme.
- c) The programme offered no alternative interpretation of the available evidence.
- d) The programme contained factual inaccuracies and distorted the available evidence in order to support the programme's central premise. It incorrectly represented Ms Andrews' character and life history.

The Premise. The programme's premise was that Ms Andrews was an arrogant social climber with nothing but contempt for her background and social class, from which she was determined to escape at any price: even if that meant taking the life of the man that she purported to love. This was a wholly inaccurate representation of Ms Andrews' character and life history, constructed in order to support the theory that her motive for killing Mr Cressman was his refusal to marry her.

Alan Starkie. The programme appeared to have based large parts of its research upon the contributor, Mr Starkie, who spoke of Ms Andrews' childhood and her years as an employee with the Duchess of York. Yet Mr Starkie knew Ms Andrews only for a relatively short period during her employment by the Duchess of York. Ms Andrews categorically refuted that she ever discussed her childhood with Mr Starkie and she rejected his account and questions his motives.

Marks & Spencers. The programme included a totally fallacious dramatisation of Ms Andrews as an employee at Marks and Spencers in Grimbsy. It suggested that she looked down on customers and was very short tempered.

Delusions of grandeur. The programme portrayed Ms Andrews as having "delusions of grandeur" because of her developing friendship with the Duchess of York. The reliance upon a single photograph of the two women wearing similar outfits to support a claim that Ms Andrews was prone to mimicking the Duchess of York was deliberately misleading. Similarly there is no basis whatsoever for example for Mr Starkie's claim that Ms Andrews was "*...hoping to transform herself into a princess...*"

Accountant. It was asserted in the programme that when the number of staff employed by the Duchess of York was reduced to save costs, Ms Andrews was employed as the Duchess of York's accountant. This was inaccurate. The programme then suggested that Ms Andrews' poor accountancy skills, rather than the Duchess of York's extravagant expenditure, were the cause of the financial difficulties that followed.

Armpits. The programme's depiction of Ms Andrews blow-drying the Duchess of York's armpits was false and further used for the purpose of to demeaning and humiliating her.

Dimitri Horne. It was suggested in the programme that Ms Andrews' interest in former boyfriend Mr Horne was motivated entirely by her alleged desire to marry a rich man. The dramatic portrayal of Ms Andrews attacking Mr Horne with a pair of scissors was false. Mr Horne made no such allegation in his police-statement, which was made under oath, for the purposes of prosecution.

Thomas Cressman's wealth. The programme suggested that Ms Andrews' overriding interest in Mr Cressman was his wealth. It failed to recognise or give any credence to the genuine attraction between the couple, which was substantiated by many of their mutual friends.

Expectation of marriage. The programme's suggestion that Ms Andrews was the only one of the two to have harboured an expectation of marriage also ignored clear evidence to the contrary, including their plans to buy property in the Cotswolds and accounts from friends which indicated that the couple were both devoted to each other. The reality was that Mr Cressman sometimes expressed misgivings about marriage, which created tension in their relationship.

The email relationship. The programme portrayed an email relationship between Mr Cressman and a woman whom he had met previously, Ms Deborah Dimiceli. The programme suggested that the relationship was entirely innocent. DCI Dickie stated that it was not based on any "sexual encounter". In fact the emails contained hardcore pornographic descriptions of anal sex, bondage, rape and sado-masochistic fantasies. The programme failed to reflect those facts, instead focussing on Mr Cressman's reference to Ms Andrews as 'an old pair of slippers'.

Ms Andrews' reaction to the discovery of the emails. The dramatic portrayal of Ms Andrews' reaction to the discovery of the emails referred to above suggested that her first fear was that she might have to return to Grimsby. There was no hint of the shock and emotional turmoil, which predictably follows the discovery of betrayal and infidelity.

DCI Dickie. DCI Dickie spoke outside his area of expertise when in the programme he commented on Ms Andrews' psychological make up. He was a police officer unqualified to speculate on such matters. DCI Dickie was shown to in the programme thrusting a knife and saying "Here have this one on me". His description of the murder was prejudicial, baseless and melodramatic.

Thomas Cressman's letter. The dramatised section of the programme suggested that the letter, "Dearest Janie..." was written on the day of the killing. It was portrayed as a timely reminder that Mr Cressman wanted to end the relationship and was in the throes of trying to end it when he was killed. This implied that this was Ms Andrews' motive for the killing. However, the letter was actually written in the year prior to Mr Cressman's death. It was referred to in the notes of a specialist who had had dealings with the couple in that year.

The timing of the killing. Perhaps the most seriously misleading inaccuracy in the programme was the portrayal of the timing of the killing. The programme suggested that Ms Andrews returned home at around 6pm, knowing that Mr Cressman would be taking an early snooze. It implied that she deliberately did this in order to murder him in cold blood as he slept. No such allegation was ever put to Ms Andrews during the trial because all the facts and the circumstances of the killing, including pathology reports, supported a very

different account.

The depiction of the murder. The programme makers did not check the facts on this key issue which were readily available. It was undisputed for example, that Ms Andrews was naked but for a dressing-gown, at the time of the fatal stabbing.

The overdose. The portrayal of Ms Andrews' also deliberately minimised the overdose she took in the aftermath of the killing, suggesting only that she had 'taken some tablets'. The programme failed to reflect the gravity of this suicide attempt as a result of which Ms Andrews came close to death and had to be hospitalised for a period prior to her return to London to be interviewed by the police.

