

# **Ofcom Broadcast Bulletin**

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## Introduction

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

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

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

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

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

## Standards cases

### In Breach

#### Emmerdale

ITV1, 17, 18, 19, 21 September 2006, 19:00

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#### Introduction

The character Tom King, who runs a successful haulage business in *Emmerdale*, was kidnapped along with his ex-daughter-in-law Sadie by village villain Cain Dingle. During the week commencing 17 September 2006, Cain's plan to extort money from Tom King's family was brought to a climax. This included what appeared to be Cain Dingle shooting Sadie King in the stomach at close range with a shotgun.

37 viewers complained about the level of violence contained in the episodes transmitted on 17, 18, 19 and 21 of September, stating that it was unacceptable for transmission before the watershed. Ofcom requested the broadcaster's comments with regard to Rules 1.3 (appropriate scheduling), 1.11 (pre-watershed violence) and 2.3 (generally accepted standards).

#### Response

ITV responded by stating that the Sadie/Cain/Tom kidnapping story was one of the most exciting and successful story events in *Emmerdale*'s history which was demonstrated by viewing figures and viewer correspondence in the week following transmission. They said that whilst it was disappointed that some viewers found the episodes not to their taste, it took the messages of appreciation it received from viewers as confirmation of their belief that they reached an appropriate balance between dramatic entertainment and offence.

ITV further added that the episode in which Sadie was seen to be shot by Cain was the culmination of several weeks of scene-setting and character development with the steady build-up of tension and animosity making it clear to viewers that a dramatic conclusion was inevitable. The broadcaster said that it took a great deal of care in the treatment of this drama and its scheduling and that *Emmerdale* viewers are accustomed to conflict and robust action and that this was successfully conveyed without confounding viewer expectation or moving beyond the boundaries of acceptability.

With regard to the younger audience, ITV commented that each scene with any violent content was discussed by a producer and compliance specialist and at some points it was modified in the pre-production process. It added that all the completed episodes were approved not only by compliance personnel but on this occasion by the Director of Programmes. Regarding the scenes of violence themselves, ITV considered that it had ensured there were no gratuitous displays of violence in this sometimes bloody and dark event and that scenes were brief including those in the barn where the kidnapping unfolded.

ITV concluded by saying that whilst it very much regretted that a few of the programme's 8 million viewers judged some of their decisions to be inappropriate, it considered that whilst *Emmerdale* stories do not condone violent acts, it need not and should not shy away from them. It said that prior to transmission of the hour-long

concluding episode on 21 September, it informed the audience of the programme's "*violent and bloody climax*" in a pre-transmission announcement and judged overall that the level of violence was responsibly presented and suitably scheduled.

### **Decision**

Rule 1.3 states that "Children must be protected by appropriate scheduling from material that is unsuitable for them" and Rule 1.11 states that "Violence, its after-effects and descriptions of violence, whether verbal or physical, must be appropriately limited in programmes broadcast before the watershed and must also be justified by the context". Rule 2.3 states that "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context".

Ofcom noted ITV's regret that some viewers considered that some of the material shown in the episodes complained of was inappropriate for the time of transmission and accepts that *Emmerdale* is a programme primarily aimed at adults. However, *Emmerdale* is transmitted at 19:00 - a time when children are likely to be viewing and they should be protected by ensuring that any violent material transmitted before the watershed is "appropriately limited" and that any material considered unsuitable for them to view is scheduled appropriately. Whilst *Emmerdale* is free to dramatise violent events, and do so robustly in an interesting way in order to provide stimulating television, it must do so in line with the requirements of the Code.

Ofcom noted that the majority of the violence that accompanied this plot was "appropriately limited" and "in context" with the storyline, e.g. the scenes featuring Cain brandishing a shotgun were brief and in certain places, the violence was implied, e.g. Cain struck Sadie with the butt of the shotgun in the episode transmitted on 17 September, but no impact was shown. Viewers would expect that in a storyline featuring kidnap some minimal violence would be featured to portray a believable plot and Ofcom considered that Rule 2.3 was not breached in this respect.

However, during the concluding episode transmitted on 21 September, Cain shot Sadie in the stomach at close range causing a large blast effect injury to her which was visible and in close-up. The resulting emotive shock of the blast was significantly portrayed by the actors and there was a substantial amount of blood. Whilst this shooting later transpired to have been elaborately faked by Cain and Sadie, it appeared completely real to the audience at the moment of broadcast and it was, in Ofcom's view, an unsuitable level of violence to portray in a programme before the watershed at a time when children were likely to be viewing. Ofcom therefore judged that the scene of the shooting of Sadie by Cain in the episode transmitted on 21 September was in breach of the Code.

### **Breach of Rules 1.3 and 1.11**

Ofcom has concerns about a growing trend of complaints regarding the portrayal of violence in soaps. Please see the Note to Broadcasters in this issue.

## Note to Broadcasters

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### Violence in soaps and Rule 1.11

Ofcom has noted that there has been an increase in the number of complaints from viewers relating to violent content in soaps broadcast before the watershed. Ofcom recognises that these programmes are aimed primarily at an adult audience and that in order to reflect real life, producers will wish to include from time to time challenging material. However, given that these programmes are generally transmitted some time before the 21:00 watershed, broadcasters must ensure that such content is treated with particular and due care.

Ofcom has considered that a number of cases it has dealt with recently have contained violence that goes to the limits of what is acceptable in terms of the Broadcasting Code. Therefore, it would like to remind broadcasters to take particular note of Rule 1.11 which states that "Violence, its after-effects and descriptions of violence, whether verbal or physical, must be appropriately limited in programmes broadcast before the watershed or when children are particularly likely to be listening and must also be justified by the context" when portraying violence in pre-watershed programmes.

## **Hellbound: Hellraiser II**

*Rapture TV, 15 May 2006, 21:00*

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### **Introduction**

Rapture TV is a general entertainment channel. *Hellbound: Hellraiser II* is a well-known 1980's horror film rated "18" by the British Board of Film Classification about a man who wishes to resurrect his dead lover. In order to do so, he brings living victims to his house to supply his lover's need for flesh and blood. A viewer complained about the broadcast of graphic violence so near to the watershed on a channel which is not PIN protected, and therefore widely accessible. Rapture TV was asked to comment in relation to Rules 1.6 and 1.21 of the Broadcasting Code which state:

Rule 1.6: "The transition to more adult material must not be unduly abrupt at the watershed or after the time when children are particularly likely to be listening. For television, the strongest material should appear later in the schedule".

Rule 1.21: "BBFC 18-rated films or their equivalent must not be broadcast before 2100 on any service except for pay per view services, and even then they may be unsuitable for broadcast at that time".

### **Response**

Rapture TV said that the film was preceded by an "18" visual and audio warning and that it was transmitted after the watershed. It said that the EPG description was clear and highlighted that the film was a horror film and therefore unlikely to be family viewing. It commented that the weekly slot promoted by the channel for a horror movie should have meant that the audience would expect a horror film at that time.

It also pointed out that it had reviewed the subject of horror films and had decided from now on to implement an "18" EPG rating service. This meant that adult horror films would be marked as 18-rated. If viewers choose to restrict access to 18-rated material on their receiving equipment, they will not be able to access it without a PIN number.

### **Decision**

This film contains graphic sequences of violence from the start, e.g. a scene of a man, whose face is impaled by hooks, being torn apart; graphic scenes of bloodied mutilation which explained how the main character 'Pinhead' came to be; and an image of a corpse covered in maggots.

The film was preceded by a visual warning which included the BBFC's "18" rating symbol and text noting that the film was not suitable for persons under 18. An accompanying audio warning stated: "*The following film is not suitable for any persons under the age of 18 years. It may contain scenes of an adult nature and contains bad language from the beginning*".

Ofcom has recently published research into programme information - *An investigation of current attitudes and behaviours towards programme information* ([http://www.ofcom.org.uk/advice/media\\_literacy/medlitpub/medlitpubrss/pirinvestigati on/](http://www.ofcom.org.uk/advice/media_literacy/medlitpub/medlitpubrss/pirinvestigati on/)). The research found that programme information is considered helpful by many viewers in its ability to mitigate offence. Over half of all adult television viewers

claimed that pre-transmission information helped to reduce potential offence and this was felt more strongly by parents and those in multi-channel households. On balance, respondents preferred on-screen text based information outlining the nature of potentially challenging material to age rating.

The information given before this film was in both audio and visual format. However the wording of the on-screen text was insufficient to fully inform viewers of the nature of the content to follow. Similarly, although the audio information was more comprehensive, this suggested that the film “*may contain scenes of an adult nature*” – which would not have prepared viewers for the sequences of graphic violence which were present from the very start of the film.

Rapture TV suggested that, in future, it will label similar films so that they can be blocked by Parental Controls. The Parental Control features of many digital television receivers mean that parents/carers can decide whether to restrict viewing based on age rating filters. When the Parental Control features are set, a PIN number must be entered if a viewer wants to watch a programme that is rated higher than the age rating that the parent/carer has chosen. However, these controls have to be set by the parent/carer – they are not a default setting.

We welcome the steps taken by Rapture TV to label its output appropriately – which would mean that viewers watching a receiver with Parental Control set at “15” would have to enter a PIN number before being able to view adult horror films rated at “18” by Rapture TV. However Rapture TV remains a free-to-air channel and labelling films such as *Hellbound: Hellraiser II* will only restrict viewing in those households who have an appropriate Parental Control set on their receiving equipment.

We accept that regular viewers of the channel may be familiar with this weekly horror slot and that some information had been provided before the broadcast of the film. However, given the extreme violence in the very early scenes of the film, it was unsuitable for broadcast so soon after the watershed on a free-to-air, general entertainment channel. The violent and extreme nature of the imagery at the beginning of the film resulted in the transition after the watershed to more adult material being unduly abrupt. For the same reason, this film was not suitable for broadcast at 21:00. The scheduling of the film was therefore in breach of the Code.

### **Breach of Rules 1.6 and 1.21**

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

## Note to Broadcasters

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### Methodology in quizzes

Rule 2.11 of the Broadcasting Code requires that: “Competitions should be conducted fairly...”.

Many Call TV quizzes rely on a specific methodology to reach a correct answer. In 2006 a number of complaints were made to Ofcom about the conduct of, and methodologies behind, certain Call TV quizzes. Ofcom investigated a sample of these cases to ensure that such competitions were being conducted in accordance with Rule 2.11. In particular Ofcom examined a number of methodologies. As a result, Ofcom has decided to issue revised guidance to all broadcasters on Rule 2.11 as regards methodologies and the fair conduct of quizzes.

Current Ofcom guidance states that broadcasters should reveal the answer to a quiz at the end of the game but there is no requirement for the methodology to be revealed.

However, in the interests of fairness, the existing guidance makes clear that where a competition is cryptic or ambiguous, broadcasters must be able to provide Ofcom with evidence that the competition has been run fairly. Broadcasters should be able to provide Ofcom with the correct answer and the methodology used to arrive at that answer. They must also supply Ofcom with evidence that the methodology and answer could not have been changed after the competition started. This is in order that Ofcom can, as the independent regulator, verify the answer to a quiz and the fairness of the process which led to it.

In general, Ofcom’s investigations confirmed that broadcasters adhered to these principles and that quizzes followed some logical reasoning – even though it may have been cryptic. However, there were isolated incidents which have led Ofcom to conclude that the existing principles set out in guidance regarding quiz methodologies needed to be expanded and clarified.

There were in particular some examples of quizzes where:

- the on-screen instructions differed between similar competitions, although the same methodology was used. As a result some viewers may have thought reasonably that in fact different methodologies were being used by the broadcaster;
- the methodologies provided were imprecise or incomplete. This meant that that it was not absolutely clear to Ofcom that the application of the methodology could lead only to the correct answer which was revealed to viewers and listeners. The absence of a clear and precise methodology which only leads to one answer undermines the broadcaster’s assertion of the fair conduct of a competition. The broadcaster cannot demonstrate that the answer broadcast to the audience was the only “correct” one.

There was no evidence available to Ofcom that these isolated cases were examples of a deliberate attempt to mislead viewers. Rather the evidence suggested that they resulted from a lack of rigour and attention to detail.

The revisions introduce two important changes to the *Solutions and Methodology* section of our guidance to Rule 2.11.

The first change is to add an explicit expectation that the correct solution to any quiz should be reasonable (i.e. not unfairly obscure) and certain. This applies to all competitions. To be fair, the answer to a quiz must be one which in Ofcom's view it would be reasonably possible for the audience to work out. For example, we made clear in a recent finding that it would not be fair to expect viewers to answer the question "things you find in a woman's handbag" with "raw/rawl plugs". Similarly, if a competition includes a sum like "64 x 2", and in context the audience would reasonably expect the answer to this sum to be worked out in the conventional arithmetical way (i.e. to give the solution 128) and included as part of the answer, then the methodology should do so. Also if any competition relies on a methodology, we would expect its application to produce only the correct solution, however difficult or cryptic the quiz itself. The methodology must be clear, comprehensive and precise.

Secondly, having investigated a variety of competitions that require the application of specific methodologies, we believe it fair for an audience to expect consistency across similar competitions.

The second addition to guidance is therefore to expect broadcasters to ensure that the use of methodologies is consistent. If a methodology is re-used in any later but similar competition by a broadcaster, the instructions or questions given to viewers and listeners in the subsequent quizzes should not differ materially from those given to the audience when the methodology was used previously. The audience must not be led to believe that a different methodology applies in the later competitions. For example if a methodology is re-used, any instructions or questions given to the audience (e.g. "add all the numbers") should remain the same, and not be changed (to e.g. "solve the sum"). Equally, if the generic name of a quiz, and the instructions or question issued to the audience, are repeated in a subsequent competition, and if the information the audience has to consider is in a similar format, the methodology should be the same.

The revised guidance comes into effect as of the date of this broadcast bulletin. Ofcom expects all broadcasters of competitions based on methodologies to study it carefully and introduce all necessary measures to ensure compliance. Ofcom will continue to keep the conduct of all broadcast quizzes under close review, investigate all complaints suggesting a competition is not being conducted in compliance with Rule 2.11 and related guidance, and will not hesitate to introduce further changes to guidance as appropriate.

## Guidance to Rule 2.11 of the Ofcom Broadcasting Code

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**Note:** The following guidance refers to all competitions, including Call TV quiz services.

### Competitions that use Premium Rate Entry

- Complaints to Ofcom alleging the broadcast of misleading information about premium rate charges and/or line availability will normally be referred to ICSTIS, since they are considered to be complaints about promotional material concerning the premium rate service (PRS) itself. ICSTIS has issued *A Statement of Expectations on Call TV Quiz Services*, which can be found at [http://www.icstis.org.uk/pdfs\\_consult/QuizTvConResponse06.pdf](http://www.icstis.org.uk/pdfs_consult/QuizTvConResponse06.pdf) and, where relevant, should be considered alongside its Code of Practice.
- Complaints concerning potential unfairness surrounding the conduct of a competition, or its solution and/or methodology, will normally be investigated by Ofcom.

### Free Entry Route

- In the future, legislation will require that free entry routes (where required) should be given equal prominence with other routes. We would encourage broadcasters to adopt this as best practice now, in advance of all the provisions of the Gambling Act 2005 coming into force. Broadcasters should be aware of the Gambling Commission's requirements concerning free entry routes, when published.

### Prizes

- Prizes should be despatched within a reasonable time (note: where relevant, ICSTIS' requirements may apply), unless indicated otherwise when the prize is described.
- If particular prizes become unavailable post-broadcast, we would expect comparable substitutes to be provided.
- We would strongly advise broadcasters not to present a monetary prize as a possible resolution of financial difficulty (e.g. as a means of paying off credit card debt). See also Rule 2.1.

### Competition Rules

- To ensure clarity, we expect rules that limit those who can take part in a competition to be broadcast. (Note: their broadcast is not expected if specific individuals – e.g. previous prize winners – have been informed directly). In particular, where such rules are considered to be significant (e.g. an age limit for entering a competition) broadcasters should air them orally each time a competition is run and on a regular basis throughout longer sequences.
- We strongly recommend that broadcasters produce written rules and/or terms and conditions that support all or specific competitions being broadcast by them. Where the competition is broadcast on television, details of where the

relevant rules are available (e.g. on the channel/programme's website) ought to be aired regularly, while on radio, where competition strands are often shorter, we would normally expect such details to be mentioned at least occasionally. Broadcasters may also need to be aware of ICSTIS' requirements regarding this issue, including those in its *Statement of Expectations*.

