

Ofcom Broadcast Bulletin

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Contents

| | |
|---------------------|---|
| <u>Introduction</u> | 3 |
|---------------------|---|

Standards cases

Notice of Sanction

| | |
|--------------------------------------------------------------------------------------|---|
| Lakeland Radio Limited <i>Suss the Celeb, 2 January 2008 to 1 May 2008</i> | 4 |
|--------------------------------------------------------------------------------------|---|

In Breach

| | |
|------------------------------------------------------------------|---|
| The Noon Show <i>Ujima Radio, 31 March 2009, 13:00</i> | 5 |
|------------------------------------------------------------------|---|

| | |
|----------------------------------------------------------------------|---|
| Herre på täppan <i>TV6 (Sweden), 1 March 2009 at 20:00</i> | 7 |
|----------------------------------------------------------------------|---|

| | |
|--------------------------------------------------------------------------------------------------------------|----|
| News bulletins & RFL Janatar Raay <i>ATN Bangla, November and December 2008, various times</i> | 10 |
|--------------------------------------------------------------------------------------------------------------|----|

| | |
|---------------------------------------------------------------------------------|----|
| Ben 10: Alien Force <i>Cartoon Network, various dates, March 2009</i> | 14 |
|---------------------------------------------------------------------------------|----|

| | |
|------------------------------------------------------------------------------|----|
| UK Tings <i>Channel AKA, 18 April 2009, 06:30, 07:15 and 08:40</i> | 16 |
|------------------------------------------------------------------------------|----|

Supplementary Note to Ofcom's Finding

| | |
|--------------------------------------------------------------|----|
| Jon Gaunt <i>Talksport, 7 November 2008, 11:25</i> | 17 |
|--------------------------------------------------------------|----|

Not in Breach

| | |
|--------------------------------------------------------------|----|
| Moving Wallpaper <i>ITV1, 20 March 2009, 21:00</i> | 18 |
|--------------------------------------------------------------|----|

Fairness & Privacy cases

Not Upheld

| | |
|------------------------------------------------------------------------------------|----|
| Complaint by Mr Ulf Olsson <i>Efterlyst, TV3 (Sweden), 10 April 2008</i> | 20 |
|------------------------------------------------------------------------------------|----|

| | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| Complaint by Humphries Kirk Solicitors on behalf of Ultimate Energy plc <i>Inside Out (South West), BBC1 South West, 22 February 2008</i> | 24 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------|----|

| | |
|------------------------------------------------|----|
| Other programmes not in breach/resolved | 39 |
|------------------------------------------------|----|

Introduction

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

- a) Ofcom's Broadcasting Code ("the Code") which took effect on 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/>
- b) the Code on the Scheduling of Television Advertising ("COSTA") which came into effect on 1 September 2008 and contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken. COSTA can be found at http://www.ofcom.org.uk/tv/ifi/codes/code_adv/tacode.pdf.
- c) other codes and requirements that may also apply to broadcasters, depending on their circumstances. These include the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code. Links to all these codes can be found at <http://www.ofcom.org.uk/tv/ifi/codes/>

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

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

Standards cases

Notice of Sanction

Lakeland Radio Limited

Suss the Celeb, 2 January 2008 to 1 May 2008

On 29 May 2009, Ofcom published its decision to impose a statutory sanction on Lakeland Radio Limited for breaches of Rule 2.11 (competitions should be conducted fairly).

Ofcom has found that this rule was breached in the conduct of a series of three listener competitions called *Suss the Celeb*, as follows:

- in approximately 85 daily rounds of the competition, the presenter deliberately selected listeners who he knew had submitted the wrong answers, which he then broadcast. This prevented the prize from being won too soon. As a result, those listeners who had paid to enter the competition on these occasions had no chance of winning.
- the licensee had failed to put in place sufficient compliance procedures and checks, and there had been a lack of appropriate compliance training for its staff.

For the reasons set out in the adjudication, Ofcom imposed a financial penalty of **£15,000** on Lakeland Radio Limited.

In addition, the licensee was directed to broadcast a statement of Ofcom's findings in a form to be determined by Ofcom on one specified occasion.

The full adjudication is available at:

http://www.ofcom.org.uk/tv/obb/ocsc_adjud/lakeland.pdf

In Breach

The Noon Show

Ujima Radio, 31 March 2009, 13:00

Introduction

Ujima Radio is a community radio station in Bristol. The station is part of the CEED Charity Ltd (Centre for Employment and Enterprise Development) and aims to reach BME communities in Bristol. It is owned and run by local people, and many of the station staff work in a voluntary capacity.

The Noon Show is broadcast every weekday from 13:00 to 16:00 and includes new music, talk and interviews. During a broadcast of the show, the presenter read out a story that featured in a newspaper entitled *"The secret life of a male prostitute"*. He then commented on the story and spoke about issues relating to black homosexuals. As part of this discussion the presenter made a number of comments directly about the black man who featured in the story, called *"Elijah"*, and homosexuality in general.

With regard to *"Elijah"*, and what appeared to be homosexuality in general, the presenter said:

"21 years old, he's out the game 'cos his backside's hanging out. Probably got a catheter.... We're taking a moment to readjust here, readjust ourself, ask God Almighty to set us straight and keep us free from the pestilence that certainly has fallen on us and certainly is a pestilence."

With regard to homosexuality the presenter said:

"I don't like to believe we are the most homophobic, I like to look at it as we are the most right thinking. It's as simple as that. Because if you didn't think right, you wouldn't be here in the first place ... as there wouldn't be such [a] thing as procreation, and procreation has to continue between man and woman... don't get it twisted and don't get sick out there, real talk now... it takes a man and hormone. Adam and Eve, simple, simple, simple. Argue your case with God Almighty."

"You know your son is up in his bedroom playing his Xbox and you think 'oh he's 16, 17 years old' and that lot, you'd like to see a few girls going up there but you don't wanna walk up there and find that they're not playing Xbox - the only box they're playing is a nasty dirty little box, you know. I'm just merely saying, every time your son comes through the door with different boys, well it might be boys or just play mates I'm afraid."

"Goodness knows what I would do if my sons turned round and told me they [are gay], I know what I would do but I won't tell you on-air."

Ofcom received a complaint from a listener who felt that the presenter's comments during this discussion were offensive towards the gay community.

Ofcom wrote to Ujima Radio for its comments under Rule 2.3 of the Code (material that may cause offence must be justified by the context).

Response

The broadcaster acknowledged that the programme was unsuitable for broadcast and that listeners would have been offended by the comments made by the presenter.

Ujima Radio said that as a consequence of the complaint the station terminated the presenter's volunteer contract and broadcast an on-air apology the following week. In addition, the broadcaster said that it had reminded all of its presenters of the policies and procedures it has in place in order to comply with the Code. It has also provided guidance. The broadcaster said that it has also carried out training on the Code and compulsory online legal training for all presenters.

Decision

Ofcom notes the broadcaster's acknowledgement that listeners would have been offended by the comments made by the presenter and the broadcast of an on-air apology. Ofcom also notes the compliance measures taken in response to this incident.

Ofcom was concerned by this material and in particular the language used and the homophobic tone and manner in which the comments were made. In Ofcom's opinion, such comments would reasonably have been perceived as hostile and pejorative towards the gay community and had the potential to cause considerable offence.

In general, offensive material can be broadcast, so long as it is justified by the context. Given factors such as the service on which the material is broadcast; the degree of harm or offence likely to be caused by the inclusion of the material; and the likely expectation of the audience, Ofcom considered that the broadcast of this offensive material was not justified by the context. Therefore, the material went beyond generally accepted standards for this type of programme and breached Rule 2.3 of the Code.

Breach of Rule 2.3

In Breach

Herre på täppan

TV6 (Sweden), 1 March 2009 at 20:00

Introduction

TV6 is a Swedish language channel licensed by Ofcom that is controlled and complied by Viasat Broadcasting UK Limited (“Viasat”). Viasat holds 25 Ofcom licences for separate television channels which broadcast from the United Kingdom to various Scandinavian and Eastern European countries, including Sweden. The Viasat compliance department is based in London and manages compliance for all these licensees centrally. TV6 is not on domestic Electronic Programme Guide and cannot be received in this country on normal satellite or cable equipment.

Herre på täppan (“King of the Hill”) is a game show that sets bizarre challenges for contestants, with the ultimate prize of becoming “King of the Hill”. The challenges range from games, such as answering general knowledge questions, to eating something unknown, or undertaking some potentially dangerous or painful activity. The winner of each challenge wins 2000 Swedish krona and the loser 500 Swedish krona.

Ofcom received a complaint from a Swedish viewer about the broadcast of a challenge called The Human Letter. This involved two young men attaching six pieces of paper, printed to resemble oversized stamps, directly to their bodies using a staple gun as quickly as possible. The programme showed the men stapling the ‘stamps’ to their face, and to their bare legs and torso. The viewer felt that the challenge was unsuitable for broadcast because it encouraged dangerous behaviour.

We asked Viasat for its comments in relation to the following Rules of the Code:

- Rule 1.3 - Children must be protected by appropriate scheduling from material that is unsuitable for them; and
- Rule 1.13 - Dangerous behaviour that is likely to be easily imitable by children in a manner that is harmful must not be broadcast before the watershed, or when children are particularly likely to be listening, unless there is editorial justification.

Response

With regard to Rule 1.3, Viasat stated that TV6 is a channel aimed at men between the ages of 15 to 49 and the programme was broadcast at 20:00, which it said is outside the peak viewing time for children in Sweden. It continued that the programme *Herre på täppan* is marketed as a general entertainment programme and viewers of this series know the programme contains different challenges, many of which are bizarre, but all are undertaken in a humorous and light-hearted fashion. It therefore believes the programme content complied with Rule 1.3 of the Code.

With regard to Rule 1.13, Viasat said that this series is not made for children, and the programme was broadcast outside of peak viewing time for children, especially on channel TV6. It stated that the behaviour during the challenge did not constitute dangerous behaviour nor was it easily imitable by children in a manner that is harmful. It continued that the act caused hardly any injury to the contestants, which it

said was clear from the programme. The broadcaster pointed out that the contestants were stapling paper to their own bodies, not to other people's bodies. It also stated that the programme made clear that the challenge was an unsuitable thing to do, as the presenter said: "*that must really hurt*" [English translation]. Viasat therefore considered that it was editorially justified to broadcast this particular challenge.

However, in response to the complaint the broadcaster stated that it has now scheduled this programme to after the watershed, beginning at 21:00.