The allegation of anal rape. The allegation that Mr Cressman had anally raped Ms Andrews earlier in the day was referred to as a "whopping lie". To support this view, it is said that the first time she mentioned the allegation was in the witness box. This was wholly incorrect. Prior to her trial Ms Andrews made the allegation to her solicitor, the defence Psychiatrist and the Psychiatrist engaged on behalf of the Crown. Moreover, one view of her police station interviews suggested that despite absence of a clear expression of anal rape the allegation was alluded to. In any event, the prosecution were aware of the allegation of anal rape several months prior to trial. It was only after that allegation was made that the prosecution disclosed a large bundle of additional email exchanges between Mr Cressman and Ms Dimiceli, which suggested a penchant for anal sex, bondage and rape fantasies, making the allegation of anal rape somewhat more credible. It was regrettable that this aspect was not explored in the programme. On the contrary, Mr Cressman was presented as unimpeachable.

- e) Birnberg Peirce and Partners submitted two "witness statements" in support of the complaint.
- f) Ms Andrews' privacy was unwarrantably infringed in the programme as broadcast. Whilst the lawyers acting on behalf of Ms Andrews accepted that Ms Andrews' story was of general public interest in view of her conviction for murder, they continued to say that "...there must be a limit to the degrading and demonising portrayal of her life."

### **ITV's Case**

a) There was discussion between the programme's producer and Birnberg Pierce and Partners in October 2002 at a very early stage of the project, before the production had completed its own research, written a script or interviewed contributors. The producer told Birnberg Pierce and Partners that she would inform them of the programme's outline at a later date, as of course at that point there was no such outline as the project was still in development.

Birnberg Pierce and Partners wrote to the producer in early April 2003 following a brief reference to the programme in the press, complaining of a failure to "consult" with their client. This letter arrived during her absence on leave, and she responded on 24 April 2003 providing the promised outline, and referring to the programme's sources. The programme makers received no further query from Birnberg Pierce and Partners as to the content of the film until they wrote out of courtesy in early October 2003 to confirm the transmission date. At that point, when it was self

evident that the programme was completed, Birnberg Pierce and Partners requested a preview copy with a view to looking for “inaccurate information or distortion”. Had Ms Andrews been genuinely concerned to contribute to the programme she could have done so at any time after becoming aware of its existence as a project in October 2002.

b) The programme makers provided Birnberg Pierce and Partners with an outline of the programme and its sources in April 2003, some six months before transmission. Birnberg Pierce and Partners failed to inquire any further until the week before broadcast, at which point the programme makers were not obliged to provide them with a preview. The programme makers were not obliged to submit every detail of the programme for comment to a convicted murderer. The core matters of fact on which it was based were either matters in the public domain or had been established conclusively in a court of law.

c) The programme makers were not obliged as a matter of fairness to present an “alternative” interpretation of the evidence. Unlike many murder cases, it was not in issue that Ms Andrews was responsible for Mr Cressman’s death. The jury clearly did not believe her evidence and the Court of Appeal found that the jury were entitled to reject her account.

d) The programme was a factual drama-documentary which combined dramatisation with interview material from various individuals who knew Ms Andrews and Mr Cressman directly, including close friends and former acquaintances, Mr Cressman’s family, and police officers who investigated the murder and were involved in successfully prosecuting her for her horrific crime. It stated at the outset that “For this dramatisation, some events have been simplified and certain characters and scenes created, but what follows reflects documented facts”.

The programme treated Ms Andrews in a rounded and sympathetic manner. Far from demonising her, it portrayed her as a troubled individual, and sought to encourage understanding of her story. The basic facts of Ms Andrews’ life were well known, and widely publicised not only by the media following her conviction, but also by Ms Andrews herself (or with her co-operation). Any television programme, particularly one employing dramatisation, had to be selective, and to make editorial and dramatic choices as to the information it considered material. There was nothing sinister in this process. The programme makers had to select from a huge wealth of material to represent the significant elements of the story. The core material they considered over many months was the evidence of Ms Andrews herself and others in the criminal proceedings, in court transcripts and police interviews, and the testimony in conducted interviews of many people directly involved in events. All material facts were properly considered.

The premise. The programme started from the straightforward factual premise that Ms Andrews was born in Grimsby, went to work in the household of the Duchess of York, was married and divorced, lost her job in the Duchess’ household, had a number of unsuccessful relationships, and finally murdered her last boyfriend Mr Cressman after he had made clear he did not intend to marry her.

Ms Andrews was a “social climber” in the factual and non-pejorative sense that her ambitions led her to move away from Grimsby and work in the Royal Household, and thereby to move in a very different social milieu to that she was born into. That was a desirable and admirable outcome to many people, working class or otherwise, and a simple fact of Ms Andrews’ life story.

Ms Andrews was not portrayed as “arrogant”, but as ambitious to better herself and pursue her career, and as a result clearly making a conscious effort to alter her accent and manners. The programme makers did not invent the title of the programme, which came from the nickname given to her apparently because of the way she adopted her employer’s mannerisms and accent and wore similar clothes. Ms Andrews was not depicted as having contempt for her background. For example, she was depicted being verbally attacked by a Marks and Spencers’ employee, not attacking her.

She was also depicted writing home to her parents when she arrived at Buckingham Palace to indicate not only her excitement at her new position, but suggesting that despite this new life she remained in contact with her family.

