

Ofcom Broadcast Bulletin

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Introduction

Ofcom's Broadcasting Code ("the 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>

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

It is Ofcom policy to state the full language used on air by broadcasters who are the subject of a complaint. Some of the language used in Ofcom Broadcast Bulletins may therefore cause offence.

Standards cases

In Breach

Yasmin

DM Digital, 15 October 2007, 19:30

Introduction

Yasmin is a film about the experiences of a young Muslim woman living in the Yorkshire town of Keighley, following the terrorist attacks of 11 September 2001. It has a 15 certificate from the British Board of Film Classification.

A viewer complained about the strong language used in the programme. Ofcom asked DM Digital for comments in relation to Rule 1.14 of the Code (the most offensive language must not be broadcast before the watershed) and Rule 1.16 (pre-watershed use of offensive language to be justified by context; frequent use to be avoided).

Response

The broadcaster stated that it had tried as far as possible to remove any unsuitable language. It argued that the remainder of the language would have been unlikely to offend its core audience of adults. In support of this argument, it pointed out that the drama had been broadcast at 19:30, suggesting that this would have minimised any child audience. It also argued that the fact that the film was both preceded and followed by political talk shows would have further reduced the possibility it being seen by children. It also stated that the language used in the film was not frequent and was justified by the dramatic context.

Decision

The film contained a number of swear words, including “fuck/fucking” as well as other sexual references. A number of other instances had been masked in part by lowering the volume of the audio.

Ofcom’s research has demonstrated that the words ‘fuck’ and ‘fucking’ are regarded as the most offensive language. By broadcasting this language in this film prior to the watershed, DM Digital was in breach of Rule 1.14 of the Code.

Although isolated use of less offensive language may be justified by context, frequent use is prohibited pre-watershed by Rule 1.16. Ofcom noted that the language complained of, together with other offensive language had occurred at regular intervals across the programme. It therefore judged that a breach of Rule 1.16 had occurred.

In July 2007 Ofcom issued guidance to broadcasters (see Broadcast Bulletin, issue 89 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb89) to remind them that they are under a clear duty to ensure that robust procedures are in place, supported by a sufficient number of appropriately qualified and trained staff, to ensure full compliance with the Code in respect to the broadcast of unsuitable material pre-

watershed. Failure to have adequate compliance procedures in place to ensure compliance is a serious matter and can lead to regulatory action being taken.

Breach of Rules 1.14 and 1.16

Fairness and Privacy Cases

Not Upheld

Complaint by Ms Ruth Catch made on her behalf by Mr Carlton Boyce

The Simon Logan Breakfast Show, Radio Aire, 12 September 2006

Summary: Ofcom has not upheld this complaint of unfair treatment and unwarranted infringement of privacy by Ms Ruth Catch.

On 12 September 2006, Radio Aire broadcast an edition of *The Simon Logan Breakfast Show*. At approximately 08:15, Ms Catch, an employee at HMP Leeds, called the station to inform them that a helicopter used by the programme for reporting on traffic congestion had flown over or was very near to the prison. Ms Catch's call was put through to Mr Simon Logan, the programme's presenter, and their conversation was recorded and subsequently broadcast. Ms Catch said that the airspace over and around the prison was restricted and asked for the helicopter to stop flying over the prison. Mr Logan appeared to accept that there was an exclusion zone over prisons. The conversation between Mr Logan and Ms Catch was broadcast.

Mr Carlton Boyce, a Governor at HMP Leeds, complained on behalf of Ms Catch that she was treated unfairly in the programme and that her privacy was unwarrantably infringed in both the making and broadcast of the programme.

Ofcom found as follows:

- a) Ofcom took the view that the broadcaster had a responsibility to consider whether broadcasting the conversation between Ms Catch and the presenter was likely to result in unfairness to Ms Catch. It noted that Ms Catch made her call to a number that was promoted frequently as a number to call to participate in programmes and spoke to the presenter. It also considered that there was nothing in her tone or words that would have alerted the presenter to any indication that Ms Catch did not want the conversation with him used in the subsequent broadcast. In these circumstances Ofcom found that it was reasonable for the broadcaster to take the view that the conversation was suitable for broadcast and that no unfairness resulted to Ms Catch.
- b) The tone of the conversation was light-hearted and friendly throughout and it did not appear that it was the presenter's intention to ridicule Ms Catch. No unfairness resulted from the programme's treatment of her in this regard.
- c) In relation to Ms Catch's privacy complaint Ofcom noted that Ms Catch had called the listener participation phone number; that the programme did not include her name nor any other personal details about her; and, that the subject matter of the discussion did not reveal any information of a personal or private nature. In Ofcom's view, Ms Catch did not therefore have a legitimate expectation of privacy in the making or the broadcast of the programme and there was therefore no infringement of her privacy (warranted or otherwise).

Introduction

On 12 September 2006, Radio Aire broadcast an edition of *The Simon Logan Breakfast Show*. At approximately 08:15am, Ms Catch, an employee at HMP Leeds, called the station to inform them that a helicopter used by the programme for reporting on traffic congestion had flown over or was very near to the prison. Ms Catch's call was put through to Mr Simon Logan, the programme's presenter, and their conversation was recorded and subsequently broadcast. Ms Catch said that the airspace over and around the prison was restricted and asked for the helicopter to stop flying over the prison. Mr Logan appeared to accept that there was an exclusion zone over prisons¹. The conversation between Mr Logan and Ms Catch was broadcast.

Mr Carlton Boyce, a Governor at HMP Leeds, complained on behalf of Ms Catch that she was treated unfairly in the programme and that her privacy was unwarrantably infringed in both the making and broadcast of the programme.

The Complaint

Ms Catch's case

In summary, Ms Catch complained that she was treated unfairly in that:

- a) She was interviewed on air without being made aware that her conversation was being broadcast.
- b) She was ridiculed by the programme's presenter, Mr Logan.

In summary, Ms Catch complained that her privacy was unwarrantably infringed in the making and the broadcast of the programme in that:

- c) She was interviewed for the programme without her knowledge and her comments were broadcast without her knowledge and, although Ms Catch's name and job title at HMP Leeds were not explicitly mentioned in the broadcast, it was apparent from it where she worked and in what capacity.

Radio Aire's case

Emap, the broadcast licence holder for Radio Aire, submitted a response to Ofcom on behalf of the station.

In response to the complaint of unfair treatment, Radio Aire said in summary:

- a) In response to the complaint that Ms Catch was interviewed on air without her knowledge, Radio Aire said that when Ms Catch rang the on air studio line, the call was answered by the programme's presenter and, as was normal practice, was recorded. This practice enabled the presenter to speak to callers whilst other audio, such as music or advertisements, was being broadcast. The call could then be edited for time delayed inclusion if the presenter/producer felt that the content was appropriate and suitable for broadcast.

¹ Emap informed Ofcom that the helicopter had confirmed, through the Civil Aviation Authority, that there was no such restricted airspace over HMP Leeds.

The studio number was announced many times each day during the course of *The Simon Logan Breakfast Show* and other programmes. The number was actively promoted as a number used for listener participation and was announced as an invitation to take part in the programme. The number was different from that of the main station phone line, which was shown as the main line in phone directory listings and on the station's website. The number called by Ms Catch was only mentioned on air as a listener participation line and under the "on air" DJ listings on the station website. Emap argued that it was therefore inconceivable that someone familiar with the listener participation line number did not also know that this was the studio line, used for participation in programming. During the call, Ms Catch said on three separate occasions that the helicopter had "just flown over" the prison. The clear implication from these comments was that she made the call immediately after seeing the helicopter. To do this, she must have been familiar with the listener participation number.

- b) In response to the complaint that Ms Catch was ridiculed, Radio Aire said that whilst Ms Catch's call was about the proximity of the traffic helicopter above Leeds prison, the tone of the call was light hearted and humorous, relying on characters portrayed in a popular television programme about a prison. Ms Catch played along with presenter during the call. She seemed to be familiar with his style and sense of humour and there was no indication that she felt in any way uncomfortable about with the tone, or direction of, the conversation. The call ended harmoniously with Ms Catch saying "cheers", which was far from an expression of disapproval or concern.

Radio Aire said that during the day of the broadcast, Radio Aire's Managing Director, the Programme Director and the presenter were in communication with Ms Catch by telephone and email. They apologised for any unintentional offence caused to her by the broadcast.

In response to the complaint that Ms Catch's privacy was unwarrantably infringed in the making and the broadcast of the programme, Radio Aire said in summary that:

- c) Although the breakfast show was not a phone-in programme per se, contributions from listeners formed an integral part of the show and the studio line was clearly announced as an opportunity for listeners to participate in the programme. Ms Catch would have been readily aware that she was using the studio line and how calls to that number were used.

Ms Catch's comments

In summary Ms Catch said in response to Radio Aire's statement:

- a) When she called the number, she did not know that the call was going to be broadcast throughout Yorkshire and there was no mention of this when she spoke to the presenter. Ms Catch remembered telephone numbers and felt that one that was played often on air stuck in her mind. She considered that the presenter should have made her aware that her call was being recorded for transmission.
- b) Ms Catch had felt that it would be better to speak to the presenter in a jovial tone rather than being aggressive.

As regards the phone call the presenter made to Ms Catch in the afternoon, she did not feel that she had received an apology.

Radio Aire's comments

In summary Radio Aire said in response to Ms Catch's comments:

- a) It was difficult to accept that someone who readily admitted to listening to the station for lengthy periods of time would not be aware that the phone number given out by presenters was for audience participation. It was used for listener dedications, anecdotes, competitions, or contributions to an on air discussion and announced as such when listeners are invited to call. Emap said that it was constantly and consistently promoted for audience interaction and someone who had it committed to memory must be well aware of its purpose and the likelihood of transmission.
- b) Towards the end of the call, when Ms Catch said to the presenter: "*Can you just tell him to stop flying over the prison*", the tone of her voice was not consistent with someone who felt humiliated or embarrassed. She could clearly be heard laughing. From the tone of the call it was difficult to accept that she appeared to be concerned about any of the content or that she would be humiliated by the inclusion of it during the programme.

Radio Aire was sorry to have inadvertently caused Ms Catch concern and the station tried to resolve the matter as soon as it came to their attention. Radio Air regretted that the efforts made failed to establish a rapport with Mr Boyce and Ms Catch and said that they would like to assure them that they did not wish to humiliate any of our listeners and regret that Ms Catch felt that they did so in her case. They apologised for any unintentional embarrassment she may have been caused.

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

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

The complaint was considered by Ofcom's Executive Fairness Group. In reaching a decision about this complaint Ofcom considered the written submissions of both parties, a recording of the programme and a transcript.

Ofcom's findings in relation to Ms Catch's specific heads of complaint are outlined below:

- a) Ofcom first considered Ms Catch's complaint that she was interviewed on air without being made aware that her conversation was being broadcast.

In considering this head of complaint, Ofcom took into account Practice 7.3 of the Code. Practice 7.3 states that broadcasters should take steps to ensure that a person invited to make a contribution to a programme is in a position to give informed consent to their participation.

Ofcom noted first that Ms Catch was not calling the station to make a formal request on behalf of the prison for the helicopter to cease flying over its airspace, nor did she suggest to the presenter that she was doing so. Ofcom accepted that it was not Ms Catch's intention to participate in a conversation on air. Ofcom noted from Ms Catch's complaint that she thought her call was broadcast live on air. However the broadcaster clarified that the material was recorded and then subsequently broadcast. In Ofcom's view, having received a call to the listener participation phone line and recorded the call, the broadcaster had a responsibility to consider whether broadcasting the conversation between Ms Catch and the presenter was likely to result in unfairness to Ms Catch. Ofcom noted that Ms Catch made her call to a telephone number that was promoted frequently on air as a number to call to participate in programmes, rather than, for example, an office phone number. It also noted that she spoke to the presenter of the programme rather than to a member of the production team. Furthermore, Ofcom considered that there was nothing in Ms Catch's tone or demeanour during the course of her conversation with the presenter that should have alerted him to any discomfort on her part about the conversation. Nor did she give any indication that she did not want the conversation to be broadcast. In these circumstances, it was reasonable for the programme makers to take the view that Ms Catch would have no objections to the conversation being broadcast and Ofcom therefore found no unfairness to Ms Catch in the broadcast of the conversation.

Ofcom therefore found no unfairness to Ms Catch in this respect.

- b) Ofcom next considered Ms Catch's complaint that she was unfairly ridiculed by the programme's presenter.

In considering this head of complaint, Ofcom took into account Practice 7.2 of the Code, as set out under decision head a) above. Practice 7.2 states that broadcasters and programme makers should normally be fair in their dealings with potential contributors to programmes unless, exceptionally, it is justified to do so.

Ofcom listened to the recording of the broadcast conversation between Ms Catch and the presenter. The conversation was as follows:

Presenter: It's 8.51 now... quick call.
Ms Catch: Hello, I'm calling from Leeds Prison.
Presenter: Oh, are ya, are ya trying to escape?
Ms Catch: No, I'm not I'm trying to stop an escape attempt, has your helicopter just flown over our prison?
Presenter: I don't think it's allowed to fly over your prison is it?
Ms Catch: Well...
Presenter: Isn't there some rules about helicopters and prisons?
Ms Catch: There is... (studio laughter) but there's one that's just flown over...
Presenter: Yeah...

Ms Catch: ...and it's just done a traffic report from Gilsum so it's pretty close.

Presenter: Right...

Ms Catch: ...and if it is yours it literally has just flown straight over the top of the prison.

Presenter: Has it?

Ms Catch: Yes.

Presenter: It's when that ladder starts being lowered, that's when you really start worrying.

Ms Catch: 200 feet up, 2 kilometres round, that's the exclusion zone.

Presenter: Is it? Right... Are you, er, are you a big butch prison guard?

Ms Catch: Well, considering I'm female, no, I'm not butch.

Presenter: You're not butch?

Ms Catch: No.

Presenter: You're not the freak off, er, Cell Block H?

Ms Catch: No.

Presenter: No.

Ms Catch: I am not.

Presenter: You haven't got... you haven't got any plastic gloves? (Studio laughter).

Ms Catch: I have got plastic gloves.

Presenter: Oh have you? (Laughs)

Ms Catch: ... can you just tell him to stop... (laughing) flying over the prison?

Female

Presenter: I'll have a word!

Presenter: Yeah, we'll tell him, yeah.

Ms Catch: Thank you very much.

Presenter: It's making the prison staff nervous, can't you, can't you tell?

Ms Catch: Well he's doing it all the time!

Presenter: Is he?

Ms Catch: Yes.

Presenter: Well it's outrageous isn't it?

Ms Catch: Isn't it!

Presenter: Well, I'll have a word.

Ms Catch: Get em told off!

Presenter: Alright! Thanks for you call.

Ms Catch: Cheers!

Presenter: Goodbye.

Ms Catch: Bye bye."

Ofcom noted that the station and the presenter took steps to apologise to Ms Catch for any offence that might have been caused to her as a result of the broadcast of the conversation.

In considering whether there was any unfairness to Ms Catch in the broadcast, Ofcom took into account not only the words used but also the tone of the conversation. Ofcom accepted that Ms Catch had called the station to discuss a potentially serious matter, namely a helicopter flying over the prison. However the tone of the conversation between her and the presenter was light-hearted and friendly throughout the broadcast. Although the presenter made some jokes about prison officers, Ofcom did not consider that these were intended to ridicule Ms Catch or that listeners would have felt that she was being ridiculed.

Furthermore, Ms Catch's tone throughout the conversation indicated that she was happy to participate in it.

Ofcom therefore found no unfairness to Ms Catch in this respect.

- c) Ofcom went on to consider Ms Catch's complaint that her privacy was unwarrantably infringed in the making and the broadcast of the programme.

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 three distinct questions: First, does the complainant have a legitimate expectation of privacy in the circumstances of the case? Second, if so, has there been an infringement of privacy? Third, if there has been an infringement of privacy was the infringement warranted? (as per Rule 8.1 of the Code).

Ofcom first considered whether Ms Catch had a legitimate expectation of privacy in the making of the programme. Ofcom appreciated from Ms Catch's complaint that she stated she was not aware that her call to the station would be recorded (and broadcast), however Ofcom considered that, as set out under decision head a) above, Ms Catch was clearly calling a telephone number that was broadcast frequently on air as a number to call to participate in programmes and spoke to the presenter. It was therefore reasonable in the circumstances for the broadcaster to record the conversation. In Ofcom's view therefore Ms Catch did not have a legitimate expectation of privacy in relation to the making of the programme.