- Competitions are sometimes run simultaneously on various local/regional services (e.g. on a radio network), and this may result in participation being spread wider (i.e. beyond the local area) than might be obvious to the viewer/listener in any one area. In such circumstances, and where the main prize is not awarded by each service, we would normally expect that, in order to be fair, it has to be made clear that other services are participating. This should be done both on air and in any written rules, whenever the competition or its results are run or trailed.

### **Solutions and Methodology**

A cause of complaint has been that, at the end of a competition, the way in which the solution is reached ('methodology') has not been explained on air and, in some cases, the answer has not been given. As many competitions are cryptic, this leads some of the audience to doubt whether the solution given is correct and to question the legitimacy of the competition. This is often because the complainant cannot understand the methodology. A further concern expressed by complainants is that as many competitions have more than one possible solution, the broadcaster may change the answer while a competition is on air, preventing it being solved too early. Sufficient transparency is therefore necessary in order to ensure that competitions are both conducted fairly and seen to be conducted fairly, to avoid unnecessary audience concern.

- We recognise that the methodology of a competition may be commercially sensitive. Broadcasters may choose to outline it on air, but this is not a requirement to achieve fairness in competitions.
- However, where a competition is cryptic or ambiguous, or there appears to the audience to be more than one possible answer to a competition, broadcasters must, when requested by Ofcom, provide evidence that the competition has been run fairly. Broadcasters should be able to provide Ofcom with the correct answer and the methodology used to arrive at that answer, together with evidence that it could not have been changed after the competition started. For example, a broadcaster may choose, before a competition is run, to place its chosen methodology and/or answer with an independent professional third party (e.g. an auditor or solicitor).
- We recognise that competitions may be carried forward to another time/day. Appropriate transparency about this is important. However, where competitions form the essential feature of a programme (e.g. in the case of Call TV quiz services or similar) an audience should normally be able to expect the correct solution to be provided on air, with or without its associated methodology, when a competition ends.
- For a competition to be conducted fairly, we believe its correct solution should be reasonable (i.e. not unfairly obscure) and certain. This applies to all competitions, including those that Ofcom judges to be dependent to any

extent on factual recall and/or the application of established protocol (e.g. accepted mathematical process). However difficult or cryptic the competition itself, we would expect application of the methodology to produce only the correct solution. All methodologies should be clear, comprehensive and precise.

- If a methodology is re-used in any later but similar competition by a broadcaster, the instructions or questions given to viewers and listeners in the subsequent quizzes should not differ materially from those given to the audience when the methodology was used previously. It is expected that the audience shall not be led to believe that a different methodology applies in the later competitions. For example if a methodology is re-used, any instruction or question given to the audience in the first broadcast of the competition (e.g. “add all the numbers”) and the name of the competition should remain the same, and not be changed (e.g. “add all the numbers” to “solve the sum”). Equally, if the name of a quiz, and the instructions or questions issued to the audience, are repeated in a subsequent competition, and if the information the audience has to consider is in a similar format, the methodology should be the same.
- In order to conduct a competition fairly, an audience should not be misled by a broadcaster stating or implying that a competition is simple if it is actually difficult or cryptic.

### **Repeat Broadcasts**

- If a former live competition is re-run so that it is no longer possible for the audience to participate by ringing the number given on air then we would expect this to be made clear to the audience. On television, text stating “pre-recorded” is likely to be insufficient unless the phone line is also dead or the number on screen is also illegible. Broadcasters may also need to be aware of ICSTIS’ Code of Practice concerning this matter.

### **Winners**

- As best practice and to forestall audience concern, broadcasters may wish to consider listing the names of all winners, with their permission, on an appropriate website as soon as possible after their wins.

## **Guidance added to Rule 10.10 of the Broadcasting Code**

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See also guidance to Rule 2.11 concerning competitions that use premium rate services as the entry mechanism.

## Resolved

### Blue Peter

*BBC1, 18 January 2007, 17:00*

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#### Introduction

During location filming in Oman, *Blue Peter* filmed in a village preparing for the Eid-ul-Fitr festival. Part of the preparation for this festival is the ritual slaughter of a goat for a festive meal. 16 viewers complained that the images of the goat being slaughtered were shocking and unsuitable for children to view. A number of the complainants also considered that a warning should have been given prior to transmission of these scenes.

Ofcom requested the BBC's views as to how this footage complied with Rule 1.3 (children should be protected by appropriate scheduling) and Rule 1.7 (appropriate information should be given about pre-watershed content).

#### Response

The BBC said it very much regretted that some viewers were offended by the footage. It said that whilst the killing was shown in long-shot and from behind, so that the exact method of slaughter was not visible, nevertheless the animal's death throes were apparent. The goat was then seen, although out of focus, briefly hanging from a tree whilst being butchered for around ten seconds.

The BBC said that the *Blue Peter* production team gave considerable thought to how best to treat this story. It was decided to include it because it was a fact of life in Oman, and because, as the report showed, both in the purchase and killing of the animal, children were significantly involved. Further, they added that the programme's presenter did tell viewers that the slaughter was done quickly and humanely. They said that whilst *Blue Peter* has always prided itself on its ethical coverage of subjects relating to animals, subjects like this should not be avoided merely because they were difficult, sad or even disturbing.

However, the BBC did also recognise that perhaps the subject should have been shown in less detail and apologised to viewers who were upset or offended by the way it was represented. They said that the programme responded quickly to complaints from viewers and an apology was posted on its complaints website the day after transmission. It confirmed that the concerns expressed by viewers have also been discussed with the programme's team in detail and will be borne in mind if similar issues arise in the future.

#### Decision

Ofcom acknowledges the prompt public apology made by the BBC and its recognition that the subject should have been shown in less detail. However, a desire to reflect difficult, sad or disturbing footage, however worthy, must be done in accordance with the requirements of the Code, taking into account appropriate scheduling and the need for appropriate information when children are likely to view. In this case, the goat was clearly seen 'twitching' in close-up as it expired and, whilst Ofcom does not consider that *Blue Peter* should refrain from exploring and reflecting

cultural differences, it did consider that the final moments of the goat expiring were not appropriate on this occasion.

However, noting that the BBC has recognised that the killing should have been shown in less detail and the apology that was given and posted on their website, Ofcom considers the matter to be resolved. It has also reminded the BBC that for programmes broadcast before the watershed, Rule 1.7 requires that broadcasters give “clear information about content that may distress some children...” and considers that the programme should have given sufficient information prior to transmission of these scenes in order to alert viewers to the programme’s content.

**Resolved**

## **I'm A Celebrity Get Me Out of Here**

*ITV1, 23 November 2006, 20:00*

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### **Introduction**

23 viewers objected to the pre-watershed inclusion of the words and phrases - "bloody", "pissed off", "bastards", "bullshit" and "shit" - by various contestants during this episode of the reality TV programme set in Australia. In particular they considered that such language was unacceptable in a programme shown at this time which attracted a family audience.

Ofcom asked the broadcaster to comment in respect of Rule 1.16 of the Code (no offensive language before the watershed unless justified by context).

### **Response**

ITV stated that it did not regard the inclusion of the words and phrases "bloody" (used once) and "pissed off" (used four times) as amounting to a breach of Rule 1.16. It argued that research undertaken by Ofcom and the Independent Television Commission indicated that neither was regarded as particularly offensive today. It therefore did not think their inclusion in a reality programme broadcast at 20:00 was inappropriate.

In relation to the use of the other words complained of - "bastards" (used twice), "bullshit" (used four times) and "shit" (used twice) - it did not regard their use as itself problematic under Rule 1.16. However, with hindsight the broadcaster could see how the repetition of these words in the editing of the programme could have offended viewers.

ITV explained that *I'm A Celebrity* is produced and edited in Australia with a very quick turnaround. It is then fed live to the UK for broadcast. It assured Ofcom that the programme operates under detailed compliance guidelines and with frequent advice from compliance specialists, and that its producers have achieved a good record in responsible editing judgement. However, it stated that on this occasion the assessment of the cumulative use of language, in a series of packages changing through the day, had fallen short of its usual standard. It apologised and stated that it had never been its intention to offend.

As a result of these complaints, in relation to the next series of this reality programming, ITV would be confirming the parameters of Rule 1.16 and its own internal policy to the show's senior producers, and reinforcing its internal guidelines accordingly, with the aim of avoiding a recurrence of complaints on this issue.

### **Decision**

Rule 1.16 requires that where offensive language is used before the watershed it is justified by context. Context can include such matters as:

- The editorial content of the programmes
- The time of broadcast
- The likely size, composition and likely expectation of the potential audience
- The extent to which the nature of the content can be brought to the attention of the audience, for example by giving information.

Rule 1.16 also states that “In any event, frequent use of such language must be avoided before the watershed.”

Whilst acknowledging the distinction ITV sought to draw between the two groups of words, Ofcom took the view that all the words and phrases used required justification by context to be used pre-watershed. Although isolated use of any of the language complained of might be justified by context, frequent use is prohibited pre-watershed by Rule 1.16. Ofcom noted that the language complained of, together with other, stronger, language obscured by ‘bleeps’ had occurred at regular intervals across the programme.

It also noted that whilst the programme had carried information concerning the presence of ‘strong language’, this did not prevent the application of this Rule given the frequent use of the language, the 20:00 transmission time of the programme and its likely and actual appeal to a younger audience. BARB data indicated that 12.5% of those viewing the programme had been under 16, suggesting that a total of one million children were watching.

Ofcom welcomed the steps taken by the broadcaster to prevent similar occurrences in future series of the programme. In view of the action taken by ITV, Ofcom considers the matter resolved.

**Resolved**

## **When Football Managers Go Mad** *ESPN Classic Sport, 27 January 2007, 16:00*

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### **Introduction**

ESPN Classic Sport is a cable and satellite channel. 7 viewers complained that the programme contained frequent use of bad language and was therefore unacceptable for the time of broadcast.

Ofcom noted that there were repeated uses of the words “*fuck*” and “*fucking*”. Ofcom asked ESPN Classic Sport to comment on the appropriateness of this programme for broadcast at 16:00 in light of Rule 1.14 of the Code. This states that “The most offensive language must not be broadcast before the watershed or when children are particularly likely to be listening.”

### **Response**

ESPN Classic Sport said that there had been a human scheduling error. It was first informed of it by an email from a viewer on the day after broadcast of the programme in question and immediately responded by removing the programme from the schedule and producing a second version without the bad language.

The broadcaster also confirmed that it had reviewed its programming schedule and quality control procedures to ensure that such an incident would not be repeated. To avoid such human error in the future, ESPN Classic is implementing some changes in its scheduling computer system to ensure that a programme marked as inappropriate for an audience or a time slot cannot be scheduled. It also wished to apologise to viewers for the offence this broadcast had caused.

### **Decision**

The programme examined the stress that football managers are under and showed various scenes in which they berated players for a poor performance. There were repeated instances of strong language (“*fuck*” and derivatives) which were unsuitable for transmission at 16:00.

While Ofcom welcomes the steps that the broadcaster has taken to prevent a recurrence of this error, it is concerned that compliance procedures failed to identify the scheduling error. However, given the broadcaster’s good compliance record to date and their assurances that internal procedures have been tightened, Ofcom considers the matter resolved.

### **Resolved**

## Fairness and Privacy Cases

### Upheld in Part

#### Complaint by Ms Jessica Rees

*Frontline Scotland: The Arlene Fraser Murder Trial - The Missing Evidence, BBC1 (Scotland), 19 October 2005*

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**Summary:** Ofcom has upheld parts of this complaint of unfair treatment about the above programme, broadcast on 19 October 2005 by BBC1 (Scotland), that revisited the circumstances surrounding the murder of Mrs Arlene Fraser. Mr Nat Fraser, Mr Glenn Lucas and Mr Hector Dick stood trial for her murder. Only her husband, Mr Fraser, was found guilty. This programme examined concerns that had arisen over the testimony of Mr Dick's evidence in court and the accuracy of a lip-reading report provided by Ms Jessica Rees who was used by the police to interpret, through lip-reading, CCTV recorded conversations between Mr Lucas and Mr Fraser.

Ms Rees complained to Ofcom that she was treated unfairly in the programme as broadcast in that: it made references to her involvement in the murder case that were untrue, inaccurate and sensationalist; the claim that she declined to participate in the programme was untrue and she was not given an appropriate and timely opportunity to respond to the allegations made about her and that a statement she provided to the programme makers was ignored; she was given inaccurate information by the programme makers about the content of the programme; and, the programme unfairly linked her lip-reading report with her being "dropped" by the Crown Prosecution Service as an expert witness.

Ofcom's Fairness Committee found as follows:

- The Committee considered that programme's overall commentary, including its repeated references to the lip-reading report being flawed and the inclusion of strong adverse and (in all but one instance) unchecked remarks of two of the programme's contributors had the cumulative effect of leaving viewers with an overall negative impression of Ms Rees' professional judgement and competency as a lip-reader and expert witness. This was unfair to Ms Rees.
- The Committee considered that the programme makers did take reasonable steps to provide Ms Rees with an appropriate and timely opportunity to respond to the criticisms and allegations that were to be made in the programme. Ofcom, therefore, found no unfairness to Ms Rees in this respect. However, the Committee considered that Ms Rees' statement in response to the programme makers was not adequately reflected in the programme, and, therefore, her position was not represented in a fair way. This resulted in unfairness to Ms Rees.
- The Committee considered that the programme makers had given Ms Rees a full and accurate account of the intended nature and purpose of the programme and had fairly explained to her the criticisms that would be made of her and her report. Although the programme makers did not mention that one contributor would be giving his opinion on Mr Rees' ability as an expert lip-reader, it considered that the information given to her was sufficient for her

to have given 'informed consent' if she had wished to contribute to the programme. The Committee concluded that there was no unfairness to Ms Rees in this respect.

- The Committee considered that the programme makers had taken sufficient steps to satisfy themselves that it was accurate for the programme to claim that Ms Rees was no longer used by the CPS as an expert lip-reading witness and that this was, in itself, fairly presented in the programme. However, the Committee considered that the cumulative effect of repeated reference to the fact that Ms Rees was no longer used by the CPS in the context of questioning her expertise and the reliability of her lip-reading report resulted in unfairness to Ms Rees.

## Introduction

On 19 October 2005, BBC1 (Scotland) broadcast an edition of *Frontline Scotland* which revisited the circumstances surrounding the murder of Mrs Arlene Fraser, who had disappeared in April 1998 from her home town of Elgin in the north of Scotland. Her body was never found. In January 2003, three men, Mr Nat Fraser, Mr Glenn Lucas and Mr Hector Dick stood trial for her murder and for conspiracy to murder. Only her husband, Mr Fraser, was found guilty. He was sentenced to life imprisonment.

The programme reported on elements of what, it alleged, had emerged as unreliable evidence at the trial. In particular, the programme highlighted inconsistencies in the evidence of Mr Dick who had turned Queen's Evidence (that is, he had given evidence for the prosecution against co-accused Mr Fraser) during the trial; and concerns that had arisen over the accuracy of a lip-reading report provided by Ms Jessica Rees. Ms Rees was used by Grampian Police to interpret, through lip-reading, CCTV recorded conversations between Mr Lucas and Mr Fraser, while Mr Fraser was in prison for an unrelated offence. These visits had been recorded by the prison authorities.

On 10 October 2005, Mr Graeme MacAuley, a producer for the programme, contacted Ms Rees by email to inform her about the programme, its nature, and purpose; and to give her an opportunity to comment on the criticisms and allegations that were to be made about her and her lip-reading report. Ms Rees was unable to respond to Mr MacAuley's email personally, but communication was made between them via Ms K Cayden, Ms Rees' personal assistant. A total of seven emails were exchanged between Mr MacAuley and Ms Cayden between 10 October 2005 and 17 October 2005.

The programme featured interview footage (recorded in 2003 for another programme) of Detective Superintendent Jim Stephen who had been the senior investigating officer in the case. He said that the interpretation of the conversation between the two men contained in Ms Rees' report had given the police the opportunity to move the investigation forward from a missing person inquiry into a murder investigation. That had resulted in Mr Fraser and Mr Lucas being charged with the murder and conspiracy to murder.