The programme did not suggest that Ms Andrews was determined to escape from her background at any price, even if that meant taking the life of the man that she purported to love. It did depict that, by the time of her relationship with Mr Cressman, she was needy, depressive, insecure and desperate for the security that she believed marriage would afford. It showed that by murdering Mr Cressman she actually frustrated her ambitions for the security of a happy marriage and a family. It depicted her as having ended his life and ruined her own. The programme did not seek to be cruel to Ms Andrews. It sought to depict her fairly and to portray her character on the basis of how it has been described by many that knew her, and with sympathy for the disappointments and frustrations she had encountered in her life.

Allan Starkie. The programme did not base large parts of its research on Mr Starkie or his book on Ms Andrews. Mr Starkie was invited to contribute to the programme because, without any doubt, he was someone who came to know Ms Andrews personally at close quarters for a significant period of her life, between 1992 and 1995. To that extent Mr Starkie’s insights were interesting and pertinent. Mr Starkie’s contributions in the film either articulated the known facts or were his own “take” on Ms Andrews’ early life based on his personal knowledge of her.

The programme did not rely solely on Mr Starkie’s opinion. His comments on Ms Andrews’ background reflected the statements of many other people who knew Ms Andrews in the early part of her life, including her own father’s reported remarks.

Marks and Spencers. It was not contested that Ms Andrews worked at Marks and Spencers before applying to work for the Duchess of York. The dramatised scenes of her working at Marks and Spencers showed her being confronted with a difficult customer and a hostile fellow worker, and displaying a good deal of patience under pressure. These scenes were invented, but they established Ms Andrews’ early working life and its contrast to the very different environment she found herself in when joining the Royal Household.

Delusions of grandeur. This was clearly stated as an opinion of Mr Starkie but was not an opinion held only by Mr Starkie. The nickname “Lady Jane” was apparently used by the Duchess and by staff in the household, and it was widely reported that this arose because of the way in which she appeared to imitate the manners, accent and dress of her employer.

Accountant. Mr Starkie stated in the programme that “Sarah said Jane is now my accountant”. He was reporting what he was told by the Duchess at the time. He stated that Ms Andrews’ was “an adequate dresser but a terrible accountant”. That was his opinion based on his contact with her in carrying out her duties for the Duchess. Mr Starkie stated in the programme that Ms Andrews was not the person

to fix the problem of the Duchess' overdraft. This was an opinion but it was demonstrably borne out by events. The programme dramatised the difficulties of Ms Andrews' increased responsibilities by depicting her under pressure with several ringing phones, explaining in a call that she had chosen to pay a telephone bill rather than a credit card which had then been refused in a shop. This did not suggest that it was Ms Andrews' accountancy skills rather than the Duchess' extravagance that was causal of the difficulties.

Armpits. This was an incident that was reported elsewhere previously. There was no reason to believe it was untrue, and its purpose was not to "demean" or "humiliate" Ms Andrews, nor did it do so. It was included to dramatised the fact that Ms Andrews was required to perform many menial tasks for the Duchess, especially in her earlier years of service, but also that their relationship was close and the Duchess relied on her for help of an intimate nature.

Dimitri Horne. The programme did not suggest that Ms Andrews was motivated "entirely by her alleged desire to marry a rich man". It depicted Ms Andrews fairly as someone seeking the security of a committed relationship, and enjoying the company of wealthy men. It was uncontested that Ms Andrews had several relationships with eligible bachelors. The significance of the scene depicting the end of Ms Andrews' relationship with Mr Horne was that it represented a recurrent pattern in Ms Andrews' behaviour with boyfriends once a relationship had broken down. It was confirmed to police by more than one man she became involved with that her response to perceived or actual rejection was obsessional behaviour amounting to "stalking". The scenes with Mr Horne exemplify some aspects of Ms Andrews's behaviour exhibited in other relationships prior to that with Mr Cressman.

Mr Horne's evidence to police was that as time went on Ms Andrews was getting serious and wanted to settle down, and he did not because he did not consider it to be a long term relationship. He began to find her overpowering and clingy, and they started to have arguments. He told her he wanted to break up with her. He returned home, having arranged that she would move her things out of his flat, to find the place a "complete mess". Objects had been broken and other items were missing. He began to receive calls from Ms Andrews at all hours of the day and night, and the doorbell was being rung by someone each evening. He eventually felt harassed and afraid. One night she arrived at his flat in a distressed state, and he invited her in. She began picking things up and throwing them about, shouting and then throwing punches. He became very nervous for his safety and shouted for his brother who was asleep in the other room, and tried to hold her arms and calm her down without effect. His brother came in and she finally calmed down and left. He discovered subsequently that Ms Andrews had stolen a cheque from his brother's chequebook whilst they were going out and forged his signature in the sum of £8,500. He decided not to call the police but instigated proceedings privately through a solicitor and Ms Andrews eventually returned the money. He also recovered from her, his personal diary, in which she had defaced references to herself.

The programme's depiction simplified events somewhat and omitted Mr Horne's brother, partly to minimise potential embarrassment to him. Ms Andrews was depicted as behaving erratically and having to be calmed down and finally comforted in her outburst. Mr Horne confirmed to the programme makers that Ms Andrews had picked up some scissors during this incident, and DC Dickie also recalled this detail from Mr Horne, although it did not feature specifically in his witness statement to police.

Thomas Cressman's wealth. The programme clearly dramatised the mutual attraction between Ms Andrews and Mr Cressman. The evidence from witnesses who knew the couple included in the programme was balanced and even handed in this regard. The overall picture presented by the programme was that Ms Andrews genuinely loved Mr Cressman, and it was this overbearing love that made her reaction to the events of the last days of Mr Cressman's life so extreme.

