

Ofcom Broadcast Bulletin

**Issue number 157
10 May 2010**

Contents

<u>Introduction</u>	3
Standards cases	
<u>In Breach</u>	
Bang Babes <i>Tease Me 3, 16 January 2010, 03:20</i>	
Bang Babes <i>Tease Me, 17 January 2010, 00:30</i>	5
The Pad <i>Tease Me, 26 February 2010, 11:45</i>	
The Pad <i>Tease Me 3, 27 February 2010, 11:45</i>	10
Tease Me: Earlybird <i>Tease Me TV (Freeview), 26 January 2010, 07:15</i>	14
Sponsorship of Do Hanso ka Joda <i>NDTV Imagine, 4 March 2010, 21:00</i>	18
Sponsorship of Jhansi ki Rani <i>Zee TV, 8 February 2010, 20:30</i>	20
Chal Sitaroon Ki <i>DM Digital, 18 February 2010, 13:00</i>	22
Retention of recordings <i>BEN TV, 26 November 2009</i>	25
<u>Resolved</u>	
LunchBreak <i>CUR1350, 5 February 2010, 13:00</i>	26
Access Services cases	
<u>In Breach</u>	
Subtitling provision <i>The Box, April to December 2007 and January to December 2008 4Music/The Hits, April to December 2007 and January to December 2009</i>	28

Advertising scheduling cases

In Breach

Advertising minutage

ITV1, 31 October 2009, 21:00

ITV2, 16 December 2009, 21:00

30

Advertising minutage

STV, 27 December 2009, 17:00

33

Other cases

**Bath Radio Ltd, Brunel FM Ltd, Three Towns Radio Ltd,
Quay West Radio Ltd and BCR FM Ltd**

August 2009 – present

35

Fairness & Privacy cases

Not Upheld

**Complaint by The Auroville Foundation and the community
of Auroville made on their behalf by The Working Committee
of the Residents' Assembly of the Auroville Foundation
through its authorised representative, Mr Carel B Thieme**

Newsnight, BBC2, 21 May 2008

38

Other programmes not in breach

73

Introduction

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

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

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

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

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

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

Standards cases

In Breach

Bang Babes

Tease Me 3, 16 January 2010, 03:20

Bang Babes

Tease Me, 17 January 2010, 00:30

Introduction

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

Ofcom received a complaint about the following broadcasts. The complainant said that the content transmitted was too sexually explicit to be available without mandatory restricted access.

Bang Babes, Tease Me 3, 16 January 2010, 03:20

Ofcom noted that the broadcast featured a presenter who was wearing a skimpy white thong and no top. At various times during the broadcast the presenter adopted various sexual positions, including: lying on her back with her legs wide open to camera for relatively prolonged periods of time; bending over with her buttocks to camera; and pulling her buttocks apart to reveal anal and outer labial detail. While in these positions the presenter repeatedly carried out a number of sexual acts in intrusive detail, including: simulating masturbation by rubbing her thong against her genitals and touching her genitals; pouring lotion over her genitals; and spitting on her genitals. The presenter was also shown spitting and massaging saliva on her breasts, and spanking herself lightly.

Bang Babes, Tease Me, 17 January 2010, 00:30

This broadcast featured a presenter wearing a skimpy black leotard that was pulled down to reveal her breasts. During the broadcast she adopted various sexual positions, including kneeling on all fours and lying on her back. While in both positions her legs were wide open to camera for prolonged periods of time. The presenter's outer labial area was shown in close up. The presenter appeared to touch her genital area and she rubbed her underwear against her genitals. The presenter was also shown miming the performance of oral sex on a man by sucking her fingers, massaging her breasts and heavily thrusting her body as though miming sexual intercourse.

Ofcom requested comments from Bang Channels in relation to the following:

Bang Babes, Tease Me 3, 16 January 2010, 03:20

- Rule 1.18 ('Adult sex material' - material that contains images and/or language of a strong sexual nature which is broadcast for the primary purpose of sexual

arousal or stimulation - must not be broadcast at any time other than between 2200 and 0530 on premium subscription services and pay per view/night services which operate with mandatory restricted access. In addition, measures must be in place to ensure that the subscriber is an adult);

- Rule 2.1 (the broadcaster must apply generally accepted standards); and
- Rule 2.3 (offensive material must be justified by context).

Bang Babes, Tease Me, 17 January 2010, 00:30

- Rule 2.1 (the broadcaster must apply generally accepted standards); and
- Rule 2.3 (offensive material must be justified by context).

Response

In relation to each broadcast the Licensee stated the following.

Bang Babes, Tease Me 3, 16 January 2010, 03:20

The broadcaster said that it did not consider the material to be 'adult sex material' and was therefore not in breach of Rule 1.18 of the Code. With regard to Rules 2.1 and 2.3, it stated that the material was broadcast long after the watershed and justified by the context of the channel on which it appeared. It continued that the material was in line with audience expectations and with material broadcast by similar channels in the 'adult' section of the Sky EPG. Therefore the material was not in breach of these elements of the Code.

Bang Babes, Tease Me, 17 January 2010, 00:30

With regard to Rules 2.1 and 2.3, the broadcaster stated that the material was transmitted long after the watershed and justified by the context of the channel on which it appeared. It continued that the material was in line with audience expectations and with material broadcast by similar channels in the 'adult' section. Therefore the material was not in breach of these rules of the Code.

Decision

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

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

Broadcasters are allowed to broadcast after the watershed (and without other access restrictions) material which is of a strong sexual nature as long as it is justified by the context. However, this material must not be considered to be 'adult sex material' (i.e. it is not strong sexual images which are broadcast for the primary purpose of sexual arousal or stimulation), or BBFC R-18 rated films or their equivalent.

Rule 1.18 of the Code requires 'adult sex material' to be broadcast only between 22:00 and 05:30, and then only if mandatory restricted access is in place. In judging whether material is 'adult sex material', and therefore is subject to this rule, broadcasters should be guided by the definitions used by the BBFC when referring to "sex-works at '18'". This has been supplemented by various decisions of Ofcom. Through a series of published findings, and published decisions of the Content Sanctions Committee, Ofcom has made clear what constitutes 'adult sex material'¹.

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

- was the content of the programme 'adult sex material'; and
- did the broadcaster ensure that the content was provided with sufficient contextual justification so as to ensure that it fell within generally accepted standards.

Bang Babes, Tease Me 3, 16 January 2010, 03:20

In relation to Rule 1.18, Ofcom examined the content of this broadcast and considered that it was of a very strong sexual nature and on some occasions contained graphic images of genital and anal detail. For example, during the broadcast the presenter was shown in intrusive detail apparently performing masturbation on herself by spitting on her genital area and repeatedly touching her genital area and rubbing her thong against her genitals. In Ofcom's opinion, a viewer could reasonably have perceived these sexual acts as real. The presenter was also shown pulling her buttocks apart to reveal her anus and extensive labial detail. Ofcom took account of the fact that the sequences were, in some cases, relatively prolonged and repeated. In Ofcom's view, the primary purpose of broadcasting this

¹ For example:

- Sanctions decision against Square 1 Management Limited concerning its channel Smile TV, dated 10 July 2008, http://www.ofcom.org.uk/tv/obb/ocsc_adjud/SmileTV.pdf;
- Breach Finding on SportxxxBabes, Ofcom Broadcast Bulletin 115, dated 11 August 2008; http://www.ofcom.org.uk/tv/obb/prog_cb/obb115/;
- Breach Finding on SportxxxBabes, Ofcom Broadcast Bulletin 119, dated 13 October 2008; http://www.ofcom.org.uk/tv/obb/prog_cb/obb119/;
- Sanctions decision against Satellite Entertainment Limited concerning its channel SportxxxBabes, dated 26 August 2008, http://www.ofcom.org.uk/tv/obb/ocsc_adjud/sportxxxbabes.pdf; and
- Sanctions decision against Satellite Entertainment Limited concerning its channel SportxxxBabes, dated 26 August 2008, http://www.ofcom.org.uk/tv/obb/ocsc_adjud/sportxxxbabes.pdf;
- Sanction decision against Playboy TV UK/Benelux Limited concerning its channel Playboy One, dated 2 April 2009, http://www.ofcom.org.uk/tv/obb/ocsc_adjud/playboytv.pdf;
- Breach Finding on Playboy One, licensed by Playboy TV UK/Benelux Limited, Broadcast Bulletin 134, http://www.ofcom.org.uk/tv/obb/prog_cb/obb134/;
- Breach Finding on Live 960, licensed by Hoppr Entertainment, Broadcast Bulletin 149, http://www.ofcom.org.uk/tv/obb/prog_cb/obb149/;
- Breach Finding on Bang Babes licensed by Bang Channels Limited, Broadcast Bulletin 151, http://www.ofcom.org.uk/tv/obb/prog_cb/obb151/; and
- Breach Finding on Bang Babes, Broadcast Bulletin 152, http://www.ofcom.org.uk/tv/obb/prog_cb/obb152/Issue152.pdf
- Breach Finding on Bang Babes, Broadcast Bulletin 153, http://www.ofcom.org.uk/tv/obb/prog_cb/obb153/

material was clearly sexual arousal. Further, given the above, the material was, in Ofcom's view, of a strong sexual nature. Having assessed this programme's content and purpose, Ofcom considered that the material broadcast constituted 'adult-sex' material. Its broadcast, without mandatory restricted access, was therefore in breach of Rule 1.18.

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

Ofcom then went on to consider whether this broadcast was also in breach of Rules 2.1 and 2.3 of the Code. In light of Ofcom's view that the programme contained material that constituted 'adult sex material' and was therefore unsuitable for broadcast without mandatory restricted access, the broadcast was clearly capable of causing considerable offence. Ofcom therefore examined the extent to which there were any particular editorial or contextual factors that might have limited the potential for offence. Ofcom noted that the programme was broadcast at 03:20, a significant time after the watershed, and that viewers also tend to expect stronger sexual material to be shown later at night. Ofcom also took account of the fact that the Tease Me 3 channel was positioned in the 'adult' section of the Sky EPG and that viewers tend to expect the broadcast of stronger sexual material on channels in this section of the EPG than would be expected to be included on other channels.

However, in this case, given the relatively prolonged and repeated scenes of a very strong sexual nature and the inclusion of graphic images of genital and anal detail (provided for the purpose of sexual arousal), the time of broadcast and location of the channel were not sufficient to justify the broadcast of the material. The material shown was so strongly sexual that it would have exceeded the likely expectation of the vast majority of the audience. Ofcom concluded that this content was clearly not justified by the context and was in breach of generally accepted standards.

This broadcast was also therefore in breach of Rules 2.1 and 2.3 of the Code.

Bang Babes, Tease Me, 17 January 2010, 00:30

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

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

Ofcom therefore examined the extent to which there were any particular editorial or contextual factors that might have limited the potential for offence. Ofcom noted that the programme was broadcast well past watershed and that viewers tend to expect stronger sexual material to be shown later at night. Ofcom also took account of the fact that the channel was positioned in the 'adult' section of the Sky EPG and that viewers tend to expect the broadcast of stronger sexual material on channels in this section of the EPG than would be expected to be included on other channels.

However, in this case, given the prolonged and frequent scenes of a sexual nature and the inclusion of images of the presenters outer labial area (provided for the

purpose of sexual arousal) the time of broadcast and location of the channel were not sufficient to justify the broadcast of the material. The material shown was so strongly sexual that it would have exceeded the likely expectation of the vast majority of the audience watching a channel without mandatory restricted access at this time. Ofcom was also concerned by the degree of offence likely to be caused to viewers who might come across this material unawares. Ofcom concluded that this content was clearly not justified by the context and was in breach of generally accepted standards.

This broadcast was therefore in breach of Rules 2.1 and 2.3 of the Code.

Ofcom is presently considering the imposition of a statutory sanction against Bang Media (London) Limited and Bang Channels Limited for material transmitted between 20 June and 25 November 2009. In light of Bang Media and Bang Channels Limited's serious and/or repeated breaches of the Code and Condition 11 of their licences, and their continued transmission after 25 November 2009 of content which appears similar in nature to that which had already been found in breach of the Code, Ofcom issued them with a Direction on 12 March 2010.