The programme went on to explain, however, that Ms Rees' report was not used as evidence in the trial. According to the programme, Mr Dick (who had been charged by the police for reasons unrelated to Ms Rees' report) had decided to turn Queen's Evidence during the trial and claimed that Mr Fraser had acted alone in arranging his

wife's murder. This resulted in the Crown no longer needing to use Ms Rees' lip-reading report in its prosecution of Mr Fraser.

Ms Rees was referred to by name a number of times during the programme. Both the programme's commentary and the contributions from Mr Bill Taylor (described by the programme as an Advocate QC who had followed the case) and Mr Terry Ruane (described by the programme as a lip-reading expert who had been employed by the defence) questioned the reliability of Ms Rees' evidence. The programme claimed that Ms Rees was no longer used as an expert lip-reader by the Crown Prosecution Service for England and Wales ("the CPS") after it was alleged that she had misled people about her university qualifications. The programme also stated that Ms Rees had declined the programme makers' offer of an interview and had denied that she had read a briefing note given to her by the police about the case before she compiled her report on the CCTV footage.

Ms Rees complained to Ofcom that she was treated unfairly in the programme as broadcast.

## **The Complaint**

### **Ms Rees' case**

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

- (a) The references made in the programme to her involvement in the Arlene Fraser murder case were untrue, inaccurate and sensationalist; and that they had the overall effect of being unfair to her. In particular, Ms Rees referred to the following statements made in the programme:
  - i) *"We can reveal dramatic new evidence which shows the case was flawed from the beginning to the end"*. Ms Rees said that this statement in the introduction to the programme was untrue, inaccurate and sensationalist.
  - ii) *"This is the actual footage of their meetings shown for the first time"*. Ms Rees said that this statement about the CCTV footage of Mr Lucas and Mr Fraser was untrue.
  - iii) *"Grampian Police were following Nat Fraser's every move"*. Ms Rees said that it was not Grampian Police but a prison officer who overheard a suspicious conversation and decided to film Mr Fraser's and Mr Lucas's prison visits at length.
  - iv) *"In a case with no body and built only on circumstantial evidence Jessica Rees' report tipped the balance"*. Ms Rees said that this statement made by the programme's reporter was untrue. She said that her lip-reading report only meant that the police switched their investigation from a missing person inquiry to a murder investigation. Ms Rees said that she had nothing to do with the evidence that led to the three men being charged with murder and conspiracy to murder.
  - v) *"We can reveal now that that report was flawed and the defence were ready to discredit it if it was ever used in court"*. Ms Rees said that the evidence would have to be tested in court and, as such, would not have been discredited as it was of a type admissible by law for use in court.

- vi) Ms Rees said that Mr Taylor had made the comment "*the Crown witness was no more an expert than I am at bird watching*". Ms Rees said that his comment flew in the face of the tests she had undertaken that confirmed that she was an expert and that she was accredited as such by the Court of Appeal.
- vii) "*Other lip-reading experts studied the tape*". Ms Rees claimed that Mr Ruane was not a lip-reading expert, despite the programme's assertion that he was. She said that he was a sign language expert who had no specialist equipment for enhancing lip-reading recordings; he had never been used by prosecuting authorities; and he did not have expert witness accreditation as a lip-reader. This was a fact ignored by the programme makers even though they had been made aware of it.
- viii) Mr Ruane's comment that "*Nobody should ever have tried to use a lip-reading report in this case*" was, according to Ms Rees, inappropriate as only the judge could decide what evidence could and could not be used as admissible evidence in court.

Ms Rees said that Mr Ruane's comment "*the police briefed her in the first place so she has all that in her head when she was viewing [the CCTV footage of Mr Lucas and Mr Fraser]*" (i.e. that she had been influenced by the police before compiling her report) was untrue. Ms Rees said that she had not been briefed by the police beforehand and that she did not have it "*all that in her head*" when she viewed the footage.

Mr Ruane also commented that the quality of the recording of the CCTV footage was very bad. Ms Rees said that the quality of the recording was not bad when she viewed it on specialist equipment which produced a much clearer picture.

- ix) "*Nobody checked her work at all*". Ms Rees said that Mr Ruane's comment that her work was not checked was untrue.
  - x) "*So, as we've just shown you the crucial lip-reading evidence which resulted in Glenn Lucas and Nat Fraser being charged was flawed*". Ms Rees said that this statement was an exaggeration and that her report was only a very small part of the evidence against Mr Lucas and Mr Fraser.
  - xi) "*Dick's decision to turn Queen's evidence meant the prosecution no longer needed flawed lip-reading testimony*". Ms Rees said that this statement was untrue and inaccurately presented in the programme. The programme makers failed to mention in the programme that there was other evidence against Mr Lucas besides her lip-reading report.
- (b) Ms Rees said that it was untrue that she had declined to participate in the programme. She said that she was not given an appropriate and timely opportunity to respond to the allegations that were to be made in the programme and that the statement that she provided to the programme makers was almost totally ignored.
  - (c) Ms Rees complained that she was given inaccurate information by the programme makers about the content of the programme.

- (d) The linking of her lip-reading report and her being “dropped” by the CPS as an expert witness was unfair and untrue.

### The BBC’s case

In summary and in response to the specific heads of complaint, the BBC said that:

- (a) i) The statement made in the programme about revealing “*dramatic new evidence which shows the case was flawed from the beginning to the end*” related both to the unreliability of Ms Rees’ evidence as a lip-reading expert and to the apparently dubious testimony of Mr Dick. These were the two most significant elements in the prosecution’s case against Mr Fraser. Ms Rees appeared to believe that the programme claimed that her evidence was inadmissible in court. At no point was such a statement made by anyone in the programme. The programme highlighted questions as to its reliability, not to its admissibility.
- ii) The BBC said that the statement made in the programme that “*This is the actual footage of their meetings shown for the first time*” had no bearing on whether or not Ms Rees was treated fairly or otherwise by or in the programme. It was, therefore, irrelevant to her complaint of unfairness. The BBC noted that Ms Rees had not detailed where the footage had previously been “publicly shown” (that is, broadcast). The BBC said that the programme makers stood by the statement made in the programme.
- iii) Ms Rees’ point that it was a prison officer who arranged the filming of the visit by Mr Lucas to Mr Fraser in prison also had no bearing on or relevance to her complaint of unfair treatment. However, in the interests of accuracy, the BBC pointed out that the programme had stated only that Grampian Police had acquired the footage. No claim or suggestion was made in the programme that the police instigated the filming. Indeed, the programme made it clear that visits may be filmed by prison authorities as a matter of routine.
- iv) Ms Rees’ objection to the claim that her report “*tipped the balance*”, did not mean, as she appeared to believe, that her evidence precipitated the murder inquiry; rather that, in the view of Detective Superintendent Jim Stephen, it enabled the inquiry to move onto a different footing.
- v) Ms Rees also appeared to believe that the programme, as a whole, and its contributors, said that her evidence was inadmissible. However, the programme claimed only that her evidence appeared to be flawed. This statement was supported by the views of two contributors, Mr Taylor (see head vi) below) and Mr Ruane (see head ix) below). Also, Mr Ruane commented that the quality of the CCTV recording was bad and that it should not have been considered for use as evidence (see head viii) below). The programme had no concern, therefore, with any speculation on the admissibility or otherwise of Ms Rees’ report.
- vi) The BBC said that Mr Taylor’s comments were clearly couched as his own view on the quality of her evidence and not on its admissibility. The BBC said that Ms Rees had not explained satisfactorily who had accredited her as an expert and what it meant. It would appear that Ms Rees implied that accreditation as an expert gave an assurance as to her reliability as a lip-reader, but as far as the BBC were aware, it did not involve any kind of

quality control. In any case, even if there were a recognised standard of expertise in lip-reading, which she had achieved, this would not put her or her work beyond criticism.

- vii) Ms Rees disputed Mr Ruane's standing as a lip-reading expert, making the point that he was a British Sign Language user. The BBC said that, as someone who has been profoundly deaf since childhood<sup>1</sup>, it was highly likely that he would be, at least, extremely well practised in lip-reading. Also, Mr Ruane had conducted work for the police; the National Crime Squad; the CPS; and, defence teams. Ms Rees was fully aware of this as she had worked on some of the same cases with him.
- viii) The BBC said that Mr Ruane possessed specialist equipment for lip-reading recordings. If the quality of the recorded material was not sufficient to see subtle lip-movements, enhancing the material during playback would not help. Ms Rees appeared to argue that Mr Ruane could not see as much as she could because she had better equipment. However, the large number of discrepancies between Ms Rees' report and the reports of the other lip-readers consulted for the programme suggested that the disagreement could not be explained by differing qualities of playback equipment.

Ms Rees had said that the quality of the tapes was not bad when viewed on her specialist equipment. The BBC said that the material had been filmed at some distance from the two men who were shown in profile. Best lip-reading results, according to the BBC, were always achieved at relatively close range and from the front. No type or amount of enhancement could have changed either of those facts and, as already explained, if the quality of the recorded material was not sufficient to see subtle lip-movements, enhancing the material during playback would not help.

The BBC also said that it could not be independently verified whether or not Ms Rees had read briefing notes provided to her by the police prior to viewing the footage. However, the police told the programme makers that they had sent her briefing notes and it was conceivable that she chose not to read them before looking at the tape. In any event, the programme made clear that Ms Rees disputed Mr Ruane's claim that she had possibly been influenced by briefing notes.

- ix) Ms Rees disputed the claim that "*nobody checked her work at all*". However, the BBC said that she had not given details of how or when her work was checked or by whom. If anyone did check her work, it was not recorded on her report. While some facts may have been retrospectively shown to be true and accurate, many others were shown to be false. For example, Ms Rees claimed that she correctly lip-read a nickname for one of the co-accused, "Hecky". This was not a nickname used for this man.
- x) The BBC did not specifically address Ms Rees' complaint that the statement "*So, as we've just shown you the crucial lip-reading evidence which resulted in Glenn Lucas and Nat Fraser being charged was flawed*" in the programme was an exaggeration.

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<sup>1</sup> The BBC subsequently admitted in its response to Ms Rees' comments that it had mistakenly said in its first statement that Mr Ruane had been deaf since birth, when, in fact, he had been deaf since childhood.

- xi) The BBC did not specifically address Ms Rees' complaint about the statement "*the prosecution no longer needed flawed lip-reading testimony*" in the programme was untrue and inaccurately presented in the programme.
- (b) Ms Rees' claim that she did not take part in the programme because she was not given enough notice flew in the face of the email exchange between Mr MacAuley and Ms Cayden. The BBC said that the email dated 17 October 2005 from Mr McAuley to Ms Cayden clearly showed that Ms Rees declined to take part in the programme out of respect for Arlene Fraser's family and not because she was not given enough time.

The BBC said that the nature of investigative current affairs programme making meant that interview requests were often made quite late in the process and against tight deadlines. Similarly tight deadlines were given to all other contributors, including Mr Ruane. In any case, the BBC said that the email correspondence between Ms Cayden and Mr MacAuley continued after the deadline and it was clear from the email dated 17 October 2005 that this initial deadline was not the reason for her refusal to take part in the programme.

- (c) The BBC said that Ms Rees was given sufficient information by Mr MacAuley to be able to provide a response to the criticisms and allegations made against her and her report. However, she chose not to out of respect for the feelings of Arlene Fraser's Family.
- (d) Ms Rees claimed that the programme linked, unfairly, the alleged unreliability of her lip-reading report in the Arlene Fraser murder case with the fact that the CPS had discontinued to use her as an expert witness. In fact, the BBC said that this part of the commentary was worded very carefully to avoid doing precisely that and to ensure that no such link was made or implied. The commentary stated:

*"Jessica Rees has since been dropped by the Crown Prosecution Service in England after allegations she has misled people about her university qualifications... The CPS confirmed to us they no longer use her as an expert witness in lip-reading."*

Both the accuracy of the statement (that Ms Rees had been "dropped" by the CPS and the reasons for it were carefully checked with the CPS and with Oxford University before the broadcast. Despite Ms Rees' claim to the contrary, the CPS made clear in an email to the programme makers dated 13 October 2006, that it no longer used her as an expert witness and had no plans to use her in the future. The programme was careful to explain that it was the allegations that she had misled people about her university qualifications that led to her being dropped by the CPS.

### **Ms Rees' comments**

In summary and in response to the BBC's statement, Ms Rees said that:

- (a) i) For the BBC to present this as "*dramatic*" and "*new*" was misleading and therefore unfair to her. Ms Rees said the BBC had given the clear impression that her evidence would have been ruled inadmissible in court and that this was an extremely unreasonable conclusion for it to make as it had no basis in fact or reality. While the BBC claimed that the programme did not make such

a direct statement that her report would have been inadmissible in court, the programme left the viewer with little else to believe.

- ii) The footage of the prison visits was previously shown, following the verdict of the court, both on ITV and BBC in January 2003.
- iii) The point about the prison officer was relevant to the general accuracy of the programme as it was a prison officer who filmed the visit after overhearing a snatch of conversation between Mr Fraser and Mr Lucas and becoming suspicious of the men's demeanour. The prison officer then brought the recording to the attention of Grampian Police. This fact was widely published and also appeared on the BBC and ITV programmes in January 2003.
- iv) The statement "*tipped the balance*", in keeping with the rest of the programme, was sensationalist and misleading.
- v) The programme gave the impression that her evidence appeared to be flawed.
- vi) Mr Taylor's view of her report was insulting and inflammatory. It appeared to be endorsed by the BBC by including it in the programme while making no attempt to highlight the fact that it was only his personal view. There was no counterbalancing comment to put it in perspective and it should not have been shown.

Ms Rees said that she was an expert fully accredited by several expert witness organisations which were careful to check out references, qualifications and expect members to be bound by a code of conduct. Although a few databases such as the National Crime Faculty only hold lists of experts available, the majority of them involved quality control. She said that she was accepted as an expert by the Court of Appeal. Also, the CPS referred to her as an expert witness approved by the Court of Appeal in correspondence early in 2005.

- vii) Mr Ruane was not a lip-reading expert as stated in the programme. Most of the work he did for the police was in the area of sign language interpretation.
- viii) Ms Rees said that there was no counterbalance to Mr Ruane's untrue comments that the quality of the recordings was bad and that she had been briefed before compiling her report. Additionally, the decision on which evidence was or was not allowed in court was made by the CPS and the judge. Mr Ruane was speaking out of turn in this respect and this was not made clear in the programme, which was unfair to her.

Ms Rees said that she understood what the BBC were saying about the quality of the recordings, but she claimed that with specialist equipment, the footage could be seen much more clearly. She said that the huge number of discrepancies in the report of Mr Ruane and Ms Rees could be explained by his lack of specialist equipment and his lack of experience in CCTV work.

Ms Rees also said that it was unfair for the programme to paint a negative picture of her by using a "lesser expert" than herself.

- ix) Ms Rees said that she was not asked by the BBC who had checked her work. The BBC claimed to have a copy of Ms Rees' report but all such reports are regarded as confidential and were not for the press to have access to. Both the

CPS and the police were fully aware that Ms Rees' work was checked, but it appeared that the BBC was not.

Ms Rees said that the police had later told her that "Hecky" was a nickname for Mr Dick. Although she did not argue with the BBC as to whether or not this was the case, Ms Rees said that her lip-reading uncovered several other facts and factors which she could not possibly have known at the time. Some facts came to light after she had viewed the tape which retrospectively proved that she had been accurate.

- x) Ms Rees said that the presenter's comment "*So, as we've just shown you, the crucial lip-reading evidence... was flawed*" appeared to endorse the comments of Mr Taylor and Mr Ruane. The whole picture of her and her report as presented in the programme was inaccurate.
- xi) No further comment was made by Ms Rees on this point.
- (b) Ms Rees said that, notwithstanding the fact that she was moving house and professionally engaged by the police, she was not given a reasonable amount of time to respond to the allegations to be made in the programme. Mr MacAulay's initial email of 10 October 2005 gave her four days in which to submit a response. Mr Cayden responded immediately to explain that Ms Rees was moving house that week and had no access to email. Ms Cayden emailed the programme makers again on 17 October 2005 to inform them that Ms Rees had no email and no fax facilities. Without these facilities, Ms Rees said that she was significantly disadvantaged in making any response at all.