Expectation of marriage. The complaint disingenuously suggested that "Thomas Cressman sometimes expressed misgivings about marriage". This flew in the face of the overwhelming evidence from numerous witnesses who knew the couple, and particularly those concerned in the events of the weekend of Mr Cressman's death. Mr Cressman never asked Ms Andrews to marry him, although she pressed him to do so, and he had told her prior to his death that he did not intend to marry her.

The email relationship. Ms Dimiceli gave witness statement evidence to the police confirming that she had met Mr Cressman in person only once in the company of business colleagues at a convention in Las Vegas in 1998. They got on well and had been flirtatious, but there was no intimacy whatever on that occasion. They then conducted an email relationship which included some explicit sexual fantasy which she regarded as harmless fun, but they never met again. The programme did not suggest the email relationship was "entirely innocent". It clearly portrayed Mr Cressman as embarrassed and defensive about the discovery of the emails, and their explicit sexual character was made plain in the programme. In one scene there was a shot of one of the emails on screen, which included some explicit sexual language and left viewers in no doubt about the sexual nature of their content.

The reference to Ms Andrews as an old pair of slippers was obviously significant as it was referred to at trial as evidence of Mr Cressman's feelings towards Ms Andrews. The programme did not use or interpret that reference unfairly towards Ms Andrews.

Ms Andrews' reaction to the discovery of the emails. The dramatisation of Ms Andrews' emotional reaction did depict her "emotional shock and turmoil". It sensitively portrayed her as broken hearted by the discovery of this email relationship. Mr Cressman was not exonerated in the scene for his behaviour. The incident was set in context by a scene where Ms Andrews explained to a friend that "he swears they're just friends – in the end I guess life comes down to the things you choose to ignore".

DCI Dickie. DCI Dickie commented in the programme on the basis of his general experience as a long serving police officer and a veteran of more than twenty murder investigations, and on the basis of his direct involvement in this case. He was not presented in the programme as a professional psychologist, although in fact he has experience and training in building up psychological profiles of both victims and offenders. However, he was eminently qualified and fully entitled to offer his own opinion as to whether Ms Andrews told the truth to police and the court, and whether there was evidence of premeditation in her actions, based on his direct contact with her and his knowledge of all the evidence in the case.

DCI Dickie's remark concerning the knife thrust was certainly not "baseless". Forensic evidence was presented in relation to Mr Cressman's wounds and the distribution of blood that contradicted Ms Andrews' account of the stabbing. DCI Dickie's comment fairly reflected his view, accepted by the jury after consideration of all the evidence, that Ms Andrews murdered Mr Cressman as revenge for him rejecting her. It also reflected the conclusion of the trial Judge.

Thomas Cressman's letter. The complaint asserted that the letter in question was written in the year previous to Mr Cressman's death. There was no compelling evidence to support this assertion, although it was also made at trial.

The timing of the killing. The programme did not suggest that Ms Andrews returned home at around 6pm "knowing that Thomas Cressman would be taking an early snooze". The murder sequence itself was prefaced at the end of part 4 of the programme with an aerial shot of London at night, establishing it was night-time. Mr Cressman was then shown in bed asleep in a darkened room with his glasses beside the bed. His friend Mr Tom Gore stated in interview that Mr Cressman would often take a snooze in the evenings. DI Ault then asked rhetorically "why did Jane Andrews at some stage that evening return to the house?". There was no reference to 6pm.

The depiction of the murder. It was undisputed that Ms Andrews was completely naked during the attack. Forensic evidence of blood staining on her dressing gown, and indeed Ms Andrews's own account in evidence, plainly concurs that she was naked at the moment of bludgeoning and then stabbing Mr Cressman. The film therefore depicted her nakedness at this point accurately. She subsequently put on the dressing gown to go upstairs and on her own account she washed herself in the bath, and then left the house in the early hours of the morning

The overdose. The programme did not "minimise" the gravity of the overdose Ms Andrews took in her car three days after fleeing the scene of the murder. She took 40 or 50 Nurofen tablets, but she was only in hospital for two nights before being re-arrested and taken to Belgravia police station for questioning. The film set up this discovery scene with comments from Ms Andrews' friends indicating the genuine fear they had for her safety. The scene of her discovery showed her weak and disorientated and was based directly on the account of PC Andrew Oliver who discovered her in the back of her car. This depiction was sympathetic to Jane Andrews.

The allegation of anal rape. This allegation was stated to be a "whopper" by Mr Gore, Mr Cressman's friend. It was relied on heavily by the defence at trial as supporting the claim of self defence. It was rejected by the jury. It was made without a shred of evidence and it was perfectly fair for the film to make that point via DCI Dickie – "we could find no evidence and I mean no evidence that Tom had physically, mentally, sexually abused Jane Andrews".

Ms Andrews made no complaint of anal rape to any of her friends despite being in telephone and text contact with several of them from Saturday morning (when she alleged it took place) until her arrest on Wednesday. She made no complaint to the doctors who examined her on arrest, nor to the officers who interviewed her in relation to Mr Cressman's death on Saturday 22 September 2000, even though if true it was obviously a crucial piece of information in the investigation of his death. The first time she mentioned the allegation to anyone was in February 2001, some five months later, during an interview with a psychiatrist instructed by her solicitors.

The transcript of Ms Andrews's police interview did not suggest a hint of an anal rape allegation. There was nothing in the interview in this regard that the programme was required as a matter of fairness to "allude to" in the film. The treatment in the film of the rape allegation made at court by Jane Andrews is fair.

Whilst the emails referred to above did contain explicit sexual fantasies, their descriptions of anal intercourse, referred to in detail at trial, were consensual.