As a result of the serious and repeated nature of the breaches recorded in these current findings, and those recorded against Bang Channels Limited elsewhere in this Bulletin, the Licensee is put on notice that these present contraventions of the Code are being considered for statutory sanction.

Bang Babes, Tease Me 3, 16 January 2010, 03:20 to 03:30: Breach of Rules 1.18, 2.1 and 2.3

Bang Babes, Tease Me, 17 January 2010, 00:30 to 01:00: Breach of Rules 2.1 and 2.3

In Breach

The Pad

Tease Me, 26 February 2010, 11:45

The Pad

Tease Me 3, 27 February 2010, 11:45

Introduction

The Pad is a televised daytime interactive chat programme broadcast without mandatory restricted access. It is broadcast on the Tease Me and Tease Me 3 channels, which are located in the 'adult' section of the Sky Electronic Programme Guide ("EPG") on channel numbers 912 and 959. The channels are owned and operated by Bang Channels Limited ("Bang Channels" or "the Licensee"). Viewers are invited to contact onscreen female presenters via premium rate telephony services ("PRS"). The presenters generally dress and behave in a provocative and/or flirtatious manner.

The Pad, Tease Me, 26 February 2010, 11:45

Ofcom received a complaint about the above broadcast. The complainant was concerned that the presenter was shown "exposing nipples on several occasions" and considered the content inappropriate for the time of broadcast.

Ofcom noted that the broadcast featured a presenter wearing a ripped, skimpy white t-shirt, and a frilly yellow G-string. During the broadcast the presenter adopted various sexualised positions for prolonged periods of time, including kneeling on all fours, and lying on her front and back with her legs open. While doing so she repeatedly thrust her pelvis and buttocks as though miming sexual intercourse. The presenter was also shown bending over and shaking her breasts to camera and while doing so a nipple was briefly revealed. The broadcast included close up and lingering shots up and down the presenter's body and various shots of the presenter's breasts and buttocks. The presenter repeatedly touched and stroked her breasts.

The Pad, Tease Me 3, 27 February 2010, 11:45

Ofcom received a complaint about the above broadcast. The complainant was concerned that the presenter was behaving in a sexual manner by "continually and repeatedly gyrating her hips, rubbing her body and genital area and massaging her breasts". The complainant considered this content inappropriate for the time of broadcast.

The broadcast featured a presenter wearing a skimpy red bra, red knickers, red stockings and white stiletto shoes. During the broadcast she was shown in various sexualised positions: on all fours, lying on her front with her legs wide open and bottom raised in the air, and lying on her side, again, with her legs wide open. While in these positions she repeatedly thrust her buttocks and pelvis as though miming intercourse. The presenter was also shown pulling down her bra strap, briefly revealing a nipple, massaging her breasts, pulling down her knickers to reveal the top of her buttocks and stroking her body suggestively. During the broadcast there were close up shots of the presenter's crotch and breasts.

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

Response

In relation to each broadcast the Licensee stated the following.

The Pad, Tease Me, 26 February 2010, 11:45

With regard to Rule 1.3 of the Code the Licensee said that the material was not in breach because it was broadcast on a channel in the adult section of the Sky EPG and therefore was clearly separated from children's channels. It said that the material broadcast was shown on a clearly signposted adult channel, and all Sky set top boxes come with built in parental controls. Therefore the material was scheduled appropriately.

The Pad, Tease Me 3, 27 February 2010, 11:45

With regard to Rule 1.3 of the Code the Licensee said that the material was not in breach because it was broadcast on a channel in the adult section of the Sky EPG and therefore was clearly separated from children's channels. It said that the material broadcast was shown on a clearly signposted adult channel, and all Sky set top boxes come with built in parental controls. Therefore the material was scheduled appropriately.

Decision

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

Ofcom has made clear in previous published decisions what sort of material is unsuitable to be included in daytime interactive chat programmes without mandatory restricted access. These decisions were summarised in a guidance letter sent by Ofcom to daytime and adult sex chat broadcasters in August 2009, and have been clarified subsequently by further findings¹. Some of these findings involved Bang Channels.

In the context of daytime interactive chat programmes where the presenters generally dress and behave in a provocative and/or flirtatious matter for extended periods in order to solicit PRS calls, the presenters should not for example appear to mimic or simulate sexual acts.

The Pad, Tease Me, 26 February 2010, 11:45

During this particular broadcast the female presenter dressed in skimpy clothing adopted various sexual positions for prolonged periods of time. The content included her kneeling on all fours and lying on her back with her legs wide open. While in these positions the presenter repeatedly thrust her pelvis and buttocks as though miming sexual intercourse. She also repeatedly touched and stroked her breasts in a sexually provocative manner.

¹ Elite Days/Elite TV Finding in Bulletin 144 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb144/; Top Shelf TV/Top Shelf TV Finding in Bulletin 149 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb149/; Elite Days/Elite and Elite TV Finding in Bulletin 151 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb151/Issue151.pdf; and The Pad/Tease Me 3 and Tease Me Findings in Bulletin 152 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb152/

The Pad, Tease Me 3, 27 February 2010, 11:45

During this broadcast the female presenter was wearing very skimpy clothing and also adopted various sexual positions for prolonged periods of time. In particular, she was shown on all fours and lying on her front with her legs wide open and her bottom raised in the air. The presenter was shown miming intercourse by repeatedly thrusting her buttocks and pelvis while in these sexual positions. She was also shown behaving in a very sexually provocative manner by massaging her breasts, pulling down her knickers to reveal the top of her buttocks and stroking her body in a suggestive manner. During the broadcast there were close up shots of the presenter's crotch and breasts.

In Ofcom's opinion the sexual imagery shown to viewers during both daytime broadcasts had no editorial context other than sexual stimulation. It was therefore not editorially justified. In Ofcom's view the repeated actions and sexual positions of the two presenters were intended to be sexually provocative in nature and the broadcast of such images was not suitable to promote daytime chat. In light of this behaviour, together with its lack of editorial justification, in Ofcom's view the material included in both broadcasts was clearly unsuitable for children.

Given the sexual nature of the content, the location of the channels Tease Me and Tease Me 3 in the 'adult' section of the EPG and the programmes' scheduling at 11:45 were not sufficient to provide adequate protection to prevent children from viewing this material. In addition, Ofcom has repeatedly made clear that the location of a channel in the 'adult' section of the Sky EPG, available without mandatory restricted access, does not in itself provide adequate protection to under-eighteens from inappropriate material shown on daytime chat channels². Therefore this unsuitable content was not appropriately scheduled.

Therefore the broadcasts breached Rule 1.3.

Ofcom is presently considering the imposition of a statutory sanction against Bang Media (London) Limited and Bang Channels Limited for material transmitted between 20 June and 25 November 2009. In light of Bang Media and Bang Channels Limited's serious and/or repeated breaches of the Code and Condition 11 of their licences, and their continued transmission after 25 November 2009 of content which appears similar in nature to that which had already been found in breach of the Code, Ofcom issued them with a Direction on 12 March 2010.

² Bang Babes 'Tease Me 2' in Bulletin 120 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb120/; Bang Babes 'Tease Me' Finding, The Pad 'Tease Me 2' Finding and Note to Daytime and Adult Sex Chat Service Broadcasters in Bulletin 137 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb137/; Freeview promotions for Playboy in Bulletin 139 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb139/Issue139.pdf; Bang Babes 'Tease Me' and 'Tease Me 3' Finding and Elite Days Finding in Bulletin 144 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb144/Issue144.pdf; Babeworld TV Finding in Bulletin 145 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb145/; Live 960 Finding in Bulletin 149 and Top Shelf TV Finding in Bulletin 149 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb149/; Elite Days finding in Bulletin 151 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb151/Issue151.pdf; and The Pad Findings in Bulletin 152 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb152/.

As a result of the serious and repeated nature of the breaches recorded in these current findings, and those recorded against Bang Channels Limited elsewhere in this Bulletin, the Licensee is put on notice that these present contraventions of the Code are being considered for statutory sanction.

The Pad, Tease Me, 26 February 2010, 11:45 to 12:15: Breach of Rule 1.3

The Pad, Tease Me 3, 27 February 2010, 11:45 to 12:15: Breach of Rule 1.3

In Breach

Tease Me: Earlybird

Tease Me TV (Freeview), 26 January 2010, 07:15

Introduction

Tease Me: Earlybird is a televised daytime interactive chat programme broadcast without mandatory restricted access. Viewers are invited to contact onscreen female presenters via premium rate telephony services (“PRS”). The presenters generally dress and behave in a provocative and/or flirtatious manner. It is part of the service known as Tease Me TV which is broadcast between 03:00 and 09:00 and located on Freeview at channel number 98. Tease Me TV on the Freeview platform is owned and operated by Bang Media (London) Ltd (“Bang Media” or “the Licensee”). Pre-watershed, the channel broadcasts programmes based on interactive chat. Post-watershed, the licensee transmits adult sex chat services. All of this programming is available without mandatory restricted access.

A parent of young children complained that the content shown during the *Tease Me: Earlybird* programme of 26 January 2010 showed “an almost naked girl” who was touching herself and mimicking sex acts. He was concerned that young children could switch on the television in the morning and see this material, which he believed was inappropriate for broadcast at this time of day on this channel.

Ofcom viewed material broadcast between approximately 07:15 and 08:15 and noted that: the presenter was wearing a thin black band around her breasts, which just covered her nipples and which she tugged at intermittently whilst fondling her breasts; she wore suspenders and stockings and a skimpy thong, which at times was pulled down slightly or bunched around her genitals; the presenter’s legs were at times wide apart; and, the presenter gyrated her hips and buttocks in a sexual manner, sometimes lying on her back and sometimes on all fours.

Ofcom asked Bang Media for its comments on the broadcast in respect of Rule 1.3 (children must be protected by appropriate scheduling from material that is unsuitable for them) and 2.3 (material which may cause offence must be justified by the context).

Response

With regard to Rule 1.3, Bang Media said that it did not believe the content broadcast was unsuitable for children, since it was not aimed at children and would be of no interest to them. It said that Tease Me TV on Freeview is an adult channel broadcasting material of interest to adults between 03:00 and 09:00, is clearly signposted as such and adequately separated from children’s channels on the Freeview service. The licensee said that the material broadcast was not overly sexualised. It referred to a previous complaint to Ofcom about material that was broadcast on this channel, at this timeslot, that it believed was comparable and was not found in breach of the Code. It did not believe that the material involved in the current case was in any way harmful and as a consequence not in breach of Rule 1.3.

With regard to Rule 2.3, Bang Media said that the presenter did not gyrate or thrust her hips in a sexually provocative manner, the content was mildly sexual in tone and

not at odds with the Code. It said that the presenter's buttocks were covered and that, given the context of the broadcast, it believed the presenter's actions were justified, did not exceed generally accepted standards, or have the potential to cause harm or offence. They were therefore not in breach of Rule 2.3.

Decision

Rule 1.3 makes clear that children should be protected by appropriate scheduling from material which is unsuitable for them. Appropriate scheduling is judged according to factors such as: the nature of the content; the likely number of children in the audience taking into account such factors as school time; the start and finish time of the programme; the nature of the channel; and, the likely expectations of the audience for a particular channel or station at a particular time and a particular day. In particular, it should be noted that the watershed starts at 21:00 and ends at 05:30.

Ofcom has made clear in previous published findings¹ what sort of material is unsuitable to be included in daytime interactive chat programmes. These decisions were also summarised in a guidance letter sent by Ofcom to daytime and adult sex chat broadcasters in August 2009.

The behaviour of presenters for daytime chat services should not at any time appear to mimic or simulate sexual acts before the watershed. In this case, for a period of around one hour, the presenter mimicked or mimed sex acts or behaved in a sexual manner, for example adopting sexual positions by opening her legs wide and jiggling her buttocks to camera. During this time she also tugged at her knickers and played with her barely covered breasts.