Decision

Ofcom recognises that Swedish audiences may have different expectations regarding the broadcast of what could be considered dangerous behaviour before the watershed. We also note that Swedish audiences may consider 20:00 to be outside the peak viewing time for children. While taking these factors into account, Ofcom has also has to recognise that Viasat is a broadcaster licensed by Ofcom and therefore it is required to comply with its licensing obligations in the United Kingdom. This includes ensuring that all of its broadcast output complies with the Code.

Rule 1.13 of the Code states that dangerous behaviour that is likely to be easily imitable by children in a manner that is harmful must not be broadcast before the (21:00) watershed, or when children are particularly likely to be listening, unless there is editorial justification.

Ofcom acknowledges that TV6 is aimed at men between the ages of 15 to 49 and the programme is not primarily aimed at children. We also note that the broadcaster did not consider the challenge to constitute dangerous behaviour. However, child audience figures provided by the independent Swedish regulator, GRN¹, indicate that approximately 28,000 children between the ages of 4 and 15 watched this programme, which was 12 per cent of the total audience. Therefore, the programme was scheduled and broadcast at a time when children were likely to, and in fact were, viewing.

In Ofcom's opinion, attaching pieces of paper directly to the body using a staple gun, including to the face, could reasonably be considered dangerous behaviour. Further it is an activity which is likely to be easily imitable by children. Staple guns are accessible objects, widely available in schools for example. We therefore considered that the behaviour featured could be easily imitated by children in a way which may be harmful. In Ofcom's opinion, the programme also presented this behaviour as both humorous and acceptable and it did not sufficiently warn younger viewers of the potentially harmful results. This is despite the fact that in the programme the staples pierced the men's skin and drew some blood: one even suggested that one staple pierced his rib. Ofcom considered there was insufficient editorial justification for featuring the material in this manner at this time of the evening. The programme was therefore in breach of Rule 1.13.

Given the breach of Rule 1.13, relating to material shown before the watershed, Ofcom also considered the programme in breach of Rule 1.3 which requires that "children must also be protected by appropriate scheduling from material that is unsuitable for them".

Before the current breaches, Ofcom had previously raised with Viasat concerns regarding its overall compliance record for the television services it operates,

¹ GRN were provided the audience figures by Mediamätning i Skandinavien (MMS).

especially as regards protection of the under-eighteens on TV6². Ofcom therefore recently met with Viasat to discuss those concerns and Viasat's compliance record and processes generally. In light of those compliance concerns and record, Ofcom considered in this case whether further regulatory action might be appropriate. Ofcom however decided that, on balance, it was not, taking account of all the circumstances and in particular the broadcaster's voluntary decision from now on to schedule *Herre på täppan* to start after the watershed. Ofcom remains, however, concerned with the recent compliance record of Viasat, and of channel TV6 in particular.

Breach of Rules 1.3 and 1.13

² See the following recorded breaches of the Code, in particular: Ofcom Bulletin 117: *World's Most Amazing Videos*, TV6 Sweden, 28 June 2008, 20:00; breach of Rules 1.3, 1.10, 1.11 and 1.13; Ofcom Bulletin 127: *Penn & Teller: Bullshit!* TV6 Sweden, 27 September 2008, 19:55; breach of Rules 1.3, 1.14, 1.16, 1.17 and 2.3; and Ofcom Bulletin 127: *Axe Gamekillers*, TV6 Sweden, 12 October 2008, 13:30; breach of Rules 9.5, 9.7 and 9.13

In Breach

News bulletins

ATN Bangla, 18 November 2008, 08:00 and 29 December 2008, 12:00

RFL Janatar Raay

ATN Bangla, 30 December 2008, 09:30

Introduction

ATN Bangla is a general entertainment channel aimed at a Bengali-speaking UK audience.

News bulletins, 18 November 2008 and 29 December 2008

Two viewers were concerned that ATN Bangla's news bulletins were sponsored.

Ofcom noted that during both of the news bulletins, the name of a bank (National Bank Limited) and its logo appeared to the left of the scrolling news bar at the bottom of the screen.

Ofcom also noted that during the news bulletin broadcast on 29 December 2008, a logo for a company called RFL Plastics Limited ("RFL") appeared on the backdrop behind the newsreader and at another point during the same bulletin, a logo for a company called United Commercial Bank Limited ("UCB") also appeared on-screen for twenty seconds. However, it did appear that efforts had been made to conceal some other pop-up logos.

Ofcom asked the broadcaster for its comments with regards to the following Code Rules:

- Rule 9.1 – News and current affairs programmes may not be sponsored.
- Rule 10.4 – No undue prominence may be given in any programme to a product or service.
- Rule 10.5 – Product placement is prohibited.

RFL Janatar Raay, 30 December 2008

Ofcom noted that during this current affairs programme which covered a national election in Bangladesh, a logo for a company called RFL Plastics Limited ("RFL") appeared in a number of places. The logo of a company called Berger Trusted Worldwide also appeared on the screen for a few seconds at one point during the programme. On several occasions throughout the programme, parts of the screen were obscured, which appeared to suggest that the broadcaster had made efforts to conceal some pop-up logos.

- Rule 9.1 – News and current affairs programmes may not be sponsored.
- Rule 10.4 – No undue prominence may be given in any programme to a product or service.
- Rule 10.5 – Product placement is prohibited.

Response

News bulletins, 18 November 2008 and 29 December 2008

Rule 9.1

Channel S Plus Limited ("Channel S"), the licensee of the channel, ATN Bangla, acknowledged that the name of the bank, National Bank Limited, appeared to the left of the scroll bar at the bottom of the screen. It explained that the sponsorship arrangement had occurred before it acquired the programme from Bangladesh, and that National Bank Limited does not have any UK branches. Channel S therefore considered that, because it had not entered into any contract with the sponsor and UK viewers could not use the services of the sponsor, the news bulletin was not sponsored content and therefore was compliant with Rule 9.1 of the Code. However, the broadcaster informed Ofcom that it had taken immediate action to obscure the entire scroll bar.

Rule 10.4

The broadcaster submitted that due to a national state of emergency in Bangladesh at the time of the broadcasts, during which the army put all broadcasting companies under surveillance, its content supplier had to work under difficult conditions which led to errors of judgement.

Channel S said that RFL is a manufacturing company in Bangladesh which had designed and made the set for the programme, and that the RFL logo was an "emblem of the set maker". The broadcaster said that as the appearance of the logo was not intended to promote any product or service, and its viewers were "very unlikely to consider it as a product or a service as there was no statement of any product or service promotion", it did not consider it to be unduly prominent.

With regards to the appearance of the UCB logo in the news bulletin, Channel S said that this was included in error due to the difficult operating conditions described above. However, it argued that "the nature of the pop-up was clear enough for the viewers to construe that it was separate from the programme" and wished to point out that it does not generate any revenue from the appearance of pop-up logos as the programming is acquired content and it is the original broadcaster in Bangladesh who generates revenue from them. It argued that this accidental appearance during programming was "very unlikely to be considered as giving prominence [to a product or service]". It assured Ofcom that it has reviewed its system to ensure that such an error does not occur again.

Rule 10.5

The broadcaster assured Ofcom that it adheres to the prohibition on product placement.

RFL Janatar Raay, 30 December 2008

Rule 9.1

Although the company called RFL was referenced in the title of this current affairs programme and references to RFL appeared throughout the programme, the broadcaster assured Ofcom that the programme was not sponsored by RFL.

Rule 10.4

Channel S told Ofcom that, as in the case of the news broadcasts detailed above, due to a national state of emergency in Bangladesh at the time of the broadcast,

during which the army put all broadcasting companies under surveillance, its content supplier had to work under difficult conditions which led to errors of judgement.

As the broadcaster had previously explained in relation to the news broadcasts (see above), RFL is a manufacturing company in Bangladesh, which had designed and made the set for the programme. The broadcaster said that the logo was not considered as an unduly prominent reference to a product or service, and therefore the “producer did not treat [the] RFL logo as any kind of advertisement or promotion”. It added that its appearance was “not intended to promote any product or service; the logo appeared as a mere emblem of the set manufacturer and designer” and that it “[did] not make any reference to any product or service provision”.

With regards to the appearance of the Berger Trusted Worldwide logo during the programme, the broadcaster said that this pop-up logo only appeared very briefly and was therefore not detected by the editor. The broadcaster also submitted that the products of Berger Trusted Worldwide are not available in the UK.

The broadcaster assured Ofcom that it adheres to the prohibition on product placement.

Decision

Ofcom noted the broadcaster’s assurances in both cases that it adheres to the prohibition on product placement and found no evidence that the broadcasts were in breach of Rule 10.5 of the Code.

As a condition of holding an Ofcom licence, broadcasters must take responsibility for ensuring that the material they broadcast complies with Ofcom codes. It is a matter of concern to Ofcom that at the time of all of the above broadcasts, the licensee appeared to have relied on a third party (i.e. its content supplier in Bangladesh), which it knew to be operating under difficult conditions, to ensure that the material broadcast on the channel was compliant with Ofcom’s codes.

News bulletins, 18 November 2008 and 29 December 2008

Rule 9.1

The sponsorship of news (and current affairs) programmes is prohibited. This requirement comes directly from European legislation – the Television Without Frontiers Directive. This is to ensure news is not distorted for commercial purposes. In news, the broadcaster must maintain, and must be seen to maintain, editorial control over its output.

In this case, Channel S transmitted sponsored news broadcasts from Bangladesh without ensuring that they complied with the Code, in breach of Rule 9.1.

Rule 10.4

The Code states that undue prominence may result from “the presence of or reference to, a product or service (including company names, brand names, logos) in a programme where there is no editorial justification”. Ofcom was therefore concerned that the broadcaster did not consider the presence of the RFL logo to be an unduly prominent reference to a product or service because “there was no statement of any product or service promotion”. In this case there was clearly no editorial justification for the presence of the RFL logo in the programme.

With regard to the presence of the UCB pop-up logo, which appeared during the programme for a period of twenty seconds, Ofcom considered that while viewers were unlikely to interpret the appearance of the pop-up logo as part of the programme, there was clearly no editorial justification for its appearance, since it had no relation to anything in the content of the programme. The presence of the RFL and UCB logos in the programme were therefore in breach of Rule 10.4 of the Code.