Mr Cressman was not presented in the film as unimpeachable. He was shown to sometimes lose patience with Ms Andrews' demands for commitment and unhappiness. As Ms Lucinda Ellery stated in interview, he could be "sharp" with Ms Andrew and this was reflected dramatically. However, it would have been a serious dereliction of duty of fairness to Mr Cressman and his family to have allowed Ms Andrews' allegation of rape to receive more credence than it deserved, and on the basis of all the available evidence, it deserved none at all.

e) Both Mr Gil Hancox and Ms Lucinda Ellery complain in their statement submitted to Ofcom that the programme was "one-sided". The programme above included comments from both participants that could be taken as supportive of Ms Andrews. Equally, both commented on Ms Andrews' personality in ways that could be said to give a rounded picture of her personality.

Mr Hancox says in his statement that the programme misrepresented the relationship of Ms Andrews and Mr Cressman and that "in my view Tommy was a bastard but he came across [in the programme] as totally gentle, kind, innocent person and this just wasn't true." Yet in his interview Mr Hancox described Mr Cressman as "a very nice guy". Although he paid tribute to Ms Andrews' personal qualities as a friend, he was willing to say that her behaviour towards Mr Cressman could be "obsessive", "pestering" and "childlike". He also suggested that Ms Andrews should "accept that what she did was wrong" and expressed doubt about her evidence at trial.

Ms Ellery specified one comment that she says was taken out of context in the programme in the sequence concerned with the discovery of the emails, where she says "it was the start of a nervous breakdown" for Jane Andrews. We accept this specific comment came at the point in her interview when discussing the loss of Ms Andrews' job with the Duchess of York, not the emails. But Ms Ellery referred more than once in her interview that in her view Ms Andrews was "heading for a nervous breakdown for quite some time" before the events of September 2000, and that she was "just a crisis waiting to happen". She referred to her variously as "emotionally unstable", "a bit nervy but pretty well balanced", and a "sensitive creature". She said that Ms Andrews "started to lose the plot" after losing her job. As she said on learning of Thomas's death – "I just assumed Janie had killed him, straight away. It never occurred to me that she didn't. Because of the build up".

She described Jane immediately before the murder as "on the brink. She was very, very, you know, unbalanced. Very unbalanced. Very emotional. You know having a complete breakdown and crash, in my opinion". The programme did not therefore misrepresent Ms Ellery's views to suggest that Ms Andrews' emotional state was fragile in the period immediately after the discovery of the emails.

f) Ms Jane Andrews's story was of general public interest. The programme makers carefully considered the effect on all of Ms Andrews's family and friends of the programme before transmission, and sought to balance respect for their privacy with that of the public interest in the story. For that reason the programme makers chose not to depict Ms Andrews' parents, siblings or her first husband with actors at all, and referred to them very sparingly in the film.

The programme makers considered carefully the effect of the film on Ms Andrews herself. It could not be an unwarranted infringement of Ms Andrews' privacy to broadcast a film about her life simply because it has a negative emotional effect on her. Her position with the Duchess of York gave rise to public interest in her background years before her relationship with Mr Cressman began. She had also

sought to divulge personal information about her life to the media in her campaign to win her freedom. But above all it was her own crime that led her to the position of public notoriety she now occupies. There was no information in the programme which was not either already in the public domain, or in respect of which Ms Andrews had a reasonable expectation of privacy.

## **Decision**

Ofcom's function is to consider whether Ms Andrews was treated unfairly in the programme as broadcast in accordance with its statutory duties under the Communications Act 2003 and the Broadcasting Act 1996 (as amended). Ofcom has regard to the need, when carrying out these duties, to do so in a manner that best guarantees an appropriate level of freedom of expression.

In this case, Ofcom only considered matters raised in the complaint insofar as they might have amounted to specific unfairness to Ms Andrews or unwarrantably infringed her privacy. It did not consider any potential unfairness, unwarranted infringement of privacy or secondary effects on Ms Andrews' family.

Ofcom took the view that there could be no objection in principle to revisiting a past event of this nature, namely a trial that has been very widely reported both at the time and since, and which involved a figure accused of serious offences who had gained public notoriety. Ofcom acknowledged that revisiting these events was potentially distressing for Ms Andrews and her family but found no unfairness in the decision to revisit these events.

- a) & b) Where a programme alleges wrongdoing or incompetence, or contains a damaging critique of an individual or organisation, those criticised should normally be given an appropriate and timely opportunity to respond to or comment on the arguments and evidence contained within that programme.

Ofcom considered that normally convicted criminals have no legitimate expectation of an opportunity to respond to claims that have already been presented to the court and proven to the satisfaction of the jury.

However, on the evidence as presented, Ofcom considered that the nature and likely content of the programme were in fact made clear to Ms Andrews well before the programme was broadcast. Further, Ms Andrews had the opportunity to request further information or respond to the likely content of the programme as outlined in writing by the programme makers, which she failed to take advantage of. Ofcom also considered that it was not incumbent on the programme makers, in the interest of fairness, to agree to Ms Andrews' request to view a recording of the programme in advance of broadcast. Ofcom found no unfairness to Ms Andrews in these respects.

- c) At the time of broadcast Ms Andrews had been found guilty of the crimes referred to in the programme; the convictions had not been overturned on appeal and the programme's presentation of the convictions was straightforward and factual.

Ofcom concluded that the programme makers were entitled to rely on the decision of the courts and were not obliged, in the interests of fairness, to offer an alternative interpretation of the available evidence. Ofcom found no unfairness to Ms Andrews in this respect.