Ofcom went on to consider whether the material was appropriately scheduled in light of Rule 1.3 of the Code. It first considered the nature of the content. In Ofcom's opinion the imagery shown to viewers had no editorial context other than sexual stimulation. The behaviour of the presenter and her skimpy clothing were intended to be sexually provocative in nature. It was therefore not editorially justified for broadcast at this time. We then considered the likely number of children in the audience and the time of the broadcast. Ofcom noted that this material was broadcast at a time when children are likely to be getting ready for school and may be watching television. It was therefore possible that there was the potential for children, should they be flicking through the Freeview electronic programme guide, to come across the channel unawares. Ofcom then considered the likely expectations of the audience for programmes broadcast at this time of day on a channel without mandatory restricted access. In its opinion, viewers would not expect to come across such material on this channel.

Taking into account the factors above, Ofcom concluded that the material was unsuitable for children and not appropriately scheduled so as to protect them from it. Therefore the content breached Rule 1.3 of the Code.

¹These include: The Pad Tease Me, 6 November 2009, 12:00 to 13:00 and 14:00 to 15:00 Bulletin 152 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb152/; Elite Days finding in Bulletin 151 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb151/Issue151.pdf; Top Shelf TV Finding in Bulletin 149 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb149/; and Note to Daytime and Adult Sex Chat Service Broadcasters Bulletin 137 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb137/.

Ofcom noted the broadcaster's comparison with a previous (unpublished) not uphold decision by Ofcom against the same channel from December 2009. Ofcom points out that the content of that broadcast was significantly different to that of this current complaint. The presenter's outfit on that occasion in December 2009 was a one-piece bathing costume as opposed to a thin black band across the presenter's breasts, thong and suspenders of this broadcast, and she did not behave in such a sexually provocative way.

Ofcom then went on to consider the broadcast against Rule 2.3 of the Code and whether the Licensee applied generally accepted standards. This Rule requires material which may cause offence to be justified by the context. Context includes factors such as: the service on which the material is broadcast and the time of broadcast; the likely expectation of the audience; the extent to which the nature of the content can be brought to the attention of the potential audience; and, the effect of the material on viewers who may come across it unawares.

Ofcom noted the broadcaster's assertion that the material was suitably limited for broadcast at this time of day and was not overly sexualised. However, as detailed earlier, the presenter wore skimpy clothing, and her actions (for example, gyrating her hips, adopting sexual positions, fondling her breasts, running her hands over her body and tugging at her underwear) were clearly for the purposes of sexual stimulation. In Ofcom's opinion this material was potentially offensive and therefore required justification by the context.

When broadcasting in the early morning around 7.00am, *Tease Me: Earlybird* is a daytime chat service broadcast into viewers' homes without mandatory access restrictions, pre-watershed and on a platform (Freeview) with no separate 'adult' section on the electronic programme guide.

Ofcom considered, in particular, the likely expectations of the audience and the effect of the material on viewers who may come across it unawares. This content was broadcast on a channel that is available on the Freeview platform in an area of the electronic programme guide not specifically signposted for this type of material. It is therefore quite possible for viewers to come across this material unawares: there are no warnings on the electronic programme guide or provided by *Tease Me: Earlybird*. Ofcom also noted that this material was broadcast in the early morning when many viewers choose to watch television at breakfast time. In Ofcom's view, audiences at this time of day on services available without mandatory restricted access on Freeview would not expect to see sexual imagery of this relatively strong nature to be broadcast. In Ofcom's view, the strength of this particular material went beyond the expectations of the majority of viewers of a daytime chat service.

Taking into account the factors detailed above, in Ofcom's view the material broadcast at this time on this service exceeded generally accepted standards and was in breach of Rule 2.3 of the Code.

Ofcom is presently considering the imposition of a statutory sanction against Bang Media (London) Limited and Bang Channels Limited for material transmitted between 20 June and 25 November 2009. In light of Bang Media and Bang Channels Limited's serious and/or repeated breaches of the Code and Condition 11 of their licences and their continued transmission of content which appears similar in nature to that which had been found in breach of the Code, Ofcom issued them with a Direction on 12 March 2010.

As a result of the serious and/or repeated nature of the breach recorded in this current finding, and those recorded against Bang Channels Limited elsewhere in this Bulletin, the Licensee is put on notice that this present contravention of the Code is also being considered for statutory sanction.

Breach of Rules 1.3 and 2.3

In Breach

Sponsorship of Do Hanso ka Joda

NDTV Imagine, 4 March 2010, 21:00

Introduction

NDTV Imagine is a Hindi general entertainment channel. Ofcom received a complaint that the holidaymood.co.uk sponsor credit for the family drama *Do Hanso ka Joda* contained information which could be deemed to be a call to action.

On reviewing the material, we noted that the sponsor's name took the form of its website address. The sponsor credit also contained a telephone number and a caption saying: "CALL NOW". In addition, Ofcom noted that next to the holidaymood.co.uk logo, there were logos for the travel organisations IATA, ABTA and World Choice Fully Bonded.

Ofcom asked the broadcaster for its comments with regards to Rule 9.13 of the Code which states:

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

This rule implements the requirements of European legislation, the Audiovisual Media Services (AVMS) Directive. The AVMS Directive states that broadcasters can only transmit a set amount of advertising per hour. Sponsorship credits are exempt from this limit and are treated as part of the sponsored programme. Therefore, to ensure that sponsorship credits are distinct from advertising, the Directive requires that sponsored programmes "shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those products or services".

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

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

Response

NDTV Imagine said the logos for the travel organisations were provided as part of the overall sponsor's logo and it had accepted these as being "standard labels in the travel sector".

The broadcaster acknowledged the "CALL NOW" reference should not have been included. It was aware that sponsor credits should not contain calls to action, however the member of staff involved did not consider "CALL NOW" to be a call to action, and had therefore not referred the matter on.

The broadcaster said the inclusion of the “*CALL NOW*” reference in the credit was a human error and was not typical of its compliance procedures. To prevent any recurrence, the compliance team has now circulated very specific guidance to ensure there is no doubt about what might constitute a call to action either in sound or vision.

Decision

Ofcom’s guidance on the rules relating to sponsorship states that the purpose of a sponsor credit is to inform viewers about the sponsorship arrangement between the sponsor and the programme. Credits must not directly invite the audience to contact the sponsor nor should they contain advertising messages. This has been made clear by Ofcom in a number of previous findings¹.

Rule 9.13 states that sponsor credits should not contain calls to action. While basic contact details can be given in credits (such as a website address or a telephone number) to help identify the sponsor, this should not be accompanied by language which could be seen as inviting the audience to contact the sponsor.

In this case, the phrase “*CALL NOW*” included in the credit directly invited viewers to contact the sponsor and was therefore a call to action. This was in breach of Rule 9.13.

Furthermore, Ofcom could find no editorial justification for the inclusion in the credit of the logos for the travel organisations IATA, ABTA and World Choice Fully Bonded which are standard in advertising for companies within the travel industry. The inclusion of such logos is not subject to any mandatory requirement and, in Ofcom’s view, served only to promote the impression of the sponsor being a reputable company. Ofcom therefore also found the inclusion of the logos to be an advertising message within the credit, in breach of Rule 9.13.

Breach of Rule 9.13

¹ See http://www.ofcom.org.uk/tv/obb/prog_cb/obb146/
and http://www.ofcom.org.uk/tv/obb/prog_cb/obb130/

In Breach

Sponsorship of Jhansi ki Rani

Zee TV, 8 February 2010, 20:30

Introduction

Zee TV is a Hindi general entertainment channel. The programme *Jhansi ki Rani* was sponsored by Raja Spices. Ofcom received a complaint that the sponsor credit included references to the sponsor's products containing "10% extra free".

Ofcom noted that five spice products were shown in the sponsor credit. On the packaging of all five products wording stating that they contained "10% extra free" was clearly visible. This wording was also included in a separate caption.

Ofcom asked the broadcaster for its comments with regards to Rule 9.13 of the Code which states:

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

This rule implements the requirements of European legislation, the Audiovisual Media Services (AVMS) Directive. The AVMS Directive states that broadcasters can only transmit a set amount of advertising per hour. Sponsorship credits are exempt from this limit and are treated as part of the sponsored programme. Therefore, to ensure that sponsorship credits are distinct from advertising, the Directive requires that sponsored programmes "shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those products or services".

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

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

Response

Zee TV admitted this credit should not have been broadcast. The broadcaster said this was due to human error as the member of staff who cleared the material in question was covering for a colleague who was on holiday and did not fully understand the requirements of the Code in this area. Zee TV said in the future all staff carrying out compliance checks in this area will be fully versed in the rules.

Decision

The purpose of a sponsorship credit is to inform the audience when a programme is sponsored and by whom. As we have made clear in previous findings¹, credits are not permitted to be advertisements and should focus on the sponsorship arrangement and not the sponsor or its goods or services.

Rule 9.13 permits a limited amount of information about the sponsor, including references to its products and services. However, credits must be distinct from advertising and not contain advertising messages such as promotional statements about the sponsor or the products or services it offers.

The reference to “10% extra free” was clearly promoting an offer for these products to encourage their purchase. In Ofcom’s view, this was a “special promotional reference” to the sponsor’s product. We are therefore recording a breach of Rule 9.13.

Furthermore, Ofcom was concerned that the broadcaster had admitted it had allowed a member of staff to take responsibility for compliance decisions without a full understanding of the Code’s relevant requirements. We therefore remind Zee TV that it is a fundamental condition of its Ofcom licence to ensure that the content it transmits complies with all relevant Ofcom Codes. Ofcom does not expect a recurrence of similar issues.

Breach of Rule 9.13

¹ See http://www.ofcom.org.uk/tv/obb/prog_cb/obb146/
and http://www.ofcom.org.uk/tv/obb/prog_cb/obb130/

In Breach

Chal Sitaroon Ki

DM Digital, 18 February 2010, 13:00

Introduction

DM Digital is a free-to-air general entertainment channel, broadcasting mainly in Urdu to the UK Asian community. The programme *Chal Sitaroon Ki*, translated as 'Actions of Stars', is a daily phone-in programme. During the programme the presenter carries out horoscope readings for members of the public based on their name and date of birth. Viewers are invited to contact the presenter via a premium rate telephony service, which is displayed on screen throughout the programme. The holder of the DM Digital licence is DM Digital Television Limited ("DM Digital" or "the Licensee").

The Code contains certain restrictions on the broadcast of material about the paranormal and related practices. In particular Rule 2.8 states that "demonstrations of exorcism, the occult, the paranormal, divination, or practices related to any of these (whether such demonstrations purport to be real or are for entertainment purposes) must not contain life-changing advice directed at individuals". The meaning of life-changing advice includes direct advice for individuals upon which they could reasonably act or rely about health, finance, employment or relationships.

Ofcom received a complaint from a viewer who was concerned that the programme contained life changing advice and health advice given by people who were not appropriately qualified.

As a result of the complaint above, on 19 February 2010 Ofcom asked DM Digital for a copy of the programme to be provided within five working days.

Background

Condition 11 of DM Digital's licence (like all TLCs licences) required that recordings of all output are retained for 60 days after transmission and that Ofcom is provided "forthwith" with any material on request.

After extensive correspondence with the Licensee, the correct recording as requested was received by Ofcom on 19 April 2010 – two months after the initial request. The information below summarises that correspondence.

On 3 March 2010 Ofcom granted an extension for the recording to be provided by 5 March 2010. On 8 March 2010 Ofcom had still not received the recording and therefore wrote to DM Digital requesting again the outstanding recording and requested DM Digital's formal comments regarding Condition 11 of its licence agreement. DM Digital then provided a recording which was supposed to be that of the 18 February broadcast. This was received by Ofcom on 9 March 2010. DM Digital apologised for the delay and explained that this was due to it moving premises so therefore its equipment was at two sites. It continued that a faulty cable meant they were unable to produce recordings within the time limit. This recording however contained only 24 minutes of material. Therefore the recording was clearly incomplete.