Ms Rees said that she had been able to speak briefly to Arlene Fraser's family who were extremely distressed about the programme and had asked her not to take part. Although she did not base her decision wholly on this request, Ms Rees said that the main reason was that she had not been given sufficient time to make a response and no respect was afforded by the BBC towards her other commitments. She accepted that her lack of email and fax facilities may have resulted in a slightly extended deadline as claimed by the BBC, but this was "desultory" and left her in an unfair position.

- (c) Ms Rees said that she was not given the full facts or the true purpose of the programme by the programme makers. She was not told any specifics, such as the remark made by Mr Taylor which would have enabled her to refute what he said. Mr MacAuley told Ms Cayden that he would take the points she made into consideration, but these were clearly dismissed despite their importance.

The viewers were told of her involvement in negative terms and the statement that she had denied having read the briefing notes provided by the police was worded in such a way that implied dishonesty on her part. Ms Rees said that the briefing notes had been handed unseen to her personal assistant and locked away in a sealed envelope which was witnessed and countersigned by the police. This was a normal procedure carried out by Ms Rees whenever briefing notes were unwittingly supplied by the police.

- (d) Ms Rees said that the CPS had written to her to state what the situation would be should it decide to use her again as a prosecution witness. This letter, dated 16 September 2005, was written by the Head of the Policy Directorate of the CPS. (Only part of the letter was provided to Ofcom because of confidentiality

issues). Ms Rees said that the email from the CPS dated 13 October 2005 to the BBC came from its press office which would not be party to decisions relating to her being used as an expert witness.

Ms Rees also said that the programme failed to state that an exhaustive investigation had found that she had never lied on her curriculum vitae or claimed to have a full degree from Oxford. The BBC did not produce any statement from the CPS which confirmed that she had lied on her curriculum vitae. Although Mr MacAulay in an email (dated 18 October 2005 to Ms Rosalind McInnes and Ms Dorothy Parker) referred to her having a BA, it referred to the course she had studied and not the qualification that she would have gained. Her curriculum vitae clearly and accurately cited her as having a '2<sup>nd</sup> in Honour Moderations'.

The overall effect of the programme was to insinuate that the reason Ms Rees' lip-reading report had not been used by the prosecution in the trial was somehow linked to the CPS decision not to use her as an expert witness, even though the trial was concluded in January 2003 and its decision was made in June 2005. No care was taken by the BBC to highlight the difference.

The programme was unfair both directly and indirectly as a result of the many inaccuracies contained within it. Ms Rees said that she felt the claim was further supported by the fact that in the recent Appeal Court hearing for this case in March 2006, Mr Fraser's defence team did not rely on anything which appeared in this programme. The reasons for this were obvious according to Ms Rees since the entire programme was sensationalist, unbalanced and misrepresented much of which was conjecture or untruths as proven fact.

### **The BBC's comments**

In summary and in response to Ms Rees' comments, the BBC said that:

- (a) Ms Rees appeared to be under the impression that the programme claimed that her report had been or would have been ruled inadmissible by the court. At no point did the programme state, expressly or implicitly, that this was, or might have been, the case. Concerns had been raised about the reliability of her report since it played such a considerable part in bringing Mr Fraser and Mr Lucas to trial, and it was in the public interest to highlight these concerns, regardless of Mr Dick's decision to turn Queen's Evidence. The programme made no comment on why Ms Rees was ultimately not called to give evidence as an expert witness at the trial.
  - i) The commentary line, "*We can reveal dramatic new evidence which shows that the case was flawed from the beginning to the end*" related to the question about the reliability of her evidence and to the doubts about Mr Dick's evidence. It was not the programme's concern whether or not her report was ruled admissible or not. Nor did the fact that it was not used in Mr Fraser's appeal invalidate it. The BBC said that neither strand of evidence, used or not, had any bearing on the accuracy or otherwise of Ms Rees' account of the filmed conversation between Mr Fraser and Mr Lucas.
  - ii) Whether or not this was the first time the CCTV footage had been shown before had no bearing on the programme's treatment of Ms Rees. However, the BBC said that what she had said in her comments in response to its first

statement was inaccurate. The programme shown in January 2003, to which Ms Rees referred, did not contain the actual CCTV footage of the prison visit. In fact it contained a reconstruction of the visit using actors. To the BBC's knowledge, ITV did not show the actual CCTV footage either.

- iii) The BBC made no further comment regarding this point.
- iv) The BBC reiterated that her interpretation of the conversation between Mr Fraser and Mr Lucas was what crucially enabled the police to pursue their investigation as a murder inquiry.
- v) The BBC reiterated that Ms Rees appeared to be under the impression that the programme said that her evidence had been, or would have been, ruled inadmissible by the court. At no point did the programme state expressly or implicitly that this was or might have been the case.

Neither the programme nor the programme makers were concerned with Ms Rees' general level of skill as a lip-reader. Although, it may well be very high, it did not put her beyond criticism. The contention that Ms Rees' evidence was "flawed" was supported by the opinions of Mr Taylor and three lip-readers consulted by the programme (who could claim the same subjective expert status as Ms Rees did).

- vi) The BBC acknowledged that Ms Rees' lip-reading ability may well be greater than Mr Taylor's comments suggested, but he appeared in the programme as a lawyer, giving his opinion of a single example of her work which he considered easy to discredit, not as a lip-reader giving a general assessment of her ability. The BBC said that had she availed herself of the opportunity to take part in the programme, she could have challenged their views.

The BBC said that there was no nationally recognised standard or agreed test of expertise in lip-reading. Even if there was a recognised standard of expertise in lip-reading, which she had achieved, it would not put her or her work beyond criticism. It was in the context of this particular case, and the controversy about her version of the conversation between Mr Lucas and Mr Fraser, that her work was questioned. In questioning it, Mr Taylor expressed his personal opinions.

- vii) The BBC said that the nature and extent of Mr Ruane's hearing impairment and the length of time he had lived with it was outside the scope of Ms Rees' complaint of unfair treatment.
- viii) The BBC said that it stood by its assertion made in its previous statement that the technical factors relating to the capture of the CCTV recording which would render lip-reading extremely difficult. These were unlikely to be addressed by technical enhancement. The BBC noted that Ms Rees did not give any explanation about how she was able to achieve such enhancement and thus make lip-reading easier.
- ix) The BBC made no further comment on this point.
- x) The BBC made no further comment on this point.

- xi) The BBC made no further comment on this point.
- (b) The BBC made no further comment on this point.
- (c) The BBC made no further comment on this point.
- (d) The BBC said that the programme properly described the circumstances which led to Ms Rees being dropped as an expert witness by the CPS. Confirmation of that decision was received from the CPS press office. Whether or not the CPS Press Office was party to the decision to discontinue to use Ms Rees as an expert lip-reader was irrelevant: it was the decision that mattered, not who actually took it.

The BBC said that while Ms Rees specifically mentioned "*BA Hons Mod*" in her curriculum vitae, she had given the corresponding dates as "*1983-86*": the three years which would have been required, in her case, to complete a full degree course.

## Decision

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

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression. Ofcom recognises that (subject to the provisions of the Ofcom Broadcasting Code) broadcasters can quite properly comment and take particular viewpoints on the subjects of broadcast programmes. However, it is essential, not only to the parties directly concerned but also to listeners and viewers, that such comments should be accurate in all material respects so as not to cause unfairness. Ofcom is also obliged to have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate and consistent and targeted only at cases in which action is needed.

This case was considered by Ofcom's Fairness Committee, Ofcom's most senior decision making body with respect to Fairness and Privacy complaints. The Fairness Committee considered the complaint and the broadcaster's response, together with supporting material and subsequent submissions from both parties. The Committee viewed the programme as broadcast and read a transcript of it along with a transcript of the subtitles used for the programme.

In the circumstances of this case, the Fairness Committee found the following:

- (a) The Fairness Committee first considered Ms Rees' complaint that the references made in the programme to her involvement in the Arlene Fraser murder case were untrue, inaccurate and sensationalist and had the overall effect of being unfair to her. The Committee had particular regard to Practice 7.9 of the Ofcom Broadcasting Code which states that the broadcaster should take reasonable care before broadcasting a factual programme to satisfy themselves that the material facts have not been presented, disregarded or omitted in any way that is unfair to an individual or organisation. Taking this

Practice into account, the Committee first addressed separately each of Ms Rees' individual points of complaint under this head concerning the programme's treatment of her.

- i) The Committee considered Ms Rees' complaint that the programme's commentary inaccurately and sensationally stated that *"We can reveal dramatic new evidence shows the case was flawed from the beginning to the end"*.

The Committee noted that the commentary line complained of was used to introduce the main focus of the programme, namely that there were concerns over the reliability of some of the evidence in the Arlene Fraser murder case. It considered that the use of this commentary line referred to all the evidential criticisms and allegations that were to be covered in the programme. In the context of the programme as a whole the Committee considered that it was unlikely that viewers would have taken the comment to refer specifically to the criticisms of Ms Rees' lip-reading report. The Committee therefore did not find unfairness to Ms Rees in the programme's use of this commentary line.

- ii) The Committee considered Ms Rees' complaint that the programme's commentary stated, incorrectly, that it was the first time that the CCTV footage of Mr Lucas and Mr Fraser had been shown on television. Ms Rees said that the footage had been shown previously both on BBC and ITV.

The Committee noted that a previous programme broadcast in January 2003 by the BBC had used a reconstruction of Mr Lucas's and Mr Fraser's conversation, but there appeared to be no evidence as to whether the footage itself had previously been shown on television. However, the Committee took the view that whether or not the CCTV had been broadcast before did not have a bearing on whether the programme's treatment of Ms Rees was unfair or otherwise as it was not likely to materially affect viewers' understanding of her, her role in the police investigation, or her competence as a lip-reader. The CCTV footage of Mr Lucas and Mr Fraser shown in the programme did not feature Ms Rees nor was she referred to in it. Neither did the commentary accompanying this section of footage refer to her in any way. Consequently, the Committee considered that the inclusion of the commentary line complained of did not reflect unfairly on Ms Rees and therefore did not cause unfairness to her in the programme.

- iii) The Committee considered Ms Rees' complaint that the programme stated, incorrectly, that it was the police rather than the prison authorities that instigated filming Mr Lucas's visits to Mr Fraser.

The Committee noted the commentary complained of:

*"But Grampian Police were following Nat Fraser's every move"*.

The Committee noted that before this commentary line, the programme had explained that:

*"Glen Lucas knew that as with every prison all visits are recorded on CCTV"*.

It took the view that the programme did not state or suggest, either implicitly or expressly, that Grampian Police instigated the filming of Mr Lucas or Mr Fraser. The Committee considered that it was clear from examining the commentary that it neither stated nor suggested, implicitly or expressly, that Grampian Police arranged the filming of the prison visits. In any event, the Committee was not persuaded that the commentary lines referred to above were likely to materially affect viewers' understanding of her, her role in the police investigation, or her competence as a lip-reader. It concluded that the inclusion of the commentary lines complained of did not reflect unfairly on Ms Rees and therefore did not cause unfairness to her in the programme.

- iv) The Committee considered Ms Rees' complaint that the programme's statement that "*Jessica Rees' report tipped the balance*" was untrue and that her lip-reading report only meant that the police switched their investigation from a missing person inquiry to a murder investigation.

The Committee noted that the commentary line complained of was made after the sequence in the programme that featured interview footage of Detective Superintendent Jim Stephen taken in January 2003. He explained that Ms Rees' lip-reading report confirmed to him at least that Arlene Fraser had been murdered and that, together with the previous information they had, it enabled the police to "move the inquiry forward", in other words to charge Mr Fraser with murder. The Committee also noted that immediately after the commentary line complained of, the programme stated that Ms Rees' report resulted in Mr Lucas and Mr Fraser being charged with murder and conspiracy to murder.

In the Committee's view, the commentary line was factually accurate. It was clear from Detective Superintendent Jim Stephen's interview that it was, in his opinion, Ms Rees' report along with the previous information they had that enabled the police to charge Mr Lucas and Mr Fraser with murder and conspiracy to murder. The Committee did not consider that viewers would have been likely to have understood the comment to mean that her report led to Mr Fraser being convicted of murder. In fact, it was clear from the programme that Ms Rees' report was never used as evidence during Mr Fraser's trial and so played no part in his conviction. In these circumstances, the Committee concluded that there was no unfairness to Ms Rees in this respect.

- v) The Committee then considered Ms Rees' complaint of unfairness in the commentary line:

*"We can reveal now that that report was flawed and the defence was ready to discredit it if it was ever used in court."*

The Committee noted Ms Rees' complaint that the commentary wrongly stated that her evidence was flawed and would have been discredited by the defence. According to Ms Rees her evidence would have been tested in court and would not have been discredited, because it was "a type" of evidence that was admissible in court. The Committee also noted the BBC's response that Ms Rees appeared to be under the impression that the programme claimed that her report was inadmissible

as evidence rather than that her report was flawed, which was what the programme actually stated.

The Committee also noted that the commentary line followed the sequence in the programme that explained how the police used Ms Rees' report, along with other information, to charge Mr Lucas and Mr Fraser. It noted that immediately after the commentary line was delivered, the programme moved on to examine in more depth the concerns relating to the reliability of Ms Rees' report.

In using the word "flawed" to describe Ms Rees' report the programme suggested that her report was unsound and inferred that it wrongly led to Mr Lucas and Mr Fraser being charged. In describing the report in this manner the programme appeared to be relying on the opinions of Mr Taylor and Mr Ruane that were expressed in the programme but which, except as discussed in viii) below, were allowed to go unchecked (see findings at vi) and ix) below). Given the nature of the allegation and its potential impact on Ms Rees the Committee considered it was unfair of the programme to conclude that the report was flawed in the absence of any proper objective discussion on this question.

However, as to whether the programme questioned the admissibility or otherwise of Ms Rees' lip-reading report, the Committee considered that whilst in describing the report as "flawed" the programme questioned its reliability, there was no overall suggestion that it would not have been accepted as evidence by the court and the statement "*the defence was ready to discredit it if it was ever used in court*" did not, in the Committee's view, amount to saying that it would have been ruled inadmissible by the court.

- vi) The Committee then considered Ms Rees' complaint of unfairness in Mr Taylor's comments made in the programme:

*"Frankly that evidence was laughable. The Crown witness was no more an expert than I am at bird watching. Far from being a crucial part of the Crown case in my view it would have been a very, very easily dismissed part of the Crown case."*

Practice 7.11 in Ofcom's Broadcasting Code states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond. Also, according to Practice 7.13, where it is appropriate to represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner.

The Committee considered whether or not Mr Taylor's remarks were unfair to Ms Rees. It noted that Mr Taylor was described in the programme as an "Advocate QC" who had followed the trial carefully. The Committee also noted the BBC's assertion that Mr Taylor's remarks were an expression of his own personal views on the quality of Ms Rees' report. However, these comments went unchecked and were not countered in any way in the programme. In view of this, and taking into account the strength of Mr Taylor's comments and their likely impact on viewers' understanding of Ms Rees' competency as an expert, the

Committee concluded that the inclusion of these comments was unfair to Ms Rees.

- vii) The Committee considered Ms Rees' complaint that Mr Ruane was not an expert lip-reader, despite the programme's assertion that he was.

The Committee noted the commentary line in the programme which introduced Mr Ruane:

*"Other lip-reading experts studied the tape. Terry Ruane was one of them."*

The Committee also considered the BBC's response that Mr Ruane had been profoundly deaf since childhood and that it was likely that he would be highly practiced in lip-reading. The Committee had not been provided with evidence which caused it to doubt the broadcaster's assertion that Mr Ruane possessed proficient lip-reading skills. The Committee therefore considered that describing Mr Ruane as a lip-reading expert did not reflect unfairly on Ms Rees and so did not cause unfairness to her in the programme.

- viii) The Committee considered Ms Rees' complaint that Mr Ruane's comments were inappropriate and incorrect. Ms Rees said that she had viewed the CCTV recordings on specialist viewing equipment that Mr Ruane did not have and she denied that she had been briefed by the police before compiling her lip-reading report.