- d) In general, Ofcom took the view that the programme's presentation of events was straightforward, factual and in no way gratuitous and did not unfairly represent Ms Andrews' character and life history. On the evidence as presented, Ofcom considered that the programme makers appeared to have taken all reasonable care to satisfy themselves that all material facts had been considered before transmission.

Specifically Ofcom found the following:

The premise. Ofcom did not consider that the programme presented Ms Andrews as an arrogant social climber with nothing but contempt for her background and social class. In our view the programme provided a straightforward factual account of her change in personal circumstances, from a relatively humble life in Grimsby to an elevated social position, closely associated with the Royal Household. Ofcom considered that viewers were unlikely to have thought critically of Ms Andrews as a result of the programme's presentation of her desire to succeed and her change of status.

Alan Starkie. Ofcom was not able to, nor should it, consider or conclude whether or not the programme was based largely on information provided by Mr Starkie, which we noted was contested by the programme makers. Ofcom was obliged to consider whether the content and/or presentation of Mr Starkie's contribution was unfair to Ms Andrews. In Ofcom's view it was reasonable, given that he had written a book about the events and had known Ms Andrews, for the programme makers to include Mr Starkie's testimony. We also took the view that it would have been clear to viewers that Mr Starkie's comments were his opinion, based on his knowledge of her, and not established fact.

Marks & Spencers. Ofcom noted the use of dramatised 'reconstructions' in this programme (of which this scene was one) and recognised that this was a legitimate device when seeking to depict events or a story based on fact. While for some it may be preferable not to invent fictional events, as this one was, Ofcom took the view that in the particular circumstances it did not result in an unfair portrayal of Ms Andrews. In our view Ms Andrews was not shown to look down on customers or be short tempered. We considered that she was shown in a positive light; being subjected to unreasonable behaviour from a very difficult customer and fellow worker and dealing with both situations with considerable restraint.

Delusions of grandeur. Ofcom noted that it had been widely reported that Ms Andrews appeared to some people to have attempted to imitate the manners, accent and dress of the Duchess of York. In Ofcom's view the statements that Ms Andrews was "starting to develop delusions of grandeur" and was "hoping to transform herself into a princess" were clearly expressed as an opinion of Mr Starkie and, for the reasons referred to above, we considered that it was reasonable for the programme makers to include Mr Starkie's testimony. Furthermore, Ofcom considered that it was reasonable for the programme makers to have included the photograph of Ms Andrews and The Duchess of York wearing similar clothing as this illustrated this apparent behaviour.

Accountant. In Ofcom's view it was inaccurate to suggest that Ms Andrews was employed as the Duchess of York's accountant (a position necessitating professional qualifications) when in fact she was appointed as the Duchess of York's Accounts Manager. However, notwithstanding this inaccuracy, Ofcom considered that the programme in no way suggested, through Mr Starkie's

comments or through its dramatised portrayal of her, that Ms Andrews' poor accountancy skills were the cause of the financial difficulties that faced the Duchess. The programme portrayed her in a sympathetic light, trying to cope with increased responsibilities and making difficult judgements concerning the Duchess' spending.

Armpits. Ofcom noted that the scene showing Ms Andrews blow-drying the Duchess of York's armpit portrayed an incident that had been widely reported. Ofcom was not able to determine whether this incident happened as it is not a fact finding tribunal. However, in Ofcom's view the scene as presented in the programme was not unkind or demeaning.

Dimitri Horne. In Ofcom's view the programme did not suggest that Ms Andrews' interest in her former boyfriend Mr Horne was motivated entirely by her alleged desire to marry a rich man. We considered that the programme's portrayal of the relationship indicated that there was genuine and mutual affection, as illustrated by the statement made in the programme by Mr Starkie that there was "a great deal of chemistry right from the beginning".

Ofcom considered that although Mr Horne made no allegation in his police statement that Ms Andrews had attacked him with a pair of scissors it was not, in our view, unreasonable to include this dramatic portrayal given that it was generally illustrative of Ms Andrews' capability of aggressive and violent behaviour (which had been proved in court) and that Mr Horne had told police in his statement that Ms Andrews' behaviour had left him feeling harassed and afraid and that on the night in question she had arrived at his flat in a distressed state and had thrown objects around and begun throwing punches. We were also satisfied that Mr Horne had informed the programme makers that Ms Andrews had picked up a pair of scissors and that DCI Dickie had also remembered this detail, even though this was not in Mr Horne's official police statement.

Thomas Cressman's wealth. In Ofcom's view the programme clearly portrayed Ms Andrews' genuine love for Mr Cressman as illustrated by the comments of her friend Ms Ellery that "They seemed to have a good rapport. She was just completely madly in love with him".

Expectation of marriage. In Ofcom's view the complainant had provided no convincing evidence that Mr Cressman had wished to or intended to marry Ms Andrews. The programme's portrayal of their relationship, with specific regard to the parties' expectation of marriage appeared to accord with the recollection of many of the contributors and in all the circumstances, we considered that it was not unfair to portray their relationship in the way the programme did.

The email relationship. Ofcom considered that the programme did not suggest that the email relationship between Mr Cressman and Ms Dimiceli was "entirely innocent". In reaching this conclusion we took into account the programme's depiction of one of the emails, which included some explicit sexual language, and the inclusion of a comment by DCI Dickie, who headed the Metropolitan Police's investigation, that one of the emails was "sexually graphic".

Ms Andrews' reaction to the discovery of the emails. In Ofcom's view the programme clearly portrayed Ms Andrews' obvious shock and distress at discovery the emails.