On 23 March 2010, Ofcom wrote to DM Digital requesting again: a full and complete recording of the programme *Chal Sitaroon Ki*, as broadcast between 13:00 and 15:00 on 18 February 2010; and DM Digital's formal comments regarding Condition 11 of its licence agreement. The deadline for providing this material was 25 March 2010.

Ofcom received from DM Digital on 31 March 2010 a second recording which was also supposedly of the programme. However the second recording included only two minutes of content, rather than the full two hours as requested. Therefore the second recording was also incomplete. It was also apparent that the presenters in this second recording were different to the presenters shown in the first recording. Therefore the recordings were not taken from the same programme. On 12 April 2010 Ofcom informed DM Digital that the second recording received on 31 March 2010 was incomplete. Ofcom requested that a full recording be sent to Ofcom to arrive either that day or the following morning.

Ofcom had still not received this material by 14 April 2010. Therefore on this date Ofcom wrote to DM Digital again to offer one last opportunity to provide a complete recording of the programme and formal comments regarding Condition 11 of its licence agreement. The deadline for this material was 15 April 2010.

On 14 April 2010 DM Digital sent a third recording of the programme *Chal Sitaroon Ki*. This was received by Ofcom on 19 April 2010. Ofcom viewed this material and noted that it did contain a full two hour recording of a programme. However, the material did not match, in terms of the presenters, the incomplete recordings previously sent to Ofcom of this programme. Ofcom therefore wrote to DM Digital on 19 April 2010 asking it to confirm in writing that the recording received by Ofcom on 19 April 2010 was of the programme *Chal Sitaroon Ki*, as broadcast on DM Digital on 18 February 2010, 13:00 to 15:00. DM Digital confirmed this on 20 April 2010.

Ofcom will now assess this material in light of the complaint about the nature of the advice given to viewers, and consider whether it raises any issues under the Code.

Response

Despite various requests from Ofcom, DM Digital TV did not provide any formal comments regarding Condition 11 of its licence agreement (Retention and production of recordings).

Decision

Ofcom considers breaches of Licence Condition 11 to be a serious matter. In Bulletin 153 (published 8 March 2010) Ofcom imposed a financial penalty totalling £18,000 against Springdoo Media Limited (owner of Friendly TV) and User Generated Broadcasting Limited (owner of Bedroom TV) for recurrent breaches of Licence Condition 11.¹

As stated above, it is a condition of DM Digital's licence that recordings of all output are retained for 60 days after transmission and that Ofcom is provided "forthwith" with any material on request. In this case, it took DM Digital around two months to supply the complete and correct recording of the requested material. Therefore it clearly failed to respond to Ofcom's request for recordings 'forthwith'. Ofcom considers this

¹ Ofcom imposed financial penalties on Springdoo Media Limited and User Generated Broadcasting Limited of **£6,000** and **£12,000** respectively for breaches of condition 11 of their licences. http://www.ofcom.org.uk/tv/obb/ocsc_adjud/springdoo.pdf

to be an entirely unacceptable delay and represents a serious and significant breach of Condition 11 (Retention and production of recordings) by DM Digital. DM Digital's response to Ofcom with regards to this case has been very unsatisfactory and has wasted a disproportionate amount of the regulator's time and resources. This breach will be held on the licensee's record.

By way of background, Ofcom has previously recorded a breach of Condition 11 of DM Digital's licence for failure to provide recordings, which was published on 7 December 2009 in Broadcast Bulletin 147. Ofcom notes that DM Digital's comments in relation to that case stated that the late provision of recordings would not happen again in future. Further, Ofcom's finding clearly stated that "should these problems recur, Ofcom may consider further regulatory action".

Since the publication of Bulletin 147, and in addition to the current case, there have also been two separate instances where DM Digital has failed to provide recordings to Ofcom within the allocated five working day period. This has resulted in Ofcom wasting time and resources following these issues up with the Licensee, although Ofcom did not on those occasions record any contraventions of Condition of the DM Digital licence.

Ofcom carefully considered whether to recommend this particular case regarding DM Digital for consideration of a statutory sanction. On balance however it decided not to do so in this instance. Ofcom does however put DM Digital on notice that it must take all necessary and appropriate measures to ensure it complies with Condition 11 of its licence in the future. If there are further breaches of this nature Ofcom may consider further regulatory action.

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

In Breach

Retention of recordings

BEN TV, 26 November 2009

Introduction

BEN TV is an entertainment and news channel that broadcasts to Western Europe and parts of Asia and Northern Africa. As part of Ofcom's routine monitoring of compliance with the Code on the Scheduling of Television Advertising ("COSTA"), we asked the broadcaster to provide recordings and transmission logs (between the hours of 12:00 and 13:00) for 20, 23, 24, 25, 26 and 27 November 2009. Despite repeated requests by Ofcom, the broadcaster failed to supply full recordings of its transmission, as broadcast, for 26 November 2009.

TLCS licence holders are required to keep recordings for 60 days after transmission of all of their output in 'broadcast' quality (i.e. the same quality in terms of both sound and picture as when originally transmitted). If requested by Ofcom, Licensees are required to provide such recordings to Ofcom "forthwith". These requirements are set out in Condition 11 of their licence and the associated Ofcom guidance.

"Greener Technology" holds the licence for BEN TV. Ofcom sought Greener Technology's formal comments in relation to its failure to retain recordings of output broadcast on BEN TV on 26 November 2009, and therefore its inability to meet Ofcom's request for these recordings.

Response

The Licensee explained the owing to a technical fault in the playout system not all of the recordings for the requested dates could be retrieved.

Decision

A broadcaster is required to comply with all the conditions in its licence. It is the Licensee's responsibility to ensure that it is aware of all of Ofcom's requirements. In this case Greener Technology failed to provide Ofcom with a recording of BEN TV's output for a particular day, as required by its licence. Ofcom is concerned that BEN TV did not have the appropriate systems in place to retain full recordings for all of its output. This is a serious and significant breach of the broadcaster's licence and will be held on BEN TV's compliance record.

We will monitor the channel again in 2010, to check that it complies with its relevant licence conditions. Should this problem recur, Ofcom may consider taking further regulatory action.

Breach of Licence Condition 11 (retention and production of recordings)

Resolved

LunchBreak

CUR1350, 5 February 2010, 13:00

Introduction

CUR1350 (Cambridge University Radio) is a Restricted Service Licence radio station aimed at students and staff at Cambridge University and Anglia Ruskin University. A competition called 'Music and Lyrics' is run during its daily programme *LunchBreak*.

Listeners are played a clip of music and are invited to contact the station via e-mail, text message, telephone or the station's website to identify the song. Later on in the programme, as a further clue, the lyrics of the song in question are read out. Text messages and telephone calls are charged at standard rate, e-mail and online entry is free.

On this occasion, no information was given on air about how the winning entrant would be selected. In fact, the entrant who submits the first correct answer is awarded the prize which normally comprises tickets to one of three local nightclubs.

Ofcom received a complaint from a listener who said that the promotion of the competition on 5 February 2010 was misleading as it did not advise that the first correct entrant would be declared the winner. Consequently, the complainant was not aware that the speed in which answers were submitted was a determining factor and assumed that as in many broadcast competitions, a correct entrant would be selected at random.

When listening to the relevant programme segment, Ofcom noted that the when first playing the clip, the presenter said that *"and if you're still struggling, in a little while I'll add some lyrics"*. Approximately nine minutes later, the presenter read out the lyrics of the second verse and repeated the invitation to contact the studio to submit an answer. The answer on this occasion was the song 'Laura' by the Scissor Sisters. Owing to the song's familiarity amongst the station's target audience, Ofcom considered there was a strong possibility that a correct answer had been received before this time.

Ofcom therefore asked CUR1350 for details of when the invitations to participate were aired on 5 February 2010 and when the first correct answer was received on this occasion. It also sought the broadcaster's comments under Rules 2.13, 2.14 and 2.15 of the Code.

Rule 2.13 of the Code states that: "broadcast competitions...must be conducted fairly."

Rule 2.14 of the Code requires broadcasters to: "ensure that...listeners are not materially misled about any broadcast competition".

Rule 2.15 of the Code states that rules: "must be clear and appropriately made known. In particular, significant conditions that may affect a ...decision to participate must be stated at the time an invitation to participate is broadcast."

Response

CUR1350 said the competition opened when the music clip was first played at 14:28. The clip was aired again at 14:37 before the presenter read out the lyrics to the second verse. The first correct answer was received at 14:31 and the entrant who submitted it was announced on air as the winner at 14:44.

The broadcaster explained that it is a student radio station and as such, it does not generally feature experienced presenters. It added that on this occasion, the person scheduled to present had to cancel at short notice and the replacement had not presented alone before. Unfortunately, the pressure of hosting a live show led to insufficient information being broadcast about how the winner would be determined.

CUR1350 fully acknowledged that on this occasion, the “competition was not explained particularly well”. It wished to highlight, however, that there were no entry costs to the competition (apart from the cost of a standard telephone call or text message) and the prize value was “just £3”. The broadcaster confirmed that the total of entrants to the competition was five.

The broadcaster also said that after the incident, “all *LunchBreak* presenters were reminded about the way they ought to conduct the ‘Music and Lyrics’ competition to ensure that it is fair.” Further, it said that the station manager and the presenter in question have recently attended an Ofcom workshop about the Code rules regarding broadcast competitions and are now fully aware of the requirements in this area. This information has been communicated to all CUR1350 staff and is used in training sessions for new presenters.

Decision

In this listener competition, no clear information about how winners would be determined was stated on air. In the circumstances, Ofcom considered it reasonable that listeners would have assumed that a winner would be randomly selected from a pool of correct entrants. As this was not the case, Ofcom judged that the competition’s rules were not appropriately made known on air.

Ofcom also had concerns that, based on the information supplied by CUR1350, the presenter continued to solicit for entries at 14:37 even though a winner had been identified at 14:31. Entrants that submitted at this time had therefore no chance of winning.

Ofcom also noted that the cost of entry to the competition was low and there was likely to have been limited harm caused to a very small number of listeners.

Ofcom accepted that the broadcaster did not deliberately intend to mislead listeners and noted the measures undertaken by the station in order to improve compliance when running broadcast competitions. Consequently, it considered the matter resolved.

Resolved

Access Services cases

In Breach

Subtitling provision

The Box, April to December 2007 and January to December 2008

4Music/The Hits, April to December 2007 and January to December 2009

Introduction

Ofcom's Code on Television Access Services ("the TAS Code") requires certain broadcasters to transmit a proportion of their output with access services (subtitles, audio description and sign language). The amount required depends on several factors, including the number of years a channel has been on-air and the size of its audience. Rule 8 of the TAS Code states "broadcasters are required to meet the targets" that apply to their services.¹

Ofcom's Guidelines on the provision of television access services state that broadcasters "should monitor playout at regular intervals to ensure that scheduled access services are being provided correctly".

During a routine audit of television access service provision, Ofcom wrote to Box Television, which holds the licences for a number of channels that broadcast music videos, to request logs of which programmes it had broadcast with subtitles. As a result, it came to Box Television's attention that, due to a technical fault, only music videos subtitled before April 2007 had been broadcast with subtitles.

Ofcom wrote to Box Television to ask whether Box Television's channels had met their quota of subtitling provision in 2007, 2008 and 2009; and specifically whether the following quotas were achieved on:

- a) Kerrang, Kiss, Magic and Smash Hits. These channels were required to subtitle 11.55% of their output in 2007²;
- b) The Box. This channel was required to subtitle 11.55% of its output in 2008³; and
- c) 4Music (previously known as The Hits). This channel was required to subtitle 11.55% of its output for 2007 and 20% of its output for 2009⁴.

Response

Box Television explained that it had not been aware of the technical fault that caused its system to fail for videos subtitled after April 2007. Box Television had selected certain videos and sent them to a third party which was responsible for adding the subtitles. Once the videos, with subtitles, were returned by the third party, Box

¹ The TAS Code is available at <http://www.ofcom.org.uk/tv/ifi/codes/ctas/>.