The Committee noted the full section of the programme that featured Mr Ruane's remarks:

*"Nobody should ever have tried to use a lip-reading report in this case. First of all the quality of the tapes was very, very bad. Secondly, the police briefed her in the first place so she has all that in her head when she was viewing it."*

The Committee noted that Mr MacAuley had informed Ms Rees in his email of 10 October 2005 that the programme would be featuring an expert who had studied the CCTV recordings and who had been critical about the conditions in which she had compiled her report. The email specifically referred to the poor quality of the recordings and the allegation that she had been "briefed" by the police about the case before she completed her report. The Committee noted that Ms Rees responded, through her personal assistant, Ms Cayden, to these criticisms in emails sent to the programme makers on 12 and 17 October 2005 and that this response was summarised in the programme's commentary wording:

*"But she denies having read the briefing given to her by the police about the case before she looked at the tapes".*

The Committee also considered the BBC's response that Mr Ruane had viewed the recordings on specialist viewing equipment for lip-reading recordings.

The Committee had not been provided with evidence which caused it to doubt the BBC's assertion that Mr Ruane was in possession of specialist viewing equipment for lip-reading. It considered that his remarks were an expression of his personal view of Ms Rees' report and that, unlike Mr Taylor's comments discussed in v) above, the programme did appropriately balance Mr Ruane's accusation that she had been "*briefed*" by the police before compiling her report by reflecting the response that Ms Rees had provided through her personal assistant. In this context the Committee found no unfairness to Ms Rees as a result of the inclusion in the programme of these comments made by Mr Ruane.

In this particular context, the comments in isolation did not cause unfairness as they did not go unchecked. However, when taken with: the unchecked comments of Mr Taylor (see vi) above); the comment made by Mr Ruane (see ix) below); and, the commentary lines detailed below in heads x) and xi) of the complaint in the Committee's view the comments did contribute towards the overall tone of the programme, the effect of which was to call into question the reliability of Ms Rees' report and her competence as a lip-reader (see the final paragraph of xi) below). This, the Committee found, created unfairness to Ms Rees.

- ix) The Committee considered Ms Rees' complaint about Mr Ruane's concluding remark that "*Nobody checked her work at all*".

Practice 7.11 in Ofcom's Broadcasting Code states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond. Also, according to Practice 7.13, where it is appropriate to represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner.

The Committee noted that the programme stated that Ms Rees denied that she had been briefed about the case by the police before compiling her report. There was a clear conflict between the parties with regard to this element of her complaint. However, the parties had not provided any evidence for the Committee to determine whether or not Ms Rees' report had been checked. The Committee, not being a tribunal of fact, was therefore unable to determine this matter.

Nonetheless, no justification was given for the inclusion of this comment either in the BBC's submissions or in the programme itself. This being the case, and given the context in which the comment was made (immediately prior to Mr Taylor's comments - see vi) above), it was likely that viewers' would have been left with a negative impression regarding the quality of Ms Rees' work. In the Committee's view, this would have contributed to an impression that she was incompetent and did not have the expertise that she claimed she possessed. In view of these considerations, the Committee concluded that the use of Mr Ruane's comment in the programme was unfair to Ms Rees.

- x) The Committee considered Ms Rees' complaint that the programme's commentary line "*we've just shown you the crucial lip-reading evidence... was flawed*" was an exaggeration, as her report was only a small part of the evidence against Ms Lucas and Mr Fraser.

The Committee noted the full commentary of this section of the programme:

*“So, as we’ve just shown you the crucial lip-reading evidence which resulted in Glen Lucas and Nat Fraser being charged was flawed”.*

The Committee noted that the BBC did not specifically respond to this element of Ms Rees’ complaint. However, the Committee considered that although the use of the word “crucial” in this context may have given an impression that Ms Rees’ report was pivotal in the case, the 2003 interview footage of Detective Superintendent Jim Stephen included in the programme made it clear that it was her lip-reading report together with the previous information they had gathered that enabled the police to change the focus of their investigation and to charge Mr Fraser with the murder of his wife. In the Committee’s view, the use of the word “crucial” was an accurate and appropriate way in which to describe the significance Ms Rees’ report had in Mr Lucas and Mr Fraser being charged.

However, the Committee went on to consider the use of the word “flawed” in connection with Ms Rees’ report and the questions the programme makers believed pointed to its unreliability. The Committee considered that the use of the word “flawed” suggested to viewers that her report was unsound and, therefore, that it wrongly led to Mr Lucas and Mr Fraser being charged. The only apparent basis provided in the programme for the suggestion that it was “flawed” came through the comments of Mr Taylor and Mr Ruane (see vi) and ix) above) which were unchecked expressions of their personal opinions. In this the Committee considered that the use of the word “flawed” in this commentary line resulted in unfairness to Ms Rees.

- xi) The Committee considered Ms Rees’ complaint that the programme’s commentary line *“the prosecution no longer needed the flawed lip-reading testimony”* was untrue and had been inaccurately presented in the programme. There was other evidence against the accused than her lip-reading report.

The Committee noted the full commentary of this section of the programme:

*“Dick’s decision to turn Queen’s Evidence meant the prosecution no longer needed the flawed lip-reading testimony”.*

The Committee noted that the BBC did not specifically respond to this element of Ms Rees’ complaint. As above, the Committee noted that the police had felt Ms Rees’ report was an important element which allowed them to move the investigation forward. The Committee considered that the commentary line, insofar as it stated that *“the prosecution no longer needed the...testimony”* was an accurate reflection of the circumstances surrounding the report during the trial, namely that it was not used as part of the prosecution case because Mr Dick turned Queen’s Evidence in the trial of Mr Lucas and Mr Fraser.

However, the Committee went on to consider the use of the word “flawed” in connection with Ms Rees’ report and the questions the programme makers believed pointed to its unreliability. For the reasons already given at heads vi) and ix) above, the Committee considered that the use of the word “flawed” in this commentary line resulted in unfairness to Ms Rees.

The Committee then considered whether or not, as stated above in the opening comments at Decision head (a), and taking into account the findings at heads i) to xi), the programme’s overall presentation of the role played in the case by Ms Rees and her report was fair.

The Committee considered that programme’s overall commentary, including its repeated references to the report/evidence/testimony being flawed and the inclusion of strong adverse and (in all but one instance) unchecked remarks of Mr Taylor and Mr Ruane had the cumulative effect of leaving viewers with an overall negative impression of Ms Rees’ professional judgement and competency as a lip-reader and expert witness.

- (b) The Fairness Committee then considered Ms Rees’ complaint that it was untrue that she had declined to participate in the programme. She said that she was not given a timely opportunity to respond and that the statement that she did make to the programme makers was almost totally ignored.

Practice 7.11 in Ofcom’s Broadcasting Code states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond. Also, according to Practice 7.13, where it is appropriate to represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner.

Accordingly, the Fairness Committee first considered whether or not the programme alleged wrongdoing, incompetence or otherwise made significant allegations about Ms Rees and her lip-reading report. It was clear from Mr MacAuley’s email of 10 October 2005 to Ms Rees that it was the programme makers’ intention to feature her lip-reading report in the programme and to refer to the criticism it had received from other lip-reading experts (in particular Mr Ruane), from Mr Taylor, the QC who had followed the case, and to reflect the fact that the CPS no longer used her as an expert witness, allegedly because of allegations that she had mislead people to her qualifications (see (d) below).

The programme itself also made it clear that the reliability of Ms Rees’ report had been called into question and her credibility as an expert witness was cast into doubt. In particular, the Committee considered the following comments:

- Mr Ruane’s remark that “*Nobody should have used a lip-reading report in this case*”; “*she has it all in her head*”; and, “*Nobody checked her work*”;
- Mr Taylor’s comment that Ms Rees was “*no more an expert that I am at bird watching*”; and
- Comments in the programme’s narrative that “*The Crown no longer need flawed lip-reading evidence*”; “*the crucial lip-reading evidence...was flawed*”; and, “*Jessica Rees has been dropped by the Crown Prosecution*”

*Service...after allegations that she misled people about her university qualifications”.*

Taking the above factors and comments into account, the Committee considered that the programme was likely to materially affect viewers’ understanding of Ms Rees, her role in the police investigation and her competence as a lip-reader. The comments made by Mr Ruane and Mr Taylor directly questioned Ms Rees’ competence as an expert lip-reader and her professionalism in compiling the report. These comments were given credence by the programme’s commentary which made reference to: Ms Rees’ report being “flawed”; the CPS decision not to continue with her services; and, allegations about her having misled people about her qualifications. It was for these reasons that the Committee took the view that the comments and commentary in the programme amounted to significant allegations of incompetence about Ms Rees and her abilities.

The Fairness Committee then went on to consider whether or not the programme makers gave Ms Rees an appropriate and timely opportunity to respond to the criticisms and allegations that were to be made in the programme.

The Committee noted that Mr MacAuley’s initial email to Ms Rees was sent to her on 10 October 2005, nine days (seven working days) before the programme was to be transmitted. In this email, the Committee noted that Mr MacAuley expressly offered Ms Rees the opportunity to respond to the criticisms and to reply to the allegation that she had misled people about her qualifications and was no longer used by the CPS as an expert witness.

On 12 October 2005, Ms Rees’ personal assistant, Ms Cayden, replied to Mr MacAuley’s email in which she answered some of the points he had raised and explained that Ms Rees was unable to respond personally as she was moving home and was not able to access her email. Mr MacAuley replied on the same day giving Ms Cayden a fax number via which, he suggested, Ms Rees could send him a short statement over that weekend that dealt with the criticisms and allegations he had raised and that he would include her rebuttal of them in the programme.

The Committee further noted that Ms Cayden’s reply on 13 October 2005 informed Mr MacAuley that Ms Rees would not be in a position to respond to him until at least that weekend and that she would prefer to revert to the police and Arlene Fraser’s family before making a statement.

No further emails or other correspondence were exchanged between the programme makers and Ms Rees or Ms Cayden until 17 October 2005 when Ms Cayden sent Mr MacAuley an email on Ms Rees’ behalf. The email stated that after speaking to Arlene Fraser’s family, Ms Rees had decided not to contribute to the programme out of respect for the family’s feelings. It also included a further response to some of the points raised by Mr MacAuley’s initial email. Later on the same day, Mr MacAuley acknowledged Ms Cayden’s email and said that he had taken all the points mentioned into consideration.

The Committee recognised that the programme makers had given Ms Rees nine days (seven working days) in which to respond to the criticisms and allegations outlined by Mr MacAuley. It noted that Ms Rees, although unable to respond directly to Mr MacAuley herself, was able to do so through Ms Cayden and that

Ms Cayden responded to many of the points his email had raised. Also Ms Cayden had on Ms Rees' behalf, made it clear to the programme makers two days before the broadcast of the programme that Ms Rees did not wish to contribute to the programme out of respect for the feelings of Arlene Fraser's family.

Taking into account all the factors referred to above, the Fairness Committee considered that the programme makers did take reasonable steps to provide Ms Rees with an appropriate and timely opportunity to respond to the criticisms and allegations that were to be made in the programme. How Ms Rees chose to respond to the programme makers' request for a response was a matter for her and her alone. Ofcom, therefore, found no unfairness to Ms Rees in this respect.

The Committee then considered whether or not the statement provided by Ms Cayden on Ms Rees' behalf to the programme makers before the broadcast of the programme was almost totally ignored in the programme, and, if so, whether this amounted to unfairness to Ms Rees or not.

The Committee noted that Ms Rees chose, through Ms Cayden, to respond to Mr MacAuley's initial email through the two emails of 12 and 17 October 2005 (see (c) below).

In the first of these emails, Ms Cayden said that: the CPS were intending to use Ms Rees again and that it did not consider that she had "misled the court" over her qualifications; that Ms Rees had not been "briefed" by the police before viewing the CCTV footage; and, that Ms Rees had used specialist equipment when viewing it. Ms Cayden also gave a cautionary mention in her email to the other lip-reading experts referred to by Mr MacAuley in his email.

Ms Cayden's second email of 17 October 2005 answered, or at least put into context, a number of points raised by Mr MacAuley in his initial email. Ms Cayden expanded on the concerns Ms Rees had about the other lip-reading experts referred to in Mr MacAuley original email and she reiterated that Ms Rees had not been given background information by the police prior to compiling her report.

The Committee noted that Ms Cayden did not specifically respond to the point raised by Mr MacAuley that Ms Rees' report was never actually used in the trial and that the police did not have her work checked by another expert.

It is an editorial decision by the programme maker as to what should be included from material provided by way of a written statement – as long as the resulting programme is fair in its treatment of the individual or company that has provided the statement. It is unrealistic for a company or individual to expect a broadcaster to cede editorial control and necessarily include a written statement in full.

By examining a recording of the programme and the transcript of it (including a transcript of the subtitles), the Committee noted that the programme makers chose to summarise Ms Rees' response by the words:

*"Jessica Rees declined our offer of an interview. But she denies having read the briefing given to her by the police about the case before she looked at the tapes".*

The Committee considered that the contents of Ms Cayden's two emails had given some explanation that could have justified Ms Rees' position. For instance, the fact that she used specialist equipment that allowed for poor quality recordings to be enhanced, and that the programme could have included material provided by Ms Cayden which would have reflected the co-operation Ms Rees had given the programme makers in the days leading up to the transmission of the programme. The Committee concluded that Ms Rees' response, made on her behalf by Ms Cayden, was not adequately reflected in the programme, and, therefore, her position was not represented in a fair way. This resulted in unfairness to Ms Rees.

- (c) The Fairness Committee considered Ms Rees' complaint that she was given inaccurate information by the programme makers about the content of the programme.

Practice 7.3 in Ofcom's Broadcasting Code states that where a person is invited to make a contribution to a programme, they should normally at an appropriate stage: be told the nature and the purpose of the programme, what the programme is about and be given a clear explanation of why they have been asked to contribute and when (if known) it is likely to be first broadcast; be told what contribution they are expected to make; be informed about the areas of questioning and wherever possible the nature of the other likely contributions. The Code explains that taking these measures is likely to result in the consent that is given being "informed consent". It may be fair to withhold all or some of this information where it is justified in the public interest or under other sections in Ofcom's Broadcasting Code.

Accordingly, the Fairness Committee went on to consider what the programme makers told Ms Rees during the email exchange that took place between them in the lead up to the broadcasting of the programme on 19 October 2005.

By examining Mr MacAuley's initial email to Ms Rees on 10 October 2005, the Committee noted that the programme makers had explained that the programme's purpose was to revisit the Arlene Fraser murder case and that one of the aspects that would be looked at was the use of the lip-reading evidence. Mr MacAuley's email went on to inform her that the reason that he had made contact with her was because she had prepared the lip-reading report and would like to give her the opportunity to respond to the criticism and allegations that would be made about her and her report in the programme.

The Committee noted that the email explained to Ms Rees that the programme makers had consulted some of the other lip-reading experts that were to be used by the defence in preparation for the murder trial and that one in particular disagreed with some of the contents of her report. The email went on to detail that the other lip-reading expert criticised the conditions in which she compiled the report; the quality of the CCTV recordings; the fact that Ms Rees was "briefed" by the police before watching the CCTV footage; and alleged that her work was not checked by another expert. The Committee also noted that Mr MacAuley's email asked Ms Rees to confirm the accuracy of the reports that she was no longer used by the CPS because of allegations that she had misled people over her university qualifications. The email ended by emphasising that the programme was dealing with a number of evidential aspects to the Arlene Fraser case and that the lip-reading report was only one aspect to be dealt with. Ms Rees was given a deadline of 14 October 2005 to respond to the points raised in Mr MacAuley's email.

Taking into account the content of Mr MacAuley's initial email to Ms Rees, the Fairness Committee was satisfied that the programme makers had given her a full and accurate account of the intended nature and purpose of the programme and had fairly explained to her the criticisms of her report by at least one other lip-reading expert and that the programme would make reference to allegations about the truth of her university qualifications. The Committee was conscious that the email did not mention that Mr Taylor would be giving his opinion on Ms Rees' ability as an expert lip-reader but considered that the information given in the email was nonetheless sufficient for Ms Rees to have given 'informed consent' if she had wished to contribute to the programme.

In these circumstances, therefore, the Fairness Committee found no unfairness to Ms Rees as a result of what she had been told about the nature and purpose of the programme.

- (d) Finally, the Fairness Committee considered Ms Rees' complaint that the programme unfairly linked the reliability or otherwise of her lip-reading report with being "dropped" by the CPS as an expert witness.