DCI Dickie. Ofcom considered that it was reasonable for the programme makers to include the testimony of DCI Dickie given his direct contact with Ms Andrews and his knowledge of all the evidence in the case. In our view, DCI Dickie's portrayal and description of the murder did not depart significantly or materially from the established facts of the case.

Thomas Cressman's letter. Ofcom noted the complainant's assertion that Mr Cressman's letter (Dearest Janie...) was written in the year prior to Mr Cressman's death and not on the day of the murder, as suggested by the programme. Ofcom is not a fact finding tribunal and as such it was not able to determine when the letter was written. In the circumstances, Ofcom considered whether this alleged inaccuracy resulted in unfairness to Ms Andrews in the programme as broadcast. In Ofcom's view the programme's presentation of this issue was unlikely to have materially affected viewers understanding of Ms Andrews in a way that was unfair to her given that she had in fact been convicted of the murder.

The timing of the killing. In Ofcom's view the programme did not suggest that Ms Andrews returned home at around 6pm, knowing that Mr Cressman would be taking an early snooze. The programme only showed it to be night.

The depiction of the murder. Ofcom considered that the programme's depiction of the murder of Mr Cressman did not depart significantly or materially from the established facts of the case.

The overdose. In Ofcom's view the programme's portrayal of Ms Andrews' overdose was sympathetic, straightforward and made clear that her friends genuinely feared for her safety.

The allegation of anal rape. In Ofcom's view the timing of Ms Andrews' first claims that she had been anally raped by Mr Cressman was not relevant to whether or not the programme was fair to Ms Andrews. Ofcom considered that, given the fact that the allegation of anal rape was made in court and was dismissed by the jury when finding Ms Andrews guilty of the murder of Mr Cressman, it was reasonable for the programme to include comments from contributors dismissing the allegation as untrue.

- e) Ofcom considered statements, made by Mr Gil Hancox and Ms Lucinda Ellery, and submitted by the complainant in support of the complaint. We noted that both Mr Hancox and Ms Ellery, who participated in the programme, considered the programme to be "one-sided". Ofcom considered the statements only insofar as they raised issues of potential unfairness to Ms Andrews in the programme as broadcast. Having viewed the programme as broadcast and read their statements, Ofcom took the view that the programme fairly represented the contributions of both Mr Hancox and Ms Ellery. It noted that one comment made by Ms Ellery was taken out of context in the programme. However, in Ofcom's view this did not materially alter the meaning of Ms Ellery's contribution and did not result in specific unfairness to Ms Andrews in the programme as broadcast.
- f) 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 the unwarranted infringement of privacy, Ofcom therefore addresses two distinct questions: First, has there been an infringement of privacy? Second, if so, was it warranted?

As stated above, Ofcom takes the view that there can be no objection in principle to revisiting a past event of this nature and again Ofcom acknowledges that revisiting these events was potentially distressing for Ms Andrews. In all the circumstances of this case, namely a trial that has been very widely reported both at the time and since ensuring that details of the crime and surrounding events remained firmly in the public domain, Ofcom considered that revisiting the events did not infringe Ms Andrews' privacy.

**The complaint of unfair treatment and unwarranted infringement of privacy was not upheld.**

## Other programmes not in breach/out of remit

15 February – 28 February 2006

Programme	Trans Date	Channel	Category	No of Complaints
30 Minutes	27/01/2006	Channel 4	Due impartiality	1
Agatha Christie's Marple	12/02/2006	ITV1	Substance Abuse	2
Bargain Hunt	09/02/2006	BBC1	Religious Offence	1
BBC News	27/02/2006	BBC1	Due impartiality	1
BBC News 24	15/02/2006	BBC News 24	Generally Accepted Standards	1
BBC Radio 5 Live	20/02/2006	BBC Radio 5	Undue prominence	1
Beacon FM	20/02/2006	Beacon FM	Generally Accepted Standards	1
Big Fat Quiz of the Year	26/12/2005	Channel 4	Offensive language	1
Brat Camp	15/02/2006	E4	Offensive language	1
Brit Awards	16/02/2006	ITV1	Generally Accepted Standards	1
CBBC	13/01/2006	CBBC	Other	1
Change The Day You Die	16/02/2006	Sky One	Generally Accepted Standards	1
Coronation Street	12/02/2006	ITV1	Dangerous behaviour	2
Coronation Street	19/02/2006	ITV1	Generally Accepted Standards	2
Coronation Street	16/02/2006	ITV1	Other	1
Coronation Street	27/02/2006	ITV1	Violence	1
Coronation Street	26/02/2006	ITV1	Sex/Nudity	1
Dick and Dom in Da Bungalow	11/02/2006	BBC2	U18s in programmes	2
Downtown Radio	30/10/2005	Downtown	Impartiality	1
Emmerdale	06/02/2006	ITV1	Offensive language	1
Fear Factor	21/02/2006	Sky 3	Generally Accepted Standards	1
Footballers' Wives	04/02/2006	ITV1	Sex/Nudity	1
Fox News	20/02/2006	Fox News	Inaccuracy/Misleading	1
French and Saunders	27/12/2005	BBC1	Offence	3
FTN - Quiz Night Live	04/02/2006	FTN	Competitions	1
FTN - Quiz Night Live	12/01/2006	FTN	Competitions	1
Galaxy 102	21/02/2006	Galaxy 102	Sex/Nudity	1
God Channel	20/02/2006	God Channel	Due impartiality	1
Going Cold Turkey	20/02/2006	Channel 4	Generally Accepted Standards	3
Going Cold Turkey	21/02/2006	Channel 4	Generally Accepted Standards	1
Harry Hill's TV Burp	21/01/2006	ITV1	Offence	2
Harry Hill's TV Burp	11/02/2006	ITV1	Generally Accepted Standards	1
Holiday Showdown	14/02/2006	ITV1	U18s in programmes	5
I'm a Celebrity...4	04/12/2005	ITV2	Misleading	1
Iain Lee	09/01/2006	LBC97.3	Other	1
Iain Lee	16/01/2006	LBC97.3	Crime incitement	1
Iain Lee	02/02/2006	LBC97.3	Other	1
It's Me or the Dog	09/02/2006	Channel 4	Undue prominence	1
ITV News	29/01/2006	ITV1	Other	1
ITV News	12/02/2006	ITV1	Violence	1