² Kerrang, Kiss, Magic and Smash Hits were exempt from access service provisions in 2008 and 2009.

³ The Box was exempt in 2007 and 2009.

⁴ 4Music was exempt from access service provisions in 2008.

Television added them to its playout system using a device called an 'ingest machine'. However, one of the settings on the ingest machine was incorrect, causing the videos to be added to the playout system without subtitles. Box Television said that it continued to transmit what it believed, in good faith, to be a larger than required percentage of subtitled output, but that it had not monitored playout to ensure that subtitles were present. Box Television informed Ofcom that it had now corrected this technical fault and re-subtitled all of the affected videos. It had also put new processes and equipment in place to ensure that videos were correctly subtitled.

Kerrang, Kiss, Magic, Smash Hits and The Hits in 2007

Box Television said that it had broadcast a higher proportion of subtitled content than its channels' quotas required in 2007 on The Hits, Kiss, Magic, Kerrang and Smash Hits (i.e. therefore the channels had met their quotas). This was because a large number of videos which were added before April 2007 continued to be played out, with subtitles, throughout the rest of the year.

The Box in 2008

In relation to the channel The Box, the broadcaster confirmed that in 2008, it only broadcast 2% of its output with subtitles (significantly lower than the required quota of 11.55%).

4 Music in 2009

As regards the channel 4Music, the broadcaster confirmed that in 2009, only 4.7% of its output was broadcast with subtitles (the quota for this period was 20%).

Box Television proposed that, as restitution for its under-delivery of subtitled content, it would commit to subtitling all new music videos on all its channels in future. If the channels continue to schedule a similar proportion of new videos as they currently do, then more than 70% of their output, across all six of their channels, could be subtitled by the end of 2010 and thereafter. This would represent a substantial over-delivery of subtitling provision: for 2010, only one of Box Television's channels (4Music) is required to provide subtitling, and its quota is 40%.

Decision

Ofcom notes the technical fault experienced by Box Television and the impact that this had on its delivery of access services. Ofcom also acknowledges the action taken by Box Television once it realised there was an issue, and welcomes its undertaking to subtitle all new videos on all its channels going forward, which will mean that Box Television will exceed the quotas that would otherwise have applied.

Nonetheless, the failure to meet its obligations to subtitle the proportion of its content required by the Code represents a serious breach, and is aggravated by the fact that Box Television had not adequately monitored the playout of subtitles on its channels since April 2007. In a serious breach of this nature, Ofcom would normally consider imposing sanctions. However, given the restitution offered by Box Television, we have decided, on this occasion, not to do so. However, Ofcom warns the Licensee against future licence failures.

As Box Television broadcast a substantially lower percentage of its output than required by the TAS Code on The Box in 2008 and on 4Music in 2009, it is in breach of Rule 8 of the TAS Code.

Breach of Rule 8 of the Code on Television Access Services

Advertising scheduling cases

In Breach

Advertising minutage

ITV1, 31 October 2009, 21:00

ITV2, 16 December 2009, 21:00

Introduction

Rule 4 of the Code on the Scheduling of Television Advertising (“COSTA”), states: “time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes”. This rule derives directly from European legislation – a requirement of the Audiovisual Media Services (AVMS) Directive.

As part of Ofcom’s routine monitoring of broadcasters’ compliance with COSTA, Ofcom observed that ITV1 appeared to have transmitted a total of 14 minutes of advertising during one clock hour (two minutes more than allowed).

Separately, ITV plc informed Ofcom that ITV2 had transmitted a total of 12 minutes 45 seconds of advertising during one clock hour (45 seconds more than allowed).

Ofcom wrote to ITV plc (“ITV”), which is responsible for the scheduling of advertising breaks on ITV1 on behalf of the ITV Network, to ask whether there had indeed been a breach on ITV1, and, if so, how the breach had occurred and what steps it intended to take to avoid a recurrence.

Ofcom requested ITV’s comments on how the breach had occurred on ITV2 and what steps it intended to take to avoid a recurrence.

Response

ITV acknowledged that in these instances ITV1 and ITV2 had not complied with Rule 4 of COSTA.

Regarding the incident on ITV1, ITV explained that a break scheduled to be transmitted at 22:05 had actually been transmitted at 21:56. This was because the first part of the programme *Piers Morgan’s Life Stories* was shorter than expected. Information which should have been issued to the production department by the scheduling team as part of an established operational process was overlooked due to human error and the late delivery of the programme.

ITV further explained that they employ a “back-stop” process in transmission operations whereby the automation software counts the advertising minutes in any given clock hour and notifies the Network Directors of potential breaches. On this occasion, the Network Directors failed to detect this warning notification when the late programme timings were entered on to the automation play list.

ITV stated that it believes it has robust procedures in place, but that there will inevitably be occasions when human error is a factor.

Following this incident, ITV said it will be examining methods by which warning notifications can be further enhanced and made more prominent in order to mitigate against the potential for human error.

Regarding the incident on ITV2, ITV explained that a break scheduled to be transmitted at 22:01 had actually been transmitted at 21:59. This was because the programme *Xtra Factor: Best and Worst* was shorter than expected, due to incorrect information being passed from the production department to the scheduling team. The transmission department recognised the problem and inserted extra material into the schedule, but this material was scheduled after the 22:01 break and therefore did not rectify the problem with the 21:00 clock hour. At this point, the scheduling department contacted transmission to suggest edits to the schedule, but was informed that the problem had already been resolved by the Transmission Controller.

Following this incident, ITV said that managers will carry out operational reviews with individuals responsible for monitoring the schedules; relevant staff will discuss how best to implement additional checks with regard to programme timings; at shift changeover points, incoming staff will check the remainder of the schedule irrespective of handover advice; and ITV will investigate whether any further cross-checking can be implemented. Additionally, any schedule with a clock hour breach will be automatically blocked in the transmission system, and staff would have to deliberately over-ride the system in order to put the schedule to air – this should help to mitigate against accidental breaches.

In recognition of the fact that there had been a number of overruns, within a short period of time, across ITV channels, ITV offered to make adjustments to its advertising minutage in respect of the overruns on ITV1 and ITV2. ITV voluntarily dropped 45 seconds of minutage from ITV2 in the 21:00 hour on 24 March 2010. Ofcom's rules do not allow ITV to withhold advertising minutage on ITV1¹, so ITV removed 2 minutes of advertising from ITV1 during the 21:00 hour on Friday 19 March, and rescheduled them in the 23:00 hour (where they are less valuable to ITV).

Decision

ITV transmitted 14 minutes of advertising between 21:00 and 22:00 on ITV1, and 12 minutes 45 seconds of advertising between 21:00 and 22:00 on ITV2. These incidents were in breach of the COSTA requirement that advertising should not exceed 12 minutes in any one hour.

Ofcom notes that these breaches were accidental. In the case of the ITV2 breach, Ofcom welcomes ITV's prompt action in bringing the matter to Ofcom's attention.

Ofcom also notes that, in both cases, minutage was transferred from one clock hour to another; ITV did not transmit any extra minutes of advertising overall. ITV did not breach the COSTA rules on how many minutes of advertising may be transmitted across the broadcast day, or the rule that PSB channels (such as ITV1) are only permitted to transmit 40 minutes of advertising during peak hours (18:00 to 23:00).

Ofcom further notes that, since these breaches, ITV has taken steps to ensure compliance with COSTA.

¹Ofcom's Airtime Sales Rules:
http://www.ofcom.org.uk/tv/ifi/guidance/ITV_airtime_sales/Airtime_sales_rules/

Ofcom welcomes the voluntary adjustments ITV made to its advertising minutage on ITV1 and ITV2 in respect of the latest two overruns which occurred during peak hours.

However, these failures followed an earlier overrun on ITV2, in February 2009. In that case, ITV transmitted 15 minutes and 15 seconds of advertising in one clock hour. ITV had informed Ofcom that it had improved its procedures in order to avoid breaches of Rule 4 of COSTA. Having noted these improvements, Ofcom recorded a resolved finding in its Broadcast Bulletin.²

Ofcom is therefore concerned that ITV's procedures were still not adequate to prevent overruns from occurring.

Breaches of Rule 4 of COSTA

² Finding available at http://www.ofcom.org.uk/tv/obb/prog_cb/obb131/issue131.pdf

In Breach

Advertising scheduling

STV, 27 December 2009, 17:00

Introduction

Rule 4 of the Code on the Scheduling of Television Advertising (“COSTA”), states: “time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes”. This rule implements the requirements of European legislation, the Audiovisual Media Services (AVMS) Directive.

STV notified Ofcom that it had transmitted a total of 14 minutes and 26 seconds of advertising during one clock hour. This was two minutes and 26 seconds more than permitted.

Ofcom therefore wrote to STV asking it to provide comments relating to the incident, under Rule 4 of COSTA.

Response

The broadcaster explained that the overrun was attributed to a combination of the following three factors occurring:

Firstly, STV had transmitted a live rugby match which created a challenging situation for their production team.

Secondly, ITV, which had managed the allocation of STV’s break patterns structure in this instance, had submitted, in error, incorrect break patterns¹ to STV that were structured to a live football match rather than a live rugby match. The broadcaster explained that because the breaks already included the maximum advertising minutage permitted, they did not allow any flexibility for changes in timings of the live programme, creating further challenges for the producer in applying the correct break pattern.

Thirdly, the broadcaster stated that the rugby match included an unforeseen eight minutes worth of stoppage time which is highly unusual. The producer had only accounted for a reasonable stoppage allowance of three minutes. The broadcaster further explained that as a result, an extra eight minutes of programme time was required which had previously been unaccounted for.

The broadcaster stated that, on reflection, it was clear that at least one advertising break should have been dropped but, as a result of human error, this had not occurred leading to the subsequent minutage overrun.

¹ ITV said that the break patterns it provided to STV on this occasion were “not actually incorrect”. It acknowledged the “pattern was not perfect but it was compliant and not contested by the [STV] producer”. Further, ITV said it informed STV that “there would be 12 minutes of advertising minutage in the 1700 clock hour following the Rugby coverage”. It said that “arising from this incident, there is a clear opportunity for ITV to carry out further work with STV to advise, and to establish processes consistent with other sports producers”.

The broadcaster also explained that, following the incident, it had addressed the matter with the individual involved and had conducted an internal review of its procedures to prevent similar incidents from occurring.

Decision

Ofcom notes the complexities of the above case and the added pressures imposed on the producer due to the transmission of a live event. We further note that, as a result of this incident, STV had now taken further steps to ensure compliance with COSTA.

Ofcom also notes that in this case, minutage was transferred from one clock hour to another; STV did not transmit any extra minutes of advertising overall. Furthermore, STV did not breach the COSTA rules on how many minutes of advertising may be transmitted across the broadcast day.

However, we are concerned that STV had also exceeded its hourly minutage allowance on three previous occasions. These previous incidents occurred on 13 September 2009, 4 October 2009 and 17 December 2009. In relation to the incident on 4 October 2009, STV explained that it had not been informed of last minute changes by ITV to Network break patterns. This led to STV applying the wrong break patterns leading to an overrun in minutage. As a result of this incident, STV and ITV have worked together to improve their internal procedures in order to avoid further incidences.

Following the feedback submitted by the broadcaster in relation to the incidents on 13 September 2009 and 17 December 2009, Ofcom noted the steps STV had taken to improve their internal procedures to prevent further incidents from occurring. As a result of this improvement, Ofcom recorded both incidents as resolved.

Notwithstanding this, Ofcom considers that the 27 December 2009 incident was a significant breach, particularly as it followed assurances provided by STV, after the 13 September 2009 and 17 December 2009 incidents, that its internal procedures had been enhanced to prevent future overruns from occurring. Accordingly, we are recording a breach of Rule 4 of COSTA.

Ofcom may consider further regulatory action if this problem recurs.

