

# **Ofcom Broadcast Bulletin**

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## Introduction

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

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

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

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

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

It is Ofcom's policy to describe fully the content in television and radio programmes that is subject to broadcast investigations. Some of the language and descriptions used in Ofcom's Broadcast Bulletin may therefore cause offence.

## Standards cases

### In Breach

#### **Bang Babes**

*Tease Me 3, 30/31 October 2009, 23:20 to 00:20*

*Tease Me 3, 7 November 2009, 21:45 to 22:30*

*Tease Me, 13/14 November 2009, 23:45 to 00:30*

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#### **Introduction**

*Bang Babes* is an adult sex chat service, owned and operated by Bang Channels Limited, and available freely without mandatory restricted access on the channels *Tease Me* and *Tease Me 3* (Sky channel numbers 912 and 959). Both channels are situated in the 'adult' section of the Sky electronic programme guide ("EPG"). These channels broadcast programmes after the 21:00 watershed based on interactive 'adult' sex chat services: viewers are invited to contact onscreen female presenters via premium rate telephony services ("PRS"). The female presenters dress and behave in a sexually provocative way while encouraging viewers to contact the PRS numbers.

#### *Bang Babes, Tease Me 3, 30/31 October 2009, 23:20 to 00:20*

The complainant said the content included in the programme was too sexually explicit to be available without mandatory restricted access.

Ofcom noted that the broadcast contained a range of sexual material broadcast without mandatory restricted access. Between 23:20 and 00:20 the broadcast featured a female presenter wearing a purple thong and no top. At various times during the broadcast the presenter adopted various sexual positions, including lying on her back with her legs wide open to camera and also kneeling on all fours with her buttocks to camera. While doing so the presenter repeatedly carried out a number of sexual acts, for example, she: simulated masturbation in a realistic way by touching and rubbing her thong against her genital and anal area; spat saliva over her genital area; and rubbed saliva and lotion over her genital area. She also repeatedly showed anal and genital detail.

#### *Bang Babes, Tease Me 3, 7 November 2009, 21:45 to 22:30*

The complainant here was concerned that the presenter was wearing inadequate underwear which resulted in images of her anus being shown.

Ofcom noted that the broadcast contained a range of strong sexual material. It featured a presenter wearing a skimpy pink thong and bikini top. The presenter adopted various sexual positions, including kneeling on all fours with her buttocks to camera and lying on her back facing the camera with her legs spread wide apart. While in these positions the presenter thrust her bottom in a sexual manner for prolonged periods of time as though miming sexual intercourse. She also repeatedly touched and rubbed her genital and anal area.

#### *Bang Babes, Tease Me, 13/14 November 2009, 23:45 to 00:30*

The complainant was concerned that the broadcast included prolonged graphic and intrusive images of vaginal and anal detail, and of simulated masturbation.

Ofcom noted that the broadcast featured a presenter wearing a black thong and black stockings. Her top was pulled down to reveal her breasts. During the broadcast she adopted various sexual positions, including kneeling on all fours with her buttocks to camera and lying on her back with her legs spread wide apart. While doing so the presenter repeatedly: showed her anal and genital area; spat on her fingers and rubbed saliva around her anal and genital area; opened her legs to show genital detail while simulating masturbation in a realistic way – vigorously rubbing saliva on her genital area and rubbing her thong against her genitals; and spat over her breasts.

Promotion of the [www.bangbabes.tv](http://www.bangbabes.tv) website address – for all broadcasts

In addition, after viewing the content complained of Ofcom noted that during all three broadcasts the website ‘[www.bangbabes.tv](http://www.bangbabes.tv)’ was promoted. When accessed by Ofcom this website featured images of a strong sexual nature equivalent to BBFC R18-rated material (“R18-rated equivalent material”) which could be readily viewed without appropriate protections. Although this R18-rated equivalent material was not broadcast on-air, Ofcom was concerned that it appeared on a website being promoted on Ofcom licensed services freely available without mandatory restricted access from 21:00.

Relevant Code rules

Ofcom requested comments from Bang Channels Limited (“Bang Channels” or “the Licensee”) – which holds the licences for and complies the Tease Me channels – in relation to the following:

Tease Me 3, 30/31 October 2009, 23:20 to 00:20

- Rule 1.24<sup>1</sup> (‘adult-sex’ material is restricted to overnight services with mandatory restricted access);
- Rule 2.1 (generally accepted standards); and
- Rule 2.3 (material which may cause offence must be justified by context) of the Code.

Tease Me 3, 7 November 2009, 21:45 to 22:30

- Rule 2.1; and
- Rule 2.3.

Tease Me, 13/14 November 2009, 23:45 to 00:30

- Rule 1.24;
- Rule 2.1; and
- Rule 2.3.

Ofcom sought comments in respect of the strong sexual nature of some of the content; and the promotion of a website featuring unrestricted R18-rated equivalent material.

**Response**

In relation to each broadcast the Licensee stated the following comments:

Bang Babes, Tease Me 3, 30/31 October 2009, 23:20 to 00:20

The Licensee stated that it did not consider the material broadcast constituted ‘adult-

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<sup>1</sup> Please note that on 16 December 2009, a revised version of the Code was issued. For programmes broadcast on or after 16 December 2009, Rule 1.18 is relevant.

sex' material and therefore was not in breach of Rule 1.24. With regard to Rules 2.1 and 2.3, it said that the material was broadcast post watershed on a clearly sign-posted 'adult' channel in the 'adult' section of the EPG. It stated that an infomercial was broadcast at 21:00 (as it is every night) before the Bang Babes programming started, advising viewers that the upcoming programming was adult in nature and providing instructions on how to manually restrict the channel if viewers did not wish to see it in future. It therefore considered that potential viewers were given adequate warning as to the nature of the broadcast.

Bang Channels stated that the transmission took place post watershed on an 'adult' TV channel and most reasonable viewers would expect to see behaviour of a sexual nature. It said that it did not believe the presenter's actions were offensive and that she did not simulate sex acts, but "merely behaved in a sexual manner, which was consistent with the context of the broadcast".

*Bang Babes, Tease Me 3, 7 November 2009, 21:45 to 22:30<sup>2</sup>*

With regard to Rules 2.1 and 2.3 the Licensee stated that it did regret the proximity of the broadcast to the watershed. It said that, in response to this complaint, all of its production team and presenters have been reminded of the importance of observing the watershed and that they should take care not to broadcast stronger material too close to the watershed.

However, Bang Channels stated that it did not believe this material exceeded generally accepted standards. It stated that an infomercial was broadcast at 21:00 (as it is every night) before the Bang Babes programming started, advising viewers that the upcoming programming was adult in nature (see above). It stated that it did not consider the content offensive, given the context of the broadcast. It did not accept that the presenter simulated masturbation, but "merely behaved in a sexual manner, which was consistent with the context of the broadcast".

*Bang Babes, Tease Me, 13/14 November 2009, 23:45 to 00:30*

With regard to Rule 1.24, the Licensee said that it did not consider the content broadcast to be 'adult-sex' material and therefore it did not "have a case to answer".

With reference to Rules 2.1 and 2.3, it did not accept that the material exceeded generally accepted standards. It said that the content was broadcast well after the watershed on an 'adult' TV channel in the 'adult' section of the EPG. It stated with regard to this broadcast too that an infomercial was broadcast at 21:00 (as it is every night) before the Bang Babes programming started (see above).

As with the broadcast of 7 November 2009, Bang Channels stated that it did not believe the transmission was offensive, given the context of the broadcast, and did not accept that the presenter simulated masturbation.

*Promotion of the www.bangbabes.tv website address – for all broadcasts*

With regard the promotion of the website www.bangbabes.tv for all three broadcasts, the broadcaster accepted that the website contained R18-rated equivalent material. It stated that the material in question was advertising a third party website and it was

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<sup>2</sup> The broadcaster was only asked to comment on Rules 2.1 and 2.3 for this broadcast.

not aware of the kind of material the third party provider would be advertising when they sold them the advertising space. It said that as soon as the material was bought to its attention it removed the material and ordered a complete review of all of its websites. The broadcaster continued that it was “disappointing” that Ofcom did not bring this to matter to its attention sooner so that it could have acted to remove the material faster.

## Decision

Ofcom has a duty to ensure that *generally accepted standards* are applied to the content of radio and television services so as to provide adequate protection from the inclusion of harmful or offensive material. In relation to generally accepted standards, including those in relation to sexual material, Ofcom recognises that what is and is not generally accepted is subject to change over time. When deciding whether or not particular broadcast content is likely to fall within generally accepted standards, it is necessary to assess the character of the content itself and the context in which it is provided.

In relation to the broadcast of material of a sexual nature this normally involves assessing the strength or explicitness of the content and balancing it against the particular editorial or contextual justification for broadcasting the content. Ofcom seeks to ensure that material of a sexual nature, when broadcast, is editorially justified, appropriately scheduled and where necessary access is restricted to adults.

Broadcasters are allowed to broadcast after the watershed (and without other access restrictions) material which of a strong sexual nature as long as it is justified by the context. However, this material must not be considered to be adult sex material (i.e. it is not strong sexual images which are broadcast for the primary purpose of sexual arousal or stimulation).

Rule 1.24 of the Code requires ‘adult-sex’ material to be broadcast only between 22:00 and 05:30, and then only if mandatory restricted access is in place. Through a series of published findings, and published decisions of the Content Sanctions Committee, Ofcom has made clear what constitutes ‘adult-sex’ material<sup>3</sup>.

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<sup>3</sup> For example:

- Sanctions decision against Square 1 Management Limited concerning its channel Smile TV, dated 10 July 2008, [http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/SmileTV.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/SmileTV.pdf);
- Breach Finding on SportxxxBabes, Ofcom Broadcast Bulletin 115, dated 11 August 2008; [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb115/](http://www.ofcom.org.uk/tv/obb/prog_cb/obb115/);
- Breach Finding on SportxxxBabes, Ofcom Broadcast Bulletin 119, dated 13 October 2008; [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb119/](http://www.ofcom.org.uk/tv/obb/prog_cb/obb119/);
- Sanctions decision against Satellite Entertainment Limited concerning its channel SportxxxBabes, dated 26 August 2008, [http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/sportxxxbabes.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/sportxxxbabes.pdf);
- Sanctions decision against Satellite Entertainment Limited concerning its channel SportxxxBabes, dated 26 August 2008, [http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/sportxxxbabes.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/sportxxxbabes.pdf);
- Sanction decision against Playboy TV UK/Benelux Limited concerning its channel Playboy One, dated 2 April 2009, [http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/playboytv.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/playboytv.pdf);
- Breach Finding on Playboy One, Broadcast Bulletin 134, [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb134/](http://www.ofcom.org.uk/tv/obb/prog_cb/obb134/); and
- Breach Finding on Live 960, Broadcast Bulletin 149, [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb149/](http://www.ofcom.org.uk/tv/obb/prog_cb/obb149/).

In considering the contents of each of these programmes Ofcom asked itself two questions:

- was the content of the programme 'adult-sex' material (as regards 30/31 October and 13/14 November 2009 broadcasts); and,
- did the broadcaster take appropriate steps to ensure that the content was provided with sufficient contextual justification so as to ensure that it fell within generally accepted standards.

Bang Babes, Tease Me 3, 30/31 October 2009, 23:20 to 00:20  
Bang Babes, Tease Me, 13/14 November 2009, 23:45 to 00:30

Ofcom considered the above broadcasts together in respect of Rules 1.24, 2.1 and 2.3 of the Code. Ofcom notes that both broadcasts complained of featured the same presenter.

In relation to Rule 1.24, Ofcom examined the content of these broadcasts and considered that it was of a very strong sexual nature and on some occasions contained explicit images of genital and anal detail. For example during these broadcasts the presenter was shown apparently performing masturbation on herself (spitting on her fingers and vigorously rubbing saliva on her genital area and rubbing her thong against her genital and anal area). In Ofcom's opinion, a viewer could reasonably have perceived these sexual acts as real. The presenter was also shown pulling her buttocks apart to reveal her anus and extensive labial detail. Ofcom took account of the fact that the sequences were several minutes each in duration, and in some cases, were repeated. In Ofcom's view, the primary purpose of broadcasting this material was clearly sexual arousal. Further given the above, the material was, in Ofcom's view, of a strong sexual nature. Having assessed the programmes' content and purpose, Ofcom considered that the material broadcast constituted 'adult-sex' material. Its broadcast, without mandatory restricted access, was therefore in breach of Rule 1.24.

Ofcom is concerned that the Licensee considers material, such as genital detail and simulated masturbation in a sexual context such as this, to be acceptable for broadcast without mandatory restricted access.

These broadcasts were therefore in breach of Rule 1.24 of the Code.

Ofcom then went on to consider whether the broadcasts were also in breach of Rules 2.1 and 2.3 of the Code. In light of Ofcom's view that this material constituted 'adult-sex' material and was therefore unsuitable for broadcast without mandatory restricted access, the broadcasts were clearly capable of causing offence. Ofcom therefore examined the extent to which there were any particular editorial or contextual factors that might have limited the potential for offence. Ofcom noted that the programmes were broadcast a considerable time after the watershed, that viewers tend to expect stronger sexual material to be shown later at night, and that they were preceded at around 21:00 by some information giving advice to viewers. Ofcom also took account of the fact that the channels were positioned in the 'adult' section of the EPG and that viewers tend to expect the broadcast of stronger sexual material on channels in this section of the EPG than would be expected to be included on other channels.

However, in this case, given the prolonged and frequent scenes of a strong sexual nature and the inclusion of graphic images of genital and anal detail (provided for the purpose of sexual arousal), the time of broadcast and location of the channels were not sufficient to justify the broadcast of the material. The material shown was of a

nature that it would have exceeded the likely expectation of the vast majority of the audience. Ofcom concluded that this content was clearly not justified by the context and was in breach of generally accepted standards.

These broadcasts were also therefore in breach of Rules 2.1 and 2.3 of the Code.

*Bang Babes, Tease Me 3, 7 November 2009, 21:45 to 22:30*

Ofcom considered this broadcast in respect of Rules 2.1 and 2.3 of the Code.

In terms of the content of this broadcast, Ofcom considered these sexual images to be strong and capable of causing offence. On a number of occasions the presenter positioned herself in front of the camera with her legs wide apart for prolonged periods of time. Given the thong the presenter was wearing and the close up nature of some shots, there were occasions when her anus and labial area were shown in detail. The presenter also appeared to simulate masturbation at various points in the broadcast, as she was seen rubbing her anal and vaginal area in a sexual manner.

Ofcom therefore examined the extent to which there were any particular editorial or contextual factors that might have limited the potential for offence. Ofcom noted that the programme was broadcast some (but not a long time) after the watershed and that viewers tend to expect stronger sexual material to be shown later at night. Ofcom also took account of the fact that the channel was positioned in the 'adult' section of the Sky EPG and that viewers tend to expect the broadcast of stronger sexual material on channels in this section of the EPG than would be expected to be included on other channels.

The Licensee's response regretted that this material was shown so close to the watershed but denied that it breached generally accepted standards.

However, in this case, given the prolonged and frequent scenes of a sexual nature and the inclusion of images of genital and anal detail (provided for the purpose of sexual arousal) the time of broadcast and location of the channel were not sufficient to justify the broadcast of the material<sup>4</sup>. The material shown was so strongly sexual

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<sup>4</sup> Ofcom has repeatedly made clear that factors such as a channel being in the 'adult' section of the EPG and the content being broadcast after the watershed do not justify the broadcast of inappropriately strong sexual material. See for example:

- Breach Findings for Sex Station 'Lucky Star', and House of Fun Broadcast Bulletin 115 [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb115/](http://www.ofcom.org.uk/tv/obb/prog_cb/obb115/);
- Breach Finding on SportxxxBabes, Broadcast Bulletin 119, dated 13 October 2008; [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb119/](http://www.ofcom.org.uk/tv/obb/prog_cb/obb119/);
- Sanctions decision against Satellite Entertainment Limited concerning its channel SportxxxBabes, dated 26 August 2008, paragraphs 4.2, 8.3 and 8.11, [http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/sportxxxbabes.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/sportxxxbabes.pdf);
- Sanctions decision against Square 1 Management Limited concerning its channel Smile TV, dated 10 July 2008, paragraph 1.4, [http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/SmileTV.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/SmileTV.pdf);
- Sanctions decision against Connection Makers Limited dated 30 November 2007, paragraph 1.4, [http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/babeworld.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/babeworld.pdf);
- Breach Findings for Tease Me and Note to Daytime and Adult Sex Chat Service Broadcasters, Broadcast Bulletin 137, 6 July 2009, [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb137/Issue137.pdf](http://www.ofcom.org.uk/tv/obb/prog_cb/obb137/Issue137.pdf);
- Breach Finding for Adult Previews Channel, Virgin Media, Broadcast Bulletin 139, [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb139/](http://www.ofcom.org.uk/tv/obb/prog_cb/obb139/);
- Breach Finding for Tease Me and Tease Me 3, Broadcast Bulletin 144, [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb144/](http://www.ofcom.org.uk/tv/obb/prog_cb/obb144/); Breach Finding for Babeworld TV, Broadcast Bulletin 145, [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb145/](http://www.ofcom.org.uk/tv/obb/prog_cb/obb145/);

that it would have exceeded the likely expectation of the vast majority of the audience watching a channel without mandatory restricted access at this time. Ofcom was also concerned by the degree of offence likely to be caused to viewers who might come across this material unawares.

Ofcom notes the regret expressed by Bang Channels regarding the proximity of the broadcast to the watershed and the compliance measures it has taken in response to this. However, Ofcom concluded that this content was not justified by the context, breached generally accepted standards and so contravened Rules 2.1 and 2.3.

Rules 2.1 and 2.3 of the Code were therefore breached.

#### Promotion of the [www.bangbabes.tv](http://www.bangbabes.tv) website address – for all broadcasts

The content of websites is not broadcast material, and therefore not subject to the requirements of the Code. However, any promotional references to websites made on air are broadcast content. Ofcom therefore has the duty and the power to regulate such references under the Communications Act 2003. Ofcom licensed services should in no circumstances promote ‘adult’ websites which provide unrestricted R18-rated equivalent material if such material can be accessed without appropriate restrictions in place. Ofcom is able to request that references to such websites are removed.

On the day that Ofcom was made aware of the broadcast promotions to the [www.bangbabes.tv](http://www.bangbabes.tv) website, and that it contained R18-rated equivalent material, it immediately spoke to the broadcaster to ask it to remove the website link from all future programming.

Code Rules 2.1 and 2.3 apply to promotional references to websites made on air because they are broadcast content. The issue in this case was whether the website was suitable to be promoted on a licensed television service and so complied with these rules. When accessed – merely by clicking a button to confirm that the user was over 18 – the [www.bangbabes.tv](http://www.bangbabes.tv) website contained clips of R18-rated equivalent material. This included video images of a woman performing oral sex on two men. This website did not require prior registration to view and its promotion on television was therefore of serious concern to Ofcom. The promotional references to the [www.bangbabes.tv](http://www.bangbabes.tv) website on air therefore breached generally accepted standards. They were offensive because of the unprotected and explicit sexual material they led to and were not in Ofcom’s opinion justified by the context, such as only being broadcast after 21:00 on a service in the ‘adult’ section of the Sky EPG. Ofcom therefore concluded that the promotional references to the website as broadcast on the three programmes were in breach of Rules 2.1 and 2.3 of the Code.