RFL Janatar Raay, 30 December 2008

As in the case of the news bulletins, Ofcom was concerned that despite the Code clearly stating that undue prominence may result from the presence of logos where there is no editorial justification, the broadcaster did not consider the appearance of the RFL or Berger Trusted Worldwide logos to be unduly prominent. The RFL logo appeared in several places such as on: the front of the desk; a mug on the desk; a screen behind the presenter and to the left of a scroll bar at the bottom of the screen, giving rise to undue prominence.

There was also no editorial justification for the presence of the RFL or the Berger Trusted Worldwide logos in the programme. Ofcom therefore found the programme in breach of Rule 10.4 of the Code.

News bulletins, 18 Nov 2008 and 29 Dec 2008: Breach of Rules 9.1 and 10.4
RFL Janatar Raay, 30 December 2008: Breach of Rule 10.4

In Breach

Ben 10: Alien Force

Cartoon Network, various dates, March 2009

Introduction

During monitoring, Ofcom noticed that the series *Ben 10: Alien Force* was sponsored by Ben 10: Alien Force the Game. The credits featured footage from the video game, which included one of the main characters from the series.

Rule 9.3 of the Code requires sponsorship to comply with advertising content and scheduling rules.

The rules that apply to the scheduling of television advertising¹ require that:

- advertisements for merchandise based on children's programmes must not be broadcast in the two hours before or after the relevant programme; and
- a person (including cartoon and puppet characters), whose appearance is central to a programme, must not appear in advertisements scheduled in breaks in or adjacent to the relevant programme.

The purpose of these rules is to assist in maintaining a clear distinction between advertising and editorial material. The rules are also in place to reduce the risk of children being more vulnerable to the impact of advertising of merchandise based on programmes they are or have been watching.

We sought the broadcaster's comments on the sponsorship arrangement under Rule 9.3 of the Code.

Response

Turner Entertainment Networks International Limited ("Turner"), the licence holder for Cartoon Network, said that it had always been its interpretation that the advertising "separation" rules were not applicable to sponsor credits. This is because the Code requires sponsorship to be distinct from advertising.

Turner believed that the scheduling rules referred to in Rule 9.3 were those that protected viewers from products and services that they should not be exposed to at all (e.g. those products that could never be scheduled around children's programmes e.g. alcohol).

Turner noted that sponsorship credits are editorial material, designed to inform viewers of the relationship between the sponsor and programme. Because credits must not contain the promotional qualities of an advertisement, Turner said that it had always been its understanding that Rule 9.3 would not impose a prohibition on products such as toys sponsoring children's programmes.

¹ See Sections 4.2.2 and 4.2.7 of the BCAP Rules on the Scheduling of Television Advertisements

Turner believed that its interpretation of Rule 9.3 had been common practice in the broadcasting industry for a number of years and asserted that the ITC, the regulator that preceded Ofcom, had indicated that the practice was acceptable.

Decision

Rule 9.3 applies the same content and scheduling restrictions to sponsor credits as those which apply to advertising. While sponsor credits must not contain the types of selling messages that are included in advertising, references to the sponsor or its products are permitted. Such references clearly provide the sponsor with promotional benefits.

Rule 9.3 therefore ensures that sponsor credits do not contain material that is harmful and/or offensive and prevents advertisers from using sponsorship as a means of circumventing advertising regulations. The advertising rules that prohibit the broadcast of advertisements for programme based merchandise, and those that feature programme characters, around the related programme recognise that children are more likely to be vulnerable to the impact of such advertising and susceptible to confusion between what is programming and what is advertising.

Ofcom does not exempt sponsorship from these rules, and, to our knowledge, neither did the ITC. The licensee did not provide us with any evidence that supported its assertion that sponsorship credits did not have to comply with the scheduling advertising rules. The sponsorship of a children's programme by merchandise based on that programme, or sponsor credits that features characters from the sponsored programme is incompatible with Rule 9.3.

The sponsorship arrangement and the sponsor credits were therefore in breach of Rule 9.3.

Breach of Rule 9.3

In Breach

UK Tings

Channel AKA, 18 April 2009, 06:30, 07:15 and 08:40

Introduction

Channel AKA is an urban music channel owned by Mushroom TV Ltd. Ofcom received three complaints from listeners regarding the broadcast of various music videos during the programme *UK Tings*. The complainants said the programme included videos which contained material of a sexual nature, including sexual language, animations of sex scenes and partial nudity. The complainants considered the videos to be inappropriate for broadcast on a Saturday morning.

Response

The broadcaster said it was unable to provide Ofcom with a recording of the material because its playout equipment was disabled. It did state, however, that it was likely that such material was broadcast at the times noted by the complainants. Channel AKA explained that the videos were scheduled in error after a temporary late night shut-down in transmission took place while new equipment was being installed. The broadcaster apologised for any offence caused.

Decision

In the absence of a recording we were unable to consider the complaints made in this case. It is a condition of Channel AKA's licence that recordings of output are retained for 60 days after transmission, and that they must provide Ofcom with any such material upon request. Failure to supply this recording is a serious and significant breach of the broadcaster's licence. This will be held on record.

Breach of Licence Condition 11

Supplementary Note to Ofcom's Finding

Jon Gaunt

Talksport, 7 November 2008, 11:25

On 11 May 2009, in Ofcom Broadcast Bulletin 133, Ofcom published its finding in relation to the above broadcast. Following the publication of this finding, the presenter of the programme, Jon Gaunt, made representations to Ofcom which disputed some of the surrounding circumstances of the broadcast, and specifically certain steps which Talksport had said it had taken, as set out in the section headed "Response". Ofcom put the substance of Mr. Gaunt's representations to Talksport. Talksport in turn disputed Mr Gaunt's account of events. Ofcom therefore notes that there are areas of dispute between Talksport and Jon Gaunt as regards the surrounding circumstances of the 7 November 2008 broadcast.

However, Ofcom's finding that the broadcast breached Rules 2.1 and 2.3 of the Broadcasting Code was based on the content of the material as broadcast. Accordingly, Ofcom considers that the areas of factual dispute between Talksport and Mr. Gaunt do not materially affect Ofcom's published decision in this case. Nevertheless, Ofcom has considered it appropriate to amend its original finding as published, to the extent of reflecting matters in dispute as between Talksport and Mr Gaunt. The amended finding is available at:
http://www.ofcom.org.uk/tv/obb/prog_cb/obb133/issue133.pdf

Not in Breach

Moving Wallpaper

ITV1, 20 March 2009, 21:00

Introduction

Moving Wallpaper is a satirical comedy drama set in a television production office run by an egotistical and maverick producer called Jonathan Pope. This second series featured Jonathan working under great pressure to deliver a hit programme after the failure of his previous production *Echo Beach*, which was featured in the first series.

Ofcom received 100 complaints about an episode which featured a transsexual character called Georgina, whom Jonathan brought in for her track record in writing successful TV drama. The hiring of Georgina resulted in anger from the in-house writing team who felt sidelined by her appointment and consequently went on strike. During the episode Georgina experienced bigoted treatment from other characters, including Jonathan and some of his production team.

The complainants expressed concern that this storyline was offensive and encouraged transphobic bullying and discrimination against transsexuals in the workplace.

Decision

Satirical programmes, such as *Moving Wallpaper*, often derive humour from exaggerating a situation or attitude to the point of absurdity and Ofcom acknowledges that this may cause offence to individuals. Potentially offensive material may, however, be broadcast provided it complies with the Code. In regulating the content of broadcast television programmes Ofcom requires broadcasters to ensure that they apply “generally accepted standards” to ensure viewers have adequate protection from offensive material.

When applying generally accepted standards, Rule 2.3 states that broadcasters must ensure that material which may cause offence is justified by the context. Context includes, but is not limited to: the editorial content of the programme; the service on which the material is broadcast; the degree of offence likely to be caused; and the likely expectation of the audience.

In applying the Code, Ofcom must also carry out its duties in light of Article 10 of the European Convention of Human Rights which provides for the right to freedom of expression. Comedy and satire often, and rightly, engage with challenging and sensitive subjects touching on sexuality and gender. Ofcom must regulate potentially offensive material in a manner that also respects freedom of expression – the broadcasters’ right to transmit information and the viewers’ right to receive it. Ofcom must therefore seek an appropriate balance between protecting members of the public from harm and offence on the one hand and the broadcaster’s right to freedom of expression on the other, taking into account context.

Ofcom recognises the concerns generated by the treatment of the transgender character Georgina in this episode of the comedy drama. In Ofcom’s view, references such as “a cock in a frock”, “trannies”, “he/she”, “not natural” and the overall discriminatory attitude demonstrated by Jonathan and some of his production

team towards Georgina certainly had the potential to cause offence. This offence was clearly reflected in the strength of the many complaints received by Ofcom, some of which were from the transgender community.

However, it is important to note that the Code does not simply prohibit the broadcast of potentially offensive material. Rather, Rule 2.3 means that such material may be broadcast, if its inclusion is justified by context so as to provide adequate protection for members of the public.

In terms of assessing the context Ofcom firstly reviewed the editorial content of this popular comedy drama. First, it should be noted that this programme was a drama, with fictional characters and set in a fictional television environment. This was the second series of *Moving Wallpaper* and the chauvinistic and narcissistic character of Jonathan Pope was already well established from series one. In the opening scenes of this particular episode, before Jonathan meets Georgina, he talks about "George" as the new writer coming in who has a strong track record in writing hit television drama scripts. He demonstrates he has no qualms in undermining his existing scriptwriters by bringing in someone over their heads to avoid another television flop.

In Ofcom's view it was therefore part of the characterisation of Jonathan to react negatively to Georgina from the point at which he meets her and realises she is a transsexual – even though it is the same writer Jonathan had previously praised for her extensive experience. Members of the production team also made negative references to Georgina's gender⁽¹⁾. Their motives however were less obvious: one stated he was "just jealous" of her long list of writing credits, and another stated that her attitude was not related to Georgina's gender but the way in which Jonathan had brought her in without consulting the team.

In contrast, throughout the programme, Georgina is not presented in a negative or stereotypical way. She has strong morals and is very professional, refusing for example to bow to the pressure Jonathan puts her under to turn around a script quickly and to re-use storylines simply to salvage his own reputation.

It is Ofcom's view that the intention of the humour in this episode was to illustrate the crass and prejudiced character of Jonathan, rather than to ridicule a transsexual character. Georgina is given her opportunity to tell Jonathan what she thinks of him at the end of the programme, referring to him as "*incompetent, sexist, offensive and talentless*".