The Committee had particular regard to the broadcaster taking reasonable care before broadcasting a factual programme to satisfy themselves that the material facts have not been presented, disregarded or omitted in any way that is unfair to an individual or organisation. Taking this requirement into account, the Committee first addressed separately each of Ms Rees' individual points of complaint under this head concerning the programme's treatment of her.

Accordingly, the Committee considered what the programme makers had known when compiling the programme and what measures they took to satisfy themselves that the CPS had discontinued using Ms Rees as an expert lip-reader.

The Committee noted that in the programme makers' email of 10 October 2005, Mr MacAuley was explicit in asking her to confirm the accuracy of the reports that she was no longer used by the CPS because of allegations that she had misled people over her university qualifications. He went on to explain that he had been informed that the reason that the CPS no longer used her was not because of any question over her lip-reading ability, but because any defence team might raise the argument over her qualifications in court, thus distracting from the case itself.

The Committee also noted Ms Cayden's email response to Mr MacAuley sent on 12 October 2005 in which she said that the CPS were intending to use Ms Rees again. Ms Rees submitted as part of her complaint an extract from a faxed letter from the CPS dated 16 September 2004 which clearly showed that she was being used by the CPS at that time. However, the Committee also noted that on 13 October 2005, a press officer for the CPS emailed the programme makers and confirmed that it had decided not to rely on Ms Rees as a prosecution witness in current or future cases.

In these circumstances, and in the absence of any documentary evidence from Ms Rees to show that the CPS were intending to use her again, the Committee considered that the programme makers had taken sufficient steps to satisfy themselves that it was accurate for the programme to claim that Ms Rees was no longer used by the CPS as an expert lip-reading witness and that this was, in itself, fairly presented in the programme.

The Committee then turned its consideration to whether or not the programme linked the fact that the CPS did not use her as an expert witness any more to the criticism made in the programme about the reliability of her lip-reading report compiled in the Arlene Fraser murder case.

The Committee noted that the programme referred to Ms Rees not being used by the CPS anymore three times during the course of the part of the programme that looked at the reliability of her lip-reading report. It noted the full commentary:

*Commentary: "Despite these significant doubts over Jessica Rees' report, both Glenn Lucas and Nat Fraser were charged with murder. Jessica Rees has since been dropped by the Crown Prosecution Service in England after allegations she has misled people about her university qualifications. Jessica Rees declined our offer of an interview. But she denies having read the briefing given to her by the police about the case before she looked at the tapes. The CPS confirmed to us that they no longer use her as an expert witness in lip-reading".*

*Reporter: "So, as we've just shown you the crucial lip-reading evidence which resulted in Glen Lucas and Nat Fraser being charged was flawed. And it was based on testimony from an expert witness who has since been dropped by the Crown Prosecution Service in England."*

The Committee considered firstly, that the phrase "despite significant doubts" was misleading since the evidence was never used in Court and no evidence had been provided that there were significant doubts at the time. The Committee noted that this comment immediately preceded commentary about Ms Rees having been dropped by the CPS and thereby appeared to connect the alleged unreliability of her report to allegations that had been made that she had misled people about her university qualifications.

The inference from this was that Ms Rees did not have the qualifications or integrity to act for the Court as a lip-reading expert. Furthermore, the Committee considered that the combined effect of repeated comments in the programme relating to the fact that the CPS no longer used her (repeated three times in the programme) intermingled with commentary stating that her lip-reading report was flawed and combined with the inclusion of Mr Taylor's personal opinion of her expertise in lip-reading, would have led viewers to think that Ms Rees was no longer used by the CPS because of the concerns raised over her involvement in providing the lip-reading report in the Arlene Fraser murder case, rather than because of concerns about her university qualifications.

Taking all these factors into account, the Fairness Committee considered that the cumulative effect of repeated reference to the fact that Ms Rees was no longer used by the CPS in the context of questioning her expertise and the reliability of her lip-reading report resulted in unfairness to Ms Rees.

**Accordingly, the complaint of unfair treatment was partly upheld.**

## Not Upheld

### Complaint by Mr Timothy Cowen

*GMTV, 21 June 2006*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment. The programme included a feature on parking enforcement in light of a new Transport Select Committee report on the subject which was about to be published. This feature included two live interviews with Mr Cowen, the Director of Communications at National Car Parks Ltd. (“NCP”).

Mr Cowen complained that he was treated unfairly in the programme as broadcast in that: he was not given a proper opportunity to prepare for the interviews; he was treated unfairly by the programme makers during the preparation for the broadcast so as to unsettle him and make him appear defensive; and the programme was an unbalanced debate between three aggressive interlocutors and him.

Ofcom found as follows:

- a) Given Mr Cowen’s role it would be reasonable to expect him to be ready to be interviewed for news and current affairs coverage of issues pertinent to parking enforcement generally and his company’s position specifically at any time. Moreover, the broadcaster appeared to have given Mr Cowen a detailed brief of the programme’s content within a reasonable timeframe.
- b) Ofcom noted that while GMTV’s submission indicated that there was no evidence whether or not a staff member had referred to Mr Cowen as “the bad guy” it acknowledged that Fiona Philips had said to Mr Cowen “*I really don’t like you*” before they went on air.

Ofcom considered that it was inappropriate for any experienced member of a broadcaster’s staff to make a negative comment of this nature to someone just about to be interviewed – even if intended as a joke. However, Ofcom recognised that Mr Cowen did not appear to be unsettled or unsure of himself during his interview with either Penny Smith or Fiona Philips and that in both he had articulated his points in an accomplished and calm manner.

- c) Ofcom found that although Mr Cowen had been subject to aggressive questioning it had not negatively affected his ability to respond to the questions put to him in a calm and coherent manner and would have been unlikely to have materially affected viewers’ opinion of him in a way that was unfair.

The complaint of unfairness was not upheld.

#### Introduction

This edition of *GMTV* included a feature on parking enforcement in the light of a Transport Select Committee report on the subject which was about to be published. The feature included two short reports from Torquay both of which noted the six-fold increase in the number of parking tickets being issued in the Torbay area following the decision to contract-out parking enforcement to a private company, namely, National Car Parks Ltd. (“NCP”). Following each report the programme included a live interview with Mr Timothy Cowen, the Director of Communications at NCP. The

first interview was conducted by Penny Smith and the second by Fiona Philips. During each interview both a co-presenter (John Stapleton co-presented with Penny Smith and Andrew Castle co-presented with Fiona Phillip) and the motoring journalist Quentin Willson were present. Mr Willson was involved in the discussions on both occasions.

NCP is best known for owning and managing car parks. However, it also operates parking enforcement services on behalf of a number of local councils across the United Kingdom.

Mr Cowen complained that he was treated unfairly in the programme as broadcast.

## **Complaint**

### **Mr Cowen's case**

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

- a) He was not given a proper opportunity to prepare for the interviews since he had not been given a clear indication about what would be the true nature of programme. Mr Cowen had been told he would be asked to comment on the Transport Select Committee report on traffic enforcement in the UK which was to be published later that week. Instead the complainant was asked unexpected questions about issues for which he had not been given the opportunity to prepare.
- b) He was treated unfairly by the programme makers during the preparation for the broadcast so as to unsettle him and make him appear defensive in the programme as broadcast; in that prior to the programme being broadcast the programme makers treated Mr Cowen in an unfriendly manner.

Specifically Mr Cowan stated that a member of studio staff told him prior to the broadcast that he was "the bad guy" and that Fiona Phillips told him prior to her interview that she didn't like him. Mr Cowen also believed that Quentin Willson "*had been instructed to question [him] aggressively*".

- c) The programme was an unbalanced debate between three aggressive interlocutors and him. Mr Cowen complained about the aggressive way he was treated, in particular, by Fiona Philips and the motoring journalist Quentin Willson.

### **GMTV's Response**

In summary, GMTV responded that:

- a) It did not accept that Mr Cowen was not given enough time to prepare for the interview.

GMTV did not consider that requesting an interview for a news and current affairs programme at 6pm for the following morning was "an insufficient or unusually short time" for the Director of Communications of a major national company like NCP.

It also noted that the report on parking enforcement had been heavily leaked by the Sunday newspapers during the weekend before the broadcast (which was on a

Wednesday) and that it believed that NCP had made a submission to the Select Committee in the lead up to the report's publication.

GMTV included a copy of the programme brief in its submission which it believed clearly indicated the nature of the interview. The producer confirmed that this brief was drawn from his hand written notes (no longer available) and that he had used an earlier version of these notes (which later on the night before broadcast were typed up and finalised for use during the programme) to brief Mr Cowen during his telephone conversation with him on the evening before the broadcast.

GMTV noted that it had informed Mr Cowen during the telephone conversation that the report would include a "live chat" with Mr Nick Bye, the mayor of Torbay, dressed as a traffic warden and, that he (Mr Cowen) would be asked: how much profit NCP made generally; how many tickets it had issued in Torbay; and how much profit it had made in Torbay specifically since it had taken over the parking enforcement contract in that area. (The report used the six-fold increase in the number of tickets issued in Torbay under NCP's management of parking enforcement to illustrate the issues surround parking enforcement nationally).

GMTV believed that it was evident that Mr Cowen was familiar with the situation in Torbay because when arranging the interview with Mr Bye (the mayor of Torbay), he (Mr Bye) had made it clear that he would need to speak to NCP to ensure that it was happy for him to appear on *GMTV* and that in light of his appearance it assumed that this conversation had occurred. GMTV also alleged that Mr Cowen had told it that he was familiar with Mr Nick Bye. It supported this view that Mr Cowen knew of Mr Bye and his then planned "stunt" by pointing to an article published on the BBC website on 19 May 2006 (a month before the programme was broadcast) in which Mr Cowen was quoted with reference to the situation in Torbay. The broadcaster claimed that it was therefore evident that Mr Cowen was aware of the "live public issue" and the particular situation in Torbay.

- b) GMTV did not accept that there was a deliberate attempt to unsettle Mr Cowen prior to the broadcast in order to make him appear defensive.

It stated that there was no evidence that when greeting Mr Cowen a staff member referred to him as "the bad guy" as stated in his submission; and that when, during his interview with Fiona Phillips (i.e. the second of the two interviews broadcast), Mr Cowen complained to Fiona that just before going on air she had said to him "*I really don't like you*", she had made it clear that it had been a joke by responding "*that was a joke and you know it*".

GMTV also stated that Quentin Willson, whom it described as an "independent commentator", was not instructed to question Mr Cowen aggressively as Mr Cowen claimed, and included an e-mail from Quentin Willson as evidence of this point.

- c) GMTV noted that Mr Cowen "was specifically appearing on *GMTV* to defend the policies of his company which are considered controversial" and that given the circumstances it would have been reasonable for him to expect a robust interview.

It commented that both of the interviews were effectively one-to-one with the respective interviewers (Penny Smith and Fiona Philips) robustly questioning Mr Cowen, while the other presenter and studio guest (Quentin Willson) "commented occasionally as warranted". The broadcaster added that this was the "normal format for [its] studio interviews". It also noted that "across the whole morning the

coverage was a feisty but balanced exploration of an issue of considerable controversy and public interest”.

The broadcaster pointed out that Fiona Phillips apologised, in the interview, for saying to Mr Cowan “*You’re not human are you?*” in reference to him, his company and the local authorities for which the company worked.

GMTV noted that Mr Cowen was given ample time to respond to questions, that he was able to make a number of points illustrating NCP’s perspective during the interview and that as noted by the presenter during the broadcast he had fought his corner very well.

Finally, GMTV commented that given Mr Cowen represents a large national organisation it was surprised that he did not contact it first rather than complain to Ofcom in the first instance.

## **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 infringements of privacy in programmes included in such services. Where there appears to have been unfairness in the making of the programme, this will only result in a finding of unfairness if Ofcom finds that it has resulted in unfairness to the complainant in the programme as broadcast.

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression. Ofcom recognises that (subject to the provisions of the Ofcom Broadcasting Code) broadcasters can quite properly comment and take particular viewpoints on the subjects of broadcast programmes. However, it is essential not only to the parties directly concerned but also to listeners and viewers, that such comments should be accurate in all material respects so as not to cause unfairness. Ofcom is also obliged to have regard in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate and consistent and targeted only at cases in which action is needed.

The case was considered by Ofcom’s Executive Fairness Group.

- a) Ofcom first considered Mr Cowen’s complaint that he was not given a proper opportunity to prepare for the interview since he had not been given a clear indication about what would be the true nature of programme.

Ofcom noted that Mr Cowen is the Director of Communications for NCP and that as such it is his job to be ready to be interviewed for news and current affairs coverage of issues pertinent to parking enforcement generally and his company’s position specifically.

The broadcaster’s submission highlighted that Mr Cowen was given a brief, via telephone at 6pm the evening before he came to the studio for the two live interviews, about the content of the sections of the programme to which he would be contributing. Ofcom noted that this fits within normal practice for any news and current affairs programme.

The only existing version of this brief was (as GMTV acknowledged in its response) typed up with some additional material later on the evening before the broadcast. However, it was quite detailed and suggests that Mr Cowen was clearly informed about the nature of the interviews and the fact that the programme would be using Torbay as an illustrative example. In addition, Ofcom noted that within his complaint Mr Cowen did not indicate that he was unfamiliar with the context in which the interviews would be taking place or the specific situation in Torbay.

Ofcom then turned to Mr Cowen's specific complaint about being asked unexpected questions. He was asked about the profit levels at NCP, both generally and from the Torbay area specifically. Ofcom noted that, given his role at NCP, a reasonable person would expect Mr Cowen to be conversant with these sorts of facts. This would particularly be the case given the nature of the then recent press coverage of parking enforcement issues.

Taking all of the above into account, Ofcom considered that Mr Cowen had been given sufficient time and information to prepare for the type of questions he was asked to respond to during his interviews in this edition of *GMTV*.

Ofcom found no unfairness to Mr Cowen in this respect.

- b) Ofcom then considered Mr Cowen's complaint that the programme makers treated him in an unfriendly manner in order to unsettle him and make him appear defensive in the programme as broadcast.

Ofcom noted that Mr Cowen was concerned with two specific comments made by members of the programme making team prior to his interviews. He said that an unnamed member of GMTV's staff told him that was he was "the bad guy" and, that the presenter Fiona Philips (who subsequently interviewed Mr Cowen) said to him "*I really don't like you*", just before they went on air.

Ofcom is not a fact finding tribunal and was not in a position to determine whether or not these statements were made to Mr Cowen. However, it noted that while GMTV's submission indicated that there was no evidence whether or not a staff member had referred to Mr Cowen as "the bad guy" it acknowledged that Fiona Philips had made the comment noted above.

In this context Ofcom noted that Mr Cowen raised this comment with Fiona Philips during his interview with her (the second interview) and that she had acknowledged that she had made it by responding to him "*that was a joke and you know it*".

Ofcom considered that it was inappropriate for any experienced member of a broadcaster's staff to make a negative comment of this nature to someone just about to be interviewed – even if intended as a joke. However, Ofcom has no remit to consider or find unfairness in the *making* of a programme. Ofcom must determine whether any treatment of a participant during the making of a programme resulted in unfairness in the programme as broadcast. With this in mind Ofcom examined the content of the broadcast and noted that Mr Cowen did not appear to be unsettled or unsure of himself during his interview with either Penny Smith or Fiona Philips and was able to articulate his points in an accomplished and calm manner. Further he was able to raise and address Ms Philips comments live on air during the interview.

In these circumstances, Ofcom was satisfied that the treatment of Mr Cowen prior to the interview had not resulted in unfairness to him in the programme as broadcast.

Ofcom found no unfairness to Mr Cowen in this respect.

- c) Finally, Ofcom considered Mr Cowen's complaint that he was treated unfairly because the programme was an unbalanced debate between three "aggressive interlocutors" and him.

Ofcom did not consider whether or not the interviews took a balanced position because an interviewer may deliberately take a particular position in order to ensure differing views of a topic are fully explored. Instead, in line with its statutory duties when considering complaints of unfairness, Ofcom considered whether the broadcaster's treatment of Mr Cowen was consistent with its obligation to avoid unfair treatment.

Ofcom noted that parking enforcement was the type of topic which engenders an emotional response in many people and about which there is likely to be great debate. It considered that in light of both his position at NCP and the information he had been given about the programme beforehand Mr Cowen should have been prepared for a challenging and sometimes difficult interview.