Ofcom notes the broadcaster’s response that it was “disappointing” that Ofcom did not bring this to matter to its attention sooner so that it could have acted to remove the material quicker. As stated above, Ofcom immediately spoke to the broadcaster after becoming aware that it was broadcasting a promotion for its website which contained R18-rated equivalent material. Ofcom reminds all broadcasters that it is the responsibility of the Licensee to ensure on an ongoing basis that all broadcast output meets the requirements of the Code.

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• Breach Finding for Live 960, Broadcast Bulletin 149,  
[http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb149/](http://www.ofcom.org.uk/tv/obb/prog_cb/obb149/).

Ofcom has notified the Licensee that it is considering these contraventions of the Code for statutory sanction in light of their seriousness and/or repeated nature.

Please see the Note on page 22 of this Bulletin about Bang Media and Bang Channels.

***Bang Babes, Tease Me 3, 30/31 October 2009, 23:20 to 00:20: Breach of Rules 1.24, 2.1 and 2.3***

***Bang Babes, Tease Me 3, 7 November 2009, 21:45 to 22:30: Breach of Rules 2.1 and 2.3***

***Bang Babes, Tease Me, 13/14 November 2009, 23:45 to 00:30: Breach of Rules 1.24, 2.1 and 2.3***

## In Breach

### The Pad

*Tease Me 3, 20 August 2009, 12:00*

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#### Introduction

*The Pad* is a televised daytime interactive chat programme broadcast without mandatory restricted access. It is broadcast on Tease Me 3, which is located in the 'adult' section of the Sky Electronic Programme Guide ("EPG") on channel number 959. Tease Me 3 is owned and operated by Bang Channels Limited ("Bang Channels" or "the Licensee"). Viewers are invited to contact onscreen female presenters via premium rate telephony services ("PRS"). The presenters generally dress and behave in a provocative and/or flirtatious manner.

Ofcom received a complaint about material broadcast during *The Pad* on 20 August 2009 at 12:00, which the complainant suggested was too sexually strong for transmission at this time. Ofcom noted that the programme featured a presenter wearing: a skimpy halter neck top, black pants, fish net stockings, suspenders and stilettos. During the broadcast the presenter adopted various positions for relatively prolonged periods of time, including kneeling on all fours, and lying on her front. While in these positions the presenter repeatedly stroked her thighs and breasts, and thrust her hips as though miming intercourse. The presenter also positioned her buttocks to camera and spanked herself lightly. Her nipples were briefly visible on several occasions.

Ofcom asked the Licensee for comments under Rule 1.3 (children must be protected from unsuitable material by appropriate scheduling).

#### Response

The broadcaster said that it did not believe the actions, behaviour or dress of the presenter breached the Code. It said that the material was no different to material broadcast on more mainstream channels, for example music videos. It continued that the presenter did not reveal sexual body parts, say anything sexual or simulate sex and/or sex acts. It also stated that the material was consistent with other channels broadcasting similar content at this time of day.

With regard to Rule 1.3, the broadcaster said that the material was not aimed at children and would not appeal to children, especially younger children. It stated that the nature of the channel and the position of the channel within the adult section of the EPG amounted to appropriate scheduling as it minimised the risk of children coming across it unawares. It stated that it was highly unlikely that children might have been watching at the time and said that even if this was the case the material was not strong enough to cause harm.

#### Decision

Rule 1.3 makes clear that children should be protected from material which is unsuitable for them by appropriate scheduling. Appropriate scheduling is judged according to factors such as the nature of the content, the nature of the channel and the time of broadcast.

The behaviour of presenters for daytime chat services should not at any time appear to mimic or simulate sexual acts before the watershed. In this case, the female presenter, dressed in skimpy clothing, clearly adopted various sexual positions for relatively prolonged periods of time, including kneeling on all fours and kneeling with her legs open to camera (while the camera moved up and down over the front of her body), while thrusting her groin in a sexual manner as though miming sexual intercourse. During this time she also stroked her thighs and buttocks on occasions with the camera moving up and down over her body. In Ofcom's opinion the sexual imagery shown to viewers had no editorial context other than sexual stimulation. It was therefore not editorially justified. In Ofcom's view the repeated actions and sexual positions of the presenter were intended to be sexually provocative in nature. In light of this behaviour, together with its lack of editorial justification, in Ofcom's view this material was clearly unsuitable for transmission before the 21:00 watershed.

In addition, the presenter was dressed in an item of clothing that was very revealing to the point where her breasts were barely covered. This meant that when adopting certain positions, such as lying on her front and bending over, the presenter's nipples were shown to viewers at various times during the broadcast. Such images of nudity are not necessarily unsuitable before the watershed. This depends on all the circumstances and the context of the material. In this case, in Ofcom's opinion, the combination of the presenter's sexual positions with nudity is unsuitable before the watershed.

Given the sexual nature of the content, the location of the channel in the 'adult' section of the EPG and its scheduling at 12:00 were not sufficient to provide adequate protection to prevent children from viewing this material. This unsuitable content was not appropriately scheduled. Ofcom has repeatedly made clear that the location of a channel, without mandatory restricted access, in the 'adult' section of the Sky EPG does not in itself provide adequate protection to under-eighteens from inappropriate material<sup>1</sup>. Therefore the material breached Rule 1.3

Ofcom has notified the Licensee that it is considering these contraventions of the Code for statutory sanction in light of their seriousness and/or repeated nature.

Please see the Note on page 22 of this Bulletin about Bang Media and Bang Channels.

### **Breach of Rule 1.3**

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<sup>1</sup> Bang Babes 'Tease Me' Finding, The Pad 'Tease Me 2' Finding and Note to Daytime and Adult Sex Chat Service Broadcasters in Bulletin 137 at [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb137/](http://www.ofcom.org.uk/tv/obb/prog_cb/obb137/); Freeview promotions for Playboy in Bulletin 139 at [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb139/Issue139.pdf](http://www.ofcom.org.uk/tv/obb/prog_cb/obb139/Issue139.pdf), Bang Babes 'Tease Me 2' in Bulletin 120 at [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb120/](http://www.ofcom.org.uk/tv/obb/prog_cb/obb120/).

## In Breach

### The Pad

*Tease Me, 6 November 2009, 12:00 to 13:00 and 14:00 to 15:00*

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#### Introduction

*The Pad* is a televised daytime interactive chat programme broadcast without mandatory restricted access. It is broadcast on the Tease Me channel, which is located in the 'adult' section of the Sky Electronic Programme Guide ("EPG") on channel number 912. Tease Me is owned and operated by Bang Channels Limited ("Bang Channels" or "the Licensee"). Viewers are invited to contact onscreen female presenters via premium rate telephony services ("PRS"). The presenters generally dress and behave in a provocative and/or flirtatious manner.

Ofcom received complaints about material broadcast during *The Pad* on 6 November 2009 between 12:00 and 13:00, and 14:00 and 15:00. The complainant suggested that the material broadcast was too strong for transmission at these times. Ofcom viewed the material and noted that both broadcasts featured the same presenter. On both occasions she was wearing skimpy black PVC knickers and a skimpy "boob tube" top with 'Playmate' written on it. During both broadcasts she was shown lying on her back with her legs wide open for prolonged periods of time. While doing so she repeatedly gyrated and thrust her pelvis as though miming intercourse. While in this position the presenter also stroked her stomach and pulled down the side of her knickers in a sexually provocative manner. The presenter also lay on her front during the programmes for prolonged periods of time. While in this position she pulled down her knickers to reveal the top of her bottom, and also raised her bottom in the air and repeatedly gyrated her pelvis in a sexual manner.

Ofcom asked the Licensee for comments under Rule 1.3 (children must be protected from unsuitable material by appropriate scheduling).

#### Response

The Licensee said that Tease Me TV is transmitted in the 'adult' section of the EPG. It stated that it is therefore clearly sign posted as an adult channel and as such is unsuitable to view by children at any time of day, even though the daytime content is non-'adult' in nature.

Bang Channels continued that the 'adult' section of the EPG does not sit beside any genres of interest to children and has easy to use parental controls. The broadcaster stated that in light of this it believes the material was appropriately scheduled.

The broadcaster stated that Ofcom's own research<sup>1</sup> indicates that the majority of people believe that responsibility for the protection of the under-eighteens lies as much with the parent as the broadcaster. The Licensee continued that it considered the safeguards in place were more than sufficient to prevent children viewing the channel and that at this point responsibility should pass to the parent. It therefore stated that the material did not result in a breach of Rule 1.3.

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<sup>1</sup> "Attitudes towards sexual material on television", published June 2009, [http://www.ofcom.org.uk/advice/media\\_literacy/medlitpub/medlitpubrss/uk\\_childrens\\_ml/full\\_report.pdf](http://www.ofcom.org.uk/advice/media_literacy/medlitpub/medlitpubrss/uk_childrens_ml/full_report.pdf)

## Decision

Rule 1.3 makes clear that children should be protected from material which is unsuitable for them by appropriate scheduling. Appropriate scheduling is judged according to factors such as the nature of the content, the nature of the channel and the time of broadcast.

Ofcom has made clear in previous published decisions what sort of material is unsuitable to be included in daytime interactive chat programmes. These decisions were summarised in a guidance letter sent by Ofcom to daytime and adult sex chat broadcasters in August 2009, and have been clarified subsequently by further findings<sup>2</sup>.

In the context of daytime interactive chat programmes where the presenters generally dress and behave in a provocative and/or flirtatious manner for extended periods in order to solicit PRS calls, the presenters should not for example appear to mimic or simulate sexual acts. During these particular broadcasts the female presenter dressed in skimpy clothing adopted various sexual positions for prolonged periods of time. The content included her lying on her back with her legs wide open while she repeatedly gyrated and thrust her pelvis as though miming intercourse, while stroking her body in a sexually provocative manner. In Ofcom's opinion the sexual imagery shown to viewers had no editorial context other than sexual stimulation. It was therefore not editorially justified. In Ofcom's view the repeated actions and sexual positions of the presenter were intended to be sexually provocative in nature. In light of this behaviour, together with its lack of editorial justification, in Ofcom's view this material was clearly unsuitable for children.

Given the sexual nature of the content, the location of the channel in the 'adult' section of the EPG and its scheduling between 12:00 and 15:00 were not sufficient to provide adequate protection to prevent children from viewing this material. Ofcom notes that the research, "Attitudes towards sexual material on television", published in June 2009, found that participants did accept that parents have a responsibility for their children's viewing. This responsibility is underlined by the fact that it is possible for parents to activate PIN controls on certain channels to restrict children's viewing. However, Ofcom also notes that other later research shows that only "around one in three households with a multichannel television service have set these [access] controls (34%)"<sup>3</sup>. Ofcom therefore does not consider that the existence of parental controls offers enough protection to under-eighteens from viewing unsuitable material of this nature.

In addition, Ofcom has repeatedly made clear that the location of a channel in the 'adult' section of the Sky EPG, available without mandatory restricted access, does not in itself provide adequate protection to under-eighteens from inappropriate

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<sup>2</sup> Elite Days Finding in Bulletin 144 at [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb144/](http://www.ofcom.org.uk/tv/obb/prog_cb/obb144/); Top Shelf TV Finding in Bulletin 149 at [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb149/](http://www.ofcom.org.uk/tv/obb/prog_cb/obb149/); and Elite Days finding in Bulletin 151 at [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb151/Issue151.pdf](http://www.ofcom.org.uk/tv/obb/prog_cb/obb151/Issue151.pdf)

<sup>3</sup> UK children's media literacy at: [http://www.ofcom.org.uk/advice/media\\_literacy/medlitpub/medlitpubrss/uk\\_childrens\\_ml/full\\_report.pdf](http://www.ofcom.org.uk/advice/media_literacy/medlitpub/medlitpubrss/uk_childrens_ml/full_report.pdf)

material shown on daytime chat channels<sup>4</sup>. Therefore this unsuitable content was not appropriately scheduled.

Therefore the material breached Rule 1.3.

Ofcom has notified the Licensee that it is considering these contraventions of the Code for statutory sanction in light of their seriousness and/or repeated nature.

Please see the Note on page 22 of this Bulletin about Bang Media and Bang Channels.

### **Breach of Rule 1.3**

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<sup>4</sup> Bang Babes 'Tease Me 2' in Bulletin 120 at [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb120/](http://www.ofcom.org.uk/tv/obb/prog_cb/obb120/); Bang Babes 'Tease Me' Finding, The Pad 'Tease Me 2' Finding and Note to Daytime and Adult Sex Chat Service Broadcasters in Bulletin 137 at [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb137/](http://www.ofcom.org.uk/tv/obb/prog_cb/obb137/); Freeview promotions for Playboy in Bulletin 139 at [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb139/Issue139.pdf](http://www.ofcom.org.uk/tv/obb/prog_cb/obb139/Issue139.pdf); Bang Babes 'Tease Me' and 'Tease Me 3' Finding and Elite Days Finding in Bulletin 144 at [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb144/Issue144.pdf](http://www.ofcom.org.uk/tv/obb/prog_cb/obb144/Issue144.pdf); Babeworld TV Finding in Bulletin 145 at [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb145/](http://www.ofcom.org.uk/tv/obb/prog_cb/obb145/); Live 960 Finding in Bulletin 149 and Top Shelf TV Finding in Bulletin 149 at [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb149/](http://www.ofcom.org.uk/tv/obb/prog_cb/obb149/).

## In Breach

### TMTV

*Tease Me TV (Freeview), 3 November 2009, 05:00*

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***It is Ofcom's policy to describe fully the content in television and radio programmes that is subject to broadcast investigations. Some of the language and descriptions used in this finding may therefore cause offence.***

#### Introduction

Tease Me TV is a channel that provides programming of a sexual nature, available without mandatory access restrictions. It is situated on the Freeview platform. The channel broadcasts programmes based on interactive 'adult' sex chat services: viewers are invited to contact on-screen presenters via premium rate telephony services. The female presenters dress and behave in a sexually provocative way. In this programme, when the presenter took calls from viewers, these conversations were typically masked by a music track to ensure that the audience did not hear what was being said.

Ofcom received a complaint that content on the channel contained language that the complainant considered inappropriate for broadcast. On reviewing the content, Ofcom noted that at one point around 05:00, when the female presenter took a telephone call from a viewer, which was audible to viewers. Ofcom noted the presenter using the following instances of sexually explicit language:

*"Dance you motherfucker".*

*"Fuck me so fucking hard in my cunt".*

*"I want you to fuck me really good and hard now. I want you to just fuck me 'til you squirt and I can see it right in that little pussy hole right there. You're going to come right in my arse are you?"*

*"You like a nice cunt, don't you?"*

Ofcom asked Bang Media, who hold the licence and provide compliance for Tease Me TV, for their comments under the following Rules of the Code: Rule 2.1 (generally accepted standards) and Rule 2.3 (material that may cause offence must be justified by the context).

#### Response

Bang Media said that during the transmission of the programme in question, a microphone was left "live, resulting in the inadvertent broadcast" of the explicit language. The broadcaster acknowledged that this language was "unacceptable for transmission under the Broadcasting Code...at anytime". However, Bang Media offered the following in mitigation: the explicit language was not broadcast deliberately; and the language had been picked up by a "distant microphone" by accident. In addition, whilst acknowledging the language was audible, the broadcaster said "it would have been apparent only to a viewer who was listening intently with their television at high volume".

## Decision

We noted the representations of the broadcaster that the broadcast of the explicit sexual language was not intentional; and that, in the broadcaster's opinion, it was not easily audible. However, we also noted that the broadcaster acknowledged that, under the Code, this language Ofcom considered that: the sexually explicit nature of this language for the purpose of sexual arousal broadcast on a channel without mandatory access restrictions is unacceptable at any time of day; and that, even though the language was broadcast 'off-mike', it was still audible.

In summary, Rules 2.1 and 2.3 require broadcasters that provide 'adult' sex chat services on channels without mandatory access restrictions, must protect viewers from material that is harmful or offensive and which cannot be justified by the context. Ofcom considers that to broadcast content that consists to a large extent of a presenter using very explicit sexual language, on a free-to-air channel without any form of mandatory protection system, and without justification by the context – as here - is contrary to generally accepted standards. In reaching its decision, Ofcom was aware of a previously published Finding and several previously published decisions of Ofcom's Content Sanctions Committee<sup>1</sup> relating to sexually explicit language on adult sex chat channels.

The content was in breach of Rules 2.1 and 2.3.

Ofcom has notified the Licensee that it is considering these contraventions of the Code for statutory sanction in light of their seriousness and/or repeated nature.

Please see the Note on page 22 of this Bulletin about Bang Media and Bang Channels.

### Breach of Rules 2.1 and 2.3

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<sup>1</sup> See Breach Finding against Sex Station on Lucky Star, Ofcom Broadcast Bulletin 115, 11 August 2008, [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb115/](http://www.ofcom.org.uk/tv/obb/prog_cb/obb115/). See Sanctions decisions against: Satellite Entertainment Limited concerning its channel SportxxxBabes, dated 26 August 2008, paragraph 4.3, [http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/sportxxxbabes.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/sportxxxbabes.pdf); Square 1 Management Limited concerning its channel Smile TV, dated 10 July 2008, paragraph 1.4, [http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/SmileTV.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/SmileTV.pdf); Connection Makers Limited dated 30 November 2007, paragraph 1.4, [http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/babeworld.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/babeworld.pdf)

## In Breach

### **Bang Babes**

*Tease Me TV (Freeview), 23 November 2009, 3:00*

### **Early Bird**

*Tease Me TV (Freeview), 23 November 2009, 7:30*

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#### **Introduction**

Tease Me TV is a daytime chat and adult sex chat channel available from 03:00 until mid-morning on Freeview. From 03:00 until the early morning Tease Me TV broadcasts adult sex chat programming, and then until it ends the service in mid-morning it transmits a daytime chat service. Both types of programming are broadcast without mandatory restricted access. The Digital Television Programme Service licence for this service is held by Bang Media (London) Ltd (“Bang Media” or the “Licensee”). Viewers complained about inappropriate adult content allegedly shown on this channel. Ofcom therefore asked Bang Media to provide recordings of the programmes that were complained about (see above).

Condition 11 of Bang Media’s licence states that the Licensee must make and retain a recording of all its programmes for a period of 60 days from broadcast, and at Ofcom’s request must produce a recording “forthwith”. Ofcom has made clear that recordings “must be of a standard and in a format which allows Ofcom to view the material as broadcast.” (See Ofcom’s Guidance notes for licence applicants for Digital Television Programme Services, paragraph 77.)

#### **Response**

Between 30 November 2009 and 15 January 2010 Ofcom was in extensive correspondence with Bang Media asking the Licensee to provide recordings of the programmes. Bang Media failed to meet the initial deadline set by Ofcom, and on request Ofcom agreed an extension to 8 January 2010.

On 8 January 2010, Bang Media provided Ofcom with an internet link to a site so that Ofcom could download recordings of the programmes. However, the quality of these recordings were not “of a standard and in a format which allows Ofcom to view the material as broadcast” (i.e. there was intermittent pixilation of images and a loss of audio). Ofcom therefore asked Bang Media for DVD copies of the programmes by an agreed deadline of 14 January 2010. As with the previous recordings, however, the quality was also not ‘as broadcast’.

On 15 January 2010, Ofcom wrote to Bang Media to advise it had an option to either provide a recording of the items ‘as broadcast’ quality by 19 January 2010; or, failing that, submit any formal comments it wished to present regarding the failure to provide these recordings in accordance with Condition 11 of its licence.

Bang Media did not provide further recordings or comments.