Although Ofcom appreciates this programme caused offence to some individuals, its intention was to draw out the characters, in the programme, in a manner which was both absurd and satirical. The reactions of the production team to the character of Georgina were a key part of the storyline (i.e. this is how certain individuals reacted to her) and therefore editorially justified. The programme did not condone or encourage such negative attitudes to transsexuals. The broadcaster met generally accepted standards given the specific context of a satirical drama. Therefore Rule 2.3 of the Code was not breached.

(1) To correct an error in the original finding, Ofcom substituted the word "gender" for "sexuality" on 19th February 2010.

Not in Breach of Rule 2.3

Fairness and Privacy Cases

Not Upheld

Complaint by Mr Ulf Olsson

Efterlyst, TV3 (Sweden), 10 April 2008

Summary: Ofcom has not upheld this complaint of unfair treatment.

This programme, which appealed to the public for information to assist the police in investigating unsolved crimes, included the case of a 10 year old girl who had disappeared and the arrest of a man suspected of abducting her. By way of background to the case, the programme examined the cases of four children who had disappeared without a trace in Sweden over the past 10 years. One of the children who had disappeared was Jasmina Jasharaj. The programme stated that:

“The search [for Jasmina Jasharaj] is in progress for several years. Among other things, the Helén murderer Ulf Olsson is questioned but the investigation leads nowhere.”

Mr Ulf Olsson, who was convicted in 2005 of murdering two people (including a 10 year old girl), complained that he had been treated unfairly in the programme as broadcast.

Ofcom considered that the programme’s suggestion that Mr Olsson had been questioned by the police in connection with Jasmina Jasharaj’s disappearance was inaccurate and had the potential to be unfair. However, given that the programme made clear that the police investigation into Mr Olsson’s possible involvement in the disappearance led “nowhere”, Ofcom was satisfied that the programme’s presentation of the matter was unlikely to have materially affected viewers’ understanding of Mr Olsson in a way that was unfair to him.

Introduction

On 10 April 2008, TV3 (Sweden) (“TV3”) (a Swedish satellite television channel licensed in the UK by Ofcom, and whose licence is held by Viasat Broadcasting Limited (“Viasat”)) broadcast an edition of *Efterlyst*, a programme that featured crimes that the Swedish police were investigating and appealed to the public for information to assist them. This edition of the programme included a story about a 10 year old girl who had disappeared and the arrest of a man the police suspected of her abduction. The programme’s presenter stated that it was unusual for children to disappear without a trace in Sweden and went on to state that over the past 10 years, four children had disappeared without a trace. The programme went on to outline the circumstances in which these four children had gone missing, including a child called Jasmina Jasharaj. The programme stated:

“...on July 28th [1997] a neighbour sees six year old Jasmina Jasharaj playing in a pile of dirt close to her home in Sävsjö. That was the last time anyone saw her.”

The programme then stated that police had questioned Mr Ulf Olsson¹ about Jasmina Jasharaj's disappearance:

"The search [for Jasmina] is in progress for several years. Among other things, the Helén murderer Ulf Olsson is questioned but the investigation leads nowhere."

Mr Olsson complained to Ofcom that he had been treated unfairly in the programme as broadcast.

The Complaint

Mr Olsson's case

In summary, Mr Olsson complained that he was treated unfairly in the programme as broadcast in that the programme alleged falsely that he was suspected of committing a crime against Jasmina Jasharaj and that he had been questioned by the police without result. Mr Olsson said that he had never been suspected of a crime against Jasmina Jasharaj, nor had he been questioned by the police in relation to her disappearance.

The Broadcaster's case

TV3 (Sweden)'s licence is held by Viasat who are responsible for compliance at TV3. Therefore, Viasat was required by Ofcom to respond to Mr Olsson's complaint.

In summary, Viasat said that Mr Olsson was a well-known murderer in Sweden and that Swedish newspapers had reported that the police had wanted to question Mr Olsson in relation to Jasmina Jasharaj's disappearance. Viasat stated that a car which Mr Olsson had access to and used at work at the time of Jasmina Jasharaj's disappearance was forensically examined in relation to the investigation into her disappearance and that the police had wanted to question him about the car. Viasat said that Mr Olsson had declined to be questioned by the police and that the police were unable to compel him, due to a lack of evidence. Viasat said that the programme makers believed that Mr Olsson was suspected by the police of having committed a crime against Jasmina Jasharaj.

Viasat said that the programme makers maintained that the programme did not falsely allege that Mr Olsson was suspected of committing a crime against Jasmina Jasharaj and that Mr Olsson's claim that he had never been suspected of a crime against Jasmina Jasharaj was not true.

Decision

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

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard in all cases, to the

¹ In 2005, Mr Ulf Olsson was convicted of the murders of 10 year old Helén Nilsson and 26 year old Jannica Ekblad. Both murders took place in 1989.

principles under which regulatory activities should be transparent, accountable, proportionate and consistent and targeted only at cases in which action is needed. This case was considered by Ofcom's Executive Fairness Group. In reaching a decision, it considered the complaint and the broadcaster's response including supporting material, together with a recording and translated transcript of the programme as broadcast. In its considerations, Ofcom took account of Ofcom's Broadcasting Code ("the Code").

Ofcom considered Mr Olsson's complaint that the programme alleged falsely that he was suspected of committing a crime against Jasmina Jasharaj and had been questioned by the police without result.

In considering this complaint, Ofcom took into account whether the programme makers' actions were consistent with the broadcaster's obligation to avoid unjust or unfair treatment of individuals in programmes as set out in Rule 7.1 of the Code.

It also considered Practice 7.9 of the Code which 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.

Ofcom noted that the programme focused on four cases in which children had disappeared in Sweden and had referred briefly to the case of Jasmina Jasharaj about which it stated:

"The search [for Jasmina] is in progress for several years. Among other things, the Helén murderer Ulf Olsson is questioned but the investigation leads nowhere."

Ofcom considered whether the programme makers had taken reasonable care to satisfy themselves that material facts were presented fairly in the programme. In doing so, Ofcom first examined the factual basis for the statement included in the programme that Mr Olsson was questioned by the police in connection with Jasmina Jasharaj's disappearance. It then considered whether the programme's presentation of the matter would have resulted in unfairness to Mr Olsson.

Ofcom noted that in its statement in response to the complaint, Viasat said:

"The police wanted to question him [Mr Olsson] in relation to the car but Ulf Olsson declined to be questioned and due to insufficient evidence the police could not bring him in for questioning."

Ofcom also noted the wording of two translated Swedish newspaper reports provided to it by Viasat which linked Mr Olsson with the police investigation into the disappearance. The first newspaper report stated that the police had found evidence in the car that Mr Olsson had access to at work when Jasmina Jasharaj disappeared and that, although the police were reluctant to comment further on the investigation, they did:

"hope to be able to question him [Mr Olsson] soon".

The second newspaper report also linked Mr Olsson to the car and stated that the police did not want to comment about the investigation. Ofcom noted that this report concluded by stating:

“It can, however, be established that no prosecutor had been brought into the investigation. This could be interpreted as the investigation into the car did not lead to any new suspicions against Ulf Olsson.”

In Ofcom’s view, neither the broadcaster’s statement nor the translated newspaper reports supported the statement made in the programme that Mr Olsson had been “*questioned*” in connection with the police investigation into Jasmina Jasharaj’s disappearance.

Ofcom took the view that, although the police may have suspected Mr Olsson and had wanted to question him, the fact remained that Mr Olsson was not questioned by the police. The programme’s presentation of this matter was therefore not accurate.

Ofcom then went on to consider whether or not the programme’s inaccurate presentation of this matter resulted in unfairness to Mr Olsson. In doing so, Ofcom again examined the programme’s statement about Mr Olsson and the investigation into Jasmina Jasharaj’s disappearance:

“The search is in progress for several years. Among other things, the Helén murderer Ulf Olsson is questioned but the investigation leads nowhere.”

Importantly, in Ofcom’s view, the programme made explicitly clear that the police investigation into Mr Olsson’s possible involvement in the disappearance led “*nowhere*”.

In doing so, the programme unequivocally signposted to viewers that there was not sufficient evidence to support the any suggestion that Mr Olsson was involved in Jasmina Jasharaj’s disappearance.

Ofcom considers that broadcasters must exercise great caution when seeking to explain the basis nature of a criminal investigation and the status of those directly associated with it or otherwise suspected of being associated with it.

In this case, the programme’s suggestion that Mr Olsson had been questioned by the police in connection with Jasmina Jasharaj’s disappearance was inaccurate and had the potential to be unfair.

However, given that the programme made clear that the police investigation into Mr Olsson’s possible involvement in the disappearance led “*nowhere*”, Ofcom was satisfied that the programme’s presentation of the matter was unlikely to have materially affected viewers’ understanding of Mr Olsson in a way that was unfair to him.

Accordingly, the complaint of unfair treatment was not upheld.

Not Upheld

Complaint by Humphries Kirk Solicitors on behalf of Ultimate Energy plc

Inside Out (South West), BBC1 South West, 22 February 2008

Summary: Ofcom has not upheld this complaint of unfair treatment in the programme as broadcast.

This programme reported on Ultimate Energy plc (“Ultimate Energy”), which sold domestic solar and renewable energy products. The programme investigated the extent to which Ultimate Energy used similar sales techniques to those which had been used by Solar Technik Limited, another solar energy product company that had the same directors and had been the subject of a previous edition of the programme. Secretly filmed footage of an Ultimate Energy representative sales pitch was filmed for, observed and commented on in the programme. The programme alleged that the sales representative made unrealistic and misleading claims about the company’s products offered for sale which were in breach of undertakings Ultimate Energy’s directors had given to the Office of Fair Trading. The programme also included contributions from disgruntled customers who had bought products from the company.

Humphries Kirk Solicitors complained on behalf of Ultimate Energy that it had been treated unfairly in the programme as broadcast in that: material facts had been presented unfairly; the company had not been given an appropriate opportunity to respond to the allegations made in the programme; and that its responses to the allegations were not fairly represented in it.

Ofcom found the following:

- Ofcom considered that material facts were presented fairly in the programme and in a way that did not portray Ultimate Energy unfairly;
- Ofcom found that as the allegation that the particular house featured in the programme was not suitable for solar panels was not made in the programme the programme makers were under no obligation to provide Ultimate Energy with an opportunity to respond to it; and
- Ofcom compared the responses provided to the programme makers by Humphries Kirk made on behalf of Ultimate Energy about allegations made in the programme and the summary of those responses given in the programme. Ofcom was satisfied that the responses had been presented fairly in the programme.