Ofcom next considered whether Ms Catch had a legitimate expectation of privacy in relation to the broadcast of the programme. In Ofcom's view having recorded a call it is the broadcaster's responsibility to consider whether that call should be broadcast, and given that responsibility it was legitimate for Ms Catch to have some expectation that her call would not be broadcast. However, that expectation was diminished by the fact that she called the listener participation number (as discussed above). It was further diminished by the fact that, although it was clear from the broadcast conversation where Ms Catch worked, her name was not broadcast nor were any other personal details given on air about her. Furthermore the subject matter of the broadcast discussion did not reveal any information of a personal or private nature. In Ofcom's view therefore Ms Catch did not have a legitimate expectation of privacy in relation to the broadcast of the programme.

Given that Ofcom found that, in these circumstances, Ms Catch did not have a legitimate expectation of privacy in relation either to the making or the broadcast of the programme, there was therefore no infringement of her privacy in the making or the broadcast of the programme. It was not therefore necessary for Ofcom to go on to consider whether or not any infringement was warranted.

Accordingly the Executive Fairness Group has not upheld the complaint of unfair treatment and unwarranted infringement of privacy.

Complaint by Mr Timothy Cowen on his own behalf and on behalf of NCP Services Limited

BBC London News, BBC 1, 8 May 2007

Summary: Ofcom has not upheld this complaint of unfair treatment by Mr Cowen on his own behalf and on behalf of NCP Services Limited (“NCP”).

Mr Cowen, Director of Communications for NCP, was interviewed by the BBC for a report broadcast on 8 May 2007 in BBC London News concerning the issue of financial incentives for numbers of parking tickets issued in parking enforcement contracts. The report indicated that the parking enforcement service operated by NCP for the Royal Borough of Kensington and Chelsea was structured around a specific numerical target and that failure to meet that target would have resulted in a reduction in the fees paid to NCP. The report included a comment from Mr Edmund King of the RAC Foundation (who was not named in the report) and, immediately afterwards, a comment from NCP’s Director of Communications, Mr Cowen.

Mr Cowen complained that he and NCP were treated unfairly in the programme as broadcast in that he was misled about the nature and purpose of the programme, his views were misrepresented in the programme and his interview was edited unfairly to exclude the “main thrust” of his comments.

In summary, Ofcom found that there was no unfairness to Mr Cowen or NCP. Ofcom was satisfied that Mr Cowen was given sufficient information by the BBC to enable him to give informed consent to be interviewed on NCP’s behalf for the programme. Ofcom also found that Mr Cowen’s views had not been misrepresented in the programme and that his and, therefore, NCP’s, position was reflected fairly in the programme.

Introduction

On 8 May 2007, BBC 1 broadcast an edition of *BBC London News*. The programme included a report which indicated that the parking enforcement service operated by NCP for the Royal Borough of Kensington and Chelsea was structured around a specific numerical target and that failure to meet that target would have resulted in a reduction in the fees paid to NCP. The report included a comment from Mr Edmund King of the RAC Foundation (who was not named in the report) and, immediately afterwards, a comment from NCP’s Director of Communications, Mr Cowen.

Mr Cowen complained to Ofcom that he and NCP were treated unfairly in the programme as broadcast.

The Complaint

Mr Cowen’s and NCP’s case

In summary, Mr Cowen complained that he and NCP were treated unfairly in the programme as broadcast in that:

- a) He was misled about the nature of the report and therefore was not able to give informed consent to participate. Specifically, Mr Cowen complained that, having explained to the BBC that comments regarding a particular parking enforcement contract could only be made by the relevant local authority, the

BBC had told him that “the report was not simply about the Royal Borough of Kensington and Chelsea but was about a wider debate regarding parking enforcement.” However, in fact, the report had focused primarily on Kensington and Chelsea.

- b) His views were misrepresented in the report. The report incorrectly stated that NCP agreed with comments made by Mr Edmund King of the RAC Foundation, who also appeared in the report. Mr Cowen was not shown Mr King’s statement; he complained that if he had been, he would have disagreed with it.
- c) The BBC unfairly edited his interview to exclude the “main thrust” of his comments, namely that “the issue of incentives in parking enforcement [was] one for the Department of Transport to clear up through statutory guidance.”

The BBC’s case

In summary, and in response to Mr Cowen’s and NCP’s complaint, the BBC said that:

- a) The BBC had informed NCP and Mr Cowen that it would be running a story in that day’s *BBC London News* that related to annual minimums in parking enforcement contracts. The BBC said that it had told NCP and Mr Cowen that the report would reference wider material than just the NCP contract with Kensington and Chelsea. The report did so: it referred to the fact that the British Parking Association was investigating the situation in relation to another London borough. Mr Cowen was informed of the identity of the other contributors to the report (Mr King of the RAC Foundation and Nicolas Paget-Brown, a Kensington and Chelsea councillor) before his interview was recorded. Mr Cowen was fully aware that the numeric targets in the Kensington and Chelsea contract with NCP were the crux of the report as the issue was put specifically to him in his interview. Further, the story was already in the public domain, having run in the lunchtime edition of *BBC London News*.
- b) When he was interviewed by the BBC, Mr Cowen had stated that NCP did not support contracts based on financial incentives for the numbers of penalty notices issued, although this was not included in the programme as broadcast. The point made in the report was that essentially NCP agreed with the RAC Foundation that clauses in parking enforcement contracts specifying annual minimums were undesirable. In a brief report, the BBC argued that paraphrasing was essential.
- c) Mr Cowen had made two main points in his interview: (i) NCP’s support for statutory guidance; and (ii) NCP’s view that the best contracts were those based on key performance issues, such as training standards, hours of parking attendant deployment and the accuracy of penalty notices issued. The BBC said its report had been edited with the aim of putting the audience in a position to form their own view of the issues. The extract of Mr Cowen’s interview that was broadcast in the programme was the most germane to the report and, in the BBC’s view, no useful purpose would have been served by the inclusion, in a very brief report, of Mr Cowen’s point regarding NCP’s support for statutory guidance.

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

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

This case was considered by Ofcom's Executive Fairness Group. Ofcom considered the complaint and the broadcaster's response, together with recordings and transcripts of the programme as broadcast and the un-transmitted footage of Mr Cowen's interview.

Ofcom found as follows:

- a) Ofcom first considered Mr Cowen's complaint that he was misled about the nature of the report and was therefore unable to give informed consent to participate. In considering this head of complaint, Ofcom took into account Practice 7.3 of the Code which provides that:

"Where a person is invited to make a contribution to a programme...they should normally, at an appropriate stage:

- be told the nature and purpose of the programme, what the programme is about and be given a clear explanation of why they were asked to contribute...;
- be told what kind of contribution they are expected to make, for example, live, pre-recorded, interview, discussion, edited, unedited, etc;
- be informed about the areas of questioning and, wherever possible, the nature of other likely contributions...

Taking these measures is likely to result in the consent that is given being 'informed consent'."

Ofcom noted that Mr Cowen stated in his complaint that NCP had been contacted by the BBC and asked to comment on camera following an article in that day's Daily Telegraph. Further, that Mr Cowen stated in his complaint that the article had alleged that the contract between NCP and Kensington and Chelsea involved a financial incentive to maximise the issue of parking tickets. Ofcom also noted that Mr Cowen stated in his complaint that he "was assured [by the BBC] that the report was not simply about the Royal Borough of Kensington and Chelsea but was about a wider debate regarding parking enforcement." Ofcom also noted that the BBC stated in its response to the complaint that the issue of financial incentives for numbers of parking tickets issued in Kensington and Chelsea had been reported on in the lunchtime edition of *BBC London News*. After reviewing the un-transmitted footage of Mr

Cowen's interview, Ofcom also noted that Mr Cowen was asked at the outset of the interview about NCP's contract with Kensington and Chelsea and that he declined to comment on it, stating that he thought it best that he did not talk specifically about it.

Ofcom was satisfied that Mr Cowen had not been misled as to the planned nature of the report. It was apparent from Mr Cowen's complaint that he had been aware that the report would refer to parking enforcement in Kensington and Chelsea, to some degree. The report, as broadcast in the programme, had focused initially on the contract between Kensington and Chelsea and NCP to illustrate the wider debate regarding financial incentives for numbers of parking tickets issued but it was broadened at the end to include reference to another London borough. Therefore, Ofcom found that the information provided to Mr Cowen about the subject matter of the item both before and during his interview resulted in no unfairness to Mr Cowen or NCP.

- b) Secondly, Ofcom considered Mr Cowen's complaint that his views were misrepresented in the report. In considering this head of complaint, Ofcom took into account Practice 7.9 of its Code, which provides that "broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation".

Ofcom noted that in the programme, as broadcast, Mr King of the RAC Foundation had stated:

"If there are contracts that specify numbers of valid tickets issued, and this one says numbers of valid tickets issued should not fall below 306,000, I think that does put some pressure on the contractor if they want to maintain that contract."

The programme's presenter then stated:

"And interestingly the contractors agree."

Mr Cowen's comment followed:

"The best kind of contracts as far as NCP are concerned are those that rate us on quality key performance indicators such as training standards and the number of hours that we deploy parking attendants on the street and also the accuracy of the tickets they issue."

Ofcom further noted that in the un-transmitted footage of Mr Cowen's interview, he stated:

"NCP does not believe that parking enforcement contracts based on the number of tickets that may or may not be issued by Parking Attendants are the most effective way of rating that service...contracts where there are financial incentives...based simply on the number of penalty notices issued are not something that we support."

Ofcom considered that there was a common thread between Mr King's and Mr Cowen's comments. Both appeared to agree that it would be preferable if parking enforcement contracts did not contain financial incentives for numbers of parking tickets issued. In particular, it was clear from Mr Cowen's

comment, as broadcast in the programme, that NCP preferred contracts that rated it on quality, rather than the quantity of parking tickets issued.

Ofcom was of the view that the statement in the report that NCP agreed with Mr King's comment did not misrepresent Mr Cowen's and/or NCP's position since the broad thrust of their positions regarding financial incentives was the same. Therefore, it found that there was no unfairness to Mr Cowen or NCP in this respect.

- c) Thirdly, Ofcom considered Mr Cowen's complaint that his interview had been unfairly edited to exclude the "main thrust" of his comments. In considering this head of complaint, Ofcom took into account Practice 7.6 of the Code, which provides that: "When a programme is edited, contributions should be edited fairly".

Ofcom considered a recording and transcript of the full, unedited interview with Mr Cowen. Mr Cowen had mentioned in the un-transmitted footage of his interview that NCP was lobbying for the introduction of statutory guidance to make clear what was and was not acceptable in parking enforcement contracts. Ofcom was of the view that the decision as to whether or not to include this comment was within the BBC's editorial discretion as long as it did not result in any unfairness to Mr Cowen or NCP. Ofcom did not consider that the omission of Mr Cowen's comment that NCP was lobbying for the introduction of statutory guidance from the programme as broadcast resulted in any unfairness to Mr Cowen or NCP, since the issue of lobbying was not central to the topic under discussion. Therefore, Ofcom found that there was no unfairness to Mr Cowen or NCP in this respect.

Accordingly, the complaint of unfair treatment was not upheld.

Complaint from Ms Anne Hinchey on behalf of the Wales and West Housing Association,

Wales This Week, ITV (Wales), 26 February 2007

Summary: Ofcom has not upheld this complaint of unfair treatment in the broadcast and unwarranted infringement of privacy in the making of the programme.

This edition of the current affairs programme *Wales This Week* included a report looking at cut backs in, and problems with, the provision of services offered to elderly residents in sheltered housing. In particular, it considered the experiences of some of the residents of Christchurch Court, a sheltered housing scheme in Llandrindod Wells that is owned and operated by the Wales and West Housing Association (“the WWHHA”).

Ofcom found that the WWHHA was not treated unfairly in the programme because the broadcaster had not only represented the views of the residents who were interviewed about the effects of the changes to the full time warden service at Christchurch Court in the report but also given the WWHHA an appropriate and timely opportunity to respond to the concerns about it which were included in the report, and fairly represented this response.

With regard to the complaint of unwarranted infringement of privacy in the making Ofcom found that WWHHA did not have a legitimate expectation of privacy in respect of the filming of the communal areas of Christchurch Court which were included in this footage. It therefore found that there was no infringement of the WWHHA’s privacy in respect of this footage and did not go on to consider the question of whether any infringement was warranted.

Introduction

On 26 February 2007, ITV broadcast an edition of *Wales This Week* a regional current affairs programme. This edition of *Wales This Week* included a report looking at cut backs in, and problems with, the provision of services offered to elderly residents in sheltered housing. In particular, it considered the experiences of some of the residents of Christchurch Court, a sheltered housing scheme in Llandrindod Wells that is owned and operated by the Wales and West Housing Association (“the WWHHA”). The programme included interviews with three residents: Mrs Dick, Mrs Reull and Mrs Sawyer. They recalled several incidents which they believed were either caused or worsened by the reduction in the warden service at Christchurch Court from full to part time (which had happened three years prior to the making and broadcast of the programme). These incidents included the breakdown of the heating system and subsequent loss of hot water for six days during January 2007; the fact that two years earlier a resident who had died (Mrs Judge) lay undiscovered for two days; and, an incident when Mrs Ruell (one of the interviewees) said that for two hours she received no response to a call for assistance (which she had made after a fall). The programme also included an interview with Welsh Assembly Member (AM) Ms Kirsty Williams who had been dealing with complaints about the effect of the reduction in the warden service at Christchurch Court for three years.

Ms Hinchey, who is the Chief Executive of the WWHHA, complained to Ofcom that the WWHHA was treated unfairly in the programme as broadcast and that its privacy was unwarrantably infringed in the making of the programme.

The Complaint

The WWHA's case

In summary, Ms Hinchey complained that the WWHA was treated unfairly in the programme as broadcast in that:

- a) The programme gave a misleading impression of the situation at the WWHA in general and at Christchurch Court specifically. Ms Hinchey complained that:
 - i) By focusing the entire item on the WWHA the programme gave the unfair impression that the WWHA was contributing to or part of an alleged crisis in the care of the elderly when in fact the claims of a crisis were not evidenced in the programme and the only evidence produced in the programme was the subjective view of those interviewed.
 - ii) The programme unfairly gave the impression that sheltered accommodation is designed to provide care for the elderly, despite the WWHA having made clear to the programme maker that its sheltered accommodation is designed as "independent living" for older people, not "care".
 - iii) The programme offered no evidence to support its suggestion that there was a link between the Welsh Assembly Government ("the WAG") budget cuts and a decline in the service which the WWHA offered to its residents.
 - iv) The criticism made by Ms Kirsty Williams (AM) unfairly implied that because the WWHA used contractors from north Wales to cover its schemes in mid Wales it provided a lesser service to its residents in mid Wales, and by implication at Christchurch Court which is located in Llandrindod Wells in mid Wales. The WWHA explained that it ensured that all its schemes in Wales could be reached by contractors within four hours and that this response time was similar to the commitment offered by other 'social landlords'.
 - v) The programme unfairly gave the impression that the WWHA was negligent in the care of its residents by highlighting an incident, that occurred two years earlier, in which a deceased resident lay undiscovered for two days. While the programme did acknowledge that the resident had previously asked not to be checked on by the WWHA, it did not disclose that the family of the resident had made no complaint against the WWHA because it had acted on the resident's wishes. Raising this incident unfairly gave the impression that current residents were in danger of being undiscovered should they die.
 - vi) The programme gave no evidence to support its untrue claim that facilities were no longer available to residents and they had lost the warden service.
 - vii) The programme incorrectly claimed that the WWHA was issuing residents with tenancy agreements/leases which allowed it to withdraw services at any time.

- viii) The programme maker interviewed just three out of thirty-eight residents and did not provide a balanced view of opinion at the scheme despite being approached by residents who were satisfied with the services provided by the WWHA.
 - ix) The programme failed to show balance by indicating that the WWHA is a non-profit making organisation with charitable status that is managed by a voluntary board (a number of whose members are residents at one of the association's schemes).
- b) The programme did not fairly reflect the WWHA's response to the programme maker's questions. Specifically it ignored the following parts of the WWHA's statement:
- i) The denial that there was a link between the WAG budget cuts and a decline in the service which the WWHA offered to its residents.
 - ii) The explanation that any resident in sheltered accommodation can have a daily welfare check if one is requested.
 - iii) The comment that the WWHA's records showed that the resident who claimed to have lain on the floor unattended for two hours had asked for emergency assistance on three occasions over the preceding two years and that the assistance had been provided immediately.
 - iv) The denial of the claim made by ITV that facilities were no longer available to residents and they had lost the warden service.
 - v) The denial of the claim made by ITV that the WWHA was issuing residents with tenancy agreements/leases which allowed it to withdraw services at any time; the explanation that it consulted residents before changing any services; and, the comment that the objections to the change in the warden service came from a minority of residents who lived at the scheme.
- c) The programme did not provide an appropriate opportunity for the WWHA to respond to the specific allegation from the resident (Mrs Ruell) who said that she had lain on the floor unattended for two hours before assistance was sent. Specifically, the programme maker did not respond to the WWHA's request for confirmation of when this alleged incident took place.