Breach of Rule 4 of COSTA

In Breach

Bath Radio Ltd, Brunel FM Ltd, Three Towns Radio Ltd, Quay West Radio Ltd and BCR FM Ltd

August 2009 - present

Introduction

In August 2009, five companies each holding a licence to provide a local commercial radio service in a locality in the south west of England entered into administration, as did their common parent company, South West Radio Ltd ('SWR'). The affected licensees were:

- Bath Radio Ltd, the Bath licensee (broadcasting as Bath FM);
- BCR FM Ltd, the Bridgwater licensee (broadcasting as Quay West Radio);
- Brunel FM Ltd, the Swindon licensee (broadcasting as Brunel FM);
- Quay West Radio Ltd, the West Somerset licensee (broadcasting as Quay West Radio); and
- Three Towns Radio Ltd, the Warminster licensee (broadcasting as 3TR FM);

(together "the Licensees").

On 4 August and 12 August 2009 a common administrator for the Licensees and SWR was appointed to act on their behalf.

On 28 August 2009 Ofcom received a request from the administrator to transfer all five licences to Your Media Communications Group Ltd ("YMC"). This application was rejected by Ofcom on 30 November 2009.

August 2009 – 24 March 2010

We became aware that the prospective transferee of these licences, YMC, was involved in the day-to-day running of the services, and in particular in the production of individual programmes. This is permissible (and not unusual in circumstances where a licensee company is in administration), provided that the Licensee retains control of the relevant services. This is in accordance with Condition 2(1) in Part 2 of the Schedule to the licences, and section 362(2) of the Communications Act 2003. These state that:

Condition 2(1) in Part 2 of the Schedule to the licences:

"The Licensee shall provide the Licensed Services specified in the Annex for the licence period [...]."

Section 362(2) of the Communications Act 2003:

"...the person, and the only person, who is to be treated for the purposes of this Part as providing the service is the person with general control over which programmes and other services and facilities are comprised in the services (whether or not he has control of the content of individual programmes or of the broadcasting or distribution of the service)."

On 13 November 2010 Ofcom wrote to the administrator reminding him that it was important the arrangements he had in place with YMC were such that general control remained with the Licensees (under his administration). Ofcom drew the administrator's attention to Condition 2(1) in Part 2 of the Schedule to the licences

and Section 362(2) of the Communications Act 2003 (as set out above). The administrator subsequently made a second application to transfer the licences to YMC on 18 December 2009.

On a number of occasions towards the end of 2009 and start of 2010, Ofcom sought from the administrator details of the arrangements in place to ensure the Licensees retained the necessary control. These letters were not responded to and therefore on 10 February 2010 Ofcom made a formal 'Request for Information' regarding these matters. Also on that date, Ofcom rejected the administrator's second request for a transfer.

The administrator responded to the 'Request for Information' on 11 March 2010 confirming that, since selling the business and assets of the Licensees to YMC, he had retained:

"... **no control or influence** over the output or programming of any of the radio stations since 22 August 2009." [Ofcom emphasis]

He added that:

"... it is **YMC** who **has full control** over the output and programming of the radio stations." [Ofcom emphasis]

In the circumstances Ofcom wrote to the administrator for its formal comments under Condition 2(1) in Part 2 of the Schedule to the licences (and read in light of Section 362(2) of the 2003 Act), as they are set out above.

24 March 2010 - present

On the afternoon of 24 March 2010, the Licensees ceased broadcasting their licensed services. Accordingly, on 25 March 2010 Ofcom wrote to the administrator to ask how the Licensees had complied with the following two conditions in their licences relating to format delivery.

Condition 2(1) contained in Part 2 of the Schedule to the licences:

"The Licensee shall provide the Licensed Service specified in the Annex for the licence period and shall secure that the Licensed Service serves so much of the licensed area as is for the time being reasonably practicable."

Condition 2(4), contained in Part 2 of the Schedule to the licences:

"The Licensee shall ensure that the Licensed Service accords with the proposals set out in the Annex so as to maintain the character of the Licensed Service throughout the licence period."

Response

The administrator, on behalf of the Licensees, did not make any representations regarding any of the potential licence breaches.

Decision

In light of the statements made by the administrator in his letter of 11 March 2010 (as set out above), it is clear that the Licensees did not retain the required control of the licensed services from 22 August 2009 until 24 March 2010. It is therefore clear that the Licensees did not provide the Licensed Services in accordance with the licences, and so were accordingly in breach of Condition 2(1) in Part 2 of the Schedule to the

licences (read in light of Section 362(2) of the Communications Act 2003). Ofcom has therefore formally recorded such breaches by the Licensees.

It is important that the provider of the service, rather than any other person, holds the relevant broadcasting licence. This is because: (i) Ofcom needs to know who is providing a service because there are statutory rules relating to who is eligible to hold a broadcasting licence and (ii) because we need to know who, at any point in time, is responsible for the content of a broadcast service (Ofcom may need to investigate and, if appropriate, sanction any breaches of the Broadcasting Code or other Ofcom codes and requirements).

By ceasing to broadcast their respective licensed services from 24 March 2010, the Licensees were clearly in breach of the relevant licence conditions. Ofcom has therefore formally recorded these serious breaches against the five Licensees.

We also note that these breaches by the Licensees are continuing, as none has resumed broadcasting its licensed services since 24 March 2010. Provision by a Licensee of its licensed service is the fundamental purpose for which a local licence is granted. Ofcom has a range of duties in relation to radio broadcasting, including securing a range and diversity of local radio services which are calculated to appeal to a variety of tastes and interests, the provision of an appropriate degree of localness, and the optimal use of the radio spectrum. All of these matters find expression in, or are linked to, the licence condition requiring the provision of the specified licensed service. Where a licensed service is not being provided in accordance with the licence, none of the required localness is provided, to the potential harm of local listeners, and choice for listeners is reduced. A failure to provide a licensed service also fundamentally damages the integrity of the statutory licensing process more broadly, as the service will have been licensed on the basis that it caters for local tastes and interests and broadens choice for listeners. It will not be doing these things if it is not being provided. Finally, it is not an optimal use of the radio spectrum to have allocated frequencies unused, or not used for the purpose for which they have been allocated.

Ofcom is now considering the most appropriate next steps, including possible revocation of the licences. Since revocation requires a statutory sanction, Ofcom has formally notified the Licensees that we are considering these licence contraventions for statutory sanction in light of their seriousness and ongoing nature.

Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the Bath commercial radio licence by Bath Radio Ltd

Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the Swindon commercial radio licence by Brunel FM Ltd

Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the West Somerset commercial radio licence by Quay West Radio Ltd

Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the Bridgwater commercial radio licence by BCR FM Ltd

Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the Warminster commercial radio licence by Three Towns Radio Ltd

Fairness and Privacy Cases

Not Upheld

Complaint by The Auroville Foundation and the community of Auroville made on their behalf by The Working Committee of the Residents' Assembly of the Auroville Foundation through its authorised representative, Mr Carel B Thieme

Newsnight, BBC2, 21 May 2008

Summary: Ofcom has not upheld the complaint of unfair treatment made by Mr Thieme on behalf of The Auroville Foundation and the community of Auroville.

An item in this programme looked at Auroville, a town in southern India created as a spiritual experiment dedicated to the realisation of human unity. The programme reported on ongoing tensions between the community of Auroville and local villagers and, in particular, allegations by local villagers that their children were being sexually abused.

The Auroville Foundation and the community of Auroville ("the Complainants") complained that they were treated unfairly in the programme as broadcast.

In summary Ofcom found the following:

- The programme did not present allegations that there was a serious and widespread problem of child abuse in Auroville and that not enough was being done about it by the Auroville authorities in a way that was unfair to the Complainants.
- The context in which villagers' claims of exploitation and fear of the Complainants were presented in the programme did not result in the Complainants being unfairly portrayed in the programme.
- The programme did not portray the Complainants as an anarchic sect and as a result they were not treated unfairly in this respect.
- Minor inaccuracies as to population of Auroville and members' tax status did not result in unfairness to the Complainants.
- To the extent that misrepresentation or deception was employed to obtain broadcast material in this case, this was not unfair because its use was in the public interest.
- The Complainants were provided with an appropriate and timely opportunity to respond to the allegations made in the programme.

Introduction

On 21 May 2008, BBC2 broadcast an edition of *Newsnight*, which included a report about the town of Auroville in southern India, a town created as a spiritual experiment whose community is dedicated to the realisation of human unity. The town is administered by the Auroville Foundation, a statutory body set up by the Indian

Government, with input from the Residents' Assembly of Auroville (comprising all the residents of Auroville aged 18 years and over) via its Working Committee.

The programme explained that Auroville was set up as a community where *"people of all nations could live together in harmony with no money, no rules and no leaders"*.

The programme said that financial inequalities between Aurovilians and the local Tamil villagers had caused ongoing tensions between the Auroville Foundation and the community of Auroville ("the Complainants") and the villagers.

The programme said that many local people had alleged that the Complainants exploited them and reported that there had been allegations of sexual abuse of local children in and around the town of Auroville by both residents of, and tourists to, Auroville. The programme also reported allegations that the Complainants were aware sexual abuse was happening, but were doing little to address it. It noted that the Complainants said the allegations were unfounded.

The programme included footage of interviews with:

- Mr Raj Batra who had lived in Auroville as a guest for two years and who said he had spoken to people in Auroville about the abuse of local children by Aurovilians, but that they did not consider that was their problem.
- Mr N Nandhivarman, a local politician, who was concerned that not enough was being done about paedophiles by the local police or the Complainants.
- Anonymised villager, "Sundrun", who said he had been abused when he was younger and that the abuse of children was continuing.
- Anonymised villager, "Shiva", who said that children were being abused, particularly at the New Creation School in Auroville.
- Mr Ram Kumar Raj who worked for an NGO and who said that, in order to address the sexual abuse issue, the Auroville Foundation should scrutinise its guests and members more thoroughly.
- Mr Gilles Guigan, an Aurovillian, who explained that Auroville was trying to become an "ideal society", but that like any society it could only reflect the quality of its members.

The programme also referred to the case of Mr Didier Keim who was expelled from Auroville and who was subsequently convicted of paedophilia in nearby Pondicherry.

The programme also broadcast two extracts from the Complainants' intranet site. One was said to openly refer to worries of abuse at the New Creation School. The other was shown as a visual image alongside narrative stating that some Aurovilians had been told they could no longer work in India.

Ms Rachel Wright, the reporter, also said in the programme that a beach near Auroville was one where westerners went to pick up young Indian children, and that she had witnessed two separate men with two young Indian boys, one of whom had been taken to a beach hut.

Finally, the programme included an interview with, and photograph of, Mr Carel Thieme of the Working Committee of the Auroville Residents' Assembly (the "Working Committee").

The Working Committee first complained to the BBC's Editorial Complaints Unit on behalf of the Complainants that the programme as broadcast was unfair and inaccurate. The complaint was not upheld by the BBC and, in a complaint received on 13 January 2009, Mr Thieme complained to Ofcom on behalf of the Complainants that they had been treated unfairly in the programme as broadcast.

The Complaint

The Complainants' case

In summary, the Complainants said that they were treated unfairly in the programme as broadcast in that:

- a) They were unfairly portrayed because the programme:
 - i) Suggested wrongly and unfairly that paedophilia was "rampant" in Auroville and that nothing was being done about it, by:
 - Presenting the statements of Mr Raj Batra and Mr N Nandhivarman, the statements of anonymous villagers "Shiva" and "Sundrun" and the statements of Ms Rachel Wright ("the reporter") at the beach, as factual, credible evidence of child abuse and inaction by Aurovilians or guests in Auroville, despite the fact that:
 - with the exception of one allegation by "Sundrun", none of them claimed to have first-hand knowledge or evidence of child abuse by Aurovilians or guests in Auroville;
 - both Mr Batra, who was asked to leave Auroville in 2004, and local politician, Mr Nandhivarman, had a history of antipathy towards the Complainants;
 - "Shiva" had already provided an untenable and unreliable statement;
 - the reporter had no evidence that the men she saw on the beach were Aurovilians or guests in Auroville or that they were involved in child abuse; and
 - details of these allegations were not provided to the Complainants or the authorities to investigate.
 - Presenting statements made by Mr Gilles Guigan and Mr Ram Kumar Raj out of context so as to suggest they agreed Auroville had a problem with child abuse. In fact, Mr Guigan had been talking about ideal societies and Mr Raj, that the Complainants, like everyone else, had to take the universal problem of child abuse seriously.
 - Presenting two extracts from the Complainants' intranet out of context as evidence of child abuse problems in Auroville, when in fact the first extract was almost five years old and referred to past problems of child abuse.