Introduction

On 22 February 2008, the BBC broadcast an edition of its regional current affairs programme *Inside Out (South West)* which reported on Ultimate Energy plc (“Ultimate Energy”), a Dorset-based company that sells domestic solar and renewable energy products.

The report stated that Ultimate Energy had the same directors, namely Mr Floyd Lewis and Ms June Lewis, as another solar energy product company, Solar Technik Limited (“Solar Technik”).

Solar Technik had been the subject of a previous *Inside Out (South West)* report broadcast in 2006 which examined its marketing practices and alleged that Solar Technik’s sales representatives were misleading potential customers. In 2007, Solar Technik went into liquidation and the Office of Fair Trading (“the OFT”) obtained undertakings¹ from Mr Lewis and Ms Lewis, on behalf of their other company (Ultimate Energy) that they would not engage in prohibited conduct including: giving misleading impressions or misrepresentations about its products; supplying goods that were not of a satisfactory quality; failing to carry out services with due care or skill; and failing to inform customers of their cancellation rights, where required.

The programme broadcast on 22 February 2008 followed on from the earlier programme and investigated the extent to which Ultimate Energy was using similar sales techniques to those which had been used by Solar Technik. Secretly filmed footage of an Ultimate Energy representative and an undercover reporter posing as a potential customer was included in the report. The representative’s sales pitch was observed and commented on in the programme by the programme’s presenter and Mr Ian Preston, an expert in the area of renewable energy. The programme alleged that the sales representative made unrealistic and misleading claims about Ultimate Energy’s products offered for sale. The programme also alleged that these claims were in breach of the undertakings Ultimate Energy’s directors, Mr Lewis and Ms Lewis, had given to the OFT. The programme also included contributions from disgruntled customers who had bought products from Ultimate Energy.

Humphries Kirk Solicitors, (“Humphries Kirk”) complained to Ofcom on behalf of Ultimate Energy that the company was treated unfairly in the programme as broadcast.

The Complaint

Ultimate Energy’s case

In summary, Humphries Kirk complained on behalf of Ultimate Energy that it was treated unfairly in the programme as broadcast in that:

- a) The programme was unfair to Ultimate Energy in relation to its portrayal of material facts, in that:
 - i) The programme alleged falsely that “*Mr Lewis was not keen to answer our questions*”, when, in fact, all of the questions put to Mr Lewis were answered in correspondence to the programme makers from Humphries Kirk.
 - ii) The programme unfairly and falsely alleged that an Ultimate Energy customer, Mr Gilbert Cannon, paid his deposit and was then treated improperly by the company. The programme makers had failed to check the facts in relation to this with Ultimate Energy.
 - iii) Ultimate Energy was unfairly described in the programme as “a solar panel company misleading its customers”, when in fact it sold solar collectors, a

¹ Obtaining an “undertaking” is one of the range of enforcement options available to the OFT. In the range of enforcement options, undertakings feature just below the imposition of financial penalties and civil or criminal court proceedings.

more modern technology than solar panels, which convert ambient daylight into hot water. Furthermore the programme's expert, Mr Ian Preston unfairly stated that:

- The house featured in the report was not suitable for solar panels. This resulted in unfairness to Ultimate Energy because Mr Preston appeared not to know the difference between a solar panel and a solar collector.
 - Mr Preston unfairly alleged that the system featured in the report was "very expensive". As he appeared not to know the difference between a solar panel system and a solar collector system, his opinion on what was expensive was valueless.
- iv) The programme's expert, Mr Preston, also unfairly made the following allegations:
- Mr Preston unfairly alleged that it was untrue that the system being offered for sale to the prospective customer would pay for itself in its lifetime, despite information to the contrary being provided to the programme makers.
 - Mr Preston unfairly and wrongly alleged that Ultimate Energy misled the prospective customer in relation to a deal done by China with Russia in relation to gas produced by Russia.
- b) Ultimate Energy was not given an appropriate opportunity to respond to the allegations in the programme in that the allegation by Mr Preston that the house featured was "not suitable for solar panels" was not put to the company.
- c) The programme did not fairly represent Ultimate Energy's responses in relation to Mr Preston's allegations that the system being offered to the prospective customer in the programme would not pay for itself in its lifetime and that the system featured was very expensive.

The BBC's case

- a) In summary, the BBC responded to the specific head of complaint that the programme was unfair to Ultimate Energy in relation to its portrayal of material facts as follows:
- i) The BBC said that it was clear that the commentary line "*Mr Lewis was not keen to answer our questions*" applied to a particular incident and to Mr Lewis's reaction at that time when asked questions by the programme makers whilst they were filming the exterior of his offices.

The BBC said that Mr Lewis was not keen to answer the programme makers' questions and, despite the fact that all of the questions he put to them were answered, Mr Lewis walked away without reply when asked to identify himself. The BBC said that it was also made clear throughout the programme that Ultimate Energy had put forward responses to the main allegations made in the programme. The BBC said that these responses were incorporated into the report at every relevant stage of the report and that it did not believe that any viewer could have formed the impression, from the line of commentary

complained of, that Ultimate Energy had not responded to questions put to it by the programme.

- ii) The BBC said that in relation to its presentation of Mr Gilbert Cannon's case, the programme stated that:

Presenter: *"But for some customers, the presentation does work. In Dorset, Gilbert Cannon paid his deposit. He told them he was going to have an operation, and wanted work to start afterwards. But he says Ultimate Energy ignored him."*

Mr Cannon: *In all, I wrote to them three times. All three letters were ignored. In the end I started getting a bit stropy and threatening them about it. And towards the end of May, they actually condescended to phone me up, pleading ignorance and not knowing what was going on."*

Presenter: *Gilbert cancelled his contract and eventually got his deposit back."*

The BBC said that it stood by the accuracy of Mr Cannon's account. Mr Cannon was referred to the programme by Consumer Direct having contacted his local Trading Standards Office for advice as to how to obtain a refund from Ultimate Energy. The BBC said that correspondence between Mr Cannon and Ultimate Energy established that he wrote to the company several times, complaining that he was being ignored, and that the eventual refund, some nine months later, came only after Mr Cannon threatened the company with legal action. The BBC said that these were the facts and that they would not change by being "checked" with Ultimate Energy.

- iii) The BBC said that the complainant argued that there was a significant distinction between a solar panel and a solar collector, and that in describing Ultimate Energy as selling solar panels, the programme was being unfair to the company.

In response to this, the BBC said that it did not believe that any known technology was capable of "converting" ambient daylight or direct sunlight into hot water. In addition, and allowing that the complainant actually meant to convey the idea that these technologies use ambient daylight or direct sunlight as sources of energy to heat water, the BBC also said that it did not accept that there was any significant difference between these technologies as described by the company. The BBC said that the only possible source of ambient daylight is sunlight, so both technologies use the same energy source. The BBC said that it may be that one may make considerably more efficient use of sunlight but that distinction was immaterial to the point that both are varieties of the same technology.

The BBC said that this technology was recognised by the Department for Business Enterprise & Regulatory Reform which explains on its Low Carbon Buildings Programme website that "For domestic hot water there are three main components: solar panels, a heat transfer system, and a hot water cylinder. Solar panels - or collectors - are fitted to your roof". The BBC also quoted *Which?* magazine which described the kind of system sold by

Ultimate Energy as “These evacuated tubes – a type of solar heating panel...”. Within the industry, therefore, the BBC said that solar collectors are considered to be a variety of solar panel. The BBC went on to say that the terms were also used interchangeably by the Ultimate Energy’s representative featured in the programme. During the course of his sales pitch, the representative referred to solar collectors as “panels” or “solar panels” no fewer than nine times.

- In response to the complaint about Mr Preston’s comments that the house featured in the report was not suitable for solar panels, the BBC said that Mr Preston did not say that the house “was not suitable for solar panels”. His view was that the house featured in the programme was “*not suitable for a traditional one-panel system*” and that a two-panel system facing east and west would be needed. By way of background to Mr Preston’s qualifications and experience in the field of renewable energy, the BBC said that Mr Preston had a BSc in Environmental science and that he is a senior analyst for the Centre for Sustainable Energy². The BBC said that in his current position Mr Preston was engaged in a range of projects that include: energy auditing; evaluating school energy programmes; advice delivery and renewable energy feasibility studies, as well as policy work around affordable warmth and energy statistics. The BBC said that Mr Preston had also worked for a number of environmental consultancies and was familiar with the evacuated tube system.
 - In relation to the complaint that Mr Preston unfairly alleged that the system featured in the report was “very expensive”, the BBC referred again to *Which?* magazine, which in February 2008, evaluated evacuated tube solar panel systems of the kind marketed by Ultimate Energy. Its report concluded that the “Best Buy” system should cost between £3,500 and £4,000. The BBC said that the programme makers contacted the installers of the product deemed “best buy” by *Which?*, and received a telephone quote of between £3,500 and £4,000 for an evacuated tube system for the property featured in the programme. This price was also in line with indicative prices given to the programme makers by other specialists in the field, such as the Solar Trade Association. The BBC said that Ultimate Energy quoted a price of £9,650 which was more than double the highest estimate or quote obtained elsewhere for a similar installation. The BBC said that it did not accept that the characterisation of Ultimate Energy’s system as “*very expensive*” was unfair.
- iv) The BBC said that Ultimate Energy’s representative had claimed to the undercover reporter (while secretly filmed) that the installation would pay for itself two or three times over in its lifetime. The BBC said that even had he made the more modest claim that it would simply pay for itself, this would still have been in clear breach of the undertaking given by Mr Lewis to the OFT. The BBC said that it believed that any such claim was not just a technical breach of the undertaking but also inaccurate and misleading.

The BBC said that Ultimate Energy’s position on the possibility that the installation would pay for itself was contradictory and wildly speculative. In

² The CSE is a national charitable company whose stated purpose is to advance sustainable energy practice and policy.

their letter of 31 January 2008, Humphries Kirk wrote to the programme makers that “Our client’s marketing literature makes no specific references as to whether and when a system will “pay for itself...”. By contrast, however, in a letter of 8 February 2008 to the programme makers, Humphries Kirk stated that “...the actual claims are very clearly set out in the script, the website and the marketing material. No consumer could be misled by that – it is there in black and white”. The BBC said that, in fact, the only references to this issue on the company’s website and in its marketing material take the form of one speculative testimonial in each case from customers. There were no claims made by Ultimate Energy itself.

In further contrast to this, and assuming that the claims made by the company’s representative were based upon the company’s sales “script” (which Ultimate Energy has not denied), the BBC said that a very strong claim was being made during his presentation on behalf of the company when he claimed that it would pay for itself two or three times over its lifetime.