In summary, Ms Hinchey complained that the WWHA's privacy was unwarrantably infringed in the making of the programme in that:

- d) The programme maker attempted to gain access to the communal areas of Christchurch Court to interview residents without securing permission to film at the scheme and despite being told by a member of staff that he was not authorised to film in any area other than the homes of the residents who had agreed to take part in the programme, the programme maker filmed residents in the communal corridor at the scheme.

ITV's case

In summary ITV responded to the WWHA's fairness complaint as follows:

- a) ITV denied that the programme gave a misleading impression of the situation at the WWHA in general and at Christchurch Court specifically.
- i) It argued that the item was not focused solely on the WWHA and that the programme had clearly explained the background to the item. Namely, that while the WAG had asked for ideas to safeguard the dignity of the elderly in care it had also backed cuts in warden services in sheltered accommodation. ITV stated that the residents at Christchurch Court had been cited in context to illustrate how some residents who had experienced these cuts felt about it, and that the programme had not identified Christchurch Court itself as the cause of the national crisis in the care of the elderly.

The broadcaster said that, in contrast to Ms Hinchey's complaint, the crisis was evidenced not only in the interviews with residents but also in the interview with two Assembly Members concerned with this issue (Mr Peter Black and Ms Kirsty Williams) and with Age Concern. ITV added that the crisis stemmed from the widespread cut backs in warden services and that in cutting back its own services the WWHA had contributed to the crisis.

It also argued that the residents the programme had interviewed at Christchurch Court characterised the problems they have faced (no hot water for six days, the fact that one resident lay undiscovered for two days after her death and the complaints of another resident that she was left on the floor and unable to move for two hours) as part of the crisis.

- ii) With regard to the complaint about the use of the term "care", ITV argued that the programme explained exactly what the residents at Christchurch Court believed sheltered accommodation is designed to provide and quoted commentary from the programme to support its position:

Commentary: "Alfreda Sawyer needed care, but she was still able to retain a lot of her independence. So, like Mrs Dick, her friend, she moved into sheltered accommodation".

It argued that the common perception of sheltered accommodation is that it is capable of providing a level of care and support which enables individuals to maintain their independence. It noted that the residents it interviewed felt that their sheltered accommodation should include at least a permanent warden.

ITV added that word "care" was not confined to the context of nursing care. It stated that the programme had not suggested that Christchurch Court had failed to provide such care but that it had indicated that as sheltered accommodation Christchurch Court was not living up to the expectations of the residents to whom ITV had spoken in terms of the level of care or service provided.

ITV also noted that Ms Hinchey had used the word "care" within her complaint.

- iii) With regard to the complaint about budget cuts, ITV said that the programme explained the reasons that the WWHA had given regarding

why it had started to provide a lower level of warden service to its residents (see also ITV's response to head b) ii) below).

- iv) With regard to the complaint about the use of contractors, ITV believed that it was reasonable for the residents to complain in the programme about not having had hot water for six days in January 2007 and for Ms Kirsty Williams (AM) to have commented on this incident. It added that the residents believed that part of the reason for the delay in fixing the problem was the distance between the location of the plumbers (north Wales and Stockport) and the home (mid Wales).
- v) ITV argued that the programme did not unfairly give the impression that the WWHA was negligent in the care of its residents by highlighting an incident, that occurred two years ago, in which a deceased resident lay undiscovered for two days. It noted that the residents remained concerned about this incident and felt vulnerable without a permanent warden. ITV explained that the programme had set out the WWHA's view that a fulltime warden would not have made a difference to this incident and that the woman involved had refused checks and calls and that the home had respected her request for privacy. The broadcaster also noted that the programme had reflected the fact that after the lady's death the WWHA had introduced a system of at least weekly contact with residents. ITV added that although the programme had not alleged that the current residents were in danger of being undiscovered should they die, they themselves were concerned that this was the case and believed a full-time warden would address this concern.
- vi) ITV stated that the programme did not make untrue allegations about services provided by the WWHA to the residents at Christchurch Court. It noted that the full time on-site warden is no longer available and in its view this was a cut in service or at the very least a cut in the quality of service. ITV referred to a comment by Mrs Dick, one of the residents, in the programme to illustrate this point:

Mrs Dick: "She [the full time warden] would see that the doctor arrived and if you were in bed she would come and see you that you were in bed. We don't have anything like that now".
- vii) ITV noted that Mrs Dick's contract with the WWHA indicated that services were provided at the discretion of the landlord in that it said: "We reserve the right to change or end the provision of these services". The broadcaster noted that in its letter to the programme maker the WWHA had not indicated that the provision enabling the removal of services was not a term of the contracts which residents sign but had said that it consulted with residents when changes were proposed. ITV noted that this was reflected in the programme with regard to the cut in warden services.
- viii) ITV argued that the views expressed by the residents interviewed on camera were accurately represented and would be no less valid if other residents didn't share them. However, it added that approximately ten further residents expressed similar concerns to the interviewees (one of whom wished to be interviewed for any follow-up programme) and no-one approached the reporter wishing to express satisfaction with the scheme. Therefore, ITV did not agree with the assessment, made in the WWHA's

original complaint, that other than among a small minority there were high levels of satisfaction among residents.

- ix) ITV argued that the WWHA's non-profit making status was irrelevant to the residents' concerns about the cut in their warden services and therefore it was not unfair not to have mentioned it in the programme.
- b) ITV denied that the programme unfairly reflected the WWHA's response to the programme maker's questions.
 - i) Regarding the response about budget cuts, ITV stated that the programme had noted that there had been a decline in services available to residents at Christchurch Court and that there had been cuts in the WAG funding. It also stated that the programme had reflected the WWHA's claim that the change from a resident to a non-resident scheme manager was essentially due to recruiting difficulties and that it had consulted residents about what should be done and kept the elements of the service which were most important to them. ITV quoted from the programme to illustrate:

Commentary: "Wales and West say we had problems trying to recruit a full time warden, we consulted residents and maintained the services they wanted".

- ii) Regarding the response about welfare checks, ITV argued that the programme did not reflect the fact that residents can have a daily welfare check if they request one because this type of check did not address the concerns of the residents in that it is merely a telephone call from Cardiff and the residents to whom it spoke did not regard this as a useful option. ITV explained that the residents held this view because an unanswered phone may indicate any number of scenarios and a daily call of this nature would not have addressed the three specific incidents of concern raised in the programme (no hot water, the undiscovered death of one resident and another being left unattended after a fall). ITV noted that the programme did detail the emergency cord system available to residents even though Mrs Reull (the lady who had fallen) did not trust this system and the representative from Age Concern had explained the limitations of such systems.
- iii) ITV argued that the fact that Mrs Reull had asked for emergency assistance on a number of occasions was not at issue, rather the concern was that she had lain unattended for two hours on one occasion. It noted that the programme had not indicated that emergency assistance never came but that Mrs Reull had said that it hadn't on this one occasion. The broadcaster also noted that the programme had reflected the WWHA's comment that its records showed that Mrs Reull had only rung once on the night in question and had been attended to very quickly.
- iv) ITV noted that it was quite clear that residents had lost the full time residential warden and that the WWHA's reasons for this had been reflected in the programme.
- v) ITV reiterated its point that Mrs Dick's contact enabled services to be withdrawn at the landlord's discretion and that the WWHA's comment that

it consulted residents before reducing the warden service was reflected in the programme.

- c) ITV denied that the WWHA was not given an opportunity to respond to the specific allegation from the resident who said that she had lain on the floor unattended for two hours before assistance was sent.

It said that the programme maker wrote to the WWHA about Mrs Reull's allegations in the following terms:

"A woman called Mabel Reull fell over – she used her emergency cord and spoke to a man in Wales and West's Cardiff based call centre – two hours later she was still stranded unable to get back on her feet – she contacted the centre again and this time help was sent. Do you refute the above sequence of events? Why did Wales & West's system fail that day?"

ITV also noted that the WWHA responded as follows:

"You have not provided any dates for the above event. Our records indicate that Mrs Reull has contacted the service centre three times in the last two years due to falls. On each occasion the service centre responded immediately, assessed the situation and as requested by Mrs Reull contacted her daughter. On each occasion an ambulance was called and they attended. We can confirm that our systems did not fail and that Mrs Reull was attended to in these instances, very quickly."

ITV believed that Mrs Reull had made the allegation that she had been left on the floor for two hours unaided to the WWHA several times and therefore assumed that it would have been aware of the date in when Mrs Reull alleged this incident had occurred. The broadcaster noted that the programme maker had understood that in its response the WWHA was not requesting further information but merely noting a point. ITV noted that its view that this response was fairly reflected in the programme.

In summary ITV responded to the WWHA's complaint of unwarranted infringement of privacy in the making as follows:

- d) ITV denied that the *Wales this Week* team had infringed the privacy of the residents at Christchurch Court.

ITV noted that it had been invited to Christchurch Court by the three residents it interviewed. It detailed its view of events following the arrival of the reporter and cameraman:

- They were greeted by Mrs Dick.
- Mrs Dick said that a group of female residents had gathered to talk to them (she gestured to about ten people in the communal seating area).
- During their conversation with these residents the scheme manager arrived, introduced herself and asked who they were.
- The reporter introduced himself and the cameraman and explained they were there at the invitation of some of the residents.
- The scheme manager said they would have to leave.

- When the reporter asked why, the manager said that they were causing distress to the women (ITV noted that this was unlikely because they had gathered specifically to talk to the reporter).
- The reporter confirmed he would not film the communal seating area but would be filming the three residents in their private accommodation.
- They adjourned to Mrs Dick's accommodation where they filmed.
- They also filmed Mrs Reull and the late Mrs Sawyer in front of Mrs Dick's door which necessitated filming the corridor in which the door is located.

ITV said that the cameraman had not filmed in the communal gathering areas, other than a brief background shot of a corridor outside Mrs Dick's flat which was empty of everyone other than the consenting contributors. In its view there was no reasonable expectation of privacy in the subject matter of the shot in question.

ITV added that if it is considered that there was an infringement of privacy it had been warranted because it is a commonplace of television grammar to have an establishing shot such as that described above. ITV also argued that if Mrs Dick was unable to use pictures of her friends arriving at her front door it would be an unjustified infringement of her right to freedom of expression.

Ms Hinchey's comments in response to ITV's statement

In summary, Ms Hinchey responded to specific sections of ITV's statement as follows:

- a) vii) In relation to the response to the complaint that the programme incorrectly claimed that the WWAHA was issuing residents with tenancy agreements/leases which allowed it to withdraw services at any time, Ms Hinchey commented that she had informed ITV that the WWAHA never made changes to contracts without first discussing them with residents.

She said that the programme was wrong when it said that *"Wales and West can withdraw any service they like from the residents - whenever they want"* and noted that the Landlord and Tenant Act 1985 prevents changes to services being made without prior consultation. Ms Hinchey said that ITV had been rather economical when quoting sections of the WWAHA's tenancy agreements in its statement. By way of example, she noted that within its statement ITV had quoted the sentence: "We reserve the right to change or end the provision of these services." but not the qualifying statement that which follows on from it in the agreements: "We will however, tell you about any proposals for change and consider any comments you make to us."

Ms Hinchey also indicated that the programme had not reflected the WWAHA's response to the programme maker indicating that the residents at Christchurch Court had been consulted about the proposed change to the warden scheme and that the majority had been happy with it.

Ms Hinchey said that there were slight differences in the wording of the tenancy agreements issued at Christchurch Court before and after the WWAHA took over from Corlan Housing in 1990. She explained that since 1990 tenancy agreements had been issued by the WWAHA and that any former Corlan tenants had been included in consultations.

- c) Ms Hinchey commented on ITV's response to the complaint that the WWHA was not given an appropriate opportunity to respond to the specific allegation from the resident who said that she had lain on the floor unattended for two hours before assistance was sent.

She reiterated the claim that the WWHA had not been told what date the alleged incident took place and argued that the programme had reported the incident in way which would have led any reasonable person to assume it was a recent event.

Ms Hinchey stated that the WWHA had asked ITV when the alleged incident took place and that when the broadcaster had not responded it had checked its own records for the preceding two years. Ms Hinchey noted that these showed three incidents when Mrs Reull had called for assistance which had been provided immediately. Ms Hinchey explained that every activation of the emergency alarm is recorded electronically and that therefore the WWHA was absolutely confident that Mrs Reull had not activated her alarm and then reactivated it two hours later.

However, Ms Hinchey also indicated that the WWHA had a file note from 2004 which suggested that a relative of Mrs Reull's had spoken to a member of the WWHA's staff about the emergency alarm system. Ms Hinchey acknowledged that Mrs Reull strongly believed that an incident had occurred and that in light of the file note it was possible that sometime before 2004 there had been an incident although the WWHA had no means of verifying this from its records.

- d) In relation to the response to the complaint that the WWHA's privacy had been infringed in the making of the programme Ms Hinchey detailed the organisation's view of events following the arrival of the reporter and cameraman.

She said that:

- Six rather than ten residents were present in the communal lounge only three of whom wished to speak to the programme makers.
- The reporter and cameraman were let into the building by Mrs Dick.
- Mrs Owens, the scheme manager, did ask them to identify themselves.
- Mrs Owens remained professional at all times.
- The reporter was rude and abusive to her.
- Mrs Owens did not tell the reporter he had to leave, she said he could not film in communal areas.
- One resident approached the reporter as he was leaving and said "you should be ashamed of yourself".
- The WWHA had received complaints about the reporter and cameraman's presence at Christchurch Court.

Ms Hinchey noted that the WWHA accepted that the TV crew felt that scene-setting shot of the residents entering a flat would be appropriate but did not feel that it warranted a breach of privacy. However, she argued that the cameraman had filmed in private property without the WWHA's knowledge. She stated that even if three residents did consent to having been filmed they did not have the right to do so and added that the majority of the other residents were not consulted and that filming in the communal area might have imposed upon

their freedom. Ms Hinchey noted that in the WWHA's view there is a distinction to be drawn between a personal photograph of a communal area and filming for a TV broadcast.

ITV's second statement in response to the complaint

In summary ITV responded to the complainant's comments as follows:

- a) vii) In relation to the complaint that the programme incorrectly claimed that the WWHA was issuing residents with tenancy agreements/leases which allowed it to withdraw services at any time, ITV indicated that Mrs Dick's contract stated in express terms that the WWHA may change or end the provision of services set out therein.

ITV argued that the requirement for consultation did not lessen this power and that the majority of residents to whom it had spoken were not happy about the reduction in warden services. ITV supplied an e-mail from Mrs Dick's daughter to illustrate this point.

The broadcaster said that it did not see how the fact that some tenants previously had different contracts which provided more stringent conditions governing how the former landlord could withdraw services was relevant, because the programme had looked at the WWHA's contracts and its withdrawal of the full time warden service. ITV reiterated the view that the WWHA's comment that it had consulted with residents, and maintained the services which they had indicated they wanted, was reflected in the programme.

- c) ITV returned to the complaint that the WWHA was not given an appropriate opportunity to respond to the specific allegation from the resident who said that she had lain on the floor unattended for two hours before assistance was sent. The broadcaster repeated the view that the WWHA had not asked the programme maker when the incident took place or indicated that it could not answer the question about this incident without this information but rather had noted that it had not been provided by the broadcaster with a date.

ITV noted that it now understood that the incident had taken place in December 2004 and supplied a copy of a letter about the incident which was sent by Mrs Reull's daughter to the WWHA in December 2004. ITV indicated that it believed that this letter had not been answered by the WWHA.

The broadcaster argued that in its view the substance of the WWHA's response to this complaint (that whenever Mrs Reull had called for assistance she had been attended to quickly) had been reflected in the programme and was unlikely to have been different even if the WWHA had been aware of the date of this incident.

- d) In relation to the complaint that the WWHA's privacy had been infringed in the making of the programme, ITV stated that the three women it interviewed had informed the reporter that the other women in the lounge had gathered there to see him.

The broadcaster added that later in the same week Mrs Dick had told Mr Blythe (the reporter) that those women were disappointed that they had not had an opportunity to meet him properly. It also said that after the programme was

broadcast he was told that some residents had been annoyed that they had not been interviewed. ITV said that Mr Blythe denied that anyone had said to him “*you should be ashamed of yourself*” or that he had been rude to anyone.