The second, referring to a person's visa having "*been cancelled*", had nothing to do with child abuse in Auroville, but referred to a mentally unstable person seen wandering near Auroville in 2008.

- Inaccurately presenting the way in which Mr Didier Keim was dealt with by the Complainants, wrongly suggesting that after they said they had expelled Mr Keim in 1996, he was allowed to work with children in Auroville for another five years before he was finally arrested and subsequently sentenced for paedophilia in the nearby city of Pondicherry in 2004.
 - Asking if the Complainants were doing enough about "brazen" child abuse taking place at the public beach near Auroville, but omitting the Complainants' statement that there was zero tolerance by them for issues of child abuse.
- ii) Suggested wrongly and unfairly that the Complainants exploited the local Tamil villagers, that few ever become members of Auroville and that they feared reprisals from the Complainants if they spoke out.

By way of background, the Complainants said that they employed approximately 4,000 local villagers with salaries and employment benefits equal to or better than could be obtained in nearby Pondicherry for comparable work. The Complainants had set up seven schools for village children, made huge efforts to help the development of the surrounding villages and, after the Tsunami struck southern India, played a large part in the relief effort in the area. In addition, many local villagers aspired to become Aurovilians and they formed the single largest group in Auroville, representing more than 33% of residents. Finally, in the 40 years of Auroville's existence there had not been one instance of reprisal or retribution by an Aurovillian.

- iii) Suggested wrongly and unfairly that the Complainants were an anarchic sect, by stating that residents had to undergo a year's induction before becoming full members, that Aurovilians believed in "*divine anarchy*", with no rules and no leaders, that the Complainants had no leadership structure and that the Complainants had slipped beneath the radar.

By way of background, the Complainants said that they had no induction process, it was not a sect, although there was a Newcomer probationary period. There was no aspiration for no rules and no leaders. The Complainants had rules, such as their Admission Policy and a formal management structure set out in the Auroville Foundation Act, 1988 ("the Auroville Act") which created and constituted the Auroville Foundation, the Governing Board, the International Advisory Council, the Secretary, the Residents' Assembly and the Working Committee to develop Auroville in accordance with its ideals. The Secretary, an official of the Indian Government and permanent resident in Auroville, would have protested if the Complainants had "slipped beneath the radar".

- iv) Contained numerous other inaccuracies which contributed to their unfair portrayal, including suggestions that:
- 16,000 Tamil villagers lived in Auroville;
 - the Complainants were partly financed by the Indian Government; and

- Auroville's members paid no tax.

Furthermore, much of the footage broadcast was not of Auroville, but of surrounding farmland, villages and Pondicherry.

- b) The programme broadcast material obtained by deception, despite the fact that:
- i) There was no public interest in the broadcast of that material.
 - ii) The material could have been obtained by other means:
 - the Foreigners' Regional Registration Officer ("the RRO") could have informed the reporter about all the cases of paedophilia in Auroville in the last 15 years; and
 - the BBC was invited to visit Auroville prior to the broadcast to make a more thorough and objective investigation. The Working Committee offered to co-operate fully to ensure that the BBC had access to all possible sources of information.

By way of background, the Complainants said that the reporter obtained permission to visit and film in Auroville and to interview residents of Auroville on the pretext that, amongst other things, she wished to explain the philosophy and idealism of Auroville, how it had started and how it had developed in 40 years. In fact, she was planning to make a film on perceived child sexual abuse before she came to visit Auroville and she deceived the Complainants about the true nature of her visit.

- c) The Complainants were not given an appropriate and timely opportunity to respond to the allegations made in the programme as broadcast, in that:
- i) During the course of her interview with the principal of the New Creation School, the reporter did not provide the principal with an opportunity to respond to the allegations of child abuse at the school by putting those allegations to the principal.
 - ii) The reporter unfairly omitted to give the Auroville Foundation or any resident Aurovilian an opportunity to contribute or respond to the allegations while she was in Auroville. She neither contacted the resident Secretary of the Auroville Foundation nor the Working Committee.
 - iii) The BBC emailed the transcript of the intended programme to the Working Committee, but gave them less than 24 hours to respond. The Working Committee emailed the BBC with a long list of detailed comments however, instead of correcting everything, the BBC accepted some corrections and ignored many others, with the result that many damaging and seriously defamatory inaccuracies were broadcast in the programme that same evening.
 - iv) A short interview with Working Committee member, Mr Thieme, was included at the end of the programme with a static picture of him. It did not, therefore, have the same weight and was far less persuasive than if such response had been incorporated into the programme itself. By way of background, the Complainants said that it was only after strong protests from the Working

Committee that the BBC agreed to include an interview with a member of the Working Committee in the programme as broadcast. Furthermore, the BBC did not send the questions to Mr Thieme in advance, so he had no idea what to expect, and he had not been informed by the BBC what allegations had actually been broadcast in the programme and what had not. Finally, the time given to Mr Thieme's response was perhaps less than three minutes.

The BBC's case

- a) In summary, the BBC responded to the head of complaint that the Complainants were portrayed unfairly as follows:
- i) The BBC said it did not accept that the programme gave the impression that "rampant paedophilia" existed in Auroville, but rather that the programme suggested that there was a serious problem of child abuse involving some residents of Auroville which had not been effectively addressed by the Complainants. The BBC said that nowhere was the word "rampant", or anything synonymous with it, or even similar to it, actually used.

The BBC said it believed that there was a substantial array of witnesses offering testimony from a number of perspectives which tended to corroborate each other to provide a sufficient basis for the claim that allegations of abuse were not being effectively tackled by the Complainants.

The BBC said that the fact that only one of the witnesses was a direct victim of child abuse did not undermine the fact that other witnesses were aware of abuse or allegations of abuse and provided compelling support for the claim that the Complainants had failed to investigate such allegations seriously.

In any event, the BBC said that this was not the limit of the evidence gathered by the programme. The BBC said that the reporter had a number of conversations with other witnesses who corroborated the allegations being made, but who were not prepared to speak publicly. The BBC said that it was clear to the reporter that the concerns expressed by the anonymous villager in the programme were shared by other villagers and that there were other young people who claimed to have been sexually abused by Aurovilians. The BBC said that the reporter also became aware of what seemed to her to be a climate of fear which discouraged people from speaking out publicly, not least because of the financial dependence of many local people on the Complainants.

The BBC said it did not accept the Complainants' characterisation of the attitude of Mr Batra and Mr Nandhivarman towards them. The BBC said that in fact both had earned the enmity of the Complainants because they had highlighted the issue of child abuse by Auroville residents and had campaigned publicly for the Complainants to take the issue seriously and investigate allegations of abuse. The BBC said it could not be argued that their testimony in relation to this issue was unreliable when the "antipathy" which existed derived originally from the Complainants' failure to deal with abuse.

In relation to "Shiva's" "untenable and unreliable statement", the BBC said that this referred to a claim made by him in interview that one in five children at the New Creation School had been abused. The BBC said that this part of his contribution was included in an early programme script which was shown

to the Complainants, but was subsequently removed. The BBC said that, however, did not lead to the conclusion that he was therefore making up the basic allegation that such abuse was known to have taken place and was an unreliable witness.

In relation to what the reporter said she saw at the beach, the BBC said that the meaning of what she said was quite clear, that the beach was frequented both by Aurovilians and their families and by westerners who came to pick up young Indian children.

The BBC said that the programme did not say the men were Aurovillian, nor did it say the beach belonged to Auroville, simply that many members of and visitors to Auroville relaxed there, which the BBC said was undeniably true. The BBC said that the reporter also took photographs of the incident she described which showed an elderly, bald, tattooed white man with a young Indian boy disappearing into a wooden hut. The BBC said that she did not follow them into the hut to see what they were doing but when she asked local people what they thought was happening they replied, "boyfriends". The BBC said that it was quite plain that the intended meaning of the reporter's commentary there was that the men in question were likely to have been tourists, given that was the clear context being set up by the script at that point.

In relation to Mr Guigan, the BBC said that his remarks were framed before and after by commentary describing, in general terms, what might well be described as "the welfare and evolution" of Auroville which, as the Complainants said, was the basis of the interview he gave. The BBC said that there was no mention of child abuse to which Mr Guigan's comments were linked or proximate. The BBC said that it did not agree therefore that Mr Guigan's views were used out of context.

The BBC said that it did not accept that Mr Raj's comments were confined to general observations that the Complainants, like everybody else, had to take seriously the universal problem of child abuse. The BBC said that in unused parts of the interview which was conducted with Mr Raj, it was quite clear that he had specific concerns about Auroville. The BBC said that, having established his sphere of work, Mr Raj then went on to make clear that he had concerns about people staying at Auroville, even if they were not the sole focus of his concern.

In relation to the presentation of two extracts from the Complainants' intranet, the BBC said that the first extract complained of was from a posting written in 2003 by a resident who expressed serious concerns about a number of things, including child sexual abuse.

The BBC said that it did not believe that it counted against the evidential value of this document that it was posted in 2003. The BBC said that in her next posting, on the following day, the resident conceded that "Auroville has a reputation for paedophilia".

The BBC said that the second extract, where the words "*visa has been cancelled. He has...and deported*" were visible, referred to a relative of an Auroville resident who had been staying in the community and, the programme was told, abusing children. However, the BBC said that the individual was not identified, and what was recorded in the posting applied

equally to other Auroville residents. The BBC said that in correspondence with the reporter, the Complainants had conceded that two residents had their visas cancelled after being suspected by the authorities of child abuse. The BBC said that using the extract in this context gave rise to no unfairness.

In relation to Mr Keim, the BBC said that although it was not stated in the programme, the allegation that he continued to work with children in Auroville for a further five years was based upon the evidence of two of the witnesses identified in the programme, Mr Batra and Mr Nandhivarman, both of whom had been instrumental in having Mr Keim's case pursued by the police in Pondicherry. The BBC said that their testimony was corroborated by material posted on the Complainants' intranet site, after the broadcast, by an Auroville member who took particular issue with the account Mr Thieme gave to *Newsnight* about how the organisation had dealt with the case of Mr Keim. The BBC said that Mr Thieme's position on the programme was that Mr Keim had been at Auroville "*for no more than eight months before he was discovered out and kicked out of Auroville*" and the authorities informed. The BBC said that the Auroville member wrote:

"... This was not what I experienced when I was in New Creation around the time that Didier (a paedophile who is now in prison in India) arrived there and started looking after a group of young boys. He was only asked to leave when the complaints against him reached a number that could not be ignored by the then Entry and other Groups. As far as I remember he was in New Creation for considerably longer than the eight months mentioned by Carel in the film".

The BBC said that the author of the posting had told the BBC that she was persuaded to remove it from the Complainants' website on 25 May 2008, a few days after the broadcast of the programme.

In relation to the question posed in the programme about "brazen" child abuse, the BBC said that the Complainants' response to the allegations made in the programme was, by agreement with the Working Committee, made by Mr Thieme through a pre-recorded interview at the end of the programme. The BBC said that this was subject to only a very minor edit and that no material part of Mr Thieme's contribution was left out. The BBC said that there had never been a complaint from the Complainants about the way that the interview was edited. The BBC said that it was clear from the interview that the Complainants claimed that they did not tolerate child abuse.

- ii) The BBC said that the programme only used the word exploitation in the introduction and then it was used to describe the view of local Tamils.

The BBC said that it was clear that the tenor of the evidence which the reporter obtained whilst investigating the story supported the claim that many Tamils did believe that the Complainants were exploiting them.