The BBC also said that in its communication of 8 February 2008, Ultimate Energy claimed that:

“It is highly likely that over that period of time, given the likelihood of increase in oil prices and of cheaper council tax for ecologically sound homes and possibly even cheaper stamp duty, that the system will indeed pay for itself several times over a 25 year period”.

Based on the correspondence from the Humphries Kirk sent to the programme makers on behalf of Ultimate Energy, the BBC said that it was not unfair, therefore, to suggest that the claim that the system would pay for itself was untrue. The company offered no evidence which would place this claim on a firm foundation and provide refutation of Mr Preston’s expert view.

In response to the complaint that Mr Preston unfairly and wrongly alleged that Ultimate Energy’s representative misled the undercover reporter in relation to a deal done by China with Russia, the BBC said that it put the claim to Dr Jonathan Stern, Director of Gas Research at the Oxford Institute for Energy Studies. The BBC said that he had described the claim as “nonsense” and stated that there was no gas agreement whatever between China and Russia, let alone one where China had agreed to take all of Russia’s gas supplies. The BBC said that the agreement referred to in the article cited by the company in fact came to nothing. The BBC said that Mr Preston’s observation that Ultimate Energy’s was “*talking rubbish*” was fair.

- b) The BBC said that Mr Preston’s allegation that the house was not suitable for solar panels was not put to the company because it was not made, either by Mr Preston or by the programme. The question was, however, put directly to him:

Presenter: *“Ian, is this house suitable for solar panels?”*

Mr Preston: *“It’s not suitable for a traditional one-panel system. What you’d need to have here, because it’s oriented west to east, is two panels, one on each side.”*

- c) The BBC said that in their letter of 8 February 2008 to the programme makers the company’s legal representatives set out in two parts the company’s position on whether the system can pay for itself two or three times over its lifetime.

Firstly, they pointed to the company's literature, where no such claim was made; secondly, that notwithstanding this, the system "would indeed" pay for itself under certain conditions. The BBC said that the programme summarised Ultimate Energy's response and that that summary was a perfectly fair representation of the position.

On the question of expense, the BBC said that the programme summarised the company's position in a way that it believed was a perfectly fair representation of the company's view by stating that "*Ultimate Energy defended their price, saying that they sell a high quality product*".

Ultimate Energy's Comments in response

Ofcom invited Humphries Kirk to respond on behalf of Ultimate Energy to the BBC's statement in relation to heads a) ii) and iii) specifically. Humphries Kirk responded that:

- a) ii) Mr Cannon's correspondence showed that it was after he had unilaterally stopped his deposit cheque on 5th January 2007 that he had difficulties. It was hardly surprising that he had difficulty recovering money as Ultimate Energy did not need to refund him anything after what was, legally, a repudiation of his contract by him. The point, however, was that to conceal that Mr Cannon had unilaterally stopped this cheque was a material fact which would have made a difference to the way that viewers would feel about the way he was allegedly subsequently treated.
- iii) Humphries Kirk said that Ultimate Energy stood by their contention that solar collectors were very different to solar panels, the most basic of which is simply a black tube through which water is pumped and works based upon sunlight and heat.

The BBC's Comments

In summary, the BBC responded to Humphries Kirk's comments as follows:

- a) ii) The BBC said that Humphries Kirk's response seemed to infer that Mr Cannon had difficulties (presumably a reference to his medical condition) after he had signed his contract with Ultimate Energy. This was simply not correct. Mr Cannon clearly told the Ultimate Energy representative, who visited him in December 2006 that he was awaiting an operation. This was, in fact, noted by the sales representative on the order form that "*Mr Cannon may need a little help in the loft space because awaiting hip replacement*".

The BBC said that it was also inaccurate for Humphries Kirk to suggest that Mr Cannon cancelled one of the cheques he made out in favour of Ultimate Energy. It said that Mr Cannon had informed it that the cheque in question had been stopped by mistake by his bank. It was clear from the correspondence already referred to above that Mr Cannon was not aware that the cheque had been stopped. In those letters Mr Cannon had asked Ultimate Energy for a refund of the full amount he had paid. The BBC said that had he known one of the cheques had been stopped he would only have been requesting a refund of the outstanding balance. Furthermore, had it been Mr Cannon's intention to terminate his contract by cancelling his payment, he would have cancelled not just one cheque but both.

The BBC said that it did not feel able to address the point Humphries Kirk made about the reasons for the refund given to Mr Cannon.

- iii) The BBC said that it did not have any further points to make on the difference between solar panels and solar collectors.

Decision

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

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate and consistent and targeted only at cases in which action is needed. This case was considered by Ofcom's Executive Fairness Group. Ofcom considered the complainant's and the broadcaster's written submissions, together with supporting material and a recording and transcript of the programme as broadcast. In its considerations, Ofcom took account of Ofcom's Broadcasting Code ("the Code"). Ofcom found the following:

- a) Ofcom looked at whether or not Ultimate Energy was portrayed unfairly in relation to the presentation of material facts in the programme.

In making a decision on his head of complaint, Ofcom referred individually to each of the separate sub-heads specified by Humphries Kirk in the complaint on behalf of Ultimate Energy set out under Head a) of the complaint. In relation to each of these allegations and looking at the programme overall, Ofcom took particular account of whether the programme makers' actions were consistent with the obligation to avoid unjust or unfair treatment of individuals in programmes (as set out in Rule 7.1 of the Code). It also considered whether the portrayal of material facts relating to Ultimate Energy was consistent with the broadcaster's obligation to ensure that material facts had not been presented in a way which was unfair (as outlined in Practice 7.9 which states 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). The consideration of each of these complaints informed Ofcom's overall decision of this head of complaint.

- i) Ofcom first considered the complaint that the programme alleged falsely that Mr Lewis, one of the company's directors, was "not keen to answer questions" when, in fact, all of the questions put to Mr Lewis were answered in correspondence.

In considering this head of complaint, the Ofcom took into account Practice 7.9 of the Code already referred to above.

Ofcom noted that the following exchange between Mr Lewis and the programme makers included in the programme:

Presenter: *"Mr Lewis is very difficult to get hold of. He's refused all requests for an interview. But suddenly he appeared when our cameraman went to film his offices in Dorset."*

Mr Lewis: *Would you care to turn the TV camera off while we talk? Where are you from please?*

Reporter: *We are from the BBC.*

Mr Lewis: *OK, have you got any identification please?*

Reporter: *Can I have your name?*

Presenter: *Mr Lewis [shown walking away] wasn't keen to answer our questions. And he isn't popular with some of his customers."*

Taking the context in which the presenter's commentary stated that "*Mr Lewis wasn't keen to answer questions*", Ofcom was satisfied that the comment referred to a particular incident outside his offices and Mr Lewis's reluctance to speak to the reporter. Ofcom considered that the comments did not reflect on the responses made by Humphries Kirk on behalf of the company and referred to throughout the programme given by Humphries Kirk and that this would have been clear to viewers. Ofcom concluded therefore that the depiction of Mr Lewis's exchange with the programme makers outside his offices and the portrayal of Humphries Kirk's responses were not presented in the programme in a way that was unfair to Ultimate Energy.

- ii) Ofcom considered the complaint that the programme alleged falsely that Mr Cannon had paid his deposit and then was improperly treated by the company, and that the programme makers had failed to check the facts with Ultimate Energy.

In considering this head of complaint, the Ofcom took into account Practice 7.9 already referred to above.

Ofcom recognised that a conflict of evidence exists between the complainant and the programme makers in relation to how Mr Cannon obtained a refund of his deposit. Ofcom's remit is to consider and adjudicate on complaints of unfair treatment and unwarranted infringement of privacy and as such is not required to resolve conflicts of evidence as to the nature or accuracy of particular accounts of events, but to adjudicate on whether the complainant has been treated unfairly in the programme as broadcast.

Ofcom noted the following extract from the presenter's commentary that related to Mr Cannon and his experience of dealing with Ultimate Energy:

Presenter: *"But for some customers, the presentation does work. In Dorset, Gilbert Cannon paid his deposit. He told them he was going to have an operation, and wanted work to start afterwards. But he says Ultimate Energy ignored him.*

Mr Cannon: *In all, I wrote to them three times. All three letters were ignored. In the end I started getting a bit stropky and threatening them about it. And towards the end of May,*

they actually condescended to phone me up, pleading ignorance and not knowing what was going on.

Presenter: *Gilbert cancelled his contract and eventually got his deposit back.”*

Ofcom recognised that Humphries Kirk disagreed with Mr Cannon’s recollection about the exact manner in which Mr Cannon received the refund of his deposit. However, Ofcom noted that it was not disputed by Humphries Kirk in making the complaint or commenting on the BBC’s statement in response that: Mr Cannon had paid his deposit; had told the company about his operation; his correspondence appeared to go unanswered; and that he cancelled his order and was eventually had his deposit refunded.

Ofcom noted that the programme makers had obtained first hand testimony of Mr Cannon in recounting his experience with Ultimate Energy. It also noted the correspondence sent to Ultimate Energy by Mr Cannon after placing his order with the company and before receiving his refund. In Ofcom’s view, it was clear from this correspondence that Mr Cannon had repeatedly tried to contact the company about installing the system, but had received no response. It was also apparent to Ofcom from this material that Mr Cannon had had to wait a number of months and after continued attempts to contact the company before he received the refund of his deposit. In Ofcom’s view, the portrayal of Mr Cannon and his experience with Ultimate Energy was presented fairly and that the programme makers had taken reasonable steps to satisfy themselves that the material facts, namely Mr Cannon’s experience of dealing with Ultimate Energy, were not presented or portrayed in away that resulted in unfairness to the company.

- iii) Ofcom considered the complaint that Ultimate Energy was unfairly described as a “*solar panel company misleading its customers*”, when, in fact, it sold solar collectors. This particular head of complaint also raised the complaint that Mr Preston had unfairly stated that the house featured in the programme was not suitable for solar panels and that the system featured was expensive. This, Humphries Kirk said, was unfair to the company as it appeared that Mr Preston did not know the difference between solar panels and solar collectors and the respective costs of such systems.

In considering this head of complaint, Ofcom had regard to Practice 7.9 of the Code already referred to above.

Ofcom noted that Humphries Kirk stated on behalf of Ultimate Energy that it sold solar collectors which convert ambient daylight into hot water and were a more modern technology than solar panels. It also noted the BBC’s response in which it stated within the renewable energy industry, solar collectors were considered to be a variety of solar panel. Ofcom considered that the technical difference between solar panels and solar collectors would not have materially affected viewers impression of the products sold by the company as the context of the programme was to examine the activities of Ultimate Energy and the sales techniques of its sales representatives.