The broadcaster indicated that the issue of the footage of the empty corridor had been dealt with in its earlier statement. However, in light of Ofcom’s request for clarification as to whether or not filming took place in any other communal area, ITV explained that unbeknown to Mr Blythe, the cameraman had, having taken some exterior shots, left the camera on when they went into the common room to meet the three interviewees. ITV indicated that it was not clear whether even the cameraman had known that the camera was on but that it was clear that this footage, which lasted about a minute, was neither meant to be nor was broadcast.

ITV also argued that the footage made clear that the ladies had been waiting for the reporter and cameraman, that none of the other residents were upset, and that the reporter was polite to the part time warden. ITV confirmed that other than this and the filming of the empty corridor it had not filmed the communal areas at Christchurch Court.

Decision

Ofcom’s statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unfair treatment and unwarranted infringement of privacy in programmes included in such services. Where there appears to have been unfairness in the making of the programme, this will only result in a finding of unfairness, if Ofcom finds that it has resulted in unfairness to the complainant in the programme as broadcast.

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

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 three distinct questions: First, does the complainant have a legitimate expectation of privacy in the circumstances of the case? Second, if so, has there been an infringement of privacy? Third, if there has been an infringement of privacy was the infringement warranted? (as per Rule 8.1 of the Code).

The case was considered by Ofcom’s Executive Fairness Group. In reaching its decision, the Group considered a copy of the programme, the programme transcript, and each party’s written submissions. (These included correspondence between the complainant and the broadcaster; a copy of the tenancy agreement between Mrs Dick and the WWHA; a list of estimated service charges for Christchurch Court; a copy of a letter to the WWHA regarding Mrs Ruell’s fall (dated 28 December 2004); an e-mail from Mrs Dick’s daughter regarding her mother’s tenancy agreement and the reduction in the warden service; an article about the programme from “*In Touch*”, the WWHA’s magazine for residents; and a short piece of untransmitted footage filmed in the communal lounge of Christchurch Court).

- a) Ofcom first considered the WWHA's complaint that the programme gave a misleading impression of the situation at the WWHA in general and at Christchurch Court specifically. Ofcom considered this complaint in light of the requirement on broadcasters in Rule 7.1 of the Code to avoid unjust or unfair treatment of individuals or organisations in programmes.

Ofcom also took particular account of Practice 7.9 of the Code which states that before broadcasting a factual programme:

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

In its consideration of this complaint Ofcom first turned to each of the individual complaints made:

- i) Ofcom addressed the WWHA's complaint that by focusing the entire item on the WWHA the programme gave the unfair impression that the WWHA was contributing to or part of an alleged crisis in the care of the elderly when in fact the claims of a crisis were not evidenced in the programme and the only evidence produced in the programme was the subjective view of those interviewed.

Ofcom noted that the presenter (Helen Callaghan) introduced the report in the following way:

Intro: “Good evening. Tonight it is with sadness that we report on a crisis in the care of the elderly. It comes at a time when pensioners are rarely out of the news and it is set to be a big election issue. The Welsh Assembly Government has asked for ideas to safeguard the dignity of the elderly in care. But the Assembly is backing cuts in warden services in sheltered accommodation. We filmed the residents of Christchurch Court in Llandrindod Wells who are fighting their landlord, Wales and West, over cut backs. Last week one of the elderly ladies, Alfreda Sawyer, died. Her family told us she would have wanted the programme to be broadcast. ”

In Ofcom's view the report did give the impression that there was a “crisis” in the care of the elderly. However, it noted that the introduction referred to the conflicting pressures in the WAG's position on the care of the elderly and to cuts in warden services in sheltered accommodation across Wales.

Having looked at the transcript and recording of the programme in its entirety, Ofcom observed that the three residents from Christchurch Court who were included in the report were shown expressing their own views about the changes to their specific warden service. In light of this, Ofcom considered that the report used these interviews to illustrate the type of concerns felt by elderly people who had already experienced a cut back in the service provided by social landlords.

Ofcom acknowledged that the report did discuss the provision of services by the WWHA as an illustration of an alleged general crisis in the care of the elderly across Wales. However, Ofcom also took into account the way in which the crisis was presented (i.e. the clear indication that it was not confined to the WWHA but rather spread across Wales and that it was linked to the policies of the WAG). Ofcom also noted the inclusion of the WWHA's response to some of the concerns

raised by the residents (see Decision at head b) below). In light of these factors Ofcom found that in respect of its treatment of the crisis in the care of the elderly the programme as broadcast did not result in unfairness to the WWHA

- ii) Ofcom next addressed the WWHA's complaint that the programme unfairly gave the impression that sheltered accommodation is designed to provide care for the elderly, despite the WWHA having made clear to the programme maker that its sheltered accommodation is designed as "independent living" for older people, not "care".

In its considerations Ofcom again took account of Practice 7.9 of the Code.

With regard to the programme's treatment of material facts relating to the type of "care" offered by Christchurch Court Ofcom noted two particular sections of the broadcast programme.

Ofcom considered that from the Introduction (which is quoted in full at head a) i) above) it had been clear that the report was about "*warden services in sheltered accommodation*" and that it had included "*the residents of Christchurch Court in Llandrindod Wells who are fighting their landlord, Wales and West, over cut backs.*".

Ofcom then went on to note the following section of the report:

Commentary: "Alfreda Sawyer needed care. But she was still able to retain a lot of her independence. So, like Eileen Dick, her friend, she moved to sheltered accommodation."

Mrs Dick: "It was heaven. That's the only way... I couldn't believe I was so lucky to have got such a lovely place. It was really nice."

Commentary: "A big part of that was a warden who was based permanently at the complex in Llandrindod Wells."

Mrs Dick: "She would see that the doctor arrived and if you were in bed she would come and see that you were in bed. We don't have anything like that now."

Commentary: "Three years ago the landlord, housing association Wales and West, replaced the warden with a part-timer responsible for three complexes. Christchurch gets the warden Tuesdays and Thursdays. This can be a problem. Mabel Ruell keeps a diary and recorded what happened when a power cut knocked out the hot water for six days."

In Ofcom's view the above extracts from the report made it clear that, when they moved in, the residents included in the report expected that the level of service provided by Christchurch Court would enable them to live "independently". It also considered that the second extract indicated that these residents felt that a full time warden service was necessary for maintaining their independence.

Ofcom noted that the programme did not indicate that the residents expected that their landlord would provide such "care" as part or full-time nursing. Rather, in Ofcom's view, the programme indicated that the residents expected (and had in the past benefited from) the presence of a full time warden who provided helpful advice and was aware of their concerns.

In light of the above material, Ofcom considered that the report had not overstated the type of “care” which this sheltered accommodation was designed to offer. Instead, Ofcom considered that taken together the interviews included provided a reasonable explanation of the residents’ understanding of the level of “care” necessary to ensure that they could live independently. It also observed that the report clearly indicated the residents’ perception of the shortfalls in the service offered by the WWHA at Christchurch Court. In addition, Ofcom considered that the residents’ expectations of the type of “care” with which they should be provided (i.e. a full time warden) would be likely to fit within the general understanding of the type of services offered to residents in “sheltered accommodation”.

Ofcom therefore found that no unfairness resulted to the WWHA from the way in which the report dealt with the issue of the expectations, and the actual provision of the “care” given to its residents.

- iii) Ofcom then considered the complaint that the programme offered no evidence to support its suggestion that there was a link between the WAG budget cuts and a decline in the service which the WWHA offered to its residents.

Ofcom considered that in addition to the introduction to the report, (which is quoted at head a) i) above) several comments during the report established the programme’s position that the WAGs’ budget cuts might well be linked to cuts in warden services across Wales. For example:

Commentary: “Wardens are part funded by grants from the UK Treasury. The Welsh Assembly Government received £140 million in 2003 but by 2006 they were down to £120 million, resulting in cut backs. There are fears they will be cut again for 2007.”

Ofcom noted that after a discussion of the cuts in the WAG’s budget for warden services the report went on to comment that *“There is no doubt that whatever the financial reasons, the loss of the warden is the biggest problem facing the ladies at Christchurch Court.”*

Ofcom considered that the close juxtaposition of the discussion of the WAG budget cuts with this comment would have indicated to viewers that the broadcaster believed that there might well have been a link between the WWHA’s decision to reduce its warden service at Christchurch Court from full to part-time and these budget cuts.

Ofcom also considered that this amounted to a significant allegation and that therefore it was incumbent upon the broadcast to offer the WWHA an opportunity to respond to it. As discussed in more detail in the Decision at head b) below, Ofcom observed that ITV had given the complainant such opportunity. It also noted that immediately after making the above comment the report reflected the WWHA’s response to this allegation in the following manner:

Commentary: “Wales and West say... we had problems trying to recruit a full time warden. We consulted residents and maintained the services they wanted.”

Given that the report had clearly reflected the WWHA’s position (that it had not employed a full time warden at Christchurch Court because of problems with

recruitment and that it had consulted the residents before making this change) Ofcom found that the broadcaster's presentation of material facts in relation to this matter had not resulted in unfairness to the WWHA.

- iv) Ofcom then addressed itself to the WWHA's complaint that the criticism made by Ms Kirsty Williams (AM) unfairly implied that because the WWHA used contractors from north Wales it provided a lesser service to its residents in mid Wales including Christchurch Court.

Ofcom noted the relevant part of the broadcast programme and in particular the comment made by Ms Williams in connection with this incident.

Ms Williams: "Unfortunately, every time somebody came to relight the boiler, the boiler would relight and then suddenly stop working again. Unfortunately, the contractors that Wales and West use here in Llandrindod Wells are based in north Wales so they had to travel from north Wales every time there was a problem with the heating."

Ofcom considered that, taken together, the comments made by the residents and by Ms Williams implied that they believed that the distance between the contractors and Christchurch Court had caused some delay in the time it took for the hot water system at Christchurch Court to be repaired.

However, Ofcom also noted that, as discussed below in the Decision at head b), the programme reflected the WWHA's response to this allegation.

Commentary: "Wales and West declined to take part in this programme. But Chief Executive, Anne Hinchey said in a statement that... "residents had no loss of heating... the lack of hot water was caused by a damaged control panel ... components needed to be replaced... this took six days which is longer than we would have hoped for"."

As discussed in the Decision at head a) iii) above, in light of the report's clear reflection of the WWHA's position regarding the repair of the hot water system, Ofcom found that the broadcaster's presentation of material facts in relation to this matter had not resulted in unfairness to the WWHA.

- v) Ofcom then turned to the complaint that by highlighting an incident, that occurred two years ago, in which a deceased resident lay undiscovered for two days the programme unfairly gave the impression that the WWHA was negligent in the care of its residents and that current residents are in danger of being undiscovered should they die.

Ofcom again looked at the relevant section of the report:

Mrs Dick: "Mrs Judge's son came and he said to Pauline, who was the cleaner, he said: "Do you know if there's anything wrong with my mum", he said, "because I can't get any answer to my calls". So she went up and found Mrs Judge lying on the floor. She had been there for two days. And the assumption was that had there been somebody – a warden – there during the day at least if she gave a call in the morning she would know if something was wrong, that Mrs Judge had not answered."

Commentary: *“Wales and West say after Hilda Judge’s death they introduced at least weekly contact between themselves and the residents. She’d refused calls and checks and the Association respected her privacy. They added that a full time warden would not have made a difference. But the residents disagree.”*

Mrs Sawyer: *“I do feel very vulnerable that some of the facilities are no longer available to us.”*

Commentary: *“The residents can call for help with an alarm system. They pull the cord and speak to someone in Cardiff who raises the alarm. Then one day Mabel Ruell fell.”*

Ofcom also noted that in the report included Mrs Ruell making the following comment:

Mrs Sawyer: *“It would be nice to have the peace of mind of a warden who would be immediately on to whatever trouble or difficulty you were in.”*

In light of the material above, Ofcom considered that the report had fairly represented the views of some residents. The report had shown that Mrs Dick had raised the incident concerning Mrs Judge as an example of her concern about the effects of having a reduced warden service at Christchurch Court and that Mrs Sawyer had described how she felt vulnerable without a full time warden. Ofcom also considered that the report had placed the incident concerning Mrs Judge in a fair context by making it clear that it had taken place two years ago and by reflecting the WWHA’s position on it. This included noting that the WWHA had introduced *“at least weekly checks”*, had respected Mrs Judge’s wish that it should not check on her, and that in its view a full time warden would not have prevented this incident.

Therefore, Ofcom considered that by including this incident in the report ITV had not given the impression that the WWHA had been negligent or failed in its duty in the care of its residents or that they still risked lying undiscovered should they die at home.

Ofcom also noted that the broadcaster had followed the discussion of the incident involving Mrs Judge with commentary referring to a pull cord alarm system which was available to all residents (this commentary is quoted above) Ofcom acknowledged that having noted the availability of this system the report had then included an allegation from Mrs Ruell (one of the interviewees) that she had not received a response to an alarm call she had made. However, Ofcom considered that as with the other allegations the report had reflected the WWHA’s response to this allegation.

In light of the considerations above, Ofcom found that the broadcaster’s treatment of material facts in relation to the incident when a deceased resident lay undiscovered had not resulted in unfairness to the WWHA.

- vi) Ofcom addressed the complaint that the programme gave no evidence to support its untrue claim that facilities were no longer available to residents and they had lost the warden service.

Ofcom noted that the report had reflected the residents' views that services had been cut. For examples see Mrs Dick's and Mrs Sawyer's comments quoted above in the Decisions at head a) ii) and v), respectively. Ofcom also noted that at no point had the report indicated that the warden service had been "lost" in its entirety. Rather, in Ofcom's view the report had made it clear that the full time warden service had been reduced to a part time service. Ofcom also observed that, within its pre-broadcast statement in response to ITV's allegations, the WWHA had indicated that this was the case by explaining why and how it had altered the warden service.

Given this evidence Ofcom considered that the report had fairly reflected the fact that at least one of the facilities at Christchurch Court (a full time warden) was no longer available to residents. Therefore, it found that the broadcaster's treatment of material facts in relation to this matter had not resulted in unfairness to the WWHA.

- vii) Ofcom considered the complaint that the programme incorrectly claimed that the WWHA was issuing residents with tenancy agreements/leases which allowed it to withdraw services at any time.

Ofcom looked at the relevant part of the broadcast programme.

Commentary: "She [Ms Kirsty Williams (AM)] also looked at the residents' contracts with the housing association. Eileen Dick's contract lists a warden under services. But it also says Wales and West can withdraw any service they like from the residents, whenever they want."

Ms Williams: "It doesn't seem possible does it that people would be asked to sign leases like that? And as we've seen from what has happened at Christchurch Court people can fall foul of that. They think that they are entering into a certain level of service and then that can be taken away."

As noted in the Decision at head a) iii) above, the report also included the WWHA's comment that it had "*consulted residents and maintained the services they wanted*".

Ofcom noted that Mrs Dick's tenancy agreement (and according to the WWHA that of Mrs Sawyer) stated that:

"The services which we currently provide and for which you shall pay a service charge are listed in the statement attached to this agreement. We reserve the right to change or end the provision of these services. We will, however, tell you about any proposals for change and consider any comments you make to us."

It also noted that the tenancy agreements issued by Corlan (the organisation which had managed Christchurch Court before the WWHA took over) including that of Mrs Ruell stated that:

"The Association may, for [the] better management of the building, add to or vary the provision of any of the services and the Association cannot be held responsible for any breakdown or withdrawal of the services for reasons beyond the Association's control."

Ofcom also observed that the WWHA had indicated, within its submissions, that all the residents had been included in the consultations at the scheme.

Ofcom acknowledged the differences between these two tenancy agreements. However, in light of the fact that the earlier Corlan agreement noted that the management could “vary” as well as “add” services and the comment by the WWHA that it had consulted all the Christchurch Court residents (i.e. those with old and new style tenancy agreements) Ofcom considered that it would have been reasonable for the broadcaster to have concluded that the WWHA had adopted the same approach to changing the services for all residents regardless of which type of tenancy agreement they held.

Ofcom considered that both styles of tenancy agreement enabled the WWHA to change the service it provided to residents at Christchurch Court. It also noted that the WWHA had consulted these residents about changes to their warden service and then introduced those changes. In addition, Ofcom recognised that in its Decision at Head a) iii) above it had found that the programme had included a reasonable representation of the WWHA’s position on the issue of the changes to the warden service.

Ofcom therefore found that the broadcaster’s treatment of material facts in relation to provisions within the tenancy agreements allowing the withdrawal services had not resulted in unfairness to the WWHA.