#### **Decision**

It is a condition of all broadcast licences that the Licensee adopts acceptable procedures for the retention of, and production of recordings to Ofcom, and that

recordings should be 'as broadcast' (i.e. the same quality in terms of both sound and picture as when originally transmitted).

In this case, Bang Media failed on several occasions, and despite repeated requests, to provide Ofcom "forthwith" with programme recordings in 'as broadcast' quality. Ofcom has therefore found Bang Media in breach of its licence.

Ofcom formally notifies the Licensee that it is considering these contraventions of the Code for statutory sanction in light of their seriousness and/or repeated nature. These breaches may be considered for sanction together with other serious and/or repeated breaches by Bang Channels Limited ("Bang Channels"). This would be on the basis that Bang Media and Bang Channels are controlled by the same person and all editorial compliance decisions regarding both Bang Media and Bang Channels are taken by one compliance team.

Please see the Note on page 22 of this Bulletin about Bang Media and Bang Channels.

### **Breach of Licence Condition 11 (Retention and production of recordings)**

**Note: Bang Channels Limited and Bang Media (London) Limited**

On 8 February 2009 in Broadcast Bulletin 151 Ofcom published a number of breaches of the Code against Bang Channels Limited (“Bang Channels”): see [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb151/Issue151.pdf](http://www.ofcom.org.uk/tv/obb/prog_cb/obb151/Issue151.pdf),

These breaches concerned the Tease Me adult sex chat service, for which Bang Channels holds the licence. Ofcom explained in Broadcast Bulletin 151 that as a result of these breaches, it was notifying the licensee that it was considering the imposition of statutory sanctions.

In the current Broadcast Bulletin (152), Ofcom has published further breaches of the Code as regards services for which Bang Channels holds the licences, Tease Me and Tease Me 3. Ofcom considers these breaches to be both serious and repeated.

Broadcast Bulletin 152 also contains breach findings recorded against another Licencee, Bang Media (London) Limited (“Bang Media”). These decisions relate to Bang Media’s channel on Freeview, Tease Me TV.

As is made clear in Broadcast Bulletins 151 and 152, these breaches are serious and/or repeated and are therefore being considered by Ofcom for statutory sanction. Bang Media and Bang Channels are controlled by the same person and all editorial compliance decisions regarding both Bang Media and Bang Channels are taken by one compliance team, For these reasons Ofcom will consider for sanction together all serious and/or repeated Code or licence breaches for which Bang Media and Bang Channels are responsible.

## In Breach

### Inside Africa

*CNN International, 29 September 2009, 09:30*

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#### Introduction

The CNN International channel broadcasts news, current affairs and business programming as well as documentaries on the cable, satellite and Digital Terrestrial Television (Freeview) platforms.

Turner Broadcasting System Europe Limited holds the Television Licensable Content Service (TLCS) licence for the broadcast of CNN International on both the cable and satellite platforms. On the Freeview platform, S4C2 Limited holds the Digital Television Programme Service (DTPS) licence for the broadcast of the channel to Wales<sup>1</sup>, while Turner Entertainment Networks International Limited holds the DTPS licence for the broadcast of the channel to the rest of the UK.

Turner Broadcasting System Europe Limited and Turner Entertainment Networks International Limited are both owned by the same parent company, and for ease, will both be referred to as “Turner” in this finding.

The edition of *Inside Africa* broadcast on 29 September 2009 was sponsored by Zenith Bank. The programme contained various reports on issues relating to Africa, including:

- the 64th United Nations General Assembly, including speeches made by President Obama and Colonel Gaddafi;
- Africa’s role in the General Assembly; and
- climate change issues affecting Africa as discussed at the UN General Assembly’s one day climate change summit.

The programme also contained an interview with the Kenyan Prime Minister about his relationship with the President of Kenya and how the Kenyan government has dealt with corruption, as well as a segment called African Business Week, which included two news headlines regarding African businesses.

Inside Africa was also described on CNN International’s website as “a weekly, half-hour, current affairs program that provides global viewers with an inside look at political, economic, social and cultural affairs and trends in Africa”.

A viewer objected to the programme being sponsored because it was a current affairs programme. The Code defines a current affairs programme as “one that contains explanation and analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy”.

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<sup>1</sup> Section 362(2) of the Communications Act 2003 states that the provider of the service is “the person with general control over which programmes and other services and facilities are comprised in the service (whether or not he has control of the content of individual programmes or of the broadcasting or distribution of the service)”. While Turner makes the editorial decisions about CNN International, S4C2 Limited holds the licence for the broadcast of the channel on the Freeview platform in Wales, and is therefore responsible for the service.

Ofcom asked Turner for its comments on the programme with regards to Rule 9.1 of the Code which states that news and current affairs programmes may not be sponsored.

## Response

Turner said that having reviewed the programme it considered that the topics covered were of a current affairs nature. It said that *Inside Africa* had been a “mainstay of CNN’s feature programming output since 2000.... Throughout the years the programme has consistently explored the challenges and opportunities facing Africa – as seen through the prism of different cultures and religions, the mediums of art and literature, seeking to capture the hopes, dreams and aspirations of its people, leaders and nations”. Turner continued that “It would appear that there has been a recent inadvertent editorial shift” in the nature of the programme.

Turner told Ofcom that the editorial team responsible for the programme has now been reminded of the relevant rules in relation to sponsorship and that it intends to retrain all relevant members of staff including those based in Africa. CNN’s lead producer will also be relocated from the network’s headquarters in Atlanta in the USA to Johannesburg in South Africa to “help to ensure the show stays true to its editorial mission as...feature programming focussing on African culture”.

Turner said that it would also change the description of the programme which appeared on CNN’s website.

S4C2 Ltd did not wish to make any additional representations to those submitted by Turner.

## Decision

Rule 9.1 of the Code prohibits news and current affairs programmes on television from being sponsored. This rule is directly derived from the requirements of the Audiovisual Media Services (AVMS) Directive<sup>2</sup>. It supports the important principle that news and current affairs must be reported with due accuracy and presented with due impartiality. A broadcaster’s editorial control over the content of its news and current affairs programming should not be, or appear to be, compromised.

In this case Ofcom noted that the programme contained the following explanation and analysis of current events and issues:

- the 64th United Nations General Assembly (held in September 2009, the same month in which the programme was broadcast), including speeches made by President Obama and Colonel Gaddafi;
- Africa’s role in the General Assembly;
- climate change issues affecting Africa as discussed at the UN General Assembly’s one day climate change summit; and
- a segment called African Business Week, which included two news headlines regarding African businesses.

Ofcom also noted that Turner had acknowledged that the programme was a current affairs programme and therefore should not have been sponsored.

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<sup>2</sup> Article 3(f)(4) of the Audiovisual Media Services Directive states that: “News and current affairs programmes shall not be sponsored”.

In view of the above, Ofcom therefore found *Inside Africa* in breach of Rule 9.1. This breach will be held on record in relation to the following licences:

- TLCS 103 licensed to Turner Broadcasting System Europe Limited.
- DTPS 042 licensed to Turner Entertainment Networks International Limited.
- DTPS 043 licensed to S4C2 Limited.

**Breach of Rule 9.1**

## In Breach

### Sponsorship of The Simpsons

*Sky 1, October 2009, various dates and times*

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#### Introduction

*The Simpsons* on Sky 1 is sponsored by Currys, the electrical retailer. Some of the sponsorship credits in the campaign allude to the sponsor's delivery service. Others revolve around the following services provided by the sponsor: recycling, car carrying and installation.

Examples of the credits include:

#### Delivery

A man is shown allowing his pet dog to lick a dirty plate clean before replacing it in a cupboard. The scene is accompanied by the voiceover *"Need a dishwasher? – The Simpsons on Sky, delivered to you by Currys in a flash"*.

The strapline *"Currys we can help"* is also included in text at the bottom of the screen.

#### Recycling

A man is shown standing on a hill next to an old television. As he unlocks his car in readiness to load the television into it, the television begins to roll away. The scene is accompanied by the voiceover *"Want to recycle without the hassle? – Currys, we can help"*.

#### Car carry service

A woman is shown struggling across a windy car park carrying a large television box. The scene is accompanied by the voiceover *"Need a hand to your car? – Currys, we can help"*.

#### Installation

Two men wearing Currys uniform are shown fixing a television to a wall, accompanied by the voiceover *"Trouble installing?"*

In the credits referring to the re-cycling, car carry and installation services, the strapline *"Currys we can help"* is included in text at the bottom of the screen with *"Sponsor of The Simpsons"* in smaller text just above it.

Ofcom sought the broadcaster's comments on the credits under Rule 9.13, which states:

"Sponsorship must be clearly separated from advertising. Sponsor credits must not contain advertising messages or calls to action. In particular, credits must not encourage the purchase or rental of the products or services of the sponsor a third party."

This rule implements the requirements of European legislation, the Audiovisual Media Services (AVMS) Directive. The AVMS Directive states that broadcasters can only transmit a set amount of advertising per hour. Sponsorship credits are exempt from this limit and are treated as part of the sponsored programme. Therefore, to

ensure that sponsorship credits are distinct from advertising, the Directive requires that sponsored programmes “shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those products or services”.

Guidance issued by the European Commission on the interpretation of this requirement states that there should be “no explicit reference to the products or services of the sponsor during the [sponsored] programme, except where the reference serves the sole purpose of identifying the sponsor or making explicit the link between the programme and the sponsor”.

Rule 9.13 prevents credits effectively becoming advertisements and therefore increasing the amount of advertising transmitted.

## **Response**

Sky noted that, in advance of the credits’ transmission, it had sought and had been given informal advice by Ofcom on the campaign’s compliance with Rule 9.13, Sky was of the view that “Ofcom had confirmed the credits were compliant”, and accordingly, Sky considered that the credits complied with the Code.

Sky believed the point at issue was the strapline “Currys we can help”. Sky did not consider these words could be construed as either an advertising message or call to action. The broadcaster was of the view that the credits did not encourage the purchase of goods or services from Currys. Rather, they informed viewers that Currys can help viewers with certain issues in certain circumstances e.g. “if the viewer wants to recycle white goods, Currys can help”.

Sky asserted that the credits contained neither specific nor detailed advertising messages about the products or services offered by the sponsor. Nor did they make advertising claims that were either implicitly or explicitly capable of objective substantiation. The statement “we can help”, within the context of the scenarios set out in the credits, was simply a generalised statement of fact. Any reference to goods or services provided by Currys was made to help identify Currys as a sponsor of the programme and to identify the fact that in certain situations, Currys can help.

## **Decision**

Previous Broadcast Bulletins<sup>1</sup> have stated that the purpose of a sponsorship credit is to inform the audience when a programme is sponsored and by whom. Credits are not permitted to be advertisements and should focus on the sponsorship arrangement and not the sponsor or its goods or services.

Rule 9.13 permits a limited amount of information about the sponsor, including references to its products and services, in credits on the basis that this can help identify the sponsor or help associate the sponsor with the sponsored content. However, credits must be distinct from advertising and not contain advertising messages such as promotional statements about the sponsor or the products or services it offers.

## **Delivery credits**

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<sup>1</sup> See [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb130/](http://www.ofcom.org.uk/tv/obb/prog_cb/obb130/) and [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb146/](http://www.ofcom.org.uk/tv/obb/prog_cb/obb146/).

In relation to the credits in which the sponsor is referred to as “delivering” the sponsored programme, Ofcom notes that these credits focus on the sponsorship. While alluding to the sponsor’s delivery service, the voiceover clearly refers to the sponsorship arrangement. There is no direct reference to services provided by the sponsor. While these credits link the sponsorship arrangement to the sponsor’s delivery service, Ofcom judged that, on balance, these credits did not include advertising messages and therefore did not breach Rule 9.13.

### **Not in breach of Rule 9.13**

#### Recycling, car carrying and installation credits

In the case of the credits referring to the sponsor’s recycling, car carrying and installation services, the juxtaposition of the strapline “*Currys, we can help*” alongside specific questions (“*trouble installing?*”, “*need a hand to your car?*” and “*want to recycle without the hassle?*”) clearly imparts information about the services offered by the sponsor. In Ofcom’s opinion, the primary focus of these credits is the sponsor’s services and not the sponsorship arrangement: the sponsorship message is included in text only and is the least prominent information in the credits.

Ofcom concludes that, in the context in which they are made, the references to the sponsor’s services in these credits are promotional. The principle purpose of the credits appears to be to advertise these services and not to identify the sponsorship arrangement. As such, the credits in the campaign that refer to the sponsor’s recycling, car carrying and installation services are in breach of Rule 9.13.

#### Informal guidance given by Ofcom

Ofcom does not accept Sky’s view that, in advance of transmission, Ofcom had “confirmed that the credits were compliant”.

Ofcom is a post-transmission regulator and has always made clear to its licensees that it does not offer pre-transmission clearance or compliance approval. As stated in the Code, Ofcom does, however, offer *general* guidance on the interpretation of the Code to assist its licensees. It nevertheless remains the responsibility of the broadcaster to comply with the Code.

In this case, Ofcom was of the view that its decision to record breaches of Rule 9.13 was consistent with the general guidance it had given Sky on the campaign.

### **Breaches of Rule 9.13**

#### **Note to Broadcasters:**

In advance of a programme’s transmission, Ofcom only offer *general* guidance on the interpretation of the Code. Ofcom does not and cannot clear material prior to broadcast. Any such advice is given on the strict understanding that it will not affect Ofcom’s discretion to judge cases and complaints after transmission and will not affect the exercise of Ofcom’s regulatory responsibilities. Broadcasters should seek their own legal advice on any compliance issues arising. Ofcom will not be liable for any loss or damage arising from reliance on informal guidance.

## In Breach

### Dum Hai Tou Entertain Kar

ARY Digital, 3 December 2009, 11:00

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#### Introduction

ARY Digital is a general entertainment channel serving a UK Pakistani audience, and is broadcast on cable and satellite platforms. *Dum Hai Tou Entertain Kar* (“Entertain, if You Dare”) is a Pakistani talent show. Ofcom received a complaint that in this particular episode a contestant came on stage with a live snake and proceeded to bite the live snake’s head off, and then skin the snake with his hands and teeth while continuing to eat it. The complainant considered this content (“the Snake Contestant content”) was inappropriate for broadcast.

Having reviewed the content, Ofcom asked ARY Digital (UK) Limited (“ARY”), which is the licence holder and provides compliance for the channel, for its comments under the following Rules of the Code: Rule 1.3 (children must be protected from unsuitable material by appropriate scheduling); and Rule 2.3 (offensive material must be justified by the context).

#### Response

ARY apologised for any offence caused by the Snake Contestant content, and said that it would “try to make sure that such content is kept separate from the UK viewers” in future.

With regard to Rule 1.3, the broadcaster said that the programme (“the 3 December broadcast”) had been originally broadcast at 22:00 on 2 December 2009 (“the 2 December broadcast”) from its transmission department in Pakistan. ARY said it became aware of the Snake Contestant content just after the 2 December 2009 broadcast had been transmitted. The broadcaster said it immediately contacted its transmission department in Pakistan to ensure that the same programme was not broadcast on the following day i.e. the morning of 3 December 2009, as originally scheduled. However, ARY said: “Unfortunately, the following morning with the shift change in the transmission department, this message was lost and this same episode was transmitted”. In conclusion, the broadcaster questioned the number of children that might have been watching the programme on 3 December 2009 given that it took place on a weekday morning during school time.

With regard to Rule 2.3, ARY said the Snake Contestant content had to be seen in the context of this particular programme and its format. As well as including aspiring singers, actors and other performers, the programme “also invited anyone who could amaze the audience and the judges by doing something extraordinary”. The broadcaster said that *Dum Hai Tou Entertain Kar* was produced in Pakistan, and ARY had scheduled it for a UK audience after watching one sample episode. However, the broadcaster added that “we were unaware that this episode...include[d] such an act where it will disturb a viewer”.

#### Decision

Ofcom recognises that the talent show format proves highly popular amongst audiences. It is therefore unsurprising that: many broadcasters should seek to

feature this programme format in their schedules; and that broadcasters serving ethnic minorities would seek to provide talent shows focused towards the communities they serve. Ofcom further recognises that, at times, some of the contestants performing in talent shows will be displaying skills that may seem bizarre and strange compared to the majority of performances on display. Broadcasters are free to include any such contestants, as long as the content complies with the Code.

In this case, a talent show contestant was shown bringing a live snake on stage. After holding the live snake in his teeth, the contestant was then shown biting the snake's head off. The programme then continued to show the contestant biting into the snake and gradually ripping off and eating the skin and flesh of the animal to leave just its skeleton. Ofcom noted that this whole sequence lasted several minutes and, at several times, the shocked reactions of both the studio audience and two judges were shown on screen.

Ofcom considered that this explicit and graphic killing, and then eating, of a snake by the talent show contestant was clearly unsuitable for children and had the potential to cause offence to viewers in general. This is because the snake was clearly alive before its head was bitten off and no measures appeared to have been taken before the killing to lessen any pain; the contestant proceeded to skin and then devour the snake's flesh in front of the audience; the whole sequence lasted several minutes, including a number of close ups; and the sequence was designed purely for entertainment.

In Ofcom's view this material was not appropriately scheduled so as to provide the necessary protection to child viewers. Although this content was shown on a weekday morning during school time it was quite possible that children may have been watching, some unaccompanied. ARY Digital is a general entertainment channel and a talent show often attracts young viewers. This material clearly exceeded the likely expectations of the audience for this programme shown on ARY Digital at this time.

Ofcom notes that this was acknowledged by the broadcaster's attempts to ensure that the 2 December broadcast was not repeated on the morning of 3 December 2009. However, it is clear that these attempts failed and the programme was broadcast at a time when there was a material chance that children, including some of the very youngest children, may have been in the audience. As a consequence, Ofcom considered that this was a breach of Rule 1.3.

Concerning Rule 2.3, for the reasons set out above this material had the potential to offend. The issue was therefore whether it was justified by the context. In assessing context Ofcom has regard to factors such as the editorial content of the programme, the service on which it is broadcast, the degree of offence likely to be caused and the effect of the material on viewers who may come across it unawares.

ARY stated that the Snake Contestant content had to be seen in the context of this particular programme inviting anyone on to perform who could do something "extraordinary," and that the show is produced in Pakistan. Even though the programme was entitled "Entertain, if You Dare," the content of this show like all others, whether produced in the UK or elsewhere, must comply with the Code when broadcast on a licensed service. It was clear to Ofcom that this material was capable of causing considerable offence through its graphic nature, that it would have exceeded audience expectations for this programme on this general entertainment channel, and that it would have surprised and shocked some viewers who came across it unawares. In reaching its decision, Ofcom took account of the broadcaster's

right to freedom of expression<sup>1</sup>, and the fact that this was a talent show where the channel's audience would have come to expect that some of the performances would have likely to be out of the ordinary. However, this offensive content was not justified by the context which primary purpose is a programme to entertain the audience and was therefore in breach of Rule 2.3.

Ofcom considered that ARYs' compliance procedures have been shown to be seriously inadequate by this case. In particular, we are concerned that the broadcaster had not viewed this particular episode at all prior to broadcast. Instead on its own admission it based its compliance decisions for this programme, and the whole series from which it came, on viewing only one episode in this series. Ofcom reminds all broadcasters of the need to ensure compliance is undertaken systematically across all programme output.