Ofcom then considered whether it was unfair for the programme to include Mr Preston’s comment that the house featured in the programme was not suitable for solar panels, and that the system shown in the programme was

expensive because Mr Preston did not appear “to know the difference between a solar panel system and a solar collector system”.

Ofcom noted that Mr Preston stated that the house was “not suitable for a traditional one-panel system” and at no time during the programme did Mr Preston say that the house was not suitable for solar panels or, for that matter, solar collectors. Ofcom also noted that Mr Preston’s comment that price of the system referred to in the programme was “very expensive” immediately followed an excerpt from the secretly recorded footage of the Ultimate Energy representative quoting the price of installing the system to an undercover reporter posing as a potential customer. Ofcom noted the relevant sequence from the programme:

- Presenter: *“After more than two hours, David [company representative] reveals the price.*
- Representative: *Nine six fifty [£9,650].*
- Mr Preston: *That’s very expensive. I’d hope that you could get the same System installed for half the cost. £3,500-£4,000.*
- Presenter: *Ultimate Energy defended their price, saying that they sell a high quality product.”*

Ofcom noted the BBC’s supporting material in relation to Mr Preston’s qualifications and experience in the area of environmental science and had appeared on the programme to give his expert opinion on the system and the claims of Ultimate Energy’s representative. Ofcom took the view that Mr Preston’s comments were made and informed by his knowledge and experience in this field Ofcom noted that Mr Preston was introduced in the programme as “*an expert*” with the caption “*Centre of Sustainable Energy*” appearing along with his name. Ofcom considered that it would have been clear to viewers that Mr Preston’s comment that Ultimate Energy’s system was “*very expensive*” was based on his knowledge of comparable systems and that it was his expert view.

Taking the factors referred to above into account, Ofcom was satisfied that the reference to “*solar panels*” in the programme would not have materially misled viewers in understanding the nature of the system being sold and that to describe it as such in the programme was not unfair to Ultimate Energy. It also concluded that Mr Preston’s comments about the house not being suitable for a traditional one-panel system and, for the reasons given above, that the system was expensive, also did not result in unfairness to the company.

- iv) Ofcom considered the complaint about the allegations made by Mr Preston in the programme that it was untrue that the system would pay for itself in its life time and that he wrongly alleged that the company misled the potential customer about a deal made between China and Russia in relation to Russian gas.

In considering this head of complaint, Ofcom had regard to Practice 7.9 of the Code already referred to above.

Ofcom noted the secretly recorded footage included in the programme of Ultimate Energy's representative and Mr Preston's comments:

Representative: *"This does not have to pay for itself. The fact that it will, two or three times in its lifetime is the plus.*

Mr Preston: *Well it's not true. It's not even going to pay for itself in its lifetime, because they're using gas which is the cheapest fuel. So to say it will do two or three times is just outrageous."*

Ofcom noted a letter Humphries Kirk dated 31 January 2008 in reply to the programme makers's letter to Mr Floyd Lewis dated 25 January 2008 regarding the allegation that the company claimed that the system would pay for itself two or three times over its lifetime. The Humphries Kirk's letter stated that:

"Our client's marketing literature makes no specific reference as to whether and when a system will "pay for itself" although forcibly with rising fuel costs, available government subsidy, council tax reductions and likely further reductions (such as stamp duty), such systems could well be as cost effective as this."

Ofcom also noted that in a further letter to the programme makers dated 8 February 2008, Humphries Kirk again set out the company's position as to whether the system referred to in the programme could pay for itself two or three times over its lifetime. The letter stated that:

"...the actual claims [about the system] are very clearly set out in the script³, the [company's] website and the marketing material. No consumer would be misled by that – it is there in black and white."

The letter went on to state that:

"However, the reality is that this equipment had a guarantee of 25 years from the manufacturer. It is highly likely that over that period of time, given the likelihood of increase of oil prices and of cheaper council tax for ecologically sound homes and possibly even cheaper stamp duty, that the system will indeed pay for itself several times over a 25 years period."

Ofcom noted how this particular extract of Humphries Kirks's letter was summarised in the programme:

"...Ultimate Energy told us its marketing literature makes no such claims, but with rising fuel prices and other factors, their system is highly likely to pay for itself several times over its life time."

Ofcom compared the response given by Humphries Kirk in their letter of 8 February 2008 and the summary of that response included in the programme. It took the view that the programme's commentary fairly presented the response made on behalf of Ultimate Energy.

³ That is, Ultimate Energy's marketing literature used by its sales representatives.

Taking these factors referred to above into account, Ofcom was satisfied that the inclusion in the programme of Mr Preston's comments did not result in unfairness to the company. Ofcom took into account the absence of any evidence to support the claims made by Humphries Kirk that it was highly likely that over a period of time the system would pay for itself several times over. Also, Ofcom had regard to the apparent contradiction of this correspondence with the company's marketing literature, which did not make the claim that the system would pay for itself two or three times over its lifetime.

In considering the complaint that Mr Preston unfairly alleged that the company's representative misled the undercover reporter in relation to a deal between Russia and China, Ofcom noted the relevant sequence in the programme:

Representative: *"China has now done a deal with Russia, so that they will take all the gas that Russia can produce.*

Mr Preston: *I think he's talking rubbish, to be honest. To the best of my knowledge, there's no deal between the two countries of that sort. This to me is designed to put the customer off-guard."*

Ofcom noted that in support of its complaint that Mr Preston's comments were unfair to Ultimate Energy, Humphries Kirk provided Ofcom with an article from the BBC's News website entitled "Russia signs gas deal with China" published on 21 March 2006. Ofcom noted that the article referred to the supply of large quantities of gas from Siberia to China. However, in its response to the complaint, the BBC submitted that the agreement reported in the article had eventually come to nothing. It also stated that it had contacted Dr Jonathan Stern, Director of Gas Research at the Oxford Institute of Energy Studies who dismissed the claim of an agreement in the terms described by the secretly recorded Ultimate Energy representative as "nonsense" and that no such agreement existed between the two countries.

Taking the above factors into account, Ofcom considered that in absence of evidence of any substance to support the claim made by the company's representative in the secretly recorded footage that an agreement existed between Russia and China in which Russia would supply China with all the gas it could produce, it was neither inaccurate, nor unfair, for the programme to include Mr Preston's comments that reflected his expert opinion of that claim. Ofcom therefore found no unfairness to Ultimate Energy in this respect.

Having considered that the programme did not portray Ultimate Energy unfairly in relation to points i), ii) iii) and iv) above, Ofcom concluded that the programme as broadcast was not unfair to the company with respect to head a) of the complaint.

- b) Ofcom then considered Humphries Kirks' complaint on behalf of Ultimate Energy that the company was not given an appropriate opportunity to respond to the allegation made in the programme by Mr Preston that house featured was not suitable for solar panels.

In considering this head of complaint, Ofcom had regard to Practice 7.11 of the Code which states that "if a programme alleges wrongdoing or incompetence or

makes other serious allegations, those concerned should normally be given an appropriate and timely opportunity to respond”.

Ofcom noted the comments made by Mr Preston included in the programme and discussed at head a) iii) above.

Ofcom was satisfied that neither the programme nor Mr Preston made the allegation that the house featured in the programme was unsuitable for solar panels. It would have been clear to viewers that Mr Preston, in giving his expert opinion, believed that this particular house would need two solar panels because of its orientation rather than just having one panel.

Ofcom concluded that as this allegation was not made in the programme that the programme makers were under no obligation to provide Ultimate Energy with an opportunity to respond to it. In these circumstances, Ofcom found there to be no unfairness to the company in this regard.

- c) Ofcom then considered the complaint that the programme did not fairly represent Humphries Kirk’s responses on behalf of Ultimate Energy in relation to Mr Preston’s allegations that the system offered to the undercover reporter posing as a potential customer would not pay for itself in its lifetime and that the system featured was very expensive.

In considering this head of complaint, Ofcom had regard to Practice 7.13 of the Code which states that: “where it is appropriate to represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner”.

Ofcom noted the letters to the programme makers dated 31 January 2008 and 8 February 2008 from Humphries Kirk, as discussed at head a) iv) above.

Ofcom also noted how the programme’s commentary summarised Ultimate Energy’s position on the prices it charged for its products:

“Ultimate Energy defend their price, saying that they sell a high quality product.”

Ofcom noted a further response by Humphries Kirk on behalf of Ultimate Energy dated 18 February 2008 in answer to a question put to them by the programme makers concerning the cost of a system for hot water offered by the company. The programme makers’s letter dated 14 February 2008 had stated that experts that they had approached had told them that the price quoted by Ultimate Energy was more than double the market price. Humphries Kirk stated that:

“Our clients [Ultimate Energy] sell a high quality product installed in a high quality manner...after a proper site survey and giving the client larger and better quality equipment than many other suppliers.”

Ofcom again compared the response given by Humphries Kirk and the summary of it given in the programme. It took the view that the programme’s commentary fairly presented the response made on behalf of Ultimate Energy.

Taking these factors into consideration, Ofcom was satisfied that the programme presented the responses made by Humphries Kirk on behalf of Ultimate Energy

fairly in the programme. Ofcom considered, therefore, that there was no unfairness to the company in this regard.

Accordingly, Ofcom has not upheld the complaint made on behalf of Ultimate Energy of unfair treatment in the programme as broadcast.