In determining this, Ofcom looked at the two interviews separately.

Looking at the first interview Ofcom noted that while Quentin Willson used highly-descriptive language on one occasion (he indicated that some traffic wardens "*behave like a horde of Mongol storm troopers on a three-day pass*") the tone of the interview was calm and Penny Smith's questioning was measured.

Ofcom noted that Penny Smith challenged the responses of both Mr Cowen and Quentin Willson in order to explore their different views of the topic and that except from a comment at the end John Stapleton did not interject in this interview. Moreover, his sole comment, "*I look forward to round two*", simply appeared to be a light-hearted reference to the difference in opinion between Mr Cowen and Quentin Willson.

Significantly, Ofcom noted that not only was Mr Cowen given opportunities to counter the criticisms made to him about NCP he was able successfully to make use of these opportunities.

For example, during this first interview he explained:

- that NCP does not make "*a fortune*";
- that parking enforcement involves a lot of investment to train staff and ensure professionalism;
- that NCP gets a "*flat fee*" for ensuring traffic flow rather than being paid per ticket issued; and,
- that NCP's traffic wardens are "*trained to have common sense*" when judging whether it is appropriate to issue a ticket and to deal with people in a polite manner.

Turning to the second interview, Ofcom noted that at the beginning Quentin Willson (the studio guest) felt compelled to say to Fiona Phillips and Andrew

Castle (the co-presenters) *“you shouldn’t be here you two because you’re not emotionally balanced”*. However, it also noted that all three were laughing while he said this and Fiona Phillips responded that she and Andrew were *“trying to be impartial ... believe it or not”* and then made a pun on Mr Cowen’s name, by indicating that he would be *“cowering ... later on”*, as she introduced him. Ofcom considered that the jocular tone was in keeping with the established nature and tone of *GMTV*.

Nonetheless, Ofcom was concerned about the aggressive nature of some of Fiona Phillip’s comments and interjections as this interview progressed.

In particular, it noted that Quentin Willson again felt compelled to indicate that she should restrain herself by saying *“oh, easy Fiona”* after she had said to Mr Cowen *“that’s the problem with people like you and local councils. They’re not staffed by proper human beings”*.

In this context, Ofcom noted that later on in the interview Fiona Phillips apologised for having made this comment. It also observed that although she maintained a somewhat provocative stance towards him, prior to this she had sought to ensure that Mr Cowen had a chance to respond to the points raised.

With regard to the behaviour of the co-presenter and studio guest as the interview progressed, Ofcom considered that while Quentin Willson again used some descriptive language to frame the debate he was not aggressive and that on two occasions Andrew Castle deliberately interjected in order to moderate the tone of the discussion. The first time he did this he made the point that part the problem was the perception (rather than necessarily the actual actions) of parking wardens and the second time he acknowledged Mr Cowen’s point that parking attendants have *“got a job to do”*.

Ofcom considered that in comparison to the first interview Mr Cowen was given fewer clear opportunities to make his case. However, it also noted that despite this he was able to use his skills as a professional spokesperson to ensure that that, just as in the first interview, NCP’s position was clearly represented.

For example, during this second interview he explained:

- that he did not believe the government report would necessarily be damning;
- that there is a very effective appeals process for people wishing to dispute their tickets;
- that he agreed with Quentin Willson that work needed to be done on the quality of road signs and road maintenance but that this work was entirely distinct from the role of parking enforcement;
- that organisations like the London Fire Brigade would acknowledge the importance of NCP’s work in keeping the roads clear; and,
- that NCP puts a lot of effort into training its staff in customer relations.

Finally, Ofcom considered it noteworthy that at the end of this interview, Fiona Phillips, Andrew Castle and Quentin Willson all acknowledged how well Mr Cowen had done. Ofcom viewed this as significant because while it indicated that they recognised that the tone of the interview was perhaps overly negative

towards parking enforcement generally and Mr Cowen specifically it also underlined the fact that Mr Cowen made his counter-arguments in a very able manner.

In light of the factors noted above, Ofcom decided that (although he had been the subject of aggressive questioning) viewers' opinion of Mr Cowan was unlikely to have been materially affected in a way that was unfair.

Ofcom found no unfairness to Mr Cowen in this respect.

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

## **O’Keeffe Solicitors on behalf of Mr Faryardi Sarwar Zardad**

*Channel 4 News, Channel 4, 3 October 2005*

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

O’Keeffe Solicitors (“O’Keeffe”) complained that Mr Zardad was treated unfairly in an arts report within an edition of Channel 4 News. The report considered an art installation, specifically a short video called *Zardad’s Dog*. The report featured footage from the video showing the trial in 2002 of an Afghan man, Abdullah Shah, whom, it alleged, had worked for an Afghan warlord named Zardad. The report indicated that he (Mr Shah) was known as “Zardad’s Dog” because he bit his victims before killing them and stated that he had been found guilty of the murder of three of his wives, five of his children and others, and had been sentenced to death. It also noted that Mr Zardad (on behalf of whom this complaint was brought) had been tried in the UK for torture and hostage-taking and in July 2005 had been sentenced to twenty years in prison.

O’Keeffe complained that Mr Zardad was treated unfairly in the programme as broadcast in that it made an unfair and unsubstantiated link between him and Mr Shah as a result of presenting him as having kept Mr Shah as a ‘human dog’ that was used to attack people.

The Fairness Committee (“the Committee”) found as follows:

- a) The broadcast in question was a news report about an arts event. It did not purport to be an examination of whether or not Mr Zardad had kept a ‘human dog’ to attack people or whether that ‘human dog’ had been Mr Shah.

The Committee considered that it was necessary for Channel 4 to refer to the title of the art installation, *Zardad’s Dog*, in order to be able to report on the fact that it was being displayed at Tate Britain. It was incumbent upon the broadcaster to explain the context of the title, specifically that Mr Shah had been known in Afghanistan as “Zardad’s Dog” because he bit his victims before killing them.

The Committee was not in a position to determine whether or not the statements about Mr Shah being kept as a ‘human dog’ to attack people or being known as “Zardad’s Dog” were true, or whether any human attack dog, known as “Zardad’s Dog” in Afghanistan, had existed. However, it noted that prior to the Channel 4 News broadcast this story had appeared in a number of reports, both in the press and on the internet. It also noted that the artists had referred to one of these reports as the basis for the title of their video.

Taking these factors into account and in view of the fact that the Channel 4 report was about a work of art called *Zardad’s Dog* rather than an examination of the claims that led to it being given this name, the Committee considered it was reasonable for Channel 4 to have referred to the link in the way that it did.

The Committee noted that prior to the broadcast Mr Zardad was convicted as a torturer and hostage-taker. With this position established, and taking into consideration the nature and content of the report, the Committee considered that it was unlikely to have materially affected viewers’ understanding of the complainant. In view of these factors, the Committee did not consider that it

would have been incumbent on Channel 4 to offer Mr Zardad an opportunity to contribute.

The complaint of unfairness was not upheld.

## **Introduction**

On 3 October 2005, *Channel 4 News* included a report about a short video *Zardad's Dog* by artists Nikki Bell and Ben Langlands. The video was on display at Tate Britain. The news report featured footage from the artists' video, of the trial in 2002 of an Afghan man Abdullah Shah. It alleged he had worked for an Afghan warlord, Faryardi Sarwar Zardad. The report indicated that Mr Shah was known as "Zardad's Dog" because he bit his victims before killing them. It noted that Mr Shah had been found guilty of the murder of three of his wives, five of his children and other people, and had been sentenced to death. The report also explained that Mr Zardad (the complainant) had been tried in the UK for torture and hostage-taking and in July 2005 had been sentenced to twenty years in prison for these crimes. Stills of Mr Zardad were shown.

O'Keeffe solicitors ("O'Keeffe") complained that Mr Zardad was treated unfairly in the programme as broadcast.

## **Complaint**

### **O'Keeffe's case**

In summary, O'Keeffe complained that:

- a) Mr Zardad was linked to the trial of Abdullah Shah by the reference to Abdullah Shah being "Zardad's Dog", the suggestion being that Mr Zardad was the controller of Mr Shah, treated Mr Shah as a dog and used Mr Shah to attack people. In fact there was no truth in the association and Abdullah Shah was in fact a commander in a party fighting Mr Zardad's party. Channel 4 had perpetuated the untruthful association without any checks to authenticate it. Moreover, the broadcast of this report attracted unwarranted notoriety to Mr Zardad and exposed his family in Afghanistan to unwelcome attention.

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

In summary, Channel 4 responded that:

- a) The broadcast was a report on a work of art on display in a major art gallery (Tate Britain). This type of art report was regularly featured on *Channel 4 News* and in television programmes and newspaper reports around the world. It would be "a serious infringement of the right to freedom of expression if a duty was placed upon an art critic to investigate the factual details behind a widely exhibited and very public work of art".

The art work in question was called *Zardad's Dog*. It could not be reviewed without referring to Mr Zardad and the reason why the man in the film was called "Zardad's Dog".

The report was timed to coincide with Tate Britain's public exhibition of the piece, following its withdrawal for legal reasons during Mr Zardad's trial on charges of torture and hostage-taking.

It was "inappropriate for Ofcom to make an adjudication on whether or not the title of the work of art, *Zardad's Dog*, was accurate". Nonetheless, there was a "substantial body of evidence to show a link between the two men [Mr Shah and Mr Zardad]. Channel 4 noted that while there was no "express evidence of the fact" in the court case there would have been a "judicial note" acknowledging the connection between Mr Shah and Mr Zardad. Furthermore, it noted that prior to his execution Mr Shah did not deny this relationship. Now the only evidence to dispute this belief was the word of Mr Zardad, a man whom, it noted, had been judged to be guilty of heinous crimes despite making protestations to the contrary.

The report was not unfair to Mr Zardad. His name was used as the name of the art work. The duty of fairness did not mean that an art review should "look behind the work" in order to establish the accuracy of the title. The report did not seek to examine or investigate the relationship between Mr Shah and Mr Zardad and as such there was no duty to contact Mr Zardad to elicit his response to the report.

The concept of fairness depended upon the individual circumstances of each case. Given that Mr Zardad had been convicted for heinous crimes Channel 4 did not believe that this report was unfair to him. It disputed the spurious suggestion that the broadcast attracted unwarranted notoriety to Mr Zardad and exposed his family in Afghanistan to unwelcome attention.

Channel 4 stated that the fact that Zardad kept a 'human dog' did form part of the evidence in the original trials<sup>2</sup>.

### **O'Keeffe's second round statement**

In summary, the complainant responded that:

- a) "The core of Mr Zardad's complaint was the way in which the footage of the trial of Abdullah Shah had been erroneously linked to him by the artists, Langlands and Bell, who made the video and [the way in which] this had been perpetuated by Channel 4's news report."

O'Keeffe contended that the artists' video was misleading, by virtue of its title and the captions that appeared on screen, given that the trial shown in the video was unconnected to Mr Zardad. O'Keeffe added that it was noteworthy that the extracts from the DPP's statement following Mr Zardad's conviction (quoted by Channel 4 during the broadcast) did not "mention the jury [at Mr Zardad's trial] hearing of a 'human dog'" and that this was because there was no admissible evidence of a 'human dog' nor [a link] to Mr Abdullah Shah in either the initial or the re-trial of Mr Zardad.

O'Keeffe disagreed with Channel 4's statement regarding the threat of the infringement to the right to freedom of expression in relation to this case because the programme was a news report and the reporter was described as an art correspondent not an art critic. O'Keeffe also noted paragraph 7.8 of Ofcom's Broadcasting Code which relates to the appropriate re-use of material.

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<sup>2</sup> The jury in the initial trial was unable to reach a verdict. Therefore, Mr Zardad underwent a re-trial.

Contrary to Channel 4's assertion about the connection between Mr Shah and Mr Zardad, the complainant's solicitor believed that there was an "extremely weak link" between the two men and that the link there had been "greatly perpetuated" by the naming of the video footage of Mr Shah's trial and the captions used to accompany this footage. To support this view O'Keefe stated that no witness at Mr Zardad's trial was able to confirm the existence of a 'human dog' and that Mr Shah was not identified as the 'human dog' in question. O'Keefe also questioned the value of the proofs of a link between Mr Zardad and Mr Shah submitted by Channel 4.

O'Keefe suggested that Channel 4 had misconstrued how to judge whether or not unfairness had resulted to Mr Zardad. The broadcaster had ignored the ethnic and political perspective that rightly pertained, namely that of the relationships between different factions in the Afghan Civil War during the period between 1992 and 1996. O'Keefe claimed that this was pertinent because Mr Shah was actually a member of a party opposed to that of Mr Zardad rather than being an associate of Mr Zardad's. The link, which had not actually existed, had been indicated by another political player, a Mr Abdul Rasoul Sayuf, (with whom Mr Shah had been connected). This was in order to distance Mr Sayuf from Mr Shah for political gain during the period of reconstruction following the war and subsequent Western invasion of Afghanistan. O'Keefe stressed the point that the link had not actually existed by noting that even when he had been sentenced to death, and therefore had "nothing to lose", Mr Shah had "denied knowing Zardad".

In relation to the above point O'Keefe commented that it "*is essential to bear in mind the impact of the news report being broadcast on Channel 4 during prime-time viewing*". It noted that the other sources of information that had made a link between Mr Zardad and Mr Shah involved an active rather than passive exposure. This report had a particular impact on Mr Zardad because it was broadcast on "a respected and well-known UK channel".

Finally, O'Keefe said that Channel 4's statement contained two factual errors, which it rebutted. First, the "fact" that Zardad kept a 'human dog' did not form part of the original evidence at his trial; and, secondly, in his second trial no eye witness evidence was given to support this allegation.

### **Channel 4's second round statement**

In summary, the broadcaster responded that:

- a) Channel 4 did not feel that it could usefully add anything significant. However, it noted that the complainant's latest submission revealed that the real complaint lay with the artists, Langlands and Bell, not with Channel 4, and that the issue was not whether or not the news report had been fair or accurate but whether the artists should have called the work *Zardad's Dog*.

Channel 4 indicated that this would be a matter for the courts and that it was an "abuse of process" for the complainant to "use Ofcom's procedures in order to seek indirect redress against the artists".

With respect to the issue of whether evidence of the existence of a 'human dog' was given in court, Channel 4 noted that during Mr Zardad's trial the Attorney General had indicated his belief that a 'human dog' linked to Mr Zardad had

existed and then indicated that it was difficult to secure testimony against Mr Zardad in light of his “fearsome reputation”.

Channel 4 reiterated its view that in the context of a news report reviewing a piece of art, it was not incumbent upon the producer to verify the accuracy of the work’s title. It emphasised this by noting that, in the absence of any dispute about the title of the work (which was the case at the time of the broadcast) it would have been “disproportionate and onerous” to have given the complainant a right of reply on this issue.

Finally, Channel 4 indicated that it did not view this as a bona fide complaint; it did not believe that Mr Zardad’s assertions could be accepted at face value given the nature of the crimes for which he had been convicted; it believed art critics should be able to review art works without “the need to venture behind the work”; and that given all the circumstances the complaint should be dismissed.

## Decision

Ofcom’s statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unfair treatment in programmes, and from unwarranted infringement of privacy in the making and broadcast 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, consistent and targeted only at cases in which action is needed.

Mr Zardad’s complaint was considered by Ofcom’s Fairness Committee (“the Committee”), Ofcom’s most senior decision making body with respect to Fairness and Privacy complaints. The Fairness Committee considered the complaint, the broadcaster’s response, together with supporting material and subsequent submissions from both parties, and a recording of the programme as broadcast.

In taking account of the Fairness Section of the Broadcasting Code, the Committee had particular regard throughout their deliberations to rule 7.1 which requires broadcasters to “avoid unjust or unfair treatment of individuals or organisations in programmes”.

In the circumstances of this case the Fairness Committee found the following:

- a) The Committee noted that the broadcast in question was a news report about an arts event, specifically the exhibition of an art installation (a short video called *Zardad’s Dog*). In particular, the Committee noted that the report did not purport to be an examination of whether or not Mr Zardad had kept a ‘human dog’ to attack people or whether that ‘human dog’ had been Mr Abdullah Shah.