In addition, we are concerned that despite attempts to communicate with its transmission department following the 2 December broadcast, ARY was not able to prevent the programme, including the Snake Contestant content, being repeated on 3 December 2009. It is a matter for broadcasters how their transmission facilities are arranged, including the decision as to whether such facilities are located overseas. However, all broadcasters must ensure that they have systems in place to ensure they have adequate control over programme scheduling to ensure compliance with the Code.

### **Breach of 1.3 and 2.3**

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<sup>1</sup> As enshrined in the European Convention on Human Rights.

## In Breach

### Glasvegas

MTVN HD, 14 December 2009, 12:23

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#### Introduction

MTVN HD is a High Definition music and children's channel available on satellite and cable platforms. The programme in this case was a recording of a song performed live in session ("the Session") by the band *Glasvegas*. Ofcom received one complaint that this programme contained two instances of the most offensive language before the watershed, when the complainant's four year old child was watching.

Ofcom noted that the programme contained two instances of the word " *fucking* ". It therefore asked MTV Networks Europe ("MTVNE"), which holds the licence and provides compliance for MTVN HD, for its comments under Rule 1.14 of the Code (the most offensive language must not be broadcast before the watershed).

#### Response

MTVNE apologised unreservedly for this incident and expressed its disappointment that this had happened in close proximity to a similar breach recorded by Ofcom<sup>1</sup> (the "*Lady Gaga Breach*"). MTVNE said that the present case and the *Lady Gaga Breach* were "very different in nature and should not be interpreted as a sign that MTVNE is taking its compliance responsibilities in anything but the most serious manner".

The broadcaster explained that this programme consisted of a recording of the band *Glasvegas* performing one song from the Session. This song was labelled on screen as "*Daddy's Gone*". Following the broadcast of the programme MTVNE said it had launched an investigation. This had shown that due to human error a different song ("*Cheating Heart*")<sup>2</sup> from the Session had been copied onto the tape for broadcast, and mislabelled as the song "*Daddy's Gone*". MTVNE said that when the Session had been originally compiled for broadcast, *Cheating Heart* was the only song that had been deemed appropriate for broadcast only after the watershed.

MTVNE said that as a result of its investigation: senior staff had spoken to the member of staff responsible; all content from the Session had been correctly edited to ensure compliance with the Code; and all staff had been "further reminded of the importance of vigilance at all times through their line managers and through a company-wide, all staff meeting".

#### Decision

Ofcom's research<sup>3</sup> indicates that most viewers find the word "fuck" (and its derivatives) as one of the most offensive words. Ofcom notes MTVNE's apology and steps taken to remind staff of the importance of ensuring compliance with the Code.

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<sup>1</sup> See *MTV Live: Isle of MTV music festival, featuring Lady Gaga*, Broadcast Bulletin 149, dated 11 January 2010.

<sup>2</sup> The full title of this song was: *It's My Own Cheating Heart That Makes Me Cry*.

<sup>3</sup> "Language and Sexual Imagery in Broadcasting: A Contextual Investigation", September 2005.

However, the broadcast of the most offensive language before the watershed was a clear breach of Rule 1.14.

**Breach of Rule 1.14**

## In Breach

### Big Fight Live

ITV4, 29 November 2009, 11:30

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#### Introduction

This edition of *Big Fight Live* was a repeat of the live coverage of the British and Commonwealth Middleweight Boxing Championships, broadcast the previous evening on the same channel. During a ringside conversation in between rounds, a competitor referred to an injury he had sustained by saying “*fuck the cut*”. About an hour later, in a similar scenario, a corner-man encouraged a boxer, stating “*if you don’t win this fight, that’s you fucking done*”.

Ofcom received two complaints from viewers who considered this language was inappropriate given the programme’s weekend morning scheduling. Ofcom asked ITV Broadcasting Limited (“ITV”), who complied the programme on behalf of the ITV Network for ITV4, for its comments under Rule 1.14 of the Code (the most offensive language must not be broadcast before the watershed).

#### Response

ITV explained that during the original live broadcast the commentator and programme makers had not identified the first instance of offensive language and as a result no apology was made. However, later in the fight the commentator had detected the language used by the corner-man and had immediately apologised to viewers during the live broadcast.

As regards the repeat broadcast of the fight ITV advised that no compliance advice was sought before its re-broadcast. As a result both instances of the offensive language were broadcast the following morning. ITV apologised and accepted full responsibility for the circumstances that led to the broadcast of the offensive language.

Following this incident, ITV reviewed its compliance procedures for live sports events. A compliance advisor is now appointed to liaise with the production team for all such programmes prior to their transmission, and any incidents of this kind during live transmission will be reported to them for advice before any repeat broadcast. It was therefore confident that this would minimise the risk of a recurrence.

#### Decision

Ofcom’s research<sup>1</sup> indicates that the word “fuck” and its derivatives are examples of the most offensive language. Rule 1.14 states that the most offensive language must not be broadcast before the watershed. Ofcom noted ITV’s review of its compliance procedures to ensure that the issue of offensive language in live sports events is properly considered prior to such events and where necessary before any repeat broadcasts.

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

It should be noted that Rule 1.14 applies to all channels including those with low child audience figures such as *Big Fight Live*. This is because measures must be in place to provide adequate protection to child viewers, even those that come across material unawares.

The broadcast was therefore in breach of the Code.

**Breach of Rule 1.14**

## In Breach

### The Passions of Girls Aloud

ITV2, 16 December 2009, 08:30

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#### Introduction

This documentary series followed the members of the all-girl pop group “Girls Aloud” as they worked on individual challenges that were important to them. In this episode, the band member Nicola Roberts attempted to create her own make-up range for women with fair skin.

During the programme, Nicola Robert’s mentor used the word “*fuck*”. Ofcom received a complaint from a viewer who believed the use of such language was unsuitable before the watershed. Ofcom asked ITV Broadcasting Limited (“ITV”) who complied the programme on behalf of the ITV Network for ITV2 to comment with regard to Rule 1.14 (the most offensive language must not be broadcast before the watershed).

#### Response

ITV said the programme had been viewed by its compliance staff prior to first transmission after the watershed. The production team were asked to create an edited version for daytime transmission. But in doing so they made an error and one use of the word “*fuck*” was not masked. As a result, when the programme was repeated on the morning of 16 December 2009, the version with the offensive language was transmitted.

The broadcaster said it received three complaints about the language and had offered its unreserved apology to these complainants. ITV stated that ratings suggested a negligible child audience, but it accepted that the strong language should not have been broadcast at this time of the morning. It assured Ofcom that steps have now been taken to ensure this version of the programme is not repeated again in daytime schedules.

#### Decision

Ofcom’s research<sup>1</sup> indicates that the word “*fuck*” and its derivatives are examples of the most offensive language. Rule 1.14 states that the most offensive language must not be broadcast on television before the watershed.

Ofcom acknowledged the apology from ITV and its assurances not to broadcast this version of the programme again. However, the broadcast of this strong language during the morning when children could have been watching is a breach of Rule 1.14 of the Code.

#### Breach of Rule 1.14

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

## In Breach

### Have I Got News For You

*Dave, 27 December 2009, 14:40*

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#### Introduction

*Have I Got News For You* is a long-running satirical quiz series originally broadcast on BBC Two. This programme was a repeat broadcast, transmitted on the channel Dave, which is an entertainment channel available on the satellite and cable platforms and Freeview.

During the programme the following caption was shown on screen:

*"I couldn't give a flying fuck."*

One viewer complained that the use of such language at this time of broadcast was unsuitable as her child had been watching. The channel Dave is operated and complied by UKTV. Ofcom wrote to UKTV, asking it to comment under Rule 1.14 (the most offensive language must not be broadcast before the watershed).

#### Response

UKTV apologised unreservedly for the transmission of the offensive language. UKTV explained that due to human error their outsourced partner (which complied this series on their behalf) had failed to identify and edit out the offending language. UKTV said its partner has taken immediate action to prevent such errors happening in the future. This included disciplining the staff member responsible for the mistake and retraining compliance staff.

#### Decision

Ofcom's research<sup>1</sup> on offensive language identified that the word "fuck" and its derivatives are examples of the most offensive language. Rule 1.14 makes clear that the most offensive language must not be broadcast on television before the watershed.

Ofcom notes UKTV's apology and the compliance measures taken in response to the error. In this case, however, Ofcom was concerned that the outsourced compliance procedures (for which UKTV remained ultimately responsible at all times) were not sufficiently robust to pick up the obvious use of the word "fuck" (which stayed on screen for approximately 4 seconds) in this pre-recorded programme. Ofcom has therefore found the broadcast in breach of Rule 1.14.

#### Breach of Rule 1.14

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

## Not in Breach

### Dancing on Ice

ITV1, 31 January 2010, 18:15

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#### Introduction

*Dancing on Ice* is a well-established programme format in which, over a series of weeks, a collection of ice-skating pairs consisting of one celebrity and one professional skater compete in an ice-skating talent contest.

Each week, after each couple has performed, their performances are judged and given a mark by a panel of judges. Ofcom received 443 complaints concerning this particular edition of the programme, regarding the comments made by one of the judges, Jason Gardiner, about the performance by the former Olympic swimmer, Sharron Davies. Complainants considered the comments offensive and upsetting and unsuitable to be heard by children.

Ofcom noted that as part of his comments about the initial routine performed by Sharron Davies and her professional partner, Pavel Aubrecht, Jason Gardiner said the following:

*“It was like watching faecal matter that won’t flush – it goes around and around and around and in the end it doesn’t go anywhere.”*

Ofcom considered the complaints under Rule 1.3 (children must be protected by appropriate scheduling) and Rule 2.3 (material that may cause offence must be justified by the context).

#### Decision

*Dancing on Ice* is a popular and well-known programme format, which features ice-skating performances which are voted upon by a panel of judges and the general public. The panel of judges give their comments about the performances as well as marking them. It is well-established in these types of programmes that the judges comment on performances in a manner that some may find offensive.

In this particular edition, after the initial routine performed by Sharron Davies and Pavel Aubrecht, Jason Gardiner made the following remarks:

*“OK, I’m giving you a ‘2’ for improved leg lines and arm lines – absolutely – but for me this is also about performance and your skating is on one level; and I don’t know what it was – it was just like – the brown costume and everything. It was like watching faecal matter that won’t flush – it goes around and around and around and in the end it doesn’t go anywhere. You’ve got to give me a performance level, there’s got to be some sort of a journey with you.”*

Ofcom recognised that the reference to “faecal matter” was potentially offensive to a number of people. However, under Rule 2.3 broadcasters can transmit offensive content, as long as it is justified by the context. Context includes such factors as the editorial content of the programme, the degree of offence likely to be caused and the likely expectation of the audience.

In this case, Jason Gardiner used what Ofcom believed was unusual language to

describe the performance of Sharron Davies. However, Ofcom considered that Jason Gardiner is well established as the acerbic 'nasty' judge on *Dancing on Ice*, and seems quite content to play up to his 'pantomime villain' image within the format of the show. This was demonstrated by the fact that every comment he makes is almost invariably booed by the audience, as was the case regarding the comments he made about Sharron Davies on this occasion.

Ofcom also considered that Jason Gardiner's remarks were fleeting and seemed to be a passing reference to a combination of the colour of Sharron Davies' costume and a comment on what Jason Gardiner perceived to be the poor standard of her performance. Further, we noted that: after hearing Jason Gardiner's remarks, several of the other judges immediately distanced themselves from Jason Gardiner's comments and said they felt that Sharron Davies had given a good performance; the presenter, Holly Willoughby, swiftly moved on to the next judge, Karen Barber, and pointedly asked her not to comment on Sharron Davies' costume; and in their substantive comments, the judges following Jason Gardiner made very positive remarks about the performance of Sharron Davies.

In addition, we considered that the comment: was not dwelt upon; could be considered to be more of a medical term rather than a more commonly-used offensive word; was used in the context of a value judgement about a performance, rather than against a particular person, by a judge in a talent competition, whose role is to provide critical judgements on different performances; and would have been likely to have been recognised as part of the 'cut and thrust' of this contest, by the majority of the audience, familiar with this programme format. Ofcom considered that the audience to this programme, in general, would have come to expect negative comments being expressed by the judges about particular contestants, and that this would have been particularly the case concerning comments made by Jason Gardiner.

Given the above, and taking into account the broadcaster's right to freedom of expression<sup>1</sup>, Ofcom considered that the content, though potentially offensive to some in the audience, was justified by the context. It therefore was not in breach of Rule 2.3.

We noted that a number of complainants expressed concern that the term "*faecal matter*" was unsuitable to be heard by children who might have been watching. While *Dancing on Ice* is intended for a family audience, it is not a programme that is primarily aimed at children. Ofcom considered that most children would be unfamiliar with this term. In any event, we consider that, while some may consider it to be offensive, the word is an accepted medical term rather than a commonly-used form of offensive language. Therefore, Ofcom considered that the content in this case was appropriately scheduled, and was not in breach of Rule 1.3.

### **Not in Breach of Rules 1.3 or 2.3**

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<sup>1</sup> As enshrined in Article 10 of the European Convention on Human Rights

## Fairness and Privacy Cases

### Not Upheld

#### Complaint by Solution Project Management Limited

*Embarrassing Bodies, Channel 4, 15 April 2009*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment made by Solution Project Management Limited.

This edition of *Embarrassing Bodies* focused on the consequences of weak pelvic floor muscles. It showed three volunteers testing and reporting upon different physical therapy products designed to strengthen pelvic floor muscles, one of which was the PelvicToner.

Solution Project Management Limited (“SPML”), the manufacturer of the PelvicToner, complained that it had been treated unfairly in the programme as broadcast.

In summary Ofcom found the following:

- In the context of this brief magazine-style item, which was clearly not intended to be a clinical trial of the products, and in view of the information available to the programme makers, the broadcaster had taken reasonable care not to present the test of the products in a way that was unfair to SPML.
- The programme makers were not made aware of research demonstrating that the PelvicToner was more effective than the other products tested and no unfairness resulted to SPML by the omission of SPML’s own assertion of efficacy.

#### Introduction

On 15 April 2009, Channel 4 broadcast an edition of *Embarrassing Bodies*, a series aimed at raising health awareness and dispelling myths surrounding medical conditions deemed to be embarrassing. This edition sought to raise awareness of the consequences of weak pelvic floor muscles. The programme stated that one in three women suffers from urinary “leakage” and that this could be avoided by strengthening pelvic floor muscles.

During one item within the programme, three members of the public were recruited to “road test” three different products designed to help strengthen pelvic floor muscles. The products tested included one called the PelvicToner. The programme showed each of the participants giving their initial reaction to their product, describing how it worked and their experience of using it.

The item also referred to the results of a muscle strength test carried out to measure the “internal squeeze of the muscle”. The test results included in the item indicated that the participant using the PelvicToner had little improvement in the strength of her pelvic floor muscles. The test results for the participants using the other two products were referred to in the item as having 50% and 60% improvements in their pelvic floor muscle strength.

Mr Andrew Akerman, consultant for SPML, complained to Ofcom on behalf of SPML that it had been treated unfairly in the programme as broadcast.

## **The Complaint**

### **SPML's case**

In summary, SPML complained that it was treated unfairly in the programme as broadcast in that:

SPML's product, the PelvicToner, was portrayed unfairly and inaccurately in the programme as the least effective of the three products tested. In particular:

- a) The participant who tested the PelvicToner was a young woman, but the participants testing the other two products were significantly older and had had children.
- b) The programme makers were aware of research which showed, in clinical terms, that of the three products tested on the programme, the PelvicToner produced the best results and was determined to be "not inferior to the current gold standard treatment". The other two products were consistently determined to be "inferior to the current gold standard treatment". However, the programme failed to qualify the "subjective" test results broadcast in any way.

### **Channel 4's case**

In summary, Channel 4 responded to the complaint that SPML was treated unfairly in the programme as follows:

- a) As regards the complaint about the differing ages of the participants in the test, Channel 4 said that on 31 October 2008, the programme makers ran the Birmingham roadshow featured in the programme. The programme makers employed a physiotherapist, recommended by the Birmingham Women's Hospital, to attend the roadshow and carry out pelvic floor testing for members of the public.

Having interviewed a number of possible participants, the physiotherapist recommended three people who would be suitable to use each of the three products to be tested. In the opinion of the physiotherapist, Natasha, who used the PelvicToner in the programme, was the only one of the three participants featured who would have been able to use the PelvicToner. The physiotherapist stated:

"Someone with a bad initial score would not be able to physically use this product as they simply would not have the strength to push against the resistance of the springs in the product design".

Channel 4 said that the programme makers based the decision to film Natasha using the PelvicToner entirely on the recommendations of the physiotherapist.

Channel 4 said that in January 2009, the three women returned to a clinic in Birmingham and, under the supervision of the same physiotherapist, were re-tested. Each showed different levels of improvement. In the programme, the women gave their individual opinions about their experiences with the devices.

Channel 4 said it did not believe that any member of the audience would have considered that they had witnessed a scientific experiment or a clinical trial and that each of the three devices was treated in the same way as the others. No negative comments were made about the effectiveness of the PelvicToner in comparison to the other products.

Channel 4 said that Natasha explained her personal reaction to the PelvicToner and made clear that the product worked, that she experienced improvement and that using it made her aware, for the first time, of her pelvic floor muscle. Natasha's comments revealed a deal about her and her impatience for a quick and easy solution to her issues with her pelvic floor muscle. Channel 4 said that this could be seen from her statements in the programme:

*"What you do is you're meant to sort of lube it up erm and then that up to about there goes inside and then the spring will release a little bit and then basically what you are doing is to try and clench this part. The whole rigmarole of like – it is a rigmarole – it's like ohhh time for pelvic floors – you know. I literally have never spent so much time on something I didn't know existed nor that I can see".*

*"The product's a bit time consuming and it's quite inconvenient and I don't really feel like it's done anything but who knows. Oh well I'm a bit disappointed because there wasn't that much of an improvement for all the work that I did it was only small. But you know I got to learn where my pelvic floor muscles were which is always a positive".*

Channel 4 said that viewers would have understood that Natasha's comments about the PelvicToner were personal and stemmed from her opinion of the PelvicToner as involved and complicated and not a "quick fix".

Channel 4 said that nothing in the programme suggested that the PelvicToner was less effective than or "inferior to" the other products tested in the programme. The programme simply showed the PelvicToner being used and being effective; it also showed that one woman had found it time consuming and not a "quick fix".

Channel 4 said that there was nothing on the PelvicToner website which suggested that older women would find the device more effective than younger women or that the device would work more effectively with woman who had experienced childbirth and that every indication was given that the PelvicToner worked effectively for women of all ages. There was therefore no reason for any member of the programme makers to have thought that Natasha's age or the fact that she had not borne children was, or could have been, a factor in her successful use of the product.

Furthermore, Channel 4 said that at no point during the meeting in September 2008 between Mr Barry Fowler, managing director of SPML, and the programme makers were the programme makers advised that, for optimum effect, the device should be given to older women who had had children.

- b) As regards the complaint about the research and the programme's failure to qualify the testing used on the products, Channel 4 said that the programme makers were aware, prior to broadcast, that SPML was funding research at the Bristol Urological Institute ("the BUI"), but were not aware of any of the detail of the research or its conclusions.

Channel 4 said that as part of the preparation for the production of the programme, in September 2008, the director and a researcher met Mr Fowler to discuss the issue of pelvic floors generally and the possible inclusion of the PelvicToner in the programme. Mr Fowler mentioned that he was currently funding some research at the BUI but he did not elaborate about the detail of the research or its conclusions.

Channel 4 said that the programme makers later met personnel from the BUI and that discussions focused on the issue of pelvic floor muscles in general medical terms.