- viii) Ofcom then looked at the complaint that the programme maker interviewed just three out of thirty-eight residents and did not provide a balanced view of opinion about the scheme despite being approached by residents who were satisfied with the services provided by the WWHA.

Ofcom noted from ITV’s submission that it appeared that about ten residents had indicated to the broadcaster that they had similar concerns to the three residents included in the report. Ofcom also noted that ITV indicated that no one who had approached the reporter had said that they were satisfied with the scheme.

Ofcom considered that on the basis of ITV’s submission it would appear that at least a third of the residents at Christchurch Court had concerns about some aspects of the way in which the scheme was being managed. Ofcom also observed that programme makers can quite legitimately select, omit or edit interviews provided for inclusion in a programme as long as it does not result in unfairness to those people or organisations directly affected by the programme. This is rightly an editorial decision for programme makers to take. Therefore, Ofcom was not concerned with the nature, number or length of contributions made (and subsequently included in the programme) by parties on either side of the debate. Rather Ofcom sought to determine whether the programme maker’s actions were consistent with its obligation to avoid unfair treatment.

As discussed below at head b), the programme reflected the WWHA’s response to a number of the allegations and concerns raised by the three residents who were included in the report. Given this, Ofcom found that the broadcaster had fairly represented both the residents’ and the WWHA’s views of the changes in the warden service at Christchurch Court.

- ix) Ofcom then addressed the complaint that the programme failed to show balance by not indicating that the WWHHA is a non-profit making organisation with charitable status that is managed by a voluntary board.

As discussed in the Decision at head a) i) above, Ofcom considered that the report as broadcast had focused on the cuts to full time warden services in sheltered accommodation in Wales and that it had used Christchurch Court to illustrate the type of concerns felt by residents in sheltered accommodation who have already experienced a cut in such services. In light of the focus of the programme, Ofcom concluded that it had not been incumbent upon the programme maker to reflect the fact that the WWHHA non-profit making organisation with charitable status that is managed by a voluntary board since these issues were not pertinent to programme's inquiry and that therefore there was no unfairness to the WWHHA in this respect.

Taking into account the findings at i) to ix) above, Ofcom found no unfairness to the WWHHA in respect of the complaints at head a).

- b) Ofcom then turned to the WWHHA's complaint that the programme did not fairly reflect its response to the programme maker's questions. As well as considering this complaint in light of Rule 7.1 of the Code, as noted in the Decision at head a) above, Ofcom took particular account of the following Practices of the Code in relation to this complaint:

Practice 7.6 which states that "When a programme is edited, contributions should be represented fairly"; and,

Practice 7.11 which states that: "If a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond."

Ofcom considered that the allegations about the WWHHA which were included in the report (i.e. there was no hot water at Christchurch Court for six days, one resident lay undiscovered for two days after her death and another resident was left unattended after a fall) were serious.

It noted that an opportunity to respond to these allegations was given to the complainant via an e-mail sent to the WWHHA by the reporter for Wales This Week on 14 February 2007. This e-mail detailed the nature of the report, asked Ms Hinchey (the Chief Executive of the WWHHA) for an interview and set out the questions which the reporter wished to ask her. The questions focused on the reason why Christchurch Court no longer had a full time warden and the concerns raised by the residents who had been interviewed about the effects of this situation. Ofcom also noted that on the 16 February 2007 Ms Hinchey e-mailed the reporter with a response to his questions. It also noted that Ms Hinchey did not respond to the reporter's invitation to be interviewed within this e-mail.

In light of the above evidence Ofcom considered that the WWHHA had been given an appropriate and timely opportunity to respond to the allegations included in the programme.

Ofcom then looked at each of the individual concerns raised by the WWHHA in relation to this head of complaint in turn.

- i) Ofcom addressed the WWHA's complaint that the report ignored its denial that there was a link between the WAG budget cuts and a decline in the service which the WWHA offered to its residents.

Ofcom observed that the editing of material is a matter of editorial judgement for the broadcaster, its concern therefore lay with whether the contribution from the WWHA was represented fairly. It noted its Decision at head a) iii) above that the report made a link between the WAG budget cuts and the change in the WWHA's service but had also clearly reflected the WWHA's position on this matter by means of the following commentary:

Commentary: *"Wales and West say... we had problems trying to recruit a full time warden. We consulted residents and maintained the services they wanted."*

Having assessed the WWHA's pre-broadcast statement and looked at the programme and transcript Ofcom considered that the report included a reasonable representation of the WWHA's response on this matter.

- ii) Ofcom addressed the WWHA's complaint that the report ignored its explanation that any resident in sheltered accommodation can have a daily welfare check if one is requested.

Ofcom observed that the WWHA's pre-broadcast response to a question about how the "non-permanent scheme manager" system worked included the following points:

- the scheme manger was present at Christchurch Court on Tuesdays and Thursdays;
- the scheme is connected to a 24 hour-a-day alarm service centre and residents can raise the alarm by pulling a cord;
- sheltered housing does not provide "care" or a "nursing home";
- residents move in because they "want independence and may need some support to help them to achieve this"; and,
- "residents choose the level of contact they want, though it is at least once a week" (at Christchurch Court the level of contact varies from weekly to twice a day).

Ofcom also noted that three of the presenter's comments in the report related to the method and extent of the WWHA checks on the general welfare of its residents. These comments explained that the warden was at Christchurch Court on *"Tuesdays and Thursdays"*, that residents had *"at least weekly"* checks and that residents could call for help at any time using an alarm pull that is connected to an operations centre in Cardiff. (The full quotations are included in the Decisions at heads a) ii) and v) above.)

In respect of the second of these references, Ofcom noted that having represented the WWHA's position that *"after Mrs Judge's death [it had] introduced at least weekly checks"*, the presenter added that Mrs Judge had *"refused calls and checks and the association respected her privacy"*. In Ofcom's view this commentary implied that at a minimum the WWHA provided welfare checks once a week, that it was likely in other cases to be more and that the arrangement of additional checks was at the discretion of the residents.

As in the Decision at head b) i) above, Ofcom observed that the editing of material is a matter of editorial judgement for the broadcaster, and that its concern lay with whether the editing resulted in unfairness to the WWHA.

While it acknowledged that the report had not explicitly indicated that residents could have daily welfare checks, Ofcom considered that taken together the three comments noted above gave a reasonable and fair presentation of the level of supervision available.

- iii) Ofcom looked at the WWHA's complaint that the report ignored its explanation that its records showed that the resident who claimed to have lain on the floor unattended for two hours (Mrs Ruell) had asked for emergency assistance on three occasions over the preceding two years and that the assistance had been provided immediately.

Ofcom noted that in its pre-broadcast response to ITV the WWHA made the following points in relation to this allegation:

- ITV had not indicated when the incident took place (see head c) below);
- its records showed that Mrs Ruell had contacted the service centre three times in the preceding two years due to falls;
- on each occasion the service had responded immediately, assessed the situation and (as requested by Mrs Ruell) contacted her daughter;
- on each occasion an ambulance was called and attended;
- the WWHA's systems did not fail;
- an ambulance was necessary because neither Mrs Ruell's daughter nor the scheme manager was able to lift Mrs Ruell; and,
- scheme managers are not paramedics, nurses or carers and would not, (whether or not they lived on site) lift residents after falls.

Ofcom also noted relevant section of the report:

Having previously noted that residents had access to an emergency alarm system (see above) the report continued as follows:

Mrs Ruell: "I phoned Wales and West about one o'clock I should think. I'd just fallen. And he just answered and I said what I wanted and there was no answer. And I thought well somebody will come, I don't know. So I waited about two hours."

Commentary: "She's adamant, two hours past and nobody came."

Mrs Ruell: "I rang Wales and West again about three o'clock and a lady answered and she said she'd get something straight away and no call was registered from one o'clock. So that fellow must have just put the phone down, you see."

Commentary: "Wales and West say Mabel Ruell rang only once and was attended to quickly."

Commentary: "Age Concern, who are helping the women, warn against over reliance on technology."

As noted in the Decision at head b) i) above the editing of material is a matter of editorial judgement for the broadcaster and Ofcom is concerned with whether the editing resulted in unfairness to the WWHA.

Having considered both the WWHA's response to the broadcaster and the commentary noted above, Ofcom considered that the report fairly reflected the WWHA's position in relation to the incident under discussion.

- iv) Ofcom considered the WWHA's complaint that the report ignored its denial of the claim that facilities were no longer available to residents and they had lost the warden service.

As noted in the Decisions at head a) ii), v), vi) and vii) above, Ofcom found that the report had made clear that, as agreed by both parties the warden service at Christchurch Court had been reduced from full to part time. It also fairly reflected both the views of the residents who had been included in the programme about the effects of this change; and the WWHA's position in regard to extent and implementation of the warden service at the WWHA.

In light of these findings Ofcom considered that the report had not unfairly edited the WWHA's response to allegations concerning the reduction in services (notably the provision of a full time warden) at Christchurch Court.

- v) Ofcom then turned to the WWHA's complaint that the report ignored its denial of the claim, made by ITV, that it was issuing residents with tenancy agreements which allowed it to withdraw services at any time, as well as the explanation that it consulted residents before changing any services and the comment that the objections to the change in the warden service came from a minority of residents who lived at the scheme.

Ofcom noted that in the Decision at head a) vii) above, it had observed that it was Ms Kirsty Williams (AM) who had made this claim. Ofcom also noted that in relation to that head of complaint it had considered that the report had included a reasonable portrayal of the provisions regarding the services for residents at Christchurch Court.

Therefore, Ofcom considered that the report had not unfairly edited the WWHA's response to the allegation that residents' contracts are unfairly worded because they enable services to be taken away.

In light of the findings at heads i) to v), Ofcom considered that, having been provided with an appropriate and timely opportunity to respond, the report fairly represented the WWHA's response. Therefore, Ofcom found no unfairness had resulted to the WWHA in relation to this matter.

- c) Ofcom addressed the WWHA's complaint that ITV did not provide an appropriate opportunity for it respond to the allegation that Mrs Ruell had lain on the floor unattended for two hours before assistance was sent because it did not respond to the WWHA's request for confirmation of when this alleged incident took place.

As with head b) above, in considering this complaint Ofcom took particular account of Practice 7.11 of the Code (opportunity to respond).

Ofcom noted that as set out in the Decision at head b) above, it considered that it had been incumbent on the broadcaster to provide an appropriate and timely opportunity for the WWHA to respond to this allegation.

Ofcom observed that within its first submission ITV had explained that it had believed that Mrs Reull had made the allegation several times and that therefore the WWHA would have had a record of the date on which the alleged incident took place. Ofcom also observed that in its follow up submission the WWHA had acknowledged that it had a file note that one of Mrs Ruell's relations had spoken to it about the emergency alarm system in 2004 and that Mrs Ruell believed that the incident had taken place. In light of these factors, the WWHA noted that the incident might well have taken place but said that it no way of verifying this. Ofcom also recognised that in its second response ITV had provided a copy of a letter about the incident which was sent by Mrs Reull's daughter to the WWHA in December 2004.

Ofcom considered that ITV had provided adequate information to enable the WWHA to investigate this allegation and provide a response to it. As noted at head b) ii) above, it also considered that the WWHA's response was fairly represented in the programme as broadcast. Therefore, Ofcom found that no unfairness had resulted to the WWHA in respect of this matter.

- d) Ofcom considered the WWHA's complaint that its privacy had been unwarrantably infringed in the making of the programme because the programme maker had filmed in communal areas without consent.

Ofcom took particular account of the obligation within the Code which states that "any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted" (Rule 8.1). The Code also explains that an individual's "legitimate expectations of privacy will vary according to the place and nature of the information, activity or condition in question". Ofcom also took particular account of Practice 8.5 of the Code which states that "any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted".

With regard to this head of complaint, Ofcom first considered whether the WWHA had a legitimate expectation of privacy regarding the filming of the communal areas of Christchurch Court.

Ofcom noted that the programme as broadcast included an 'establishing shot' filmed in the corridor outside the entrance to the home of one of the residents who had been interviewed (Mrs Dick). It observed that no one was present in the corridor at the time of filming other than Mrs Sawyer and Mrs Ruell who had both agreed to take part in the programme.

Taking into account the fact that ITV had consent to film Mrs Dick in her home, that this footage included the entrance to her home and that the only two people in this footage had, like Mrs Dick, agreed to take part in the programme Ofcom concluded that the WWHA did not have a legitimate expectation of privacy in relation to the filming of this shot. Ofcom therefore found that there was no infringement of the WWHA's privacy in this respect and did not go on to consider the question of whether any infringement was warranted.

In relation to this head of complaint Ofcom also considered the material which was filmed in the communal lounge of Christchurch Court during the making of this programme and which was not subsequently broadcast.

It noted that in its second submission ITV had acknowledged that having taken some exterior shots of Christchurch Court the cameraman had left the camera on when he and the reporter went into the common room to meet the three interviewees. Ofcom also noted that ITV had said that the reporter had not known that the camera was on, and that it was not clear whether the cameraman had known, but that it was clear that the footage (which lasted about a minute) was not meant for broadcast.

Ofcom observed that the room which was filmed was a communal lounge within Christchurch Court. It recognised that the residents living in Christchurch Court could invite guests into this lounge. However, Ofcom also recognised that the lounge was not open to the public without an invitation. While Ofcom noted that the lounge was not open for public access it also observed that the three ladies who had been interviewed had invited the cameraman and the reporter into the communal lounge prior to speaking to them on camera in their own homes.

Ofcom acknowledged that the WWHA might have been concerned to ensure that no other residents were inconvenienced by the presence of the cameraman or reporter or any filming undertaken in the communal lounge. However, it considered that this concern would not in itself equate to a legitimate expectation of privacy on the part of the WWHA.

In light of this, Ofcom went on to consider whether any aspect of the content of the footage filmed in the communal lounge would have resulted in the WWHA having had a legitimate expectation of privacy in respect of this complaint.

Ofcom noted that the footage did not include anything which directly linked it to the complainant, anything which was of a private nature to WWHA, or any practices which were specific to it.

Taking into account the communal nature of the space in which the footage was filmed, the fact that the residents who were interviewed had invited the cameraman and reporter into this space and that the footage of the lounge included nothing which was specifically related to the complainant Ofcom concluded that the WWHA had not had a legitimate expectation of privacy in the making of the programme.

Ofcom therefore found that there was no infringement of the WWHA's privacy in respect of this footage and did not go on to consider the question of whether any infringement was warranted.

The complaints of unfair treatment and the complaint of unwarranted infringement of privacy in the making of this programme were not upheld.

Complaint by Mr Tony Sutton

Trust me I'm a Healer, BBC2, 20 February 2007

Summary: Ofcom has not upheld this complaint of unfair treatment and unwarranted infringement of privacy in the making and broadcast of the programme by Mr Tony Sutton,

On 20 February 2007, BBC2 broadcast a documentary entitled *Trust Me I'm a Healer*. The documentary showed Mr Sutton in the context of his healing practices and abilities.

Mr Sutton complained that he was treated unfairly in the programme as broadcast and that his privacy was unwarrantably infringed in the making and broadcast of the programme.

Ofcom found as follows:

- a) Ofcom found the programme makers did not treat Mr Sutton unfairly by omitting some footage recorded over the five months of filming the documentary. Ofcom noted that a number of positive testimonials from Mr Sutton's patients were included in the programme and considered that viewers would have had a fair understanding of Mr Sutton's healing practices and abilities from the programme as broadcast. Further, Ofcom found that it was fair for the programme makers to use their editorial discretion when editing Mr Sutton's contribution.
- b) Ofcom found that the programme makers did not treat Mr Sutton unfairly in the footage included. Ofcom took account of the personal nature of the documentary and the overall tone of the programme and was of the view that viewers were unlikely to have been left with an unfair impression of Mr Sutton.
- c) Ofcom found no evidence that Mr Sutton's participation had been secured by a guarantee that he would be advised of the title and permitted to preview the programme prior to its broadcast. Further, Ofcom considered that Mr Sutton's consent to participate would not have been affected had he been advised of the dual role of the cameraman (who was credited as a producer).
- d) Ofcom found that Mr Sutton's privacy was not infringed in the making of the programme, as Mr Sutton had no legitimate expectation of privacy. Further, Mr Sutton's privacy was not infringed in the broadcast of the programme, as the programme makers had adhered to their commitment that they would not identify the exterior and address of Mr Sutton's home.

Introduction

On 20 February 2007 BBC2 broadcast a documentary entitled *Trust Me I'm a Healer*. The programme was sub-titled *Tony Super Energy* and described the complainant (referred to in the programme as Tony Chadwick) as "*one of 15,000 people in the UK who call themselves healers*", and included footage of him preparing for and performing what he described as "Super Energy Therapy" which he claimed successfully treated people with a number of conditions including infertility.