This was illustrated by the fact that other than the presenter’s (Jon Snow’s) brief introduction, the report consisted principally of either commentary from Nicholas Glass (the arts correspondent for *Channel 4 News*), voiced-over sections of the artists’ video; or of excerpts from an interview with the artists themselves. The only exception to this was the explanation that, following his trial in the UK earlier

in 2005, Mr Zardad had been convicted to 20 years in prison for torture and hostage-taking. This was voiced-over two still images of Mr Zardad.

The Committee considered that it was necessary for Channel 4 to refer to the title of the art installation, *Zardad's Dog*, in order to be able to examine the fact that it was being displayed at Tate Britain. In doing so it was incumbent upon the broadcaster to explain the context of the title, specifically that Mr Shah had been known in Afghanistan as "Zardad's Dog" because he bit his victims before killing them. In addition, the Committee noted that this report had been prompted by the fact that the art installation was on display after having been withdrawn from the preceding years' Turner Prize exhibition because of legal proceedings (namely the trial of Mr Zardad and his conviction for torture and hostage-taking). In this context, it was necessary for the report to refer to the legal proceedings.

The Committee is not a fact finding tribunal and was not in a position to determine whether or not the statements about Mr Shah being kept as a 'human dog' to attack people or being known as "Zardad's Dog" were true, or whether any human attack dog, known as "Zardad's Dog" in Afghanistan, had existed. However, the Committee did note that prior to the *Channel 4 News* broadcast this story had appeared in a number of reports, both in the press and on the internet. The Committee also noted from the material submitted, that the artists had referred to one of these reports (a Reuters report from Kabul dated 15 February 2002) in an email they had sent to O'Keeffe in response to being asked on what basis they had stated that Mr Shah was "Zardad's Dog".

Taking these factors into account, and in view of the fact that the *Channel 4 News* report was about a work of art called *Zardad's Dog* rather than an examination of the claims that led to it being given this name, the Committee considered it was reasonable for Channel 4 to have referred to the link in the way that it did. Consequently, the Committee did not consider that material facts had been presented, disregarded or omitted in a way that was unfair to Mr Zardad.

The Committee noted that prior to the broadcast Mr Zardad had an established reputation as a convicted torturer and hostage-taker. With this in mind and taking into consideration the nature and content of the report, the Committee considered that it was unlikely to have materially affected viewers' understanding of the complainant. In view of these factors, the Committee did not consider that it would have been incumbent on Channel 4 to offer Mr Zardad an opportunity to contribute.

Finally, in view of the nature of the material in question and the context within which it was used, the Committee considered that Practice 7.8 (regarding the re-use of material) was not applicable in this case. It was not necessary, therefore, for it to reach a finding in respect of the complainant's submissions on this practice.

In light of each of the factors noted above, the Committee found no unfairness to Mr Zardad in the programme as broadcast.

**Accordingly the complaint of unjust or unfair treatment was not upheld.**

## Other Programmes Not in Breach/Out of Remit

20 March to 3 April 2007

| Programme                               | Trans Date | Channel           | Category                     | No of Complaints |
|---|------------|-------------------|------------------------------|------------------|
| A Girl's Guide to 21st Century Sex      | 20/11/2006 | Five              | Sex/Nudity                   | 1                |
| After You've Gone                       | 12/01/2007 | BBC1              | Offensive Language           | 5                |
| Al Murray's Happy Hour                  | 24/02/2007 | ITV1              | General Acceptance Standards | 3                |
| Andi Coleson Show                       | 22/03/2007 | Chorley FM        | General Acceptance Standards | 1                |
| Anna Raeburn                            | 23/02/2007 | LBC 97.3FM        | General Acceptance Standards | 1                |
| Balls of Steel                          | 23/02/2007 | Channel 4         | Sex/Nudity                   | 3                |
| Bargain Hunt                            | 12/02/2007 | BBC1              | Offensive Language           | 1                |
| Best of Friends                         | 09/02/2007 | BBC1              | Offensive Language           | 1                |
| Bridget Jones Trailer                   | 21/02/2007 | Channel 4         | Sex/Nudity                   | 1                |
| Bugs Bunny                              | 26/01/2007 | Boomerang         | Dangerous Behaviour          | 1                |
| Celebrity Big Brother 2007              | 22/01/2007 | Channel 4         | Sex/Nudity                   | 1                |
| Celebrity Big Brother's Big Mouth       | 24/01/2007 | E4                | Religious Offence            | 1                |
| Celebrity Sex Lives                     | 09/03/2007 | TMF               | Animal Welfare               | 1                |
| Chaos at the Chateau                    | 29/03/2007 | Channel 4         | Other                        | 2                |
| Classic FM News                         | 24/12/2006 | Classic FM        | Commercial References        | 1                |
| Cold Case                               | 13/02/2007 | Sky Two           | Offensive Language           | 1                |
| Cooking in the Danger Zone              | 30/01/2007 | BBC4              | General Acceptance Standards | 1                |
| Coronation Street                       | 26/02/2007 | ITV1              | General Acceptance Standards | 1                |
| Coronation Street                       | 23/02/2007 | ITV1              | General Acceptance Standards | 2                |
| Coronation Street                       | 23/02/2007 | ITV1              | Sex/Nudity                   | 4                |
| Coronation Street Confidential          | 16/02/2007 | ITV1              | Sex/Nudity                   | 1                |
| Crip on a Trip                          | 14/02/2007 | Channel 4         | General Acceptance Standards | 2                |
| Damien and Naomi                        | 12/03/2007 | Leicester Sound   | General Acceptance Standards | 2                |
| Dave Barrett                            | 22/01/2007 | BBC Radio Bristol | General Acceptance Standards | 1                |
| Deal Or No Deal                         | 14/02/2007 | Channel 4         | Inaccuracy/Misleading        | 2                |
| Desperate Housewives                    | 24/01/2007 | Channel 4         | Advertising                  | 1                |
| Dirty Sanchez                           | 30/01/2007 | TMF               | Suicide/Self Harm            | 1                |
| Dispatches: Labour's Gambling Addiction | 22/01/2007 | Channel 4         | Due Impartiality/Bias        | 1                |
| Dog Borstal                             | 22/01/2007 | BBC3              | General Acceptance Standards | 1                |
| Dog Borstal                             | 27/02/2007 | BBC3              | Animal Welfare               | 1                |
| Dom Joly's Happy Hour                   | 21/01/2007 | Sky Three         | General Acceptance Standards | 1                |
| Eastenders                              | 02/02/2007 | BBC1              | Sex/Nudity                   | 1                |
| Eastenders                              | 23/02/2007 | BBC1              | Offensive Language           | 2                |
| Eastenders                              | 06/02/2007 | BBC1              | Sex/Nudity                   | 1                |

|                                      |            |                 |                                |   |
|--------------------------------------|------------|-----------------|--------------------------------|---|
| Emmerdale                            | 26/01/2007 | ITV1            | Dangerous Behaviour            | 1 |
| Emmerdale: Omnibus                   | 24/02/2007 | ITV2            | Animal Welfare                 | 2 |
| Energy Savings Trust sponsor credits | -          | Channel 4       | Inaccuracy/Misleading          | 1 |
| Family Guy                           | 12/02/2007 | BBC2            | General Acceptance Standards   | 1 |
| Family Guy                           | 20/03/2007 | BBC3            | General Acceptance Standards   | 1 |
| Fortune: Million Pound Giveaway      | 13/02/2007 | ITV1            | Crime (payment)                | 1 |
| Freshly Squeezed                     | 08/02/2007 | Channel 4       | Competitions                   | 1 |
| GMTV                                 | 16/01/2007 | ITV1            | Due Impartiality/Bias          | 1 |
| God is Green                         | 12/02/2007 | Channel 4       | Sex/Nudity                     | 2 |
| Hollyoaks                            | 02/03/2007 | Channel 4       | Inaccuracy/Misleading          | 1 |
| Hollyoaks                            | 07/02/2007 | Channel 4       | General Acceptance Standards   | 3 |
| Hollyoaks                            | 14/02/2007 | Channel 4       | Violence                       | 1 |
| Horrid Henry                         | 16/02/2007 | CITV            | General Acceptance Standards   | 1 |
| ITV News                             | 25/01/2007 | ITV1            | Inaccuracy/Misleading          | 1 |
| ITV News                             | 15/02/2007 | ITV1            | Violence                       | 1 |
| ITV News                             | 08/02/2007 | ITV1            | Due Impartiality/Bias          | 1 |
| Jon Gaunt                            | 13/02/2007 | Talksport       | Offensive Language             | 1 |
| Junior Mastermind                    | 12/02/2007 | BBC1            | Other                          | 1 |
| Loose Women                          | 17/02/2007 | ITV1            | Due Impartiality/Bias          | 1 |
| MacIntyre's Underworld: Get Conroy   | 21/11/2006 | Five            | Crime (incite/encourage)       | 1 |
| Man Stroke Woman                     | 08/02/2007 | BBC3            | U18 - Coverage of Sexual/Other | 2 |
| Matthew Bannister                    | 25/01/2007 | BBC Radio Five  | General Acceptance Standards   | 1 |
| Midsomer Murders                     | 16/02/2007 | ITV1            | Offensive Language             | 1 |
| Midsomer Murders                     | 02/02/2007 | ITV1            | Offensive Language             | 1 |
| Mock the Week                        | 27/01/2007 | BBC2            | General Acceptance Standards   | 1 |
| Mystery Voices competition           | -          | Magic 105.4FM   | Competitions                   | 1 |
| NCSI                                 | 09/02/2007 | Five            | Violence                       | 1 |
| Newsround                            | 14/02/2007 | BBC1            | General Acceptance Standards   | 2 |
| Newsround                            | 06/02/2007 | CBBC            | Scheduling                     | 1 |
| Nice House Shame about the Garden    | 29/01/2007 | Five Life       | Offensive Language             | 1 |
| Nick Ferrari                         | 02/02/2007 | LBC 97.3FM      | General Acceptance Standards   | 1 |
| Nick Ferrari                         | 18/01/2007 | LBC 97.3FM      | General Acceptance Standards   | 1 |
| Nicky Campbell                       | 30/01/2007 | BBC Radio Five  | General Acceptance Standards   | 1 |
| Night-Time TV                        | 15/02/2007 | Baby TV         | Violence                       | 1 |
| North East Tonight                   | 06/02/2007 | Tyne Tees       | General Acceptance Standards   | 1 |
| Original Fever                       | 12/02/2007 | BBC Radio 1Xtra | General Acceptance Standards   | 1 |
| Panorama                             | 29/01/2007 | BBC1            | Violence                       | 2 |
| Party Animals                        | 14/02/2007 | BBC2            | Offensive Language             | 1 |

|   |            |                |                              |   |
|---|------------|----------------|------------------------------|---|
| PokerFace: The Million Pound Final                | 03/03/2007 | ITV1           | General Acceptance Standards | 2 |
| Primeval  | 24/02/2007 | ITV1           | General Acceptance Standards | 1 |
| Quiz Call   | 11/02/2007 | Five           | Competitions                 | 2 |
| Reporting Scotland                                | 05/02/2007 | BBC1           | Crime (incite/encourage)     | 1 |
| Richard and Judy                                  | 12/02/2007 | Channel 4      | Sex/Nudity                   | 3 |
| Richard and Judy                                  | 02/02/2007 | Channel 4      | Sex/Nudity                   | 1 |
| Richard and Judy                                  | 01/03/2007 | Channel 4      | Competitions                 | 1 |
| Richard and Judy                                  | 19/03/2007 | Channel 4      | Sex/Nudity                   | 3 |
| Richard and Judy                                  | 19/03/2007 | Channel 4      | General Acceptance Standards | 1 |
| Richard and Judy                                  | 31/01/2007 | Channel 4      | General Acceptance Standards | 1 |
| Richard and Judy                                  | 02/02/2007 | Channel 4      | Sex/Nudity                   | 1 |
| Sexy Beast  | 11/02/2007 | Channel4       | Offensive Language           | 1 |
| Shipwrecked                                       | 11/02/2007 | C4             | Animal Welfare               | 2 |
| Sky News  | 31/01/2007 | Sky News       | Due Impartiality/Bias        | 1 |
| South Park  | 27/01/2007 | MTV            | Religious Offence            | 1 |
| Stephen Nolan                                     | 26/01/2007 | BBC Radio Five | General Acceptance Standards | 1 |
| Steve Allen                                       | 20/02/2007 | LBC            | Offensive Language           | 1 |
| Steve Allen                                       | 21/01/2007 | LBC            | Offensive Language           | 1 |
| Street Wars                                       | 03/02/2007 | Sky3           | Crime (incite/encourage)     | 1 |
| Strutter  | 23/01/2007 | MTV            | General Acceptance Standards | 1 |
| Strutter  | 18/01/2007 | MTV            | Offensive Language           | 1 |
| Supernatural trail                                | 16/02/2007 | ITV2           | Violence                     | 1 |
| The Bad Mother's Handbook                         | 19/02/2007 | ITV1           | General Acceptance Standards | 2 |
| The Bad Mother's Handbook                         | 19/02/2007 | ITV1           | Sex/Nudity                   | 2 |
| The Brits Are Coming                              | 10/02/2007 | ITV1           | Substance Abuse              | 1 |
| The Comedy Hour                                   | 20/01/2007 | BBC Radio 2    | Offensive Language           | 1 |
| The Meaning of Life                               | 21/01/2007 | BBC1           | Religious Offence            | 6 |
| The Mint  | 14/02/2007 | ITV1           | U18's in Programmes          | 2 |
| The National Theatre of Brent's Messiah           | 22/12/2006 | BBC Radio 4    | Religious Offence            | 1 |
| The Now Show                                      | 17/03/2007 | BBC Radio 4    | Offensive Language           | 1 |
| The Now Show                                      | 09/03/2007 | BBC Radio 4    | Offensive Language           | 1 |
| The Trap: What Happened to Our Dreams of Freedom? | 25/03/2007 | BBC2           | Violence                     | 1 |
| The Underdog Show                                 | 20/03/2007 | BBC2           | Competitions                 | 1 |
| The Verdict                                       | 11/02/2007 | BBC2           | General Acceptance Standards | 1 |
| The Verdict                                       | 13/02/2007 | BBC2           | Crime (incite/encourage)     | 1 |
| The Verdict                                       | 13/02/2007 | BBC2           | General Acceptance Standards | 1 |
| The War At Home                                   | 22/02/2007 | E4             | General Acceptance Standards | 1 |

|                                    |            |              |                              |   |
|------------------------------------|------------|--------------|------------------------------|---|
| The War At Home                    | 21/02/2007 | E4           | General Acceptance Standards | 1 |
| The Weakest Link                   | 13/02/2007 | BBC2         | General Acceptance Standards | 1 |
| The Worlds Most Amazing Videos 2   | 22/03/2007 | Bravo        | General Acceptance Standards | 1 |
| The Simon Logan Breakfast Show     | 25/01/2007 | Radio Aire   | General Acceptance Standards | 1 |
| Three Minute Wonder                | 06/02/2007 | Channel 4    | General Acceptance Standards | 1 |
| Top Gear                           | 21/02/2007 | BBC2         | Dangerous Behaviour          | 1 |
| Top Gear                           | 25/02/2007 | BBC2         | General Acceptance Standards | 6 |
| Tottenham Hotspur v Manchester Utd | 04/02/2007 | Sky Sports 1 | Offensive Language           | 1 |
| Tourettes De France                | 11/01/2007 | Channel 4    | General Acceptance Standards | 5 |
| Trial and Retribution              | 12/02/2007 | ITV1         | General Acceptance Standards | 1 |
| Trial and Retribution              | 12/02/2007 | ITV1         | Offensive Language           | 2 |
| Trial and Retribution              | 21/01/2007 | ITV1         | Violence                     | 1 |
| Trial and Retribution              | 21/01/2007 | ITV1         | Offensive Language           | 1 |
| Trisha Goddard                     | 13/02/2007 | Five         | Dangerous Behaviour          | 1 |
| Vroom Vroom                        | 11/02/2007 | Sky 3        | Dangerous Behaviour          | 1 |
| Where's My Pension Gone?           | 25/01/2007 | ITV1         | Due Impartiality/Bias        | 3 |
| Wild at Heart                      | 11/02/2007 | ITV1         | Offensive Language           | 2 |