The programme makers were particularly interested in whether the BUI might be willing to recommend people who suffered from weak pelvic floor muscles who would be willing to be filmed for the programme. There was no discussion about any BUI research about the PelvicToner and, in particular, the programme makers were never made aware that the BUI had concluded that the PelvicToner was the most efficient apparatus on the market for strengthening pelvic floor muscles.

Channel 4 said that in or around September 2008, a researcher for the programme looked at the SPML PelvicToner website and saw no mention at that time of any of the details of the BUI research or its conclusions. In September 2009 nothing on the website disclosed the conclusions referred to in the complaint as being known by the programme makers prior to broadcast. Rather, the website contained a bare assertion about a clinical trial that proved that the PelvicToner was more effective than the other named devices. A hyperlink to the clinical trial did not provide access to the detail of the clinical trial or its conclusions and the website provided no way to objectively assess the accuracy of the statements made on it about the effectiveness of the PelvicToner.

Channel 4 said that even if it were the case that the programme makers knew about the information available on SPML's website in September 2009 prior to broadcast, it did not follow that the information would have formed part of the programme. Channel 4 said that there was a significant difference between promotional material used by SPML and factual matters. Channel 4 said that for the programme to repeat a bare assertion favourable to SPML without objectively establishing the accuracy of that assertion might materially mislead the audience and would be impermissible.

### **SPML's response**

In summary, Mr Fowler, who took over the conduct of the complaint from Mr Akerman, responded to Channel 4's statement as follows:

- a) As regards the complaint about the differing ages of the participants in the test, Mr Fowler said it was true that at no point during the September 2008 meeting were the programme makers advised that, for optimum effect, the device should be given to older women who had had children. Mr Fowler said that he would not have made such a point and that the PelvicToner was a registered medical device designed for use by any woman of any age who wanted to learn how to exercise correctly. Mr Fowler said that women could present with Urinary Stress Incontinence ("USI") at any age and that physiotherapists would be well aware that childbirth and menopause were the principal causes of a weak pelvic floor and USI and, that older women with children were more likely to exhibit weaker pelvic floor muscles.

Mr Fowler said SPML's complaint was that Channel 4 created a situation where two products were shown in an unrealistically positive light because they were used by women with this history who would obviously experience a more rapid improvement under any circumstances than a woman selected because she already had a good initial score and who patently had less potential to improve.

Mr Fowler said that women of any age, and capable of squeezing their pelvic floor to even a minimal degree, would benefit from the PelvicToner and many women into their 90s had found it perfectly simple to use. Mr Fowler said that for the physiotherapist to pre-judge who would be capable of using the PelvicToner demonstrated that she was not familiar with it and that was at the root of the problem.

- b) As regards the complaint about the research and the programme's failure to qualify the testing used on the products, Mr Fowler said his discussions with the programme makers took place on two occasions. On 12 September 2008 he said he had a very long telephone conversation with a researcher and sent her several items of background information, a PelvicToner and a DVD produced by the BUI. Mr Fowler then met the director of the programme at SPML's Bristol office on 22 September 2008. Mr Fowler also met one of the show's presenters, Dr. Christian Jessen, at a conference on 13 September and briefly discussed the PelvicToner with him.

In all of the discussions, Mr Fowler said that he emphasised the core proposition of the PelvicToner, which was its superiority to electro-stimulation and vaginal cones, by referring to research published in the British Medical Journal ("the BMJ"). Mr Fowler said that while that research did not specifically refer to the PelvicToner, it compared pelvic floor muscle training ("PFMT") against the other two approaches and drew the very clear conclusion that electro-stimulation and vaginal cones were quite inferior to PFMT. Mr Fowler said that the whole premise of the PelvicToner was that it was a pelvic floor exerciser designed to help users get the most from their PFMT by helping them identify and isolate the correct muscles and then exercise them correctly by squeezing against a resistance. Mr Fowler said that it was on the basis of the BMJ research and other work that the NICE<sup>2</sup> guidelines for the treatment of USI recommended pelvic floor exercises as the primary treatment and only recommended electro-stimulation in exceptional situations. Mr Fowler said that NICE did not recommend vaginal cones at all.

Mr Fowler noted that Channel 4 acknowledged that the programme makers were aware of the BMJ research and that there was a link to the BMJ paper from SPML's website. Mr Fowler said that the BMJ conclusions were also summarised and referenced in all SPML's literature and in the PelvicToner instruction leaflet which the programme makers had received. Mr Fowler said that in his conversations with the programme makers he advised them that the research being undertaken by the BUI was to compare the use of the PelvicToner with the current NICE gold standard treatment, i.e. standard PFMT. Mr Fowler said that the objective of the BUI research was not to demonstrate that PFMT itself was inappropriate, but to show that the PelvicToner had a key role in ensuring that PFMT was performed to the maximum effect and was effectively managed in the context of the NHS primary care environment.

Mr Fowler agreed that the programme makers were not shown results that demonstrated that the PelvicToner was "not inferior to the current gold standard treatment", because the phrase was not documented by the BUI until a research debrief in 2009. However, Mr Fowler said it would be totally false for the programme makers to assert that they were not aware of the fact that the other two products were determined to be inferior to the current gold standard treatment because their attention was repeatedly drawn to the BMJ publication and they acknowledged the direct link to that publication from SPML's website.

### **Channel 4's final response**

In summary, Channel 4 responded to Mr Fowler's comments as follows:

- a) As regards the complaint about the differing ages of the participants in the test, Channel 4 said it noted SPML's confirmation that the PelvicToner was designed for use by any woman of any age.

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<sup>2</sup> National Institute for Health and Clinical Excellence.

Channel 4 said that there was nothing about the programme which sought to artificially make the PelvicToner look bad and that all that happened was that three products were used by three women and their experiences of use were included in the final programme.

- b) As regards the complaint about the research and the programme's failure to qualify the testing used on the products, Channel 4 said it was grateful for SPML's confirmation that the programme makers were not shown results that demonstrated that the PelvicToner was not inferior to the current gold standard treatment, because that phrase was not documented by the BUI until a research debrief in 2009. Channel 4 said that the programme makers could not deal unfairly with research about which they were unaware.

Channel 4 said that, even if Mr Fowler had, as he claimed, emphasised on one or more occasion, that the core proposition of the PelvicToner was its superiority to electro-stimulation and vaginal cones and referred to research published in the BMJ, nothing turned on such statements, as they did not inform the programme makers of anything relevant to the alleged superiority of the PelvicToner over the other products.

Channel 4 said that Mr Fowler sought to claim unfairness based upon the programme makers being aware of the BMJ research. However, Channel 4 said that the BMJ study did not involve the PelvicToner and certainly said nothing about its effectiveness in relation to other products.

Channel 4 said that it followed that nothing had been raised which established any basis for a conclusion that the programme makers were aware of relevant research about the PelvicToner which they either ignored or failed to properly report. Rather, Channel 4 considered Mr Fowler sought to convince the programme makers that the technique underlying the PelvicToner was superior to other possible techniques available. Channel 4 considered that was a separate and different question from whether the PelvicToner itself was superior to other products in the marketplace.

## **Decision**

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

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

SPML's complaint was considered by Ofcom's Executive Fairness Group. In reaching its decision, Ofcom considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast, both parties' written submissions and supporting material.

In considering this complaint, Ofcom took account of Rule 7.1 of the Code which states that broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes. Ofcom also took account of Practice 7.9 of the Code which states that

broadcasters must 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.

- a) Ofcom first considered the complaint that SPML was treated unfairly in the programme because the participant who tested the PelvicToner was a young woman, but the participants testing the other two products were significantly older and had had children and that as a result the PelvicToner was portrayed unfairly and inaccurately in the programme as the least effective of the three products tested.

Ofcom noted that the programme highlighted the prevalence of incontinence, particularly amongst women, and stated that urinary “leakage” could be avoided by strengthening pelvic floor muscles through physical therapy. In order to demonstrate to viewers some of the solutions available to the problem, three volunteers were recommended by a physiotherapist to “road test” different physical therapy products on the market designed to improve pelvic floor muscle strength, a PFMT product (the PelvicToner), an electro-stimulation product and a vaginal cones product. The three volunteers had their pelvic floor muscle strength tested initially, used the products for three months and then had their pelvic floor muscle strength tested again.

The programme showed the volunteers not only reporting upon the ease of use of the respective products and the effect it had had upon their lives, but on the degree of improvement in their pelvic floor muscle strength after three months’ use. The following statements were made in the programme:

Voiceover: *“Katie has been using an electric muscle stimulator.*

Katie: *I thought it was very easy to use, it fitted around my lifestyle, and as long as it works I would recommend it 100%.*

Voiceover: *There’s a big difference between three weeks ago and now.*

Katie: *I improved by 50%, so I’m really happy with that.*

Voiceover: *Natasha had the PelvicToner.*

Natasha: *The product’s a bit time consuming and it’s quite inconvenient and I don’t really feel like it’s done anything but who knows. Oh well I’m a bit disappointed because there wasn’t that much of an improvement for all the work that I did it was only small. But you know I got to learn where my pelvic floor muscles were which is always a positive.*

Voiceover: *And Sharon had the weighted cones.*

Sharon: *I personally think it’s made a huge difference in my life. It’s improved my sex life – I don’t dribble as much as I used to. It’s fantastic. I’m absolutely over the moon with the results. I’ve improved over 60%. So I’m ecstatic”.*

Ofcom noted that the volunteers who used the vaginal cones product and electro-stimulation product stated that they had improved their pelvic floor muscle strength by 60% and 50% respectively. Natasha, the volunteer who tested the PelvicToner, stated that she had not experienced much of an improvement for all the work that she

had done using the product. In Ofcom's view, the item presented Natasha as being the least pleased out of the three volunteers with the product that she had tested.

Ofcom then considered whether the broadcaster had taken reasonable care not to present, disregard or omit material facts in a way that resulted in unfairness to SPML. Ofcom noted SPML's assertion that older women who had given birth were more likely to exhibit weaker pelvic floor muscles and, as a result, upon undertaking physical therapy would experience a more rapid improvement in pelvic floor muscle strength than women with good initial strength. SPML complained, therefore, that by choosing older women who had had children to test the other two products, and a younger woman whose initial pelvic muscle strength was better, to test the PelvicToner, there had been an unequal test which led to the PelvicToner being unfairly portrayed as the least effective of the three products.

Ofcom considered Channel 4's statement that there was no reason for the programme makers to have thought that Natasha's age or the fact that she had not borne children was or could have been a factor in her successful use of the PelvicToner. Ofcom noted that in preparation for the programme, the programme makers met representatives of both SPML and the BUI in September 2008 to discuss pelvic floor issues generally and viewed SPML's website. They also employed a physiotherapist recommended to them by the Birmingham Women's Hospital to undertake the pelvic floor muscle strength tests at the Birmingham roadshow and relied upon her recommendations in selecting the road test volunteers. Ofcom also took account of the fact that the programme makers were not informed by SPML that for optimum effect the PelvicToner should be given to older women who had had children and that there was nothing to alert them to that fact on SPML's website.

Ofcom noted that the context of the test was as a very short magazine-style item in the programme which lasted only a few minutes overall and that it was never intended to be, and was not presented as, a rigorous scientific experiment or a clinical trial to establish conclusively the most effective product out of the three. The test was used in the programme to introduce viewers to three products that were available on the market and to present the personal views of the volunteers about their individual experiences of using the products.

In light of the way in which the item was presented to the audience, as set out above, it is Ofcom's view that it was not necessary for the programme makers to ensure that the volunteers were matched in age, had all borne children or had comparable room for improvement in the strength of their pelvic floors. As such, Ofcom was satisfied that the programme makers had taken reasonable care in the circumstances to ensure that material facts were not presented, disregarded or omitted in a way that was unfair to SPML.

Ofcom has not therefore upheld the complaint in this respect.

- b) Ofcom then considered the complaint that the programme makers were aware of research which showed that the PelvicToner produced the best results and was determined to be "not inferior to the current gold standard treatment" and that the other two products were consistently determined to be "inferior to the current gold standard treatment", but that the programme failed to qualify the "subjective" test results and that, as a result, the PelvicToner was portrayed unfairly and inaccurately in the programme as the least effective of the three products tested.

As set out in decision head a) above, in Ofcom's view, the programme presented the volunteer who had tested the PelvicToner as being the least pleased out of the three volunteers with the product she had tried.

Ofcom considered whether the programme makers had taken reasonable care not to omit and/or disregard material facts in a way that was unfair to SPML in circumstances where SPML complained that the programme makers had been made aware of, and had omitted and/or disregarded, clinical research undertaken by the BUI which showed the PelvicToner was the most effective of the three products tested in the programme.

Ofcom noted that SPML accepted that prior to broadcast the programme makers could not have known the results of the clinical research undertaken by the BUI because those results were not made available until later in 2009. Ofcom also noted that SPML then relied upon the fact that it had drawn the programme makers' attention to an article published in the BMJ on 20 February 1999 which concluded that PFMT was superior to the other two methods of physical therapy, namely electro-stimulation and vaginal cones in the treatment of genuine USI. Ofcom noted that SPML argued that because the study published in the BMJ showed that the PFMT method of physical therapy was more effective than the other two methods, it proved the PelvicToner was a more effective product than the other two products used by volunteers in the programme and that it was unfair for the programme not to have clarified this.

In Ofcom's view, while the programme makers had their attention drawn to the study in the BMJ which concluded that PFMT was a more effective method of physical therapy for reducing UCI than either electro-stimulation or vaginal cones, no evidence was supplied to the programme makers that the PelvicToner product itself was more effective than the other two products tested in the programme.

In light of the above factors, Ofcom was satisfied that, in the absence of such evidence, it would have been inappropriate for the programme to have qualified the test results in the way SPML suggested. Ofcom therefore found that the programme makers had taken reasonable care not to omit and/or disregard material facts in a way that was unfair to SPML.

Ofcom has not therefore upheld the complaint in this respect.

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

## Not Upheld

### Complaint by Crystal Spring Limited made on its behalf by Mr Thomas Laird

*Watchdog, BBC1, 6 April 2009*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment made by Mr Thomas Laird on behalf of Crystal Spring Limited.

This edition of BBC1's consumer affairs programme, *Watchdog*, included an investigation of "detox" products available for sale on the high street. The presenter tested Crystal Spring's Detoxology Footpads and another product. The presenter and a panel of experts then discussed the results.

Mr Laird, managing director of Crystal Spring, complained to Ofcom on behalf of the company that it was treated unfairly in the programme as broadcast.

In summary Ofcom found the following:

- It was clear that the presenter and panel were expressing their opinions rather than making statements of fact. It was also clear that the panel members were sceptical of detox products in general. There was no unfairness to Crystal Spring as a result of the presentation of the views of the presenter and panel.
- The programme's failure to make clear that the presenter's view that the footpads had not worked was based on one day's use of a pad, rather than following the recommended 14-day programme, did not result in unfairness to Crystal Spring.

#### Introduction

On 6 April 2009, the BBC broadcast an edition of *Watchdog*, a consumer series that investigates viewers' complaints about traders, retailers and other companies around the country.

The programme included a report assessing the merits of various detox products available for sale. The presenter tested two products, including Crystal Spring Limited's ("Crystal Spring") Detoxology Footpads ("the footpads") and then presented the footpads to a panel of three experts, along with the other tested product and four other detox products. The panel discussed the footpad the presenter had used and questioned whether the "brown goo" that had appeared on it demonstrated that toxins had actually been drawn out through her foot by the footpad. The panel expressed doubts about detox products in general and favoured making general lifestyle changes to achieve health benefits. The presenter took the items to the streets to test their popularity before concluding:

*"...when there's so little evidence that some of these actually work, the only thing you're getting rid of is your cash".*

The report ended by stating that:

*"Crystal Spring, who make the footpads, say different people get different effects, but the colour change our experts got from water is very different from what happens when they're used on feet".*

Mr Thomas Laird, managing director of Crystal Spring, complained to Ofcom that the company was treated unfairly in the programme as broadcast.

## **The Complaint**

### **Mr Laird's case on behalf of Crystal Spring**

In summary, Mr Laird complained on behalf of Crystal Spring that it was treated unfairly in the programme as broadcast in that:

- a) The programme unfairly discredited Crystal Spring's footpads because the presenter and expert panel chose to air their opinions as facts. Furthermore, the programme made no attempt to make it clear to viewers that the experts were associated with a particular viewpoint which opposed detox products.

By way of background, Mr Laird said that this happened despite his request that the programme makers include an expert on their panel who did believe in detoxing. During Mr Laird's correspondence with the programme makers, he provided evidence to show that the footpads worked and referred the programme makers to bodies that supported detoxing and had evidence to prove it worked.

- b) Crystal Spring's footpads were unfairly portrayed, in that they were sold in a box of 14 for use over a two-week period. It was therefore unfair for the presenter to use them for one night and then say she didn't feel any better.

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

By way of introduction to its response to the specific complaints, the BBC said that in this edition, *Watchdog* wanted to put the detoxifying claims of various products to the test and to see what relevant scientific experts thought about them. The BBC said that Crystal Spring's footpads were just one of the products available on the high street for which such claims were made.

- a) In summary, the BBC responded to the complaint that the programme unfairly discredited the footpads as follows:

The BBC first responded to the complaint that the presenter and expert panel members "aired their opinions as facts". The BBC said that the comments were clearly the opinions of those expressing them and, in the case of the scientists, expert opinions informed by the evidence presented to them.

The BBC said that the presenter's comments were not offered as facts but as questions, as demonstrated by the following extracts:

*"I'm going to try some of these products for myself. Can they really do what they say they will?... There's been a result. But does that really mean I've been detoxed?... I certainly don't feel any better. So am I wasting my time and my money?"*

The BBC said that the panel's responses to the footpads and to the presenter's experience were clearly expressed as their opinions. The BBC said that, on being presented with the "evidence" of brown colouring on a footpad after use, the chemist on the panel expressed doubts about the relationship between the colour and detoxification. He stated:

*“I’m not necessarily sure that this is proof that you’ve drawn toxins out through the skin of your feet”.*

The BBC also said that the panel had studied the research papers provided by Crystal Spring, one of which referred to tourmaline (an ingredient in the footpads) as promoting bacterial growth. The BBC said that in the programme the chemist referred to that research in measured terms, which the BBC considered made clear that he was expressing his opinion. He stated:

*“This company sent us a research paper talking about using tourmaline to promote bacterial growth. Which to me doesn’t sound like a good thing to do to your foot”.*

The BBC said it believed that the wording used demonstrated that the experts were expressing their opinions in measured and considered terms, based on the information that had been provided by Crystal Spring and their own assessments of the claims made for the footpads.

The BBC said that, as scientists, the panel members were, in essence, giving their professional judgements based on their expertise and on factual evidence – in this case, the lack of any factual basis for the claims made by Crystal Spring for the footpads. The BBC said that the opinions broadcast constituted a fair summary of all the expert advice received by the programme, not just the opinions of the experts who appeared on the programme.

The BBC next responded to the complaint that the programme made no attempt to make it clear to viewers that the panel members were associated with a particular viewpoint which opposed detox products. The BBC said that it was made clear in the programme that the panel were sceptical of the claims of detoxifying products and were identified by the voiceover as being *“all rather sceptical of this stuff”*.

The BBC said that, regardless of their general professional opinion regarding the efficacy of detoxifying products, before making their comments, the panel members had examined the evidence supplied by Crystal Spring to the programme makers. Their comments were therefore informed by the research which, in their view, failed to provide any scientific proof for the claims made for the footpads. Despite their scepticism, the BBC said that the panel gave the products featured a full and fair scrutiny.