Mr Sutton complained that he was treated unfairly, and his privacy was infringed in both the making and broadcast of the programme.

The Complaint

Mr Sutton's case

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

- a) The programme unfairly omitted material which resulted in a negative, misleading and unfair portrayal of Mr Sutton and his practices as a healer. In particular:
 - i) Mr Sutton stated that although the programme maker was informed about, and filmed, a number of individuals with positive experiences of Mr Sutton's Super Energy Therapy, he failed to include these positive results in the programme. Mr Sutton stated that he provided a chart detailing individuals with conditions he had successfully treated. The programme maker made contact with a number of them, but unfairly stated in the programme that he "*hadn't even met one person who claims to have been healed, helped or cured*" by him.
 - ii) The programme failed to include material filmed of Mr Sutton explaining his background, and experience of "strange phenomenon", in Knaresborough.
 - iii) The programme failed to include the ringing endorsement of him, given in an interview recorded for the programme, from his parish priest.
 - iv) The programme maker unfairly stated in the programme that "*Tony tells me he was in the Coldstream Guards*", omitting the fact that this was confirmed by the Ministry of Defence, and thereby giving the misleading impression that this was an empty claim.
- b) The programme included footage and comments that portrayed Mr Sutton in a negative, misleading and unfair light, in particular:
 - i) In the opening commentary, the programme maker unfairly stated "*My world was about to be dominated by greasy spoons, bed-sits and bizarre encounters*" when this was an unfair description of cafés visited by Mr Sutton, his home and people he had treated. The opening also unfairly stated "*Tony was big in the 1970's. Now he's back.*" Insinuating he was back with a "vengeance".
 - ii) The programme maker unfairly criticised Mr Sutton when he stated in the programme that "*Tony seems to wear the same clothes every time I see him*", when Mr Sutton stated he had never had complaints about his clothes.
 - iii) The programme unfairly referred to his therapy as "Tony Super Energy" when the correct name was "Super Energy Therapy".
 - iv) The programme maker filmed him on a number of occasions in cafés, having explained this would show him in a positive light discussing his work.

However the programme as broadcast unfairly referred to the cafes as “*SET’s HQ*”. This was a lie.

- v) The programme unfairly criticised him for having two surnames. Mr Sutton stated he had changed his name from Chadwick to Sutton many years ago, but was encouraged by the programme maker to use his old surname so that past patients could identify him.
 - vi) The programme unfairly stated “*Tony claims he worked in solicitors firms in London*” when Mr Sutton could have given the programme maker the details of these firms had he been asked.
 - vii) The programme unfairly cast doubt on the success of his Super Energy Therapy as a treatment for infertility, stating “*Tony claims he has helped 170 women with fertility problems*”. In fact when asked in the broadcast interview how many women had become pregnant, he had named two and explained that he may be unaware of many more. The programme also ignored other gynaecological problems he had treated which did not result in pregnancy.
 - viii) The programme makers encouraged him to make a large crown of thorns as a prop for use in his Super Energy Therapy, unfairly included footage of him making it, and stated cynically “*it may seem like harmless fun but not when his patients take it seriously*”. In fact this was just a proto-type prop unseen by patients. The programme included further sneering remarks about his use of props in order to undermine him as a healer and cast doubt on his powers.
 - ix) The programme stated he was planning a big marketing campaign when in fact he placed adverts in shops offering free treatment.
 - x) The programme unfairly stated that Mr Sutton managed to organise a phone call with Professor Lord Robert Winston, when in fact the phone call was arranged with the help of the programme maker.
 - xi) The programme maker stated in a sneer that Mr Sutton lived alone when Mr Sutton had informed him on several occasions that his landlord also lived at the premises.
 - xii) The programme maker stated in the programme “*I went to his flat and questioned Tony about whether his powers even existed but he gave me the same old answers*” which was, Mr Sutton said, totally untrue. In fact the programme maker had told him he wanted to film his home in order to give a fair overview of what kind of person Mr Sutton was and how he lived.
- c) The programme makers treated Mr Sutton unfairly by failing to properly inform him about the programme in advance of the broadcast, in particular:
- i) The programme maker did not reveal the programme’s title to him in advance and told him he “didn’t know” it. Mr Sutton stated that had he been informed of the title he would have known that the true nature of the programme was a debunking exercise and would not have taken part in it.
 - ii) The programme makers did not allow Mr Sutton to view the programme before broadcast in spite of repeated requests to do so.

- iii) A member of the production team was described to him as the camera man but was described on the final credits of the programme as an assistant producer.

In summary, Mr Sutton complained that his privacy was unwarrantably infringed in both the making and broadcast of the programme, in that:

- d) Mr Sutton agreed to the inside of his home being filmed as long as the exterior and address were not identified. In the programme as broadcast however the front of the house and road were clearly shown.

The BBC's case

In summary, the BBC responded to the complaint as follows:

- a) With reference to the complaint that the programme unfairly omitted material which resulted in a negative, misleading and unfair portrayal of Mr Sutton and his practices as a healer:
 - i) The BBC disagreed that the programme failed to include any positive experiences or results of Mr Sutton's Super Energy Therapy. The BBC stated that the programme contained several testimonials from clients of Mr Sutton who stated that they could feel something happening when they were being treated by him. However, none of the interviewees went any further than that or claimed that they had been healed by Mr Sutton. The BBC further stated that the programme makers had contacted a sample of approximately a dozen individuals listed on the chart provided by Mr Sutton, however none of these had attributed any health benefits to treatment they had received from Mr Sutton. As such, the BBC considered that the director/producer's comment that "*he had not met one person who claims to have been healed*" was therefore accurate and appropriate.
 - ii) The BBC stated that the filming of Mr Sutton in Knaresborough was initially undertaken to assist Mr Sutton's recollection of his earlier experiences. However, according to the BBC no such recollection occurred and the filming was not included because it was unrevealing and added little, if anything, to the documentary.
 - iii) The BBC stated that it decided not to include the "ringing endorsement" of Mr Sutton by his parish priest, because it considered that his claims were exaggerated, unreliable and had no scientific or medical basis. The BBC further stated it was concerned that vulnerable viewers may have been at risk by concluding Mr Sutton's treatments were more meritorious than the programme makers believed to be the case. The BBC did not accept that omitting the claims in the circumstances amounted to unfairness to Mr Sutton.
 - iv) The BBC said that the claim by Mr Sutton that he had served in the Coldstream Guards was not confirmed by the Ministry of Defence. The Ministry of Defence had confirmed that Mr Sutton had served in the Army, but would not disclose the Regiment in which he had served. The BBC considered that the programme makers had no choice but to attribute the claim to Mr Sutton and that this was done in a proper manner with no suggestion that it might be untrue.

b) With reference to the complaint that the programme included footage and comments that portrayed Mr Sutton in a negative, misleading and unfair light:

i) The BBC stated that the reference to “*greasy spoons, bed-sits and bizarre encounters*” was made because:

- the producer/presenter invariably met Mr Sutton in cafes which would merit the colloquial term “greasy spoon”;
- Mr Sutton lived in a bed-sit, as did his friends and assistants who were also filmed; and
- the encounters with Mr Sutton and the people seeking treatment were bizarre, as indicated by standing them in front of reflective panels and adorning them with crowns of thorns to pick up miraculous healing waves emanating from Mr Sutton.

The BBC considered that the introduction to the film which contained the above phrase was an accurate reflection of what was to occur and did not result in any unfairness to Mr Sutton.

In response to the phrase “Now he’s back” alleged by Mr Sutton to be unfair, the BBC stated that it did not understand what was unfair in the phrase and that it did not accept that it implied “with a vengeance”.

ii) The BBC stated that Mr Sutton’s complaint regarding him wearing the same clothes was actually as follows:

Commentary: “I first met Tony 6 weeks ago, but I still know little about his personal life. I’ve come across at least two surnames he uses. He won’t let me visit him at home. All I know is that he lives alone, is unemployed and seems to wear the same clothes every time I see him.”

According to the BBC, Mr Sutton did wear the same clothes each time the producer/presenter met with him over a five month period and there was no unfairness in pointing this out.

iii) The BBC maintained that Mr Sutton was advised early in the filming process that the producer would refer to him as “Tony Super Energy” [not Super Energy Therapy which was Mr Sutton’s name for his therapy] and that Mr Sutton had no difficulty with this.

iv) The BBC said the reference in the programme to the cafes being Super Energy Therapy’s Head Quarters was accurate and fair, as Mr Sutton conducted most of his business in the cafes. The BBC also maintained that programme makers did not advise Mr Sutton that being filmed in a café would show his work in a positive light.

v) In response to Mr Sutton’s complaint of unfair criticism for having two surnames, the producer/presenter stated that when he met Mr Sutton for the first time, he replied that his surname was Chadwick, but that he also used Sutton “or whatever”. The BBC submitted that as Mr Sutton offered healing to often vulnerable people, programme makers felt it was relevant that he appeared to use two different names. The BBC disputed that Mr Sutton was encouraged by the programme makers to use his previous

surname for identification purposes for past patients. The BBC further noted that the testimonial letters from people treated by Mr Sutton indicated they knew him as Chadwick, rather than Sutton.

- vi) The BBC did not accept that the way in which Mr Sutton's employment history was presented implied that aspects of his history were doubtful. BBC contended that if the programme makers had regarded the information as doubtful, they would have made that clear in the programme.
- vii) In relation to Mr Sutton's complaint that the programme unfairly cast doubt on the success of his Super Energy Therapy as a treatment for infertility, the BBC stated that the programme did cast doubt on the success of the treatment and was justified in doing so. However, the BBC stated that it did not treat Mr Sutton unfairly, as Mr Sutton himself conceded that he had no evidence to justify his claims. Furthermore, the BBC stated that out of 170 women he claimed to have treated, only two had eventually become pregnant. The programme makers contacted the two women who stated that they did not attribute their pregnancy to any treatment received from Mr Sutton. The BBC stated that it would have been irresponsible to have presented the claimed success of Super Energy Therapy in any other way. The BBC made no comment in respect of Mr Sutton's complaint that the programme ignored other gynaecological problems he had treated which did not result in pregnancy.
- viii) The BBC denied that the programme makers encouraged Mr Sutton to manufacture his crown of thorns (a prop used by Mr Sutton in his treatments), referring to the script which the BBC contended revealed the idea was Mr Sutton's. Further, the BBC disputed that no sneering tone was used in describing Mr Sutton's use of props. However, it said it made no excuse for casting doubt on the efficacy of Mr Sutton's methods, as Mr Sutton failed to demonstrate any meaningful success and that his target audience was vulnerable and often desperate.
- ix) The BBC disputed that the reference to Mr Sutton planning a marketing campaign was unfair, as whilst the initial treatments were free, he did go on to charge those he claimed to be treating. The BBC stated that the distribution of the adverts was a marketing campaign in terms of spreading awareness of his treatments and as a route to making money by charging for treatments.
- x) The BBC disputed that the programme makers arranged a phone call with Professor Lord Robert Winston and said that the call was organised by Mr Sutton. The BBC said the producer/presenter spoke to Lord Winston's assistant to confirm he was making a BBC documentary about Mr Sutton and sought permission to record Lord Winton's voice on the telephone.
- xi) In response to Mr Sutton's complaint that a sneering comment was made regarding Mr Sutton living alone, the BBC denied that such a tone was used. The BBC maintained that Mr Sutton lived alone as he occupied his own bed-sit in a house in which the landlord also happened to live and that did not equate to co-habitation.
- xii) The BBC said that in relation to Mr Sutton's complaint about the filming of him in his home, Mr Sutton answered questions willingly. The BBC further stated that it was clear that he consented to the interview and at no time

indicated he was unhappy being asked questions. The BBC did not understand Mr Sutton's complaint of unfairness in this regard.

c) With reference to the complaint that the programme makers treated Mr Sutton unfairly by failing to inform Mr Sutton properly about the programme in advance of the broadcast, the BBC submitted the following response:

- i) In respect of Mr Sutton's complaint that he was not informed of the title of the programme, the BBC said the title was not decided upon until June 2006, which was after the filming was completed. The BBC further stated that the title was not unfair to Mr Sutton as it reflected the nature of the documentary, namely that it was about someone who made ambitious claims, who offered bizarre treatments with no proven record of success and who risked disappointing vulnerable and desperate people.
- ii) The BBC stated that Mr Sutton once requested to view the programme prior to transmission and was told by the producer/presenter that it was not normal policy to allow pre-transmission viewing. The BBC said Mr Sutton appeared to accept that and did not raise the issue again.
- iii) In regard to Mr Sutton's complaint about the identity of one production team member, the BBC stated that it was normal for assistant producers to take on filming responsibilities. The BBC further stated that it did not understand why the difference between the final credits and the description given to Mr Sutton would result in unfairness to him.

d) With reference to Mr Sutton's complaint that his privacy was unwarrantably infringed in both the making and broadcast of the programme:

The BBC stated that in respect of Mr Sutton's complaint regarding the filming of the front of his house, Mr Sutton was never assured that the house would not be shown. The BBC maintained that Mr Sutton was only assured that it would not be identified and a very low shot was used which did not reveal either the street name or house number, or enough for the street to be recognisable.

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

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

This complaint was considered by Ofcom's Executive Fairness Group. In reaching a decision it considered a recording and transcript of the programme and the submissions from both parties.

- a) Ofcom first considered Mr Sutton's complaint that the programme unfairly omitted certain material which resulted in a negative, misleading and unfair portrayal of Mr Sutton and his healing practices. Mr Sutton identified four instances of omitted material.

In considering each element of Mr Sutton's complaint at Head a), Ofcom took account of Practice 7.6 of the Code. Practice 7.6 states that when a programme is edited, contributions should be represented fairly.

Ofcom also took account of Practice 7.9 of the Code. Practice 7.9 states that before broadcasting a factual programme, including programmes examining past events, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

- i) Mr Sutton complained that the programme makers failed to include positive results in the programme and that the programme makers unfairly stated that he [the presenter] "*hadn't even met one person who claims to have been healed, helped or cured by him*" [Mr Sutton].

The relevant part of the transmission was as follows:

Presenter: "Do, do you understand what I'm saying. I've never seen, I haven't seen or spoken to anybody, not one single person who feels they've been fully cured, healed, helped."

Ofcom viewed the recording of the programme and noted the testimonials that were included in the broadcast. Six individuals, Rory, Jacqui, Carol, Darren, Anna and Joy were interviewed on camera and featured throughout the programme, stating their experiences of Mr Sutton's healing treatment:

Jacqui: "So I have experienced things that I've never actually..."

Mr Sutton: "And what do you think of today's experience?"

Jacqui: "Good."

Carol: "There is, something is happening. I, I can only really explain it almost like it's scanning your body, I know it sounds really crazy or unbelievable, but it does actually feel as something's actually going through your body and scanning for like, there is certain things that are out of sync."

Mr Sutton: "I've only seen Rory once and that was on the 22nd and it's now the 13th of the following month and already he's noticed a reduction in the amount of pain in his back. Rory, if it was a ten before, for example if it was bad, if it's gone down what's it down to?"

Rory: "I think a five you know."

Mr Sutton: "So it's gone down by 50 per cent after one treatment."

Presenter: "Out of all the sort of alternative healers that you've been to see Darren, does this feel the sort of most effective or..."

Darren: *“Yeah during the treatment yeah I’m feeling things, I’m feeling something happen I haven’t felt this before.”*

Presenter: *“Anna you’re moving apart are, are you doing that. Do you feel the power or...”*

Anna: *“Yes I do.”*

Joy: *“No. Some of it yeah, you know pressure round the feet and that but, but no not the, not the particular types of energy I felt in the three different sessions.”*

Presenter: *Right.”*

Joy: *“No so far that’s been with him, just with him.”* [Mr Sutton]

In considering this issue, Ofcom noted that the programme resulted from five months of filmed material. It also noted the general obligation on programme makers and broadcasters to ensure that during the editing of a factual programme, contributions are represented fairly and material facts are not disregarded or omitted in a way that will result in unfairness to an individual.

Ofcom considered that a broad range of testimonials was reflected fairly in the programme and that the testimonials indicated that the patients were *experiencing* positive effects from Mr Sutton’s treatment, as noted above. Further, Ofcom considered that from the broadcast, the viewers would have had a fair understanding of Mr Sutton’s treatment and results.