ITV News	13/02/2006	ITV1	Violence	2
ITV News	15/02/2006	ITV1	Due impartiality	1
ITV News	17/02/2006	ITV1	Due impartiality	1
ITV News	20/02/2006	ITV1	Generally Accepted Standards	1
ITV News	21/02/2006	ITV1	Inaccuracy/Misleading	1
James Whale Show	22/02/2006	Talksport	Generally Accepted Standards	1
L Double	07/02/2006	BBC 1Xtra	Generally Accepted Standards	1
LBC Programme	15/01/2006	LBC97.3	Language	3
Little Britain	24/11/2005	BBC1	Offence	3
Little Britain	25/01/2006	BBC1	Other	1
Men and Motors	07/02/2006	Men & Motors	Sex/Nudity	1
Mike Reid Live and Uncensored	02/02/2006	Men & Motors	Religious Offence	1
Mike the Mouth	14/02/2006	Sun FM	Crime incitement	1
Mock the Week	10/02/2006	BBC2	Generally Accepted Standards	1
Mock the Week	17/02/2006	BBC2	Generally Accepted Standards	1
My Name is Earl	27/01/2006	Channel 4	Scheduling	1
Newsround	13/02/2006	BBC1	Violence	1
Northern Lights	20/02/2006	ITV1	Violence	2
On the Fiddle	13/02/2006	BBC1	Inaccuracy/Misleading	1
Outfoxed	14/02/2006	ITV4	Due impartiality	1
Planet Sketch	09/02/2006	ITV1	Generally Accepted Standards	1
Police, Camera, Action	17/01/2006	ITV1	Inaccuracy/Misleading	1
Power FM	09/01/2006	Power FM	Other	1
Prison Break	09/02/2006	Five	Violence	1
Rajan and his Evil Hypnotists	21/12/2005	E4	Other	1
Ready, Steady, Cook	17/02/2006	BBC2	Undue prominence	1
Red Hot	06/02/2006	Red Hot TV	Sex/Nudity	1
Relocation, Relocation	08/02/2006	Channel 4	Inaccuracy/Misleading	1
Richard and Judy	03/12/2004	Channel 4	Other	1
Richard and Judy	06/12/2004	Channel 4	Offence	1
Richard Hammond's 5 O'Clock Show	02/02/2006	ITV1	Dangerous Behaviour	1
Richard Hammond's 5 O'Clock Show	03/02/2006	ITV1	Sex/Nudity	1
Richard Hammond's 5 O'Clock Show	17/02/2006	ITV1	Other	1
Rosemary and Thyme	18/02/2006	ITV1	Dangerous Behaviour	1
Saga 106.6FM	22/02/2006	Saga 106.6FM	Generally Accepted Standards	1
Seduced & Betrayed	13/02/2006	Five	Sex/Nudity	1
Sky News	19/01/2006	Sky News	Other	1
Stars In Their Eyes Kids	18/02/2006	ITV1	U18s in programmes	1
Sunset Beach	13/02/2006	Five	Scheduling	1
T4	18/02/2006	Channel 4	Offensive language	1
Talksport	01/12/2005	Talksport	Advertising	1
Television X	06/01/2006	Television X	Misleading	1
The Armstrongs	22/02/2006	BBC2	Offensive language	2
The Chris Moyles Show	14/02/2006	BBC Radio 1	Offensive language	1
The Edge	19/02/2006	ITV1	Offensive language	1
The Friday Night Project	17/02/2006	Channel 4	Generally Accepted Standards	1
The Inside	10/02/2006	ITV4	Violence	1
The IT Crowd	17/02/2006	Channel 4	Generally Accepted Standards	1
The Thick of It	02/01/2006	BBC2	Offensive language	2
The Truth	11/02/2006	ITV1	Violence	1

The Wright Stuff	09/11/2005	Five	Impartiality	1
Three Minute Wonder	16/02/2006	Channel 4	Sex/Nudity	2
Titty Bang Bang	31/01/2006	BBC3	Generally Accepted Standards	1
Titty Bang Bang	18/02/2006	BBC3	Sex/Nudity	1
TMF - The Music Factory	15/02/2006	TMF	Sponsorship	1
Trailer for E4	07/02/2006	E4	Sex/Nudity	1
Uncle Max	14/02/2006	ITV1	Generally Accepted Standards	1
Virgin Breakfast Show	20/02/2006	Virgin Radio	Undue prominence	1
West Country Regional News	03/01/2006	ITV1	U18s in programmes	1
Wild At Heart	05/02/2006	ITV1	Sex/Nudity	3
WWE – Smackdown	16/02/2006	Sky Sports	Advertising	1
You've Been Framed	14/02/2006	ITV1	Dangerous Behaviour	1