The BBC said that in view of the lack of any published research about detoxification it would be difficult to find many, if any, scientists actively in favour of products employing such terminology and making such claims.

The BBC then responded to the background point that, despite Crystal Spring’s request, the programme did not include an expert who believed in detoxing.

The BBC said it was satisfied with the credentials and suitability of the experts used in the programme. While the programme makers were under no obligation to speak to anyone recommended by Crystal Spring, in addition to the panel members who appeared in the programme, the programme makers consulted five other scientists, one of whom was from the organisation suggested by Crystal Spring, the Alliance for Natural Health (“ANH”). Far from endorsing or supporting the footpads in any way, the ANH expert made clear that he was “not impressed” by the claims of any of the products the programme makers had asked him to consider. In particular, the BBC

said that the comments he made about the footpads suggested he was not at all convinced by the claims made on their behalf and stated:

“They probably do increase perspiration, but if only on the foot won’t help much. If they have a reflexology effect it usually makes people feel nice. But negative ions and far infrared? Please!”

The BBC said that all the experts the programme makers spoke to about Crystal Spring’s footpads shared this scepticism.

Finally, the BBC responded to the background point that Crystal Spring had provided evidence to show its footpads worked. The BBC said that the programme makers had sent the evidence supplied by Crystal Spring to seven experts for their consideration. These included two dieticians, a biophysicist, a consultant dermatologist, a professor of complementary medicine, a chemist and an NHS doctor. None of the experts consulted was supportive of the footpads, or convinced by the evidence provided by Crystal Spring. The BBC also said that Crystal Spring supplied no evidence of any proper trials or peer-reviewed research and that not one of the experts contacted by the programme makers considered the material supplied by Crystal Spring to constitute valid scientific evidence.

- b) In summary, the BBC responded to the complaint that Crystal Spring’s footpads were unfairly portrayed as follows:

The BBC said that the presenter used the footpad as an illustrative example of how it was supposed to work and reported her personal reaction following use of the footpad. The BBC said that the programme did not suggest that the presenter’s use of the footpad constituted a clinical trial and that Crystal Spring’s arguments regarding the ideal duration of use did not invalidate the presenter’s personal view of the experience.

The BBC said that, while the footpads are sold in packs of 14 (referred to as “2 weeks supply”), neither Crystal Spring’s website nor the packaging for the footpads stated that they must to be used for 14 days in order to have an effect. Although the instruction leaflet inside the packet referred to use of the footpads for 14 days, it did not made clear that such a course of treatment was essential in order for the footpads to work and in fact there was an indication that the user would feel better straight away following the “dark sticky mess” appearing on the footpads overnight. Under the heading “How do I know if they are working?”, the instructions stated:

“The great thing about the Crystal Spring Footpads is that the results are so visual. In the morning you will see a dark sticky mess on the pads...”

The BBC said that this wording seemed to imply that some almost immediate benefit may be had from the use of the footpads.

The BBC said that when Mr Laird was told in an email on 3 April 2009 that the presenter might be trying out the footpads and commenting on the results, he had replied (also on the 3 April 2009) and suggested that several different people should try them and that the colour change should be assessed, though he did not make it clear why that would be relevant. Mr Laird had made no mention of the importance or necessity of a 14-day trial and in fact acknowledged in his email that the presenter would only be trying one of the footpads.

### **Mr Laird's response on behalf of Crystal Spring**

- b) In summary, Mr Laird said that, as he received the BBC's email on Friday 3 April 2009 and the programme was due for broadcast on Monday 6 April 2009, it was clear that the presenter was not going to use a full 14-day pack. Mr Laird said he had therefore tried to offer a constructive way for the programme to better test the footpads in a short period of time.

### **The BBC's final response**

- b) In summary, the BBC said that there was no indication that the footpads could only be effectively appraised when used for 14 days and that Mr Laird could have raised his concerns over the duration of the trial in his emails prior to broadcast but did not do so. The BBC said that the suggestion that adapting the size of the sample group would have ensured the validity of the testing was not compatible with the suggestion that the validity of the trial hinged on its duration.

### **Decision**

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

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

Mr Laird's complaint on behalf of Crystal Spring was considered by Ofcom's Executive Fairness Group. In reaching its decision, Ofcom considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast, both parties' written submissions and supporting material.

- a) Ofcom first considered the complaint that Crystal Spring was treated unfairly in the programme in that the programme unfairly discredited Crystal Spring's footpads because the presenter and expert panel aired their opinions as facts and it was not made clear the experts were opposed to detox products.

Ofcom had regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of an organisation, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("the Code"), and whether the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to an organisation (as outlined in Practice 7.9 of the Code).

Ofcom first considered the complaint that the presenter and panel members "aired their opinions as fact". Ofcom noted that the presenter said in relation to the footpads:

*"There's a nasty brown goo on the pad which, according to Crystal Spring, shows it's working. So, ... there's been a result. But does that really mean I've been detoxed?...I've tried two detox products now... and the second one seemed to suck some brown goo off my foot. Maybe that's what they're supposed to do, but I certainly don't feel any better, so am I wasting my time and my money?"*

The presenter then discussed the footpads with the expert panel. The presenter stated:

*“Our experts clearly weren’t impressed, so we showed them some more products ... and they weren’t convinced by the claims of any of them.”*

Ofcom then considered the specific comments made by the experts. Ofcom noted comments made by the doctor on the panel about another product tested on the programme:

*“The most toxic ingredient in this is the promise that you can do something meaningful for your health in just 24 hours and I think that’s quite misleading.”*

The doctor also commented, following a suggestion that healthy eating, exercise, drinking water and enough sleep are all we need, that:

*“And the tragedy is, you can’t make money out of giving advice like that, so in the media what you see is magic pills and detoxes because nobody’s trying to sell just sensible lifestyle advice.”*

Ofcom noted that the chemist on the panel said of detox products generally:

*“Well I think it meets a need in that we want a quick fix ... and they’re providing an apparent quick fix to our lifestyles. I’d like to see detox become a dirty word that wasn’t useful in marketing.”*

Finally, Ofcom noted the comments of the dietician on the panel:

*“We can get everything we need and more from eating healthily, exercising regularly, drinking lots of water and getting enough sleep.”*

Ofcom considered that the experts’ comments about detox products in general were clearly presented as their opinions, and they applied to all of the products tested. Ofcom then considered the other comments made by the presenter and experts:

*“So ... there’s been a result. But does that really mean I’ve been detoxed?... I’m not necessarily sure that this is proof that you’ve drawn toxins out through the skin of your feet... Looks like water’s far more toxic than you... This company’s sent us a research paper, talking about using tourmaline to promote bacterial growth, which to me doesn’t sound like a very good thing to do on your foot.”*

Ofcom concluded that these comments (aside from the factual reference to the company’s provision of a research paper) were either expressions of opinion or questions rather than statements of fact.

Ofcom then considered the complaint that the programme unfairly discredited the footpads because it did not make clear that the panel was opposed to detox products. Ofcom noted that after the panel was introduced on the programme, it was stated in commentary that:

*“They’re all rather sceptical of this stuff”.*

Ofcom noted that the panel were introduced in the programme as being “sceptical” rather than “opposed” to detox products. However, in Ofcom’s view, the comments

they each made during the course of the programme left little doubt that each of them was opposed to detox products. Ofcom also considered that, as medical and scientific experts who had knowledge of the wider evidence base for products that claimed to detoxify the body, it was not unfair for the programme to include these “sceptical” opinions.

In the circumstances, in relation to both the expressions of opinion and the viewpoint of the panel, Ofcom was satisfied that the broadcaster had taken reasonable care not to present, omit or disregard material facts in a way that was unfair to Crystal Spring.

Ofcom therefore found no unfairness to Crystal Spring in this respect.

- b) Ofcom then considered the complaint that Crystal Spring’s footpads had been portrayed unfairly in the programme because they were sold in a box of 14 for use over a two-week period, but the presenter had used them for one night and then said she didn’t feel any better.

Ofcom had regard to whether the broadcaster’s actions ensured that the programme as broadcast avoided unjust or unfair treatment of an organisation, as set out in Rule 7.1 of the Code, and whether the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to an organisation (as outlined in Practice 7.9 of the Code).

Ofcom considered whether the footpad detox programme was sold as a 14-day programme and, if so, whether that was a material fact, the omission of which was likely to result in unfairness to Crystal Spring.

Ofcom first considered Crystal Spring’s instruction leaflet for the footpads and noted that it included the following:

“Place on alternate feet each night for the full 14 nights. This detox programme can be repeated as often as you wish. ... Many people find they sleep better, their skin is clearer and eyes brighter, but as everyone is different, we suggest you write down any ailments or reasons for using the pads on a piece of paper and refer to it again when you have used all the pads. That way you can check out your results for yourself. ... The great thing about the Crystal Spring Footpads is that the results are so visual. In the morning you will see a dark sticky mess on the pads. Over a period of time, that gets lighter in colour and less sticky”.

In Ofcom’s view, the leaflet made clear that the footpad detox programme was a 14-day programme. Bearing in mind the examples of the benefits that the leaflet suggested could be experienced (better sleep, clearer skin and brighter eyes), Ofcom considered that the manufacturers may have intended to convey that such benefits would be observed only after the full 14-night programme, even if, according to the leaflet, the results were visible because of the dark sticky mess that would appear on the footpads. Ofcom therefore agreed that the product was sold as a 14-day programme.

Ofcom then noted the BBC’s submission that when Mr Laird was told that the presenter might be trying out the footpads and commenting on the results, he expressed the view that several different people should try them and that the colour change should be assessed, but didn’t mention the importance or necessity of a 14-day trial.

It appeared to Ofcom that Mr Laird understood that the presenter was going to test the footpads for colour change results, rather than for feelings of wellbeing, hence his suggestion that a few different people try the footpads. In the context of a test for colour change, Ofcom did not consider that anything could be read in to the fact that Mr Laird did not mention the importance of a 14-day trial.

Ofcom noted that the presenter tested one footpad on one foot for one night, but in doing so, did not mention that the footpad detox programme was a 14-day programme and that she had only tested them for one day. She noted the “result” promised by the product’s packaging but then queried what the result actually meant:

*“There’s a nasty brown goo on the pad which, according to Crystal Spring, shows it’s working. So, ... there’s been a result. But does that really mean I’ve been detoxed?”*

She also summed up her experience of both the footpads and another detox product tested by stating: *“I certainly don’t feel any better”*.

In order to answer the question, *“does that really mean I’ve been detoxed?”* the presenter then explained the steps taken by the programme makers:

*“We bought a range of detox products and wrote back to the makers of each, asking them to send us proof to back up the claims they make on the packet. We then showed their products and the evidence to a panel of experts.”*

The next section of the programme introduced the experts (who included a registered dietician, a medical doctor and a chemist) who commented on the principle of removing toxins from the human body, and whether the visual result could offer proof that toxins had been removed:

*“Yes, yes, actual brown sludge”, “I’m not necessarily sure that this is proof that you’ve drawn toxins out through the skin of your feet”.*

The panel also stated:

*“The company’s sent us a research paper, talking about using tourmaline to promote bacterial growth”.*

Ofcom noted the BBC’s submission that the panel consisted of scientists, whose judgements were based on their expertise and the scientific evidence available. Ofcom recognised that the programme made clear that the experts had examined the evidence supplied by Crystal Spring in support of its product and that, in their professional opinion, the evidence did not provide any scientific proof for the claims made for the footpads about removing toxins from the body.

Ofcom considered that the programme did not present the test carried out by the presenter as a scientific trial but rather as an attempt to reproduce the visible results claimed for the product. Ofcom acknowledged that the product’s packaging suggested that it was a course intended to be used for 14 nights, and that the programme did not make this clear; however, Ofcom also noted that the programme included and relied upon the professional opinion of an expert panel who confirmed in the programme that they had examined the evidence submitted in support of the footpads and explained that the visual result was not proof of the removal of toxins. Ofcom considered that the programme makers were entitled to rely on the view of the expert panel that the product was not proven to work in principle, and therefore that

omitting to refer to the intended 14-day programme did not amount to the omission of a material fact.

Taking the above factors into account, Ofcom considered that the broadcaster had not omitted a material fact from the programme as broadcast in a way that was unfair to Crystal Spring, and had taken steps to ensure that the facts regarding the use of the footpads as a method of removing toxins from the human body were not presented in a way that was unfair.

Ofcom therefore concluded that Crystal Spring was not treated unfairly in this respect.

**Accordingly, Ofcom has not upheld Mr Laird's complaint on behalf of Crystal Spring of unfair treatment in the programme as broadcast.**

## Not Upheld

### **Complaint by Criminal Defence Milton Keynes Solicitors on behalf of Mrs D**

*Anglia News, ITV1, 10 June 2009*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment and unwarranted infringement of privacy made by Criminal Defence Milton Keynes Solicitors (“CDMK”) on behalf of Mrs D.

Two editions of *Anglia News* included reports that police had recovered drugs and cash and made 13 arrests in a series of dawn raids on homes in Milton Keynes. The reports were illustrated with footage of the police breaking into Mrs D’s property.

CDMK complained on behalf of Mrs D that she was treated unfairly and that her privacy was unwarrantably infringed in the programmes as broadcast.

In summary, Ofcom found the following:

- As the reports did not suggest that drug dealing had taken place at Mrs D’s property, they were not unfair to her.
- As Mrs D did not have a legitimate expectation of privacy in relation to the police raid on her property or the reasons for it, her privacy was not infringed in the programmes as broadcast.

#### **Introduction**

On 10 June 2009, ITV1 broadcast two editions of its regional news programme *Anglia News* that featured an item about a series of police raids carried out on homes in Milton Keynes as part of National Tackling Drugs week. The reports stated that cocaine, amphetamines, cannabis plants and £6,000 in cash had been seized in the dawn raids and that 13 people had been arrested.

The reports included footage of police officers breaking down the door of a property and, in the case of the report broadcast at 18:00 hours, carrying boxes towards what appeared to be the same property. The second report, broadcast at 22:50 hours, depicted officers breaking into the property but did not contain footage of boxes being carried towards it.

CDMK complained to Ofcom on behalf of Mrs D, whose property was the only property shown in the broadcasts, that she had been unfairly treated in the programmes and that her privacy had been unwarrantably infringed in the programmes as broadcast.

#### **The Complaint**

##### **Mrs D’s case**

In summary, Mrs D complained that she was unfairly treated in the programmes as broadcast in that:

- a) The reports implied that drug dealing had taken place at the property shown.

By way of background, CDMK stated that no arrests were made at the property.

In summary, Mrs D complained that her privacy had been unwarrantably infringed in the programmes as broadcast in that:

- b) Her home address was clearly identified in the programmes that linked it to drug dealing by implication.

### **ITV's case**

In summary, ITV Broadcasting Limited ("ITV"), licensee responsible for the compliance of the programme on behalf of the ITV Network, responded to Mrs D's complaint that she was treated unfairly in the programme as follows:

- a) ITV said that neither the property nor its location were identifiable from the reports. ITV said that at the time of the broadcasts it had not been confirmed by police what action, if any, would be taken against the occupants of the property and that because of that, the programme makers blurred the house numbers (on the garage and beside the front door) and avoided using wider shots of the street so as not to disclose the property's location. ITV said that the reports did not reveal any distinguishable or identifiable features of Mrs D's property that would have made the area of Milton Keynes, the street or the exact location of the property identifiable to viewers, nor did they identify the owner or occupiers of the property.

ITV noted that Mrs D had said that her neighbours were able to identify her property from the reports. However, ITV said that it understood from the police that a number of neighbours passed the property during the execution of the search warrant. ITV said that it therefore appeared that Mrs D's neighbours would already have been aware of the raid, notwithstanding the coverage.

In any event, ITV said that the reports did not imply drug dealing had actually taken place at the property, or make any specific allegations about the property or its occupants. ITV said that, although both reports stated the raids were part of a "crackdown on drug dealing" and referred to the total amount of drugs and money seized in all raids, the reports did not state or imply that drugs had been found at that particular address, that drug dealing had taken place at the address or that anyone at the address had been arrested.

ITV said that in the second report a police spokesperson stated:

*"Basically what we are looking to do is to target dealers in Milton Keynes and really to send out a very strong message that if we get intelligence to suggest that you are dealing drugs in Milton Keynes we will be coming to pay you a visit very soon".*

ITV said that the police had confirmed that they did have intelligence relating to Mrs D's property, which was why they executed the warrant. ITV said that, according to the police, they also found traces of cannabis at the address. However, ITV said that the reports stopped short of stating or implying that drug dealing had actually taken place at the property, as that had not been proven to be the case at the time of broadcast. ITV said that such is the immediacy of news reporting that the raids had to be reported before any findings were analysed, any investigations completed or cases concluded. In the circumstances, ITV said that it firmly believed that the editing of the reports and the statements made in them fairly and accurately represented what had occurred on the day of the raids and the reasons for them.

In summary, ITV responded to Mrs D's complaint that her privacy had been unwarrantably infringed in the broadcast of the programmes as follows:

- b) ITV said that Mrs D did not have a legitimate expectation of privacy regarding the broadcast of footage of her home.

ITV said that the filming took place openly in a public place and captured the police carrying out their law enforcement functions. ITV also said that the address and location of the property was not "clearly identified" in the reports. In addition, ITV said that the reports did not disclose the area, street or location of the property, nor did they name or otherwise identify the owner or the occupiers of the property or disclose any other private information about Mrs D. As such, ITV said that the location of the property and the identity of its occupiers/owner would not have been identifiable to viewers.

ITV said that no specific allegations of drug dealing were made in the reports about the owner or occupiers of the property and it was satisfied that statements about the intelligence police had about the property were factually correct.

ITV also said that just as there was nothing inherently private about an incident of arrest on suspicion of a criminal offence, so it believed that there was nothing inherently private about being the target of a police raid on suspicion of a criminal offence.

ITV said that even if Mrs D had a legitimate expectation of privacy regarding the footage of the property featured in the reports and her privacy was infringed, it believed that it was, in any event, warranted to include the footage in the reports given that:

- the reports were edited so that the location of the property and identity of its occupiers/owner were not identifiable to viewers;
- there was an inherent public interest in reporting police operations to tackle drug crime;
- no specific allegations were, or could have been, made about the owner or occupiers at the time of broadcast given the status of the police investigation; and
- there was nothing to suggest that the reason for the raids, as stated in the reports, was not factually correct.

## **Decision**

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

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

Mrs D's complaint was considered by Ofcom's Executive Fairness Group. In reaching its decision, Ofcom considered all the relevant material provided by both parties. This

included recordings and transcripts of the programmes as broadcast and both parties' written submissions.

### *Unfair treatment*

- a) Ofcom first considered the complaint that Mrs D was unfairly treated in the programmes as broadcast in that the reports implied that drug dealing had taken place at the property shown.

Ofcom had particular regard to whether the broadcaster's actions ensured that the programmes as broadcast avoided unjust or unfair treatment of individuals, as set out in Rule 7.1 of the Ofcom's Broadcasting Code ("the Code"), and whether the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to an individual or organisation (as outlined in Practice 7.9 of the Code).

Ofcom noted that, following receipt of intelligence that drug dealing may have been taking place at Mrs D's property, the police raided the property on 10 June 2009 and that nobody was arrested as a result of the raid.