In respect of the statement by the programme presenter complained of, Ofcom noted that in the transcript the producer/presenter’s statement, *“Do, do you understand what I’m saying. I’ve never seen, I haven’t seen or spoken to anybody, not one single person who feels they’ve been **fully** cured, healed, helped”* [Ofcom’s emphasis], included the word “fully”. As such, in terms of the broadcast, there was no evidence that indicated that any person who had received treatment was fully healed, helped or cured. For the reasons discussed at decision head b)vii) below, Ofcom considered that material facts were not presented in a way which was unfair to Mr Sutton. Therefore, there was no unfair treatment in respect of this sub-head of complaint.

- ii) Ofcom next considered Mr Sutton’s complaint that the programme failed to include footage filmed in Knaresborough which revealed information about his background and experience of strange phenomenon.

Ofcom first considered whether it was incumbent on the programme makers to include the Knaresborough footage (i.e. did the footage constitute material facts that if not referred to would result in unfairness to Mr Sutton).

In Ofcom’s view, the footage related to further background information about Mr Sutton and his experiences of strange things which assisted him in his healing abilities. Ofcom considered that the programme makers included sufficient material relating to this:

Mr Sutton: *"I mean what I am doing really is paranormal, supernatural, it's divine, it's the ability to do things that human beings can't do and it works on a kind of physic that we don't understand."*

Mr Sutton: *"My destiny if you like seems to be as a healer and, and to perform miracles..."*

As such, Ofcom considered that the exclusion of the Knaresborough material would not have significantly affected viewers' perception and understanding of Mr Sutton and his healing abilities. It was within the programme makers' discretion to select and chose which material they would include. Therefore, there was no unfairness in respect of this sub-head of complaint.

- iii) Ofcom next considered Mr Sutton's complaint regarding the programme makers' failure to include the interview of Mr Sutton's Parish Priest, which was "a ringing endorsement" of Mr Sutton.

Again, Ofcom considered whether the interview of Mr Sutton's priest constituted material facts that if not referred to would result in unfairness to Mr Sutton. In Ofcom's opinion, the interview related to further positive testimonial to Mr Sutton's healing abilities and practices. As such, Ofcom considered that the programme included a sufficient number of testimonials (as discussed at decision head a)i) above) and included information regarding Mr Sutton's techniques (i.e. use of discs and panels in his treatment). Accordingly, Ofcom did not consider that the omission of the interview would have affected viewers understanding of Mr Sutton's healing abilities and practices. Therefore, there was no unfair treatment of Mr Sutton in relation to this sub-head of complaint.

- iv) Ofcom next considered Mr Sutton's complaint that the programme makers unfairly stated that he was in the Coldstream Guards, omitting the fact that this was confirmed by the Ministry of Defence, which gave the misleading impression that it was an empty claim.

Ofcom noted the reference in the programme as follows:

Commentary: "Tony's had a varied past. He tells me he was in the Coldstream Guards, then he worked in a solicitors firm and even published an underground gay newspaper."

Ofcom considered whether the omitted information (the confirmation from the Ministry of Defence) was a material fact that if not included was capable of resulting in unfairness to Mr Sutton. In doing so, Ofcom considered the reference to Mr Sutton serving in the Coldstream Guards in the context of the entire statement. In Ofcom's view, the reference to Mr Sutton's time in the Coldstream Guards was made as part of a summary of his past life and work experience, i.e. that he worked for solicitors, was in the army and published a newspaper. Ofcom did not note any tone used by the presenter that may have suggested to viewers that Mr Sutton's experiences were untrue or fabricated. Further, Ofcom did not consider that including the confirmation by the Ministry of Defence would have added to or affected viewers' understanding of Mr Sutton and his past work/life experience. Accordingly, Ofcom was of the view that the omission of the confirmation from the Ministry of Defence did not result in unfairness to Mr Sutton.

In the circumstances, taking into account the findings at sub-heads a) i)-iv), Ofcom found that the omission of the material identified by Mr Sutton in his complaint did not result in unfairness to Mr Sutton.

- b) The second aspect of Mr Sutton's complaint was that the programme included footage and comments that portrayed Mr Sutton in a negative and unfair light.

In considering each element of Mr Sutton's complaint under Head b), Ofcom took account of Practice 7.6 and Practice 7.9 of the Code (as detailed above).

Ofcom considered there was notable overlap in respect of certain sub-heads under Head (b) of Mr Sutton's complaint. As such, Ofcom grouped the references according to where they arose within the script.

- i)iv)ix) Ofcom first considered Mr Sutton's complaint regarding the presenter's comments, "*greasy spoons, bed-sits and bizarre encounters*", that Mr Sutton was "*big in the 1970s*" and "*was back*", insinuating he was back with a vengeance, that his local café was "SET's HQ" and that he was planning a big marketing campaign.

Ofcom noted the commentary as follows:

Commentary: "The first time I met Tony he insisted on meeting in a cafe. My world was about to be dominated by greasy spoons, bed-sits and bizarre encounters..."

Commentary: "Tony started healing 30 years ago. He says he was big in the late 70s. Now he's back. And from the super energy headquarters, which is his local café, he's planning a marketing campaign."

When considering Mr Sutton's complaint regarding the above comments, Ofcom took account of the nature, purpose and style of the programme. Ofcom considered that the programme was intended to be a personal journey in which the programme makers followed Mr Sutton and his activities and presented this personal account to viewers. Ofcom considered the themes of the programme were to introduce Mr Sutton and his healing abilities/practices to the viewers, explain the nature of his claims for his healing abilities, show examples of him putting them into practice and to challenge Mr Sutton's belief that he had healing powers. All of these were filmed in an observational documentary style.

Ofcom considered the context in which the "*greasy spoon*" statement was made and noted that the presenter's comment was said as part of the introductory lead in to the documentary. It was Ofcom's view that the statement by the presenter regarding "*greasy spoons, bed-sits and bizarre encounters*" was a fair encapsulation of some of the material to follow and was in keeping with the informal style and manner of the documentary. Further, Ofcom did not note any tone in the statement, particularly "*now he's back*", that may have been interpreted as disparaging of Mr Sutton nor indicated that Mr Sutton was back "with a vengeance". Rather, the presenter was indicating simply that Mr Sutton used to practice his healing techniques previously, in the 1970s and that he had returned to practicing. In Ofcom's view the presenter's approach to Mr Sutton and his healing practices and his

patients, was open and direct, as evidenced by the subsequent questioning of Mr Sutton's results. The commentary was not spoken with innuendo or insinuation.

In respect of the reference to "*super energy headquarters*", Ofcom took account of the style of the documentary, as noted above, and considered that the comment by the presenter was a reflection of the personal and observational style and approach taken by the programme makers.

With respect to the marketing campaign comment, Ofcom noted the context in which the statement was made, namely that Mr Sutton and his assistant were putting up fliers in various businesses' windows and were distributing them.

Ofcom also noted that one of Mr Sutton's patients had become aware of Mr Sutton's practices through seeing the flier:

Presenter: "*Can I ask how you heard, how you heard about Tony?*"

Female patient: "*I, I was under the archway and I saw the leaflet and I decided to just take the number down because I was sceptical myself I didn't know, you know what this place I'd been before so I just called him and then I was contacted by him, he texted me and, and that was it really.*"

In Ofcom's opinion material facts were not presented in a way which was unfair to Mr Sutton and there was no unfair treatment of Mr Sutton in respect of sub-heads (i)(iv) and (ix).

ii)v)(vi)(xi) Ofcom next considered Mr Sutton's complaint concerning the comments by the presenter that Mr Sutton wore the same clothes, had two surnames, worked in a solicitor's firm and lived alone.

Ofcom identified the relevant excerpt of the programme as follows:

Commentary: "*I first met Tony 6 weeks ago, but I still know little about his personal life. I've come across at least **two surnames** he uses. He won't let me visit him at home. All I know is that he **lives alone**, is unemployed and **seems to wear the same clothes** every time I see him.*" [Ofcom's emphasis]

Commentary: "*Tony's had a varied past. He tells me he was in the Coldstream Guards, **then he worked in a solicitors firm** and even published an underground gay newspaper.*" [Ofcom's emphasis]

As noted above at head (i)(iv)(ix), Ofcom considered each of the comments made by the presenter in the context of the programme as a whole. In light of this, Ofcom considered that the comments made regarding Mr Sutton's two surnames, his residential status and his attire, were part of the personal account approach the programme makers took and also the presenter's style of engaging with the audience. Ofcom acknowledged that whilst some comments in the programme were not entirely favourable to Mr Sutton, when considered in the context of the programme as a whole, which provided numerous occasions where he gave a full account of himself and his work,

and the observational documentary style, they were not capable of resulting in unfairness to him.

Further, in Ofcom's opinion, the commentary concerning Mr Sutton's time in a solicitor's office (and his service in the Coldstream Guards) was included to give the viewer a complete picture of Mr Sutton. The reference to Mr Sutton's time in a solicitor's firm was made in the context of a summary of his past life and work experience, i.e. that he worked for solicitors, was in the army and published a newspaper. Ofcom did not note any tone used by the presenter that may have suggested to the viewer that Mr Sutton's experiences were untrue or fabricated.

- iii) Ofcom next considered Mr Sutton's complaint that the programme unfairly referred to his therapy as "Tony Super Energy" when the correct name was Super Energy Therapy. Ofcom referred to the transcript and noted that the reference to "Tony Super Energy" was made in the programme title only and was not used in the programme. Ofcom noted the following references used in the programme:

Commentary: "But Tony Chadwick is one of a kind. He uses home made props and calls his method Super Energy Therapy." Mr Sutton: "It's a new way of treating fertility conditions. The actual therapy is called SET."

Ofcom considered in view of the script references as noted above, and the nature of the documentary, as discussed at sub-head i)iv)ix), the use of the term did not result in unfairness to Mr Sutton.

- vii) Ofcom next considered Mr Sutton's complaint, that the programme makers unfairly cast doubt on the success of his Super Energy Therapy.

Ofcom noted the following excerpts from the transcript:

Presenter: "Out of all the people that you've treated you know 150, 170 all you know about that you successfully treated is one."

Mr Sutton: "Yes that's the one, that's the one person when she rang me and said, oh by the way I did actually, I did actually become pregnant."

Presenter: "So it begs the question how do you know you're successful in treating fertility."

Mr Sutton: "Because no one has ever rang, rang to complain, not once in 30 years."

Presenter: "Do, do you understand what I'm saying. I've never seen, I haven't seen or spoken to anybody, not one single person who feels they've been fully cured, healed, helped."

Presenter: "But that's the point I've not seen, like all the fertility women you're treating none are pregnant, and, and in fact all the stories that you have of women who you help with fertility treatment, you've the two main stories, the women did get pregnant but didn't have the baby."

As noted above, it was evident to Ofcom that the programme makers challenged Mr Sutton and the healing abilities he claimed to have. However, within the context of the programme and its purpose, it was fair to do so. In Ofcom's view, the programme makers balanced their critique of Mr Sutton's abilities with the inclusion of positive testimonials from a variety of Mr Sutton's patients (as noted at decision sub-head (a)(i)). The programme also included the following comment which communicated to viewers that Mr Sutton's treatment could be used in respect of a range of ailments:

Commentary: *"Although he says his forte is treating infertility, Tony relishes the challenge of all ailments and diseases".*

Further, the programme makers provided Mr Sutton with many opportunities to put his side of the issue forward:

Presenter: *"But they didn't have a baby though. How many through your treatment, of women that you've treated for fertility have had children?"*

Mr Sutton: *"The ones that I know of are Simone and Vanessa."*

Presenter: *"No that have had children. That have had children."*

Mr Sutton: *"Oh that have actually full conception."*

Presenter: *"Have full c, have given birth."*

Mr Sutton: *"Well they both didn't did they because one had a miscarriage and one had the entopic pregnancy."*

Presenter: *"The answer's no, that you don't, there's none that you know of. There might be ones that you don't know of."*

Mr Sutton: *"Yeah that's what I'm saying yes yeah."*

Ofcom therefore considered that there was no unfairness to Mr Sutton in respect of this sub-head of complaint.

- viii) Ofcom next considered Mr Sutton's complaint that the programme makers encouraged him to make a large crown of thorns as a prop for use in his "Super Energy Therapy".

Ofcom noted that Mr Sutton used a variety of props, including a small sized crown of thorns, discs and metallic panels, in relation to his treatment of his patients and that this was reflected in the programme. Ofcom did not therefore consider that the inclusion of the footage of Mr Sutton making the larger crown of thorns affected viewers understanding of how Mr Sutton's treatment and his props work.

In respect of the comment by the presenter *"It may seem like harmless fun but not when his patients take it seriously"*, Ofcom considered that Mr Sutton was given a number of opportunities to explain his practices and did so accordingly:

Mr Sutton: *"Well basically, what happens I use it normally, they can actually feel the actual the whole, they can actually feel like a ghost if you like entering inside the head and what it does it looks inside the brain and we're gonna use this in the same sort of way, but I'm going to see if they can actually feel the thorns as well and see if it has any effect on the treatment."*

Ofcom therefore considered that there was no unfair treatment of Mr Sutton in respect of this sub-head of complaint.

- x) Ofcom next considered Mr Sutton's complaint that the programme stated he had managed to arrange a telephone call with Professor Lord Robert Wilson, when the phone call was organised with the help of the programme makers. Ofcom's responsibility is to determine if what is contained in a broadcast is unfair, not whether it is true. Accordingly, Ofcom did not seek to determine which party arranged the telephone call, but rather whether the reference to the arrangement of the telephone conversation in the broadcast, resulted in unfairness to Mr Sutton.

Ofcom noted the transcript as follows:

Commentary: "Back at his office, Tony somehow managed to organise a phone call with Professor Robert Winston, Britain's leading fertility expert."

Mr Sutton: "I thought we could ring him up and go down and talk to him about the things I've been doing for fertility. See if it's possible to treat some of his patients with what we're doing this new therapy. I just wanted to say, wanted to look at it from a medical a scientific perspective see what he does and say there's something here we should look at and maybe there's new ways we can start treating infertility, because I could open up a Pandora's box for him..."

(Followed by the telephone conversation between Mr Sutton and Professor Winston.)

In Ofcom's view, the introduction by the presenter of the telephone conversation and how it was arranged would not have significantly affected viewers' perception of Mr Sutton. The focus of the reference was not on who had arranged the telephone call, but rather that a telephone call had been organised with Professor Winston. This was further supported by the inclusion of the telephone conversation in the broadcast which indicated that Professor Winston was interested in Mr Sutton's treatment and his healing abilities.

Accordingly, Ofcom considered there was no unfairness to Mr Sutton in respect of this sub-head of complaint.

- xii) Ofcom next considered Mr Sutton's complaint that the presenter stated *"I went to his flat and questioned Tony about whether his powers even existed but he gave me the same old answers"*.

Ofcom noted the relevant part of the transcript as follows:

Commentary: "A couple of weeks later I went to meet Tony for the last time. I'd never been into his flat before. I questioned him on whether these powers exist, but he gave me the same old answers."

Mr Sutton: "So there is something there Danny, its just that it's, it's a bit like, it's a bit like oxygen we breathe it but we cant see it, without it we wouldn't be here. My destiny if you like seems to be as a healer and, and to perform miracles and the more people you've treating if you're doing a, I'd love to have a huge room full of you know a hundred, thousand, maybe a thousand people...I'd love to treat them all at the same time. That would be fantastic wouldn't it and do that every day, do that every day."

Commentary: "Even after all my interrogations Tony remains defiant and resolute. I've got to give him that – he truly believes in himself. Or says he does anyway."

In Ofcom's view the programme makers gave Mr Sutton appropriate opportunity to explain the nature of his healing abilities and treatment, and further, the inclusion of "*even after all my interrogations...Tony remains defiant and resolute*", had the effect of making it clear to viewers that Mr Sutton had a strong belief in his abilities and this provided a counterbalance to the questioning comments made by the presenter.

Taking all the factors outlined above into account, Ofcom considered that the inclusion of footage and comments in the programme did not portray Mr Sutton in a negative or misleading light and did not result in unfairness to him.

- c) Ofcom next considered Mr Sutton's complaint that he was treated unfairly in that the programme makers had failed to properly inform him about the programme in advance of the broadcast. Specifically, Mr Sutton complained that the programme makers did not inform him of the programme title, did not allow him to preview the programme and was not informed of the dual role of the cameraman.

In considering this head of complaint, Ofcom took account of Practice 7.3 of the Code. Practice 7.3 states that where a person is invited to make a contribution to a programme (except when the subject matter is trivial or their participation minor) they should normally, at an appropriate stage: be told the nature and purpose of the programme, what the programme is about and be given a clear explanation of why they were asked to contribute and when (if known) and where it is likely to be first broadcast; be told what kind of contribution they are expected to make, for example live, pre-recorded, interview, discussion, edited, unedited, etc; be informed about the areas of questioning and, wherever possible, the nature of other likely contributions; be given clear information, if offered an opportunity to preview the programme, about whether they will be able to effect any changes to it." Ofcom also took account of Practice 7.7 of the Code, which states that guarantees given to contributors, for example relating to the content of a programme, confidentiality or anonymity should normally be honoured.