Other Programmes Not in Breach/Resolved

Up to 2 June 2009

| Programme | Transmission Date | Channel | Category | Number of Complaints |
|------------------------------------------------------|-------------------|--------------------|------------------------------|----------------------|
| 5 Live Breakfast | 12/05/2009 | BBC Radio 5 Live | Generally Accepted Standards | 1 |
| 60 Minute makeover | n/a | ITV | Inaccuracy/Misleading | 1 |
| 90210 | 25/05/2009 | E4 | Commercial References | 1 |
| A Place in the Sun: Home or Away | 15/05/2009 | Channel 4 | Religious Offence | 1 |
| Animal Rescue Squad | 11/05/2009 | Nat Geo Wild | Animal Welfare | 1 |
| BBC News | 21/05/2009 | BBC Radio 2 | Due Impartiality/Bias | 1 |
| Balls of Steel | 13/05/2009 | 4Music | Sex/Nudity | 1 |
| Born Survivor: Bear Grylls | 16/05/2009 | Channel 4 | Animal Welfare | 9 |
| Breakfast | 21/05/2009 | Fresh Radio 1413AM | Due Impartiality/Bias | 1 |
| Britain's Next Top Model | 02/05/2009 | Living | Sex/Nudity | 1 |
| Britney Spears "If U Seek Amy" | 27/04/2009 | Kiss 100 | Offensive Language | 1 |
| Britney Spears "If U Seek Amy" | 07/05/2009 | Cool FM | Offensive Language | 1 |
| Broken Silence | 03/05/2009 | Brit Asia TV | Generally Accepted Standards | 1 |
| Channel 4 on Demand promo | n/a | Channel 4 | Inaccuracy/Misleading | 5 |
| Channel 4 promo | n/a | Channel 4 | Dangerous Behaviour | 1 |
| Channel 4 News | 14/05/2009 | Channel 4 | Due Impartiality/Bias | 1 |
| Charlie Wilson's War | 26/05/2009 | Sky Movies Drama | Offensive Language | 1 |
| Colin and Justin's How Not To Decorate | 22/05/2009 | Five | Religious Offence | 1 |
| Come Dine With Me | 10/05/2009 | Channel 4 | Generally Accepted Standards | 35 |
| Competition | 08/05/2009 | KMFM | Competitions | 1 |
| Conservative Party Election Broadcast | 15/05/2009 | BBC1 | Inaccuracy/Misleading | 1 |
| Cops With Cameras | 11/05/2009 | ITV1 | Due Impartiality/Bias | 1 |
| Coronation Street | 18/05/2009 | ITV1 | Generally Accepted Standards | 1 |
| DM Digital | 10/05/2009 | DM Digital | Other | 1 |
| Dickinson's Real Deal | | ITV1 | Competitions | 1 |
| Dickinson's Real Deal | 28/05/2009 | ITV1 | Use of Premium Rate Numbers | 2 |
| Dispatches: How They Squander our Billions (Trailer) | 06/03/2009 | Channel 4 | Due Impartiality/Bias | 1 |
| Divided | 18/05/2009 | ITV1 | Generally Accepted Standards | 5 |
| Divided | 20/05/2009 | ITV1 | Crime | 1 |

| | | | (incite/encourage) | |
|--------------------------------------------------|------------|-----------------------|------------------------------|---|
| Domino's sponsorship of Britain's Got Talent | n/a | ITV1 | Violence | 1 |
| Domino's sponsorship of Britain's Got Talent | 16/05/2009 | ITV1 | Generally Accepted Standards | 1 |
| Eastenders | 10/04/2009 | BBC1 | Violence | 6 |
| Eastenders | n/a | BBC 1 | Generally Accepted Standards | 1 |
| Eastenders | 21/05/2009 | BBC1 | Generally Accepted Standards | 4 |
| Eastenders | 22/05/2009 | BBC1 | Generally Accepted Standards | 2 |
| Eastenders | 17/05/2009 | BBC1 | Offensive Language | 1 |
| Embarrassing Bodies | 20/05/2009 | Channel 4 | Sex/Nudity | 4 |
| Eurovision Song Contest | 16/05/2009 | BBC1 | Generally Accepted Standards | 6 |
| Formula 1: The Monaco Grand Prix | 24/05/2009 | BBC1 | Offensive Language | 1 |
| GMTV | 25/05/2009 | ITV1 | Inaccuracy/Misleading | 1 |
| GMTV | 14/05/2009 | ITV1 | Generally Accepted Standards | 1 |
| Gok's Fashion Fix | 19/05/2009 | Channel 4 | Generally Accepted Standards | 1 |
| Good Morning Sports Fans | 21/04/2009 | Sky Sports News | Generally Accepted Standards | 8 |
| Have I Got News For You | 24/04/2009 | BBC1 | Other | 1 |
| Hawksbee and Jacobs | n/a | Talksport | Advertising | 1 |
| Heartbeat | 24/05/2009 | ITV1 | Violence | 1 |
| Hilltop Hospital | 13/05/2009 | CITV | Other | 1 |
| Horrible Histories | 21/05/2009 | BBC1 | Generally Accepted Standards | 1 |
| ITV News | 21/05/2009 | ITV1 | Inaccuracy/Misleading | 1 |
| ITV News | 30/05/2009 | ITV1 | Undue Prominence | 1 |
| ITV News | 27/05/2009 | ITV1 | Violence | 1 |
| ITV News | 20/05/2009 | ITV1 | Generally Accepted Standards | 1 |
| ITV News | 19/05/2009 | ITV1 | Generally Accepted Standards | 1 |
| ITV News | 18/05/2009 | ITV1 | Due Impartiality/Bias | 1 |
| Ian Collins | 22/05/2009 | Talksport | Due Impartiality/Bias | 1 |
| Inspector George Gently | 03/05/2009 | BBC1 | Generally Accepted Standards | 1 |
| JoAnne Good and Paul Ross | 11/05/2009 | BBC Radio London 94.9 | Offensive Language | 1 |
| Justice League | 10/04/2009 | CITV | Violence | 1 |
| Kanye West - "Happiness" | 13/02/2009 | The Box | Substance Abuse | 1 |
| Katie & Peter: Stateside | 14/05/2009 | ITV2 | U18's in Programmes | 1 |
| Kinder Bueno sponsorship of Desperate Housewives | n/a | Channel 4 | Generally Accepted Standards | 1 |
| Lily Allen "Not Fair" | n/a | Leicester Sound | Generally Accepted Standards | 1 |
| Little Lodgers | 26/05/2009 | Five | Generally Accepted Standards | 1 |

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|-------------------------------------------------|------------|------------------|------------------------------|---|
| Live FA Cup Final | 30/05/2009 | ITV1 | Other | 2 |
| Live at Home | 11/03/2009 | Friendly TV | Use of Premium Rate Numbers | 1 |
| Live at the Apollo | 23/05/2009 | BBC Three | Generally Accepted Standards | 1 |
| Local news provision | n/a | Dune FM 107.9 | Regionality | 1 |
| Monty Halls' Great Escape | 04/04/2009 | BBC2 | Violence | 1 |
| Mum's Gone Gay | 22/05/2009 | Channel 4 | Generally Accepted Standards | 1 |
| Murder, She Wrote | 26/05/2009 | BBC1 | Offensive Language | 1 |
| My Crazy Media Life | 21/05/2009 | Channel 4 | Sex/Nudity | 1 |
| My Weapon is a Dog | 21/05/2009 | BBC Three | Crime (incite/encourage) | 2 |
| My Weapon is a Dog | 21/05/2009 | BBC Three | Animal Welfare | 1 |
| News at Ten | 29/05/2009 | ITV1 | Undue Prominence | 1 |
| Nicky Campbell | 14/05/2009 | BBC Radio 5 Live | Inaccuracy/Misleading | 1 |
| Northern Ireland v Poland | 28/03/2009 | Sky Sports 1 | Generally Accepted Standards | 5 |
| Nuzzle & Scratch | 11/05/2009 | CBeebies | Other | 1 |
| Pets Undercover: Tonight | 16/03/2009 | ITV1 | Generally Accepted Standards | 1 |
| Playing the Part | 21/05/2009 | BBC1 | Generally Accepted Standards | 1 |
| Police Stop! | 20/05/2009 | ITV4 | Dangerous Behaviour | 1 |
| Prime Suspect | 21/05/2009 | ITV3 | Advertising | 1 |
| Question Time | 21/05/2009 | BBC1 | Inaccuracy/Misleading | 1 |
| Quiz Call | 17/04/2009 | Five | Inaccuracy/Misleading | 1 |
| Quiz Call | n/a | Five | Inaccuracy/Misleading | 1 |
| STV News at Six | 05/05/2009 | STV | Due Impartiality/Bias | 1 |
| Saturday Kitchen | 23/05/2009 | BBC1 | Offensive Language | 1 |
| Shameless | 28/04/2009 | C4 | Inaccuracy/Misleading | 1 |
| Shameless | 12/05/2009 | C4 | Crime (incite/encourage) | 1 |
| Sky News | 14/05/2009 | Sky News | Offensive Language | 1 |
| Sky News | 09/05/2009 | Sky News | Due Impartiality/Bias | 1 |
| Skye at night | 05/05/2009 | 96.3 Radio Aire | Generally Accepted Standards | 1 |
| South Park (trailer) | 08/05/2009 | Comedy Central | Generally Accepted Standards | 1 |
| Standard Life sponsorship of Islands of Britain | 17/05/2009 | ITV1 | Generally Accepted Standards | 1 |
| Taggart (trailer) | 04/05/2009 | ITV1 | Violence | 1 |
| Terminator 3: Rise of the Machines (Trailer) | 25/05/2009 | Five | Violence | 1 |
| Testees (trailer) | n/a | FX | Sex/Nudity | 1 |
| The Apprentice | 13/05/2009 | BBC1 | Generally Accepted Standards | 1 |
| The Big Questions | 24/05/2009 | BBC1 | Generally Accepted Standards | 1 |
| The Jeremy Kyle Show | 07/05/2009 | ITV1 | Generally Accepted Standards | 1 |
| The Jerry Springer Show | n/a | Living | Sex/Nudity | 1 |

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|---------------------------|------------|---------------------|------------------------------|---|
| The News Quiz | 15/05/2009 | BBC Radio 4 | Religious Offence | 3 |
| The News Quiz | 16/05/2009 | BBC Radio 4 | Religious Offence | 1 |
| The Owl | 23/05/2009 | BBC2 | Dangerous Behaviour | 1 |
| The Paul O'Grady Show | 19/05/2009 | Channel 4 | Sex/Nudity | 1 |
| The Real Hustle Las Vegas | 19/05/2009 | BBC Three | Crime (incite/encourage) | 1 |
| The Secret Millionaire | 24/05/2009 | Channel 4 | Commercial References | 1 |
| The Simpsons | 15/05/2009 | Channel 4 | Violence | 1 |
| The Simpsons | 19/05/2009 | Channel 4 | Violence | 3 |
| This Morning | 21/05/2009 | ITV1 | Generally Accepted Standards | 9 |
| This Morning | 22/05/2009 | ITV1 | Sex/Nudity | 1 |
| Top Gear | 20/05/2009 | Dave | Generally Accepted Standards | 1 |
| Velichcham | 25/11/2008 | Global Tamil Vision | Due Impartiality/Bias | 1 |
| Waterloo Road | 13/05/2009 | BBC1 | Offensive Language | 1 |