Ofcom viewed the two reports broadcast in the *Anglia News* bulletins at 18:00 and 22:50 on 10 June 2009 and noted that, over footage of the raid on Mrs D's property (the only property shown in the footage), both reports stated:

*"Cocaine, amphetamines, over 300 cannabis plants and around £6,000 have been found in dawn raids by police in Milton Keynes. Officers stormed the homes this morning as part of a week-long crackdown on drug dealing in the town to coincide with National Tackling Drugs week. They have arrested 13 people so far and say the raids should be a strong message to drug dealers".*

In the 22:50 report a police communications officer was shown saying:

*"Basically what we are looking to do is to target dealers in Milton Keynes and really to send out a very strong message that if we get intelligence to suggest that you are dealing drugs in Milton Keynes we will be coming to pay you a visit very soon".*

Ofcom noted that Mrs D neither appeared in nor was referred to in the reports and, in Ofcom's view, Mrs D's property (and hence Mrs D) would not have been recognisable from the reports to anyone who was not already aware of the police raid on her property or who knew her property very well (e.g. her immediate neighbours – who realistically were likely to have been aware of the raid, given their proximity to the property). Ofcom considered that the programme makers had taken care to ensure that the footage of Mrs D's property that was broadcast was treated in such a way as to successfully conceal its identity. No mention was made of the area of Milton Keynes it was in, the house number had been obscured and none of the broadcast footage identified either the street on which the property was located or its position in the street.

In any event, Ofcom noted that the reports gave details of the total recoveries and arrests from the police raids that day. While the reports were solely illustrated with footage of the raid on Mrs D's property, Ofcom did not consider that either report suggested her property was one where drugs or anything else had been recovered or arrests had been made. In Ofcom's view, the reports suggested that the properties raided, including Mrs D's property, were addresses where drug dealing was

suspected rather than addresses where drug dealing had occurred and Ofcom considered that the statement of the police communications officer in the report broadcast at 22:50 served to underline that message.

Taking the above factors into account, Ofcom was satisfied that the broadcaster had taken reasonable care not to present, disregard or omit material facts in either of the reports in a way that was unfair to Mrs D.

Ofcom has not therefore upheld Mrs D's complaint in this regard.

### *Privacy*

- b) Ofcom then considered the complaint that Mrs D's privacy had been unwarrantably infringed in the broadcast of the programmes, in that her home address was clearly identified in the programmes that linked it to drug dealing by implication.

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

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

In considering whether or not Mrs D's privacy had been infringed, Ofcom first determined whether she had a legitimate expectation of privacy in relation to the information that was broadcast.

Ofcom examined the footage that was included in the programmes as broadcast and assessed the nature of the information, actions and events disclosed as well as the context of the disclosure.

Ofcom noted that the reports disclosed the total amount of drugs and cash seized and the number of arrests made by police that day in the context of a high-profile and public series of raids carried out by police on properties suspected of drug dealing as part of National Tackling Drugs week. Ofcom took account of the fact that the reports were illustrated with footage of police breaking into a property (Mrs D's property), that the footage (which showed the exterior of the property only) had been taken openly and from a public place, did not include footage of Mrs D or any other information linking her to the property and, as noted in decision head a) above, that care had been taken by the programme makers to conceal the identity and location of the property.

While Ofcom recognised that there may be occasions where an individual's contact with the police could give rise to a legitimate expectation of privacy, in this case, Ofcom noted that the raid undertaken by the police on the property took place openly and in public and, together with the other raids that day, was apparently designed to send a public message reassuring the community that the police were tackling drug dealing and discouraging offending and/or re-offending. In the circumstances, Ofcom considered that Mrs D could not legitimately have expected that the public raid on the property was a private matter or that the reasons for the raids would remain private and that, as a result, she could not have had a legitimate expectation of privacy in respect of the information disclosed in the reports.

Taking into consideration the above factors, Ofcom was satisfied that Mrs D did not have a legitimate expectation of privacy in the circumstances and that there had therefore been no infringement of her privacy in the broadcasts. Given that Ofcom found that Mrs D's privacy was not infringed in the programmes as broadcast, it was not necessary for Ofcom to further consider whether any infringement of privacy was warranted.

Ofcom has not therefore upheld Mrs D's complaint in this regard.

**Accordingly Ofcom has not upheld CDMK's complaint on behalf of Mrs D of unfair treatment or unwarranted infringement of privacy in the programmes as broadcast.**

## Not Upheld

### Complaint by Mrs Shayo Bryan and Mr Jonathan Fenelon

*Focus on Grenada, Wedding TV, 5 July 2009*

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**Summary:** Ofcom has not upheld this complaint of unwarranted infringement of privacy.

This programme featured wedding venues on the Caribbean island of Grenada and it included interviews with hotel managers, tourism representatives and people who had been married or had honeymooned there. One of the venues included was the Rex Resorts Hotel and footage of its grounds and function rooms were shown. Footage of a number of weddings was also shown in the programme, including very brief footage from Mrs Shayo Bryan's and Mr Jonathan Fenelon's wedding. They were shown in the distance walking with the bridesmaids through the hotel grounds. The programme also included footage of their wedding cake and the decoration of the room in which their reception was to be held.

Mrs Bryan and Mr Fenelon complained that their privacy was unwarrantably infringed in making and broadcast of the programme in that footage of their wedding was filmed and included in the programme without their consent.

Ofcom found as follows:

Ofcom considered that Mrs Bryan and Mr Fenelon had a legitimate expectation of privacy in that their wedding would not be filmed and footage of it would not be included in the programme after specifically not giving their consent to the programme makers.

However, Ofcom considered that the footage of them in the programme was so brief, and the filming was conducted at a distance from Mrs Bryan and Mr Fenelon and their wedding party. The brief footage did not capture anything more than Mrs Bryan and Mr Fenelon and their guests walking in the distance through the hotel grounds. Ofcom also noted that Mrs Bryan and Mr Fenelon were not identified by name in the programme and that the brief and distant nature of the footage did not render them identifiable (to a wider audience other than those in attendance at the wedding) from their appearance. Therefore, Ofcom concluded that the complainants' privacy was not infringed and having reached this view, it was not necessary for Ofcom to go on to consider the question of whether any infringement was warranted.

#### Introduction

On 5 July 2009, Wedding TV broadcast *Focus on Grenada*, a programme that reported on wedding venues on the Caribbean island of Grenada. It featured interviews with hotel managers, tourism representatives and couples who had been married or had taken their honeymoon on the island.

The programme included an interview with the manager of the Rex Resorts Hotel in Grenada, who talked about the services the hotel had to offer to those planning to get married on the island. Footage of the hotel's grounds and functions rooms were shown, as was footage of a number of weddings taking place. One of the weddings that had taken place at the time of filming was that of Mrs Shayo Bryan and Mr Jonathan Fenelon who were shown briefly and from a distance walking with bridesmaids and other guests through the hotel grounds. The programme also included footage of the room in which Mrs Bryan and Mr Fenelon's wedding reception was to be held.

Mrs Bryan complained to Ofcom on her own behalf and on behalf of Mr Fenelon that their privacy was unwarrantably infringed in the making and broadcast of the programme.

## **The Complaint**

### **Mrs Bryan's and Mr Fenelon's case**

In summary, Mrs Bryan and Mr Fenelon complained that their privacy had been unwarrantably infringed in the making and the broadcast of the programme in that footage of their wedding was filmed for the programme and subsequently included in the broadcast of it without their consent.

Mrs Bryan said that despite repeated requests by the programme makers to film the wedding, she had made it very clear to them that she did not want her wedding to be filmed or to be broadcast. She said that the programme makers had agreed that they would not film her wedding and that they would only be filming the hotel's grounds.

### **Wedding TV's case**

In summary, Wedding TV responded to the complaint of unwarranted infringement of privacy in the making and broadcast of the programme as follows:

Wedding TV said that it had the full approval of the hotel management to film at the hotel, including its grounds and the other areas belonging to it. It said that the permission given by the hotel also extended to any guests or staff who would be present at the time of filming. During filming, the programme makers (consisting of four crew members) were accompanied by a hotel representative.

Wedding TV said that the programme makers had met with Mrs Bryan and Mr Fenelon on the morning of their wedding and the day of filming to discuss filming them. It said that Mrs Bryan and Mr Fenelon and the programme makers failed to come to an agreement about the filming and so the programme makers went about filming the venue. Wedding TV said that there had been no agreement with the couple about what would be filmed and included in the programme. Wedding TV said that the filming of individuals and personal items had been incidental.

Wedding TV said that the footage of Mrs Bryan's and Mr Fenelon's wedding had been filmed in the grounds of the hotel (as approved by the hotel management) and that the couple had their backs to the camera and their faces were not shown. Wedding TV said that, when the wedding was being filmed, the hotel's manager was present and was aware that the programme makers (consisting of four crew members) were filming without anyone being identified as the wedding party had their backs to the camera so their faces were not visible. In relation to the wedding room, Wedding TV said that again, the hotel's manager was present and was filmed demonstrating how a wedding would be set up at the hotel.

Wedding TV said that, although the programme makers were unable to get the consent of Mrs Bryan and Mr Fenelon, they had been given permission to film by the hotel's manager. Wedding TV said that it was decided by the programme makers that the footage to be included in the programme would not include any faces of the wedding party and would be brief. Wedding TV said that the footage of Mrs Bryan's and Mr Fenelon's wedding included in the programme was unobtrusive, minimal and did not identify any of the wedding party.

## Decision

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

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

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

Ofcom considered Mrs Bryan's and Mr Fenelon's complaint that their privacy was unwarrantably infringed in both the making and broadcast of the programme in that their wedding was filmed and footage of it subsequently broadcast without their consent.

In Ofcom's view, the individual's right to privacy has to be balanced against the competing rights of the broadcasters to freedom of expression. Neither right as such has precedence over the other and, where there is a conflict between the two rights, it is necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account. And any interference or restriction must be proportionate.

This is reflected in Rule 8.1 of the Code which states that any infringement of privacy in programmes or in connection with obtaining material included in programmes must be warranted. In considering complaints about the unwarranted infringement of privacy, Ofcom will therefore, where necessary, address itself to two distinct questions: First, has there been an infringement of privacy? Second, if so, was it warranted?

Ofcom first considered whether or not Mrs Bryan and Mr Fenelon had a legitimate expectation of privacy in relation to the filming and the subsequent broadcast of footage of their wedding. The Code explains that "legitimate expectations of privacy will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye".

Ofcom considered that the nature of the information filmed and subsequently disclosed in the programme as broadcast relating to Mrs Bryan's and Mr Fenelon's wedding was information that may be understood to be sensitive and personal and may therefore attract an expectation of privacy. Ofcom noted that the programme makers had sought Mrs Bryan's and Mr Fenelon's consent to film their wedding and broadcast the footage, but that such consent was not forthcoming. Ofcom took the view that, given that Mrs Bryan and Mr Fenelon had made clear to the programme makers that they did not consent for their wedding to be filmed or for footage of it to be broadcast, they had a legitimate expectation of privacy in relation to the filming and broadcast of footage of their wedding.

Having found that Mrs Bryan and Mr Fenelon had a legitimate expectation of privacy in relation to filming their wedding and then broadcast of footage of them in the programme without their consent, Ofcom went on to consider whether or not their privacy was in fact infringed.

Ofcom recognised that the hotel is private property and that access to its grounds and functions rooms may well be restricted to the general public, albeit readily accessible to the hotel's guests and visitors. However, having examined the footage included in the programme, it appeared to Ofcom that the filming in and around the hotel had been conducted openly and that the programme makers had not concealed the fact that they were filming. Ofcom noted that the programme makers were aware that Mrs Bryan and Mr Fenelon had refused to agree to their wedding being filmed and broadcast. In such circumstances, Ofcom does not consider that any consent given by the hotel management to filming in the hotel grounds could in any way provide the programme makers with consent to film and broadcast their wedding. However, Ofcom noted that the filming was conducted at a distance from Mrs Bryan and Mr Fenelon and their wedding party and that it very briefly captured (from behind) Mrs Bryan and Mr Fenelon and their guests walking through the hotel grounds. Ofcom noted that the programme makers also filmed the empty function room in which Mrs Bryan and Mr Fenelon were later to hold their wedding reception. Ofcom noted that the programme makers did not film the actual wedding ceremony or the wedding reception itself.

In relation to the footage broadcast in the programme, Ofcom considered that Mrs Bryan and Mr Fenelon were shown briefly from a distance, walking with their guests through the grounds of the hotel. They had been filmed from behind so that their faces were not discernable. Ofcom also noted that the footage itself appeared in the programme very briefly (for a duration of approximately five seconds), and that Mrs Bryan and Mr Fenelon were not identified by name in the programme; moreover the brief and distant nature of the footage was very unlikely to have rendered them identifiable (other than to those who had attended the wedding) from their appearance.

In relation to the broadcast of footage of the function room where the Mrs Bryan's and Mr Fenelon's wedding reception was to be held, Ofcom considered that the images of the room did not reveal any information about Mrs Bryan and Mr Fenelon that could be understood to be of a sensitive or private nature. Ofcom considered that the images of the function room shown in the programme were non-specific and did not display any decorative features that associated or identified the room with Mrs Bryan and Mr Fenelon.

Taking all these factors into account, Ofcom was satisfied that Mrs Bryan's and Mr Fenelon's privacy had not been infringed in either the making or the broadcast of the programme. Having concluded that there was no infringement of their privacy in the making and broadcast of the programme, Ofcom did not go on to consider the issue of whether any infringement was warranted.

**Accordingly, the complaint of unwarranted infringement of privacy in the making and broadcast of the programme has not been upheld.**

## Not Upheld

### Complaint by Ms Lara Akande

*Focus on Grenada, Wedding TV, 5 July 2009*

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**Summary:** Ofcom has not upheld this complaint of unwarranted infringement of privacy.

This programme featured wedding venues on the Caribbean island of Grenada and it included interviews with hotel managers, tourism representatives and people who had been married or had honeymooned there. One of the venues included was the Rex Resorts Hotel and footage of its grounds and function rooms were shown. Footage of a number of weddings was also shown in the programme including very brief footage from that of a wedding at which Ms Lara Akande was a bridesmaid. Ms Akande was shown in the distance walking with the bride and groom and other bridesmaids through the hotel grounds.

Ms Akande complained that her privacy was unwarrantably infringed in the making and broadcast of the programme in that the footage of her was filmed and subsequently included in the programme without her consent.

Ofcom found as follows:

Ofcom considered that Ms Akande had a legitimate expectation of privacy in that the wedding in which she was a bridesmaid would not be filmed and footage of it would not be included in the programme after the bride and groom had not given their consent to the programme makers.

However, Ofcom considered that the footage in the programme was so brief and the filming was conducted at a distance from Ms Akande and the wedding party. The brief footage did not capture anything more than Ms Akande and the other bridesmaid guests walking in the distance through the hotel grounds. Ofcom also considered that Ms Akande was not identified by name in the programme and that the brief and distant nature of the footage did not render her identifiable (to a wider audience other than those in attendance at the wedding) from her appearance. Therefore, Ofcom concluded that the complainants' privacy was not infringed and having reached this view, it was not necessary for Ofcom to go on to consider the question of whether any infringement was warranted.

### Introduction

On 5 July 2009, Wedding TV broadcast *Focus on Grenada*, a programme that reported on wedding venues on the Caribbean island of Grenada. It featured interviews with hotel managers, tourism representatives and couples who had been married or had taken their honeymoon on the island.

The programme included an interview with the manager of the Rex Resorts Hotel in Grenada, who talked about the services the hotel had to offer to those planning to get married on the island. Footage of the hotel's grounds and functions rooms were shown, as was footage of a number of weddings taking place. Ms Lara Akande, the complainant, was a bridesmaid at one of the weddings included in the programme and footage of her walking in the grounds with the wedding party was shown.

Miss Akande complained to Ofcom that her privacy was infringed in both the making and broadcast of the programme.

## **The Complaint**

### **Ms Akande's case**

In summary, Ms Akande complained that her privacy had been unwarrantably infringed in the making and broadcast of the programme in that she was surreptitiously filmed and footage of her was included in the programme without her knowledge or consent. Ms Akande said that the bride and groom had refused to give their consent for the programme makers to film the wedding and for it to be broadcast.

### **Wedding TV's case**

In summary, Wedding TV responded to the complaint of unwarranted infringement of privacy in the making and broadcast of the programme as follows:

Wedding TV said that it had the full approval of the hotel management to film at the hotel, including its grounds and the other areas belonging to it. It said that the permission given by the hotel also extended to any guests or staff who would be present at the time of filming. During filming, the programme makers (consisting of four crew members) were accompanied by a hotel representative.

Wedding TV said that the programme makers had met with the bride and groom on the morning of their wedding and the day of filming to discuss filming them. However, they failed to come to an agreement about the filming and so the programme makers went about filming the venue. Wedding TV said that the filming of individuals and personal items had been incidental.

Wedding TV said that the footage of the wedding had been filmed in the grounds of the hotel (as approved by the hotel management) and that the wedding party had their backs to the camera and their faces were not shown. Wedding TV said that when the wedding was being filmed, the hotel's manager was present and was aware that the programme makers (consisting of four crew members) were filming without anyone being identified (the wedding party had their backs to the camera so their faces were not visible).

Wedding TV said that although the programme makers were unable to get the consent of the bride and groom, they had been given permission to film by the hotel's manager. Wedding TV said that it was decided by the programme makers that the footage to be included in the programme would not include any faces of the wedding party and would be brief. Wedding TV said that the footage of the wedding included in the programme was unobtrusive, minimal and did not identify any of the wedding party.

## **Decision**

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

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

Ms Akande's was considered by Ofcom's Executive Fairness Group. In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast and the parties' written submissions. In its considerations, Ofcom took account of Ofcom's Broadcasting Code ("the Code").

In Ofcom's view, the individual's right to privacy has to be balanced against the competing rights of the broadcasters to freedom of expression. Neither right as such has precedence over the other and, where there is a conflict between the two rights, it is necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account. And any interference or restriction must be proportionate.

This is reflected in Rule 8.1 of the Code which states that any infringement of privacy in programmes or in connection with obtaining material included in programmes must be warranted. In considering complaints about the unwarranted infringement of privacy, Ofcom will therefore, where necessary, address itself to two distinct questions: First, has there been an infringement of privacy? Second, if so, was it warranted?

Ofcom first considered whether or not Ms Akande had a legitimate expectation of privacy in relation to the filming and the subsequent broadcast of footage of her at the wedding. The Code explains that "legitimate expectations of privacy will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye".

Ofcom considered that the nature of the information filmed and subsequently disclosed in the programme as broadcast relating to Ms Akande at the wedding was information that may be understood to be sensitive and personal and may therefore attract an expectation of privacy. Ofcom noted that the programme makers had sought the bride and groom's consent to film their wedding and broadcast the footage, but that such consent was not forthcoming. Ofcom took the view that, given that the bride and groom told the programme makers that they did not consent for their wedding to be filmed or for footage of it to be broadcast, they and their wedding party had a legitimate expectation of privacy in relation to the filming and broadcast of footage of the wedding in which she appeared.

Having found that Ms Akande had a legitimate expectation of privacy in relation to filming their wedding and then broadcast of footage of them in the programme without their consent, Ofcom went on to consider whether or not their privacy was in fact infringed.