- i) Ofcom first considered Mr Sutton's complaint that the programme makers did not advise him of the title of the programme. In doing so, Ofcom noted that there was no evidence presented to Ofcom that the programme makers gave Mr Sutton a guarantee in respect of advising him of the title of the

programme. Further, it was apparent from the material in the broadcast, that the presenter was direct in his approach to Mr Sutton, questioning and challenging his practices at a number of junctures which would have indicated to Mr Sutton the nature of the documentary. Finally, Ofcom noted that it is conventional practice that titles are not developed until after the period of filming. Therefore, there was no unfairness to Mr Sutton regarding this sub-head of complaint.

- ii) Ofcom next considered Mr Sutton's complaint that he was not permitted to preview the programme prior to the broadcast. Ofcom noted in the BBC's response to the complaint, that Mr Sutton once requested to preview the programme and that this request was refused by the programme makers. In accordance with the Code, programme makers are not obliged to provide previews of programmes, however if a guarantee is given, programme makers should honour the guarantee. There was no evidence to indicate that the programme makers had given Mr Sutton a guarantee that he could preview the programme prior to its broadcast. Accordingly, in the absence of such evidence, it is Ofcom's view that no unfair treatment resulted.
- iii) In respect of the complaint regarding the dual role of the cameraman, Ofcom did not consider that this information was relevant to whether Mr Sutton would have consented to participating in the programme. Ofcom was presented with no evidence to indicate that this knowledge would have affected his consent to participate and further, Ofcom noted it is common for programme makers to carry out dual tasks when filming. Therefore, no unfair treatment resulted.

Accordingly, there was no unfairness to Mr Sutton in respect of Head c), and Ofcom has not upheld this part of Mr Sutton's complaint.

- d) Ofcom next considered the complaint that the programme makers unwarrantably infringed Mr Sutton's privacy by showing the front of his home and road in the broadcast. Ofcom considered Mr Sutton's complaint in respect of both the making of the programme and in the broadcast of the programme.

Rule 8.1 of the Code requires that any infringement of privacy in programmes, or in connection with obtaining material included in programmes must be warranted.

In considering this head of complaint, Ofcom took account of Practice 8.2 of the Code, which states that information which discloses the location of a person's home or family should not be revealed without permission, unless it is warranted. Ofcom also took account of Practice 8.6, which states that if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

In 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 three distinct questions: First, does the complainant have a legitimate expectation of privacy in the circumstances of the case? Second, if so, has there been an infringement of

privacy? Third, if there has been an infringement of privacy was the infringement warranted?

Ofcom first considered whether Mr Sutton's privacy was infringed in the making of the programme. In doing so, Ofcom examined whether Mr Sutton had a legitimate expectation of privacy in the making of the programme. Ofcom noted that Mr Sutton gave his consent to the filming inside his home on the condition that the exterior and address were not identified. Ofcom viewed the footage and considered that Mr Sutton's address and the exterior of his home were not identified (discussed further below). Therefore, as the conditions Mr Sutton imposed on the programme makers were complied with, Mr Sutton had no legitimate expectation of privacy in this respect and therefore, there was no infringement of his privacy in the making of the programme. In these circumstances, it was not necessary for Ofcom to then consider whether or not any infringement was warranted.

Ofcom also considered whether Mr Sutton's privacy was infringed in the broadcast of the programme. In doing so, Ofcom addressed whether or not Mr Sutton had a legitimate expectation of privacy in the broadcast of the programme. As noted above, Mr Sutton's consent was given on the basis that the exterior and address of his home were not identified. In Ofcom's opinion, the exterior of Mr Sutton's home and address were not identified in that no street name was shown and it would have only be identifiable to those already known to Mr Sutton or those residing in the immediate vicinity. In Ofcom's view the programme makers had taken sufficient measures to keep within the conditions imposed by Mr Sutton in order to secure his consent, including the use of low camera shots and limited footage of the street. Taking these factors into account, Ofcom considered that Mr Sutton did not have a legitimate expectation of privacy in relation to the broadcast of information relating to the location of his home. As Mr Sutton did not have a legitimate expectation of privacy in this respect, there was no infringement of his privacy in the broadcast of the footage. As noted above, in these circumstances, it was not necessary for Ofcom to then consider whether or not any infringement was warranted.

Accordingly, Mr Sutton's complaint of unwarranted infringement of privacy in the making of the programme and in the broadcast of the programme was not upheld.

Other Programmes Not in Breach/Out of Remit

19 February to 3 March 2008

Programme	Channel	Trans Date	Category	No of Complaints
50 Most Shocking Moments in Comedy	Five	13/02/2008	Offensive Language	1
Alan Brazil's Sports Breakfast	talkSport	04/02/2008	Generally Accepted Standards	1
Alex Dyke	Isle of Wight Radio	12/02/2008	Generally Accepted Standards	1
All New You've Been Framed	ITV1	09/02/2008	Generally Accepted Standards	1
BBC Breakfast	BBC1	27/02/2008	Generally Accepted Standards	1
BBC Breakfast	BBC1	29/02/2008	Generally Accepted Standards	1
BBC London News	BBC1	07/02/2008	Other	1
BBC News	BBC1	15/11/2007	Generally Accepted Standards	1
BBC News	BBC1	23/02/2008	Due Impartiality/Bias	2
BBC News	BBC1	04/02/2008	Offensive Language	1
Big Brother US	E4	14/02/2008	Generally Accepted Standards	1
Big Brother: Celebrity Hijack Live Final	E4	28/01/2008	Use of Premium Rate Numbers	1
Big Train	Dave	08/02/2008	Generally Accepted Standards	1
Brainiac: Science Abuse	Sky One	15/02/2008	Generally Accepted Standards	1
Breakfast	BBC1	16/02/2008	Inaccuracy/Misleading	1
Breakfast	BBC1	30/01/2008	Generally Accepted Standards	1
Breakfast Show	Century FM	21/12/2007	Competitions	2
Brokeback Mountain	Sky Movies Drama	21/02/2008	Other	1
Chris Moyles Show	BBC Radio 1	05/02/2008	Generally Accepted Standards	1
Chris Moyles Show (trailer)	BBC Radio 1	-	Offensive Language	1
Chute	BBC2	21/01/2008	Offensive Language	1
Coronation Street	ITV1	-	Substance Abuse	1
Crimewatch	BBC1	23/01/2008	Generally Accepted Standards	1
Dan and Steve Live and Direct	Nuts TV	08/02/2008	Generally Accepted Standards	1
Dancing on Ice	ITV1	16/02/2008	Competitions	1

Dancing on Ice	ITV1	17/02/2008	Generally Accepted Standards	2
David White Show	BBC Radio Cornwall	20/12/2007	Generally Accepted Standards	1
Dawn Goes Lesbian	BBC3	21/02/2008	Generally Accepted Standards	1
Dexter	ITV1	27/02/2008	Generally Accepted Standards	1
Dexter (trailer)	ITV1	16/02/2008	Violence	1
Dispatches:	Channel 4	18/02/2008	Inaccuracy/Misleading	1
How the Banks Bet Your Money	-	-	-	-
Divorce Sharia Style	Channel 4	03/02/2008	Generally Accepted Standards	1
Dom Joly's Happy Hour	Sky Three	11/02/2008	Generally Accepted Standards	1
EastEnders	BBC1	13/11/2007	Generally Accepted Standards	132
EastEnders	BBC1	28/02/2008	Undue Prominence	2
EastEnders	BBC1	13/11/2007	Inaccuracy/Misleading	1
EastEnders	BBC1	07/02/2008	Violence	5
EastEnders	BBC1	01/02/2008	Substance Abuse	1
EastEnders	BBC1	15/02/2008	Religious Offence	3
EastEnders	BBC1	14/02/2008	Offensive Language	1
EastEnders	BBC1	07/02/2008	Generally Accepted Standards	1
EastEnders	BBC1	13/11/2007	Violence	3
Eddie Jordan's Bad Boy Racers	Discovery	04/02/2008	Crime (incite/encourage)	2
Emmerdale	ITV1	06/02/2008	Generally Accepted Standards	3
Fifth Gear	Five	11/02/2008	Dangerous Behaviour	2
File on 4	BBC Radio 4	26/02/2008	Generally Accepted Standards	1
Five News	Five	19/02/2008	Sex/Nudity	1
Freefonix	CBBC	17/02/2008	Offensive Language	1
Friday Night with Jonathan Ross	BBC1	11/01/2008	Generally Accepted Standards	6
GMTV	ITV1	21/01/2008	Inaccuracy/Misleading	1
GMTV	ITV1	11/02/2008	Inaccuracy/Misleading	1
Go, Diego, Go!	Nick Jr2	05/02/2008	Dangerous Behaviour	1
Golden Balls	ITV1	25/02/2008	Crime (incite/encourage)	7
Grease is the Word	ITV1	26/05/2007	Generally Accepted Standards	1
Harry Hill's TV Burp	ITV1	12/01/2008	Generally Accepted Standards	1
Harry Hill's TV Burp	ITV1	12/01/2008	Violence	1
Heist	ITV4	24/02/2008	Other	1
Hits	Smash Hits!	16/02/2008	Generally Accepted Standards	1

Hollyoaks	E4	20/02/2008	Religious Offence	4
Hollyoaks	C4	13/02/2008	Substance Abuse	1
Honest	ITV1	13/02/2008	Generally Accepted Standards	1
ITV News	ITV1	03/01/2008	Generally Accepted Standards	1
ITV News	ITV1	07/02/2008	Violence	1
Jeremy Kyle	ITV1		Use of Premium Rate Numbers	1
Jeremy Kyle Show	ITV	28/02/2008	Other	1
Jon Gaunt	talkSport	01/02/2008	Due Impartiality/Bias	1
Jon Gaunt	talkSport	20/02/2008	Flashing images	1
Jon Gaunt	talkSport	19/02/2008	Offensive Language	1
Jon Gaunt	talkSport	12/02/2008	Generally Accepted Standards	1
Jon Gaunt	talkSport	11/02/2008	Generally Accepted Standards	3
Judy Spiers	BBC Radio Devon	15/01/2008	Generally Accepted Standards	1
Katy Brand's Best Bits	ITV1	10/01/2008	Religious Offence	3
Ladette to Lady (trailer)	ITV1	18/02/2008	Dangerous Behaviour	1
Lads Lounge	Passion TV	26/02/2008	Generally Accepted Standards	1
Little Miss Jocelyn	BBC2	14/02/2008	Generally Accepted Standards	2
Live Rugby Union	BBC1	02/02/2008	Offensive Language	3
Look East	BBC1	14/11/2007	Generally Accepted Standards	1
Lucio	Capital FM	04/02/2008	Generally Accepted Standards	1
Midsomer Murders	ITV1	17/02/2008	Generally Accepted Standards	1
Mike Mendoza	talkSport	20/12/2007	Commercial References	1
More4 News	More4	07/02/2008	Due Impartiality/Bias	1
Moving Wallpaper (trailer)	ITV1	07/02/2008	Offensive Language	1
Neighbours	Five	18/02/2008	Sponsorship	1
Never Mind the Buzzcocks	BBC2	14/02/2008	Generally Accepted Standards	1
News	Real Radio	05/02/2008	Due Impartiality/Bias	1
News at Ten	ITV1	07/02/2008	Inaccuracy/Misleading	1
News at Ten	ITV1	19/02/2008	Generally Accepted Standards	1
Passat Sponsorship of Bodyshock	Channel 4	19/02/2008	Sponsorship	1
Pay Your Bills (on air competition)	Virgin Radio	-	Competitions	1
Psychic Interactive	Psychic TV	21/12/2007	Use of Premium Rate Numbers	1

Quiz Call	Five	08/02/2008	Generally Accepted Standards	1
Quran Recitation	The Islam Channel	08/02/2008	Religious Offence	1
Red Hot Channels	Red Hot	29/08/2007	Sex/Nudity	1
Richard & Judy	Channel 4	11/02/2008	Animal Welfare	1
Richard & Judy	Channel 4	08/02/2008	Offensive Language	1
Richard & Judy	Channel 4	21/02/2008	Other	1
Rude Tube	Channel 4	15/02/2008	Animal Welfare	1
Rude Tube	Channel 4	15/02/2008	Generally Accepted Standards	2
Russell Brand	BBC Radio 2	16/02/2008	Other	1
Sam & Mark at Breakfast	Viking FM	11/02/2008	Sex/Nudity	1
Scott Mills	BBC Radio 1	04/02/2008	Generally Accepted Standards	1
See Hear	BBC2	10/10/2007	Generally Accepted Standards	7
Skins	E4	18/02/2008	Generally Accepted Standards	1
Sky Bet	Sky Sports		Advertising	1
Sky News	Sky News	12/10/2007	Inaccuracy/Misleading	1
Sky News	Sky News	20/02/2008	Due Impartiality/Bias	1
Sky News	Sky News	24/02/2008	Generally Accepted Standards	1
Smallville	TV6	04/02/2008	Violence	1
Soccer Night	ITV1 (Yorkshire)	05/02/2008	Generally Accepted Standards	1
Sports Breakfast	talkSport	10/02/2008	Crime (incite/encourage)	1
Supersize vs Superskinny	Channel 4	12/02/2008	Inaccuracy/Misleading	1
Supersize vs Superskinny	Channel 4	19/02/2008	Other	1
Supersize vs Superskinny	Channel 4	19/02/2008	Sex/Nudity	1
The Alan Titchmarsh Show	ITV1	26/02/2008	Other	1
The Alan Titchmarsh Show	ITV1	08/02/2008	Generally Accepted Standards	1
The Baby Borrowers on Holiday	BBC3	16/01/2008	U18's in Programmes	2
The Bill	ITV1	21/02/2008	Other	1
The Brit Awards 2008	ITV1	20/02/2008	Offensive Language	3
The Catherine Tate Show	BBC2	21/02/2008	Crime (incite/encourage)	1
The Culture Show	BBC2	09/02/2008	Religious Offence	1
The Day of the Kamikaze	Channel 4	18/02/2008	Generally Accepted Standards	1
The Fimbles	CBeebies	09/02/2008	Offensive Language	1

The George Lamb Show	BBC Radio 6 Music	-	Commercial References	3
The Girl with Eight Limbs: A Bodys shock Special	Channel 4	24/02/2008	Inaccuracy/Misleading	1
The Jeremy Kyle Show	ITV1	19/10/2007	U18's in Programmes	1
The Jeremy Kyle Show	ITV1	08/02/2008	Offensive Language	1
The Jeremy Kyle Show	ITV2	06/02/2008	Generally Accepted Standards	1
The Legends	Century FM	29/01/2008	Generally Accepted Standards	3
The ONE Show	BBC1	20/02/2008	Animal Welfare	1
The ONE Show	BBC1	20/02/2008	Commercial References	1
The One and Only	BBC1	16/02/2008	Generally Accepted Standards	1
The Palace	ITV1	18/02/2008	Sponsorship	2
The Simon Logan Breakfast Show	Radio Aire	05/02/2008	Generally Accepted Standards	1
The Villa	Sky Three	05/02/2008	Generally Accepted Standards	1
The Wright Stuff	Five	13/02/2008	Generally Accepted Standards	1
The Wright Stuff	Five	07/02/2008	Religious Offence	1
Today	BBC Radio 4	15/02/2008	Due Impartiality/Bias	1
Tony Horne In The Morning	Metro Radio	10/01/2008	Generally Accepted Standards	1
Tony Horne In The Morning	Metro Radio	28/01/2008	Sex/Nudity	1
Tony Horne In The Morning	Metro Radio	15/01/2008	Sex/Nudity	1
Trisha Goddard	Five	04/02/2008	Inaccuracy/Misleading	1
UEFA Champions League	Sky One	20/02/2008	Scheduling	1
Vale FM Competition	Vale FM	03/02/2007	Competitions	1
Vanity Lair	Channel 4	03/02/2008	Generally Accepted Standards	1
Wife Swap	Channel 4	03/02/2008	Animal Welfare	1
Wife Swap	Channel 4	10/02/2008	Generally Accepted Standards	1
Wife Swap	Channel 4	16/02/2008	U18's in Programmes	1
Wife Swap	Channel 4	10/02/2008	U18's in Programmes	2
Wild at Heart	ITV1	17/02/2008	Offensive Language	1