Ofcom recognised that the hotel is private property and that access to its grounds and functions rooms may well be restricted to the general public, albeit readily accessible to the hotel's guests and visitors. However, having examined the footage included in the programme, it appeared to Ofcom that the filming in and around the hotel had been conducted openly and that the programme makers had not concealed the fact that they were filming. Ofcom noted that the programme makers were aware

that the bride and groom had refused to agree to their wedding being filmed and broadcast. In such circumstances, Ofcom does not consider that any consent given by the hotel management to filming in the hotel grounds could in any way provide the programme makers with consent to film and broadcast this wedding. However, Ofcom noted that the filming was conducted at a distance from Ms Akande and the wedding party and that it very briefly captured Ms Akande and the other bridesmaids and guests walking through the hotel grounds with the bride and groom.

In relation to the footage broadcast in the programme, Ofcom considered that Ms Akande was shown briefly, from a distance, walking with members of the wedding party through the grounds of the hotel. She had been filmed from behind so that her face and those filmed with her were not discernable. Ofcom also noted that the footage itself appeared in the programme very briefly (for a duration of approximately five seconds), and that Ms Akande was not identified by name; moreover the brief and distant nature of the footage was unlikely to have rendered her identifiable (other than to those who had attended the wedding) from her appearance.

Taking all these factors into account, Ofcom was satisfied that Ms Akande's privacy had not been infringed in either the making or the broadcast of the programme. Having concluded that there was no infringement of their privacy in the making and broadcast of the programme, Ofcom did not go on to consider the issue of whether any infringement was warranted.

**Accordingly, the complaint of unwarranted infringement of privacy in the making and broadcast of the programme has not been upheld.**

## Other Programmes Not in Breach

Up to 1 February 2010

Programme	Transmission Date	Channel	Categories	Number of complaints
90210	17/01/2010	Channel 4	Harm/Food	1
60 Minute Makeover	11/01/2010	ITV1	Offensive Language	1
90210 (trailer)	13/01/2009	E4	Harm/Food	1
Angela and Friends	22/01/2010	Sky 1	Generally Accepted Standards	1
At The End Of My Leash	13/01/2010	Animal Planet	Animal Welfare	1
Bang Babes	20/12/2009	Tease Me	Sex/Nudity	1
BBC News	23/01/2010	BBC News Channel	Generally Accepted Standards	1
BBC News at Ten	18/01/2010	BBC 1	Generally Accepted Standards	1
BBC News at Ten	20/01/2010	BBC 1	Generally Accepted Standards	2
BBC Radio 4	20/01/2010	BBC Radio 4	Generally Accepted Standards	1
Beauty Simplify	13/01/2010	Sunrise TV	Harm/Food	1
Big Brother's Big Mouth	15/01/2010	E4	Crime (incite/encourage)	1
Big Brother's Big Mouth	15/01/2010	E4	Generally Accepted Standards	1
Big Brother's Little Brother	20/01/2010	Channel 4	Religious Offence	1
Big Brother's Little Brother	22/01/2010	E4	Religious Offence	1
Bleach, Nip, Tuck: The White Beauty Myth	01/02/2010	Channel 4	Generally Accepted Standards	1
Casualty	23/01/2010	BBC 1	Substance Abuse	1
Celebrity Big Brother	12/01/2010	Channel 4	Generally Accepted Standards	23
Celebrity Big Brother	13/01/2010	Channel 4	Generally Accepted Standards	5
Celebrity Big Brother	15/01/2010	Channel 4	Generally Accepted Standards	5
Celebrity Big Brother	18/01/2010	Channel 4	Generally Accepted Standards	7
Celebrity Big Brother	19/01/2010	Channel 4	Generally Accepted Standards	5
Celebrity Big Brother	20/01/2010	Channel 4	Generally Accepted Standards	2
Celebrity Big Brother	21/01/2010	Channel 4	Generally Accepted Standards	49
Celebrity Big Brother	23/01/2010	Channel 4	Generally Accepted Standards	3
Celebrity Big Brother	18/01/2010	Channel 4	Offensive Language	1
Celebrity Big Brother	24/01/2010	Channel 4	Offensive Language	1
Celebrity Big Brother	21/01/2010	Channel 4	Religious Issues	1
Celebrity Big Brother	24/01/2010	Channel 4	Sex/Nudity	28
Celebrity Big Brother	27/01/2010	Channel 4	Use of Premium Rate Numbers	2

Celebrity Big Brother	27/01/2010	Channel 4	Use of Premium Rate Numbers	1
Celebrity Big Brother Live	25/01/2010	Channel 4	Generally Accepted Standards	1
Celebrity Big Brother Live	23/01/2010	Channel 4	Generally Accepted Standards	1
Celebrity Big Brother Live	26/01/2010	Channel 4	Generally Accepted Standards	1
Celebrity Big Brother's Big Mouth	18/01/2010	E4	Generally Accepted Standards	1
Celebrity Quitters	18/01/2010	Five	Offensive Language	1
Celebrity Quitters	22/01/2010	Five	Offensive Language	2
Channel 4 News	10/12/2009	Channel 4	Due Impartiality/Bias	3
Channel 4 News	26/01/2010	Channel 4	Due Impartiality/Bias	1
Channel 4 News	15/01/2010	Channel 4	Generally Accepted Standards	1
Channel 4 News	17/01/2010	Channel 4	Generally Accepted Standards	1
Channel 4 News	25/01/2010	Channel 4	U18's in Programmes	1
Channel M Today	13/01/2010	Channel M	Generally Accepted Standards	1
Channel promotion	21/01/2010	Racing UK	Inaccuracy/Misleading	1
Chris Moyles Show	12/01/2010	BBC Radio 1	Crime (incite/encourage)	1
Come Dine with Me	26/01/2010	Channel 4	Generally Accepted Standards	1
Come Dine with Me	18/01/2010	Channel 4	Offensive Language	1
Coronation Street	18/01/2010	ITV1	Commercial References	1
Coronation Street	15/01/2010	ITV1	Generally Accepted Standards	1
Coronation Street	22/01/2010	ITV1	Generally Accepted Standards	1
Coronation Street	22/01/2010	ITV1	Religious Offence	1
Coronation Street	19/01/2010	ITV1	Substance Abuse	1
Coronation Street	25/01/2010	ITV1	Substance Abuse	1
Countryfile	24/01/2010	BBC 1	Violence	1
Cowboy Builders	29/12/2009	Five	Competitions	1
Dance Premier League	06/11/2009	Sony TV Asia	Commercial References	1
Dancing on Ice	17/01/2010	ITV1	Advertising	1
Dancing on Ice	24/01/2010	ITV1	Generally Accepted Standards	3
Dating the Enemy	25/01/2010	ITV1	Generally Accepted Standards	1
Deal or No Deal	24/01/2010	Channel 4	Sex/Nudity	2
Dickinson's Real Deal	16/12/2009	ITV1	Use of Premium Rate Numbers	1
Dickinson's Real Deal	28/01/2010	ITV1	Use of Premium Rate Numbers	1
Doctor Who	01/01/2010	BBC 1	Sex/Nudity	1
Dollhouse	25/01/2010	ITV4	Advertising	1
EastEnders	19/01/2010	BBC 1	Generally Accepted Standards	2
EastEnders Omnibus	24/01/2010	BBC 1	Generally Accepted Standards	1

Emmerdale	19/01/2010	ITV1	Violence	5
Extreme Fishing with Robson Green	28/01/2010	Five	Animal Welfare	1
FA Cup Live	24/01/2010	ITV1	Inaccuracy/Misleading	1
FA Cup Live	23/01/2010	ITV1	Unconscious influence/hypnosis/subliminal	1
FA Cup Live	24/01/2010	ITV1	Unconscious influence/hypnosis/subliminal	1
FA Cup Replay	13/01/2010	ITV1	Unconscious influence/hypnosis/subliminal	1
Fat Families (trailer)	08/01/2010	Sky 3	Harm/Food	1
Fearne Cotton	30/11/2009	BBC Radio 1	Generally Accepted Standards	1
Fern Britton (standing in for Jeremy Vine)	14/01/2010	BBC Radio 2	Generally Accepted Standards	1
Five News	21/01/2010	Five	Suicide/Self Harm	1
Five News	14/01/2010	Five	Inaccuracy/Misleading	1
Five News Update	28/01/2010	Five	Generally Accepted Standards	1
George Galloway	08/01/2010	Talksport	Other	1
Glee	17/01/2010	Channel 4	Offensive Language	1
Glee	23/01/2010	Channel 4	Offensive Language	2
Glee	17/01/2010	Channel 4	Sex/Nudity	1
Glee	23/01/2010	Channel 4	Sex/Nudity	1
Glee	24/01/2010	Channel 4	Sex/Nudity	1
GMTV	22/01/2010	ITV1	Generally Accepted Standards	2
GMTV	18/01/2010	ITV1	Inaccuracy/Misleading	1
Gordon's Great Escape	18/01/2010	Channel 4	Generally Accepted Standards	16
Gordon's Great Escape	20/01/2010	Channel 4	Generally Accepted Standards	1
Gordon's Great Escape	18/01/2010	Channel 4	Inaccuracy/Misleading	4
Gordon's Great Escape	18/01/2010	Channel 4	Offensive Language	1
Gordon's Great Escape	19/01/2010	Channel 4	Offensive Language	2
Gordon's Great Escape	20/01/2010	Channel 4	Offensive Language	12
Harry Hill's The Best of TV Burp	17/01/2010	ITV1	Generally Accepted Standards	1
Harry Hill's The Best of TV Burp	16/01/2010	ITV1	Offensive Language	1
Hidayat TV	26/01/2010	Hidayat TV	Violence	1
Horrible Histories	21/01/2010	BBC 1	Religious Offence	1
Horrible Histories	28/01/2010	BBC 1	Violence	1
House	21/01/2010	Five USA	Sex/Nudity	1
How to Look Good Naked... With A Difference	19/01/2010	Channel 4	Generally Accepted Standards	1
How to Look Good Naked... With A Difference	26/01/2010	Channel 4	Generally Accepted Standards	2
I Believe in UFOs: Danny Dyer	26/01/2010	BBC 3	Generally Accepted Standards	1
Infected	12/12/2009	Sky 3	Offensive Language	1
Inside Out	11/01/2010	BBC 1 (South East)	Generally Accepted Standards	3

It's Me or The Dog	19/01/2010	Sky 3	Generally Accepted Standards	1
ITV News	15/01/2010	ITV1	Generally Accepted Standards	1
ITV News	18/01/2010	ITV1	Generally Accepted Standards	2
ITV News	27/01/2010	ITV1	Generally Accepted Standards	1
ITV News	28/01/2010	ITV1	U18's in Programmes	1
James May at The Edge of Space	20/01/2010	BBC 2	Offensive Language	1
Keith Community Radio	31/12/2009	Moray Firth Radio (MFR)	Generally Accepted Standards	1
Kevin McCloud: Slumming It	14/01/2010	Channel 4	Generally Accepted Standards	3
Kevin McCloud: Slumming It	23/01/2010	Channel 4	Offensive Language	1
Kia Motors' sponsorship of 24	24/01/2010	Sky 1	Generally Accepted Standards	6
Kia Motors' sponsorship of 24	28/01/2010	Sky 1	Generally Accepted Standards	1
Kia Motors' sponsorship of CSI	19/01/2010	Five	Generally Accepted Standards	8
Kia Motors' sponsorship of CSI	19/01/2010	Five	Generally Accepted Standards	1
Kia Motors' sponsorship of CSI	23/01/2010	Five	Generally Accepted Standards	3
Kia Motors' sponsorship of CSI	23/01/2010	Five	Generally Accepted Standards	4
Kia Motors' sponsorship of CSI	21/01/2010	Five USA	Generally Accepted Standards	1
Kia Motors' sponsorship of CSI	24/01/2010	Five USA	Generally Accepted Standards	1
Kia Motors' sponsorship of CSI: Miami	19/01/2010	Five	Generally Accepted Standards	1
Kia Motors' sponsorship of Law & Order	23/01/2010	Five	Generally Accepted Standards	2
Kia Motors' sponsorship of NCIS	20/01/2010	Five	Generally Accepted Standards	4
Kia Motors' sponsorship of NCIS	23/01/2010	Five	Generally Accepted Standards	4
Law and Order: UK (trailer)	17/01/2010	ITV1	Violence	1
Law and Order: UK (trailer)	18/01/2010	ITV1	Violence	1
Live At Five	12/01/2010	Sky News	Due Impartiality/Bias	1
Live Football	17/01/2010	Sky Sports 1	Flashing images	1
Live from Studio Five trailer	22/01/2010	Five	Generally Accepted Standards	1
London Tonight	18/01/2010	ITV1 London	Other	1
Look North	24/12/2009	BBC 1 North	Generally Accepted Standards	1
Loose Ends	23/01/2010	BBC Radio 4	Generally Accepted Standards	1
Loose Women	25/01/2010	ITV1	Elections/Referendums	1
Loose Women	11/12/2009	ITV1	Generally Accepted Standards	1
Loose Women	29/01/2010	ITV1	Sex/Nudity	1
Macleans' sponsorship of	17/01/2010	ITV1	Sex/Nudity	1

Dancing on Ice				
Material Girl	21/01/2010	BBC 1	Sex/Nudity	1
Maury	13/01/2010	Living+2	Generally Accepted Standards	1
Meet the Fockers	17/01/2010	BBC 3	Offensive Language	1
Miami Ink (trailer)	15/12/2009	Discovery Channel	Generally Accepted Standards	1
Midsomer Murders	27/01/2010	ITV1	Generally Accepted Standards	4
Mike Graham	18/01/2010	Talksport	Due Impartiality/Bias	1
Mock the Week	21/01/2010	BBC 2	Religious Offence	2
Mock the Week	22/01/2010	BBC 2	Religious Offence	1
Most Haunted Live	14/01/2010	Living	Generally Accepted Standards	5
Most Haunted Live: Halloween 2009	31/10/2009	Living	Suicide/Self Harm	18
Most Haunted Live: Halloween 2009	01/11/2009	Living	Suicide/Self Harm	8
Most Haunted Live: Halloween 2009	31/10/2009	Virgin1	Suicide/Self Harm	5
Muslim Driving School	19/01/2010	BBC 2	Generally Accepted Standards	1
My Body Hell	21/01/2010	Fiver	Sex/Nudity	1
Mystery Voices promo	14/01/2010	Magic 105.4 FM	Inaccuracy/Misleading	1
Mythbusters	11/01/2010	Quest	Animal Welfare	1
New You've Been Framed!	30/01/2010	ITV1	Generally Accepted Standards	1
News	17/12/2009	Sky News	Due Impartiality/Bias	1
News	07/01/2010	Press TV	Due Impartiality/Bias	1
News	07/01/2010	Press TV	Due Impartiality/Bias	1
News	18/12/2009	Sky News	Inaccuracy/Misleading	1
News	05/01/2010	Press TV	Violence	1
News at Ten	19/01/2010	ITV1	Due Impartiality/Bias	1
News at Ten	18/01/2010	ITV1	Generally Accepted Standards	2
Nick Ferrari	11/01/2010	LBC 97.3FM	Offensive Language	1
Nick Grimshaw standing in for Vernon Kay	16/01/2010	BBC Radio 1	Generally Accepted Standards	1
Old Speckled Hen sponsorship	27/01/2010	Dave ja vu	Dangerous Behaviour	1
Paul Merton in Europe	18/01/2010	Five	Generally Accepted Standards	1
Pink: Funhouse Live	16/01/2010	Channel 4	Offensive Language	1
Programme promotion	06/01/2010	Sci Fi Channel	Unconscious influence/hypnosis/subliminal	1
Programme trailer	09/11/2009	Wyvern FM	Offensive Language	1
Punjabian Di Gal Baat	09/10/2009	Panjab Radio	Crime (incite/encourage)	1
QI	15/01/2010	BBC 1	Generally Accepted Standards	1
QI	15/01/2010	BBC 1	Offensive Language	1
Ross Kemp Middle East: Israel (trailer)	04/01/2010	Sky 3	Inaccuracy/Misleading	1
Secret Diary of a Call Girl	28/01/2010	ITV2	Generally Accepted	1

(trailer)			Standards	
Secrets of Egypt	20/01/2010	Five	Inaccuracy/Misleading	2
Send in the Dogs	26/01/2010	ITV1	Violence	1
Sex How to do Everything	15/02/2009	Fiver	Generally Accepted Standards	1
Sex: How to Do Everything	21/05/2009	Fiver	Sex/Nudity	1
Silent Witness	14/01/2010	BBC 1	Substance Abuse	1
Sky News	13/01/2010	Sky News	Generally Accepted Standards	1
Sky News	14/01/2010	Sky News	Generally Accepted Standards	1
Sky News	27/01/2010	Sky News	Generally Accepted Standards	1
Sky News	28/01/2010	Sky News	Generally Accepted Standards	1
Sky News	11/12/2009	Sky News	Inaccuracy/Misleading	1
Slumdog Secret Millionaire	17/01/2010	Channel 4	Generally Accepted Standards	1
So You Think You Can Dance	23/01/2010	BBC 1	Generally Accepted Standards	1
Station ident	26/01/2010	Jack FM	Offensive Language	1
Stephen Nolan	12/01/2010	BBC Radio Ulster	Generally Accepted Standards	1
Steve Allen	24/12/2009	LBC 97.3FM	Undue Prominence	1
Surveillance	09/01/2010	Sky Movies Premiere	Violence	1
The Alan Titchmarsh Show	18/01/2010	ITV1	Sex/Nudity	4
The Bill	28/01/2010	ITV1	Generally Accepted Standards	1
The Daily Politics	14/01/2010	BBC 2	Crime (incite/encourage)	1
The Jeremy Kyle Show	25/01/2010	ITV1	Generally Accepted Standards	1
The Jeremy Kyle Show	20/01/2010	ITV1	Substance Abuse	3
The Morning Line	30/01/2010	Channel 4	Generally Accepted Standards	1
The National Television Awards	20/01/2010	ITV1	Due Impartiality/Bias	1
The National Television Awards	20/01/2010	ITV1	Generally Accepted Standards	2
The River Cottage Treatment	24/01/2010	More4	Generally Accepted Standards	1
The Secret Millionaire	25/01/2010	More4	Generally Accepted Standards	1
The Simpsons	27/01/2010	Sky 1	Generally Accepted Standards	2
The Slumdog Children of Mumbai	21/01/2010	Channel 4	Generally Accepted Standards	1
The Terminal	24/01/2010	BBC 2	Offensive Language	1
The Vampire Diaries (trailer)	26/01/2010	ITV2	Sex/Nudity	1
The Wright Stuff	22/01/2010	Five	Generally Accepted Standards	3
The X Files	15/01/2010	Virgin 1	Violence	1
This Morning	18/01/2010	ITV1	Commercial References	1
This Morning	03/12/2009	ITV1	Competitions	1

This Morning	27/01/2010	ITV1	Dangerous Behaviour	1
This Morning	15/01/2010	ITV1	Generally Accepted Standards	1
This Morning	28/01/2010	ITV1	Sex/Nudity	1
Tim Minchin Live (trailer)	09/01/2010	E4	Generally Accepted Standards	1
Toonattik	24/01/2010	ITV1	Generally Accepted Standards	1
Top 40: Anthems of the Decade	30/01/2010	Scuzz	Dangerous Behaviour	1
Top Gear	31/01/2010	BBC 2	Generally Accepted Standards	1
True Stories - The Trials of Amanda Knox	05/01/2010	More 4	Inaccuracy/Misleading	1
Your Questions Answered	25/01/2010	Ummah Channel	Other	1
You've Been Framed! Kids Special	06/01/2010	ITV1	U18's in Programmes	1