The BBC said that during her investigation, the reporter was shown data which had been compiled internally and which showed the contrast between the numbers of Tamils from the local community who applied to become Aurovilians and the number who were admitted. The BBC said that the reporter also saw internal data which showed the length of time it would take for a local Tamil to complete the admission process – sometimes up to 15 years – and, by contrast, how a relatively wealthy European could complete

the process, sometimes within months. The BBC said that this material, however, was shown to the reporter on a confidential basis and it was unable to make it available. The BBC said that the reporter also spoke to three Indians who were members of Auroville who were quite happy to be interviewed (albeit anonymously) to testify how hard it was to join Auroville if you were a local Tamil.

The BBC said that the reporter could affirm that very many of the Tamils she spoke to gave the clear impression of being scared of upsetting the Complainants and that they explained that this was because their livelihoods often depended on the Complainants or because they felt vulnerable to acts of reprisal. The BBC said that one local villager had stated that the Complainants had put pressure on local people by “blackmailing them” to sell their land to them.

The BBC said that “Sundrun” corroborated the claim that people were scared. He stated in the programme:

“We depend on them for work. If these kind of stories come out there would be death threats from Aurovilians and we have no protection from them. There are lots of things that happen like this inside Auroville”.

The BBC said that the reporter also spent time with another witness who she asked for help and who agreed to accompany her in her car around Auroville. However, the BBC said that he was physically shaking during the whole experience and hid on the floor of the car when he saw Aurovilians. The BBC said that the reporter was left in no doubt that local Tamils were genuinely frightened of people from Auroville.

The BBC said that the Complainants did employ local people, but although this brought benefits to them, it also had the effect of making them vulnerable, and while they were paid better than workers in Pondicherry they still only received some £30 per month, which was substantially less than Aurovilians themselves received as a form of maintenance payment.

The BBC said that the programme acknowledged the contribution that the Complainants had made to the surrounding community and referred specifically to work done to provide relief after the Tsunami.

The BBC said that it did not believe it was accurate to say that the local Tamil population constituted 33% of Auroville residents. The BBC said it understood that the figure actually represented the total number of Indian members of Auroville, many of whom were from other areas of the country and were significantly richer and more educated than the local Tamil population. The BBC said that it was right to say that many of the local Tamils aspired to become members, but the BBC said that it was extremely hard for them to do so, not least because they were expected to have funds of their own in order to join.

- iii) The BBC said that the programme did not use the phrase “anarchic sect” or anything resembling it. The BBC said it believed that reference to a period of “*induction*” carried no adverse implication whatsoever and certainly did not suggest that the community was an “anarchic sect”. The BBC said that it was common to refer to the process whereby an individual was introduced into a new job, for instance, as “induction”.

The BBC said that reference to “*divine anarchy*” derived from a quote on the Complainants’ own website attributed to Mirra Alfassa (known to Aurovilians as “The Mother”) who founded the community. The BBC said that The Mother went on to spell out that “the ideal” was a situation “without fixed rules and laws”. This, the BBC said it believed, was perfectly consistent with the comment made in the programme that the Complainants aspired to “*no rules, no leader*”. The BBC said that it believed that, regardless of the organisational structures in place in Auroville, there was no doubt that it aspired ultimately to the ideal which was expressed by its own founder. The BBC said that it did not believe that it was unfair to represent the community as aspiring to that particular ideal.

- iv) The BBC said that the complaint did not set out why the minor alleged inaccuracies gave rise to unfairness. The BBC said it did not accept that any of them represented genuine inaccuracies and said it believed that they had all been disposed of in the BBC’s response to the Working Committee’s complaint to the BBC’s Editorial Complaints Unit.

- b) In summary, the BBC responded to the complaint that the programme broadcast material obtained by deception as follows:

The BBC said that the only material obtained by deception was a very limited amount of background information supplied by the Complainants. The BBC said that the material upon which the allegations of child abuse and the Complainants’ inadequate response to this were based, was obtained openly and all material used was used with the informed consent of those who had provided it.

The BBC said that when the reporter approached the Complainants she told them that she was working on a general report about Auroville because at that stage she was hoping to be able to film within the community and she took the view that this would have been rendered less likely if she had disclosed that she was investigating allegations of paedophilia. The BBC said that at that stage, the programme makers had to consider the possibility that early disclosure of the nature of the allegations might have resulted in a lack of co-operation from the Complainants or even measures being taken to thwart the investigation. The BBC said that it believed that, given the public interest in the allegations being investigated, the programme was entitled to protect its investigation by exercising prudence at that stage and that the level of deception was justified in those terms.

However, the BBC said that it was never its intention to withhold from the Complainants the actual focus of the investigation to the extent that the community would have been denied a sufficient right of reply to the allegations. The BBC said that the deception at the early stage was intended solely to facilitate the preparation of the programme.

The BBC said it believed that the subject matter of the programme – child abuse within the community and the inadequacies in the community’s response which may have left children at serious risk – was self-evidently in the public interest and the relatively minor degree of deception involved in bringing the story to public attention was justified.

- c) In summary, the BBC responded to the complaint that the Complainants had not been provided with a sufficient right of reply as follows:

The BBC said that there was no requirement in Ofcom's Broadcasting Code that allegations should be put at the earliest opportunity or during filming. The BBC said that it believed that the Complainants were given more than sufficient notice of the allegations being investigated to allow them to provide a considered response, as evidenced by email correspondence between the BBC and the Complainants and the BBC's extended efforts to accommodate an interview with a representative of the Complainants. The BBC said that the fact that, closer to transmission, the Complainants were also provided with a script and copy of the programme, underlined the BBC's commitment to provide a sufficient right of reply to what were very serious allegations.

The BBC said that the email correspondence between the BBC and the Complainants made clear that the allegations were put clearly to the Complainants well before transmission of the programme and that the BBC made strenuous efforts to accommodate an interview with a representative of the Complainants in the programme.

The BBC said that the first email from the reporter setting out the allegations which were being investigated was sent on 24 April 2008, nearly a month before the programme was broadcast. The BBC said that there followed an exchange of emails over the next three weeks where further requests for responses were made and information was provided by the Complainants. The BBC said that the reporter had asked in the first email for an interview with Dr Karan Singh, the Chairman of the Auroville Foundation. However, this invitation was declined.

The BBC said that it was not true that it was only after strong protests from the Working Committee that the BBC agreed to conduct an interview. The BBC said that, during further discussions on 19 May 2008, it became clear that the Complainants were now interested in providing someone for interview for the programme, but that there appeared to have been internal confusion between Auroville's Outreach Media¹, the Working Committee and the International Board as to who would be dealing with the matter. At that stage, therefore, the BBC said that efforts resumed to try to provide facilities for a studio interview for *Newsnight*. On the morning of 20 May 2008, the BBC said that the script of the programme was sent to the Complainants and they replied with comments the following day. The BBC said that on the basis of the Complainants' reply some minor amendments were made to the script. The BBC said that a recording of the programme was sent to the Complainants by email prior to transmission.

The BBC said that it became evident by the afternoon of 21 May 2008 that a studio interview would not be logistically possible, and so alternative arrangements were made to interview Mr Thieme by Skype for inclusion at the end of the programme. The BBC said that the interview covered the central issues in the programme: whether there was evidence for the allegations being made; the credibility of the witnesses; and the steps that the Complainants had taken to deal with allegations or suspicions of child abuse as they arose. The BBC said that Mr Thieme responded at length to the questions put by Mr Jeremy Paxman.

The BBC said that given all of this, it could not agree that the Complainants were not given a sufficient right of reply. The BBC said that the main allegations were put to the Complainants well in advance of transmission, and the specific form in

¹ The Auroville department set up to look after the logistics of visiting journalists.

which the allegations would be made was clarified in the script and recording which were provided to the Complainants before transmission and before the interview with Mr Thieme. The BBC said that it acknowledged that a studio interview would have been preferable to a telephone interview via Skype and that it used its best endeavours to arrange that but, because of the Complainants' own internal confusion, it was left with insufficient time to do so. Nevertheless, the BBC said that the interview which took place provided sufficient opportunity for Mr Thieme to respond fully to the allegations contained in the programme.

The BBC's Supplementary Statement

As it appeared to Ofcom that there may be a fundamental misunderstanding between the parties about what the terms "Auroville" and "Aurovilian" covered, Ofcom asked the BBC to set out what it believed the definitions of Auroville and Aurovilians were. Were they a limited area with 2,000 residents over which the Complainants could exert some control, as the Complainants said, or a wider area and a wider group of people?

The definition of Auroville

The BBC said that the geographical definition of Auroville was a matter where the formal, legal position and the practical reality were not the same. The BBC said that the formal delineation of Auroville only began with the Auroville Act, which imposed a duty to provide a "Master Plan" for the Auroville project which would create a geographical definition.

The BBC said that the Master Plan on the Complainants' website showed that the population of Auroville exceeded by a considerable margin the 2,000 claimed by the Complainants, which referred only to Auroville residents – i.e. those that had been accepted into membership of the Auroville project. The BBC said that the Auroville boundaries had subsumed local villages whose residents did not fall into this category. The BBC said that a total of six villages were included in the central Auroville area, where some 8,000 local people lived.

The BBC said that Auroville had proceeded to extend its limits by purchasing additional land, some of which was contiguous with the original area, and some of which was not. Locally, because of this growth, the BBC said that the area considered to be "Auroville" was much wider than the more narrowly-defined area over which the Complainants said they had jurisdiction, and the postal address "Auroville" was used to cover an area even wider than the land owned by Auroville.

The BBC said that it was misleading to argue that the definition of Auroville's limits should be confined to the central area. The BBC said that it believed that a broader, less legalistic understanding of the geographical limits of Auroville conformed more to the practical reality and that no unfairness necessarily attached to those parts of the programme complained of where that broader definition informed the allegations being made.

Auroville Beach

The BBC said that the issue of jurisdiction over Auroville beach did not rest upon determining legal ownership or whether it fell within a particular definition of Auroville. The BBC said that it believed that, while it was unarguably the case that the beach was publicly owned and not legally owned by Auroville, the Complainants were being disingenuous when they claimed that they had no jurisdiction over it. The BBC said

the facts were that though they did not own it, the Complainants had a proprietary attitude towards the beach in question (situated in front of the Repos restaurant, which was owned by Auroville), and treated it as their own.

The BBC said that it was on the section of beach controlled, if not owned, by Auroville, that the reporter observed a man taking a young boy into nearby huts. The BBC said that it was not clear whether the huts were on public land or the Repos land belonging to Auroville, but the man was observed with the boy on the section of beach to which the BBC said that the Complainants attempted to control access. The BBC said that a second European man with a very young local boy accompanying him was seen leaving the beach by the Repos exit, suggesting that he was highly likely to have been an Auroville member or guest.

The BBC said that it did not believe therefore, that the fact that Auroville did not legally own the beach rendered the programme's report of what was seen there unfair.

Mr Keim

The BBC referred to a copy of a note which it said was provided by the Auroville Entry Group (which regulated the admission of Newcomers to Auroville) to Mr Batra in 2004. The BBC said that the note was provided to Mr Batra at a time when the Secretary of Auroville had instructed Working Committee members to co-operate with Mr Batra in investigating the matter of Mr Keim.

The BBC said that the note, which the BBC said was drawn from the Entry Group's file on Mr Keim, revealed that:

- Evidence of his activities with children first came to light between April and September 1996, yet Mr Keim was granted a further visa extension (supported by the Auroville Visa Service) in September 1996.
- Despite what was known about him, Mr Keim's "Newcomer process" was not terminated until April 1997. The BBC said that during that time he was allowed to carry on living in central Auroville, where children were put at risk by his presence.
- Had the authorities been informed when the allegations first came to light, it was inconceivable that Mr Keim would have been granted a visa extension in September 1996. The BBC said that despite the Complainants' claim that they "informed the RRO" in September 1996, there was actually no record in the Auroville note that this happened, then or later.

The BBC said that it did not dispute that Mr Keim lived in Pondicherry after he was asked to leave Auroville. However, the BBC said that he was able to freely visit Auroville without any efforts being made by the Complainants to exclude him and frequently did so.

The BBC said that it acknowledged that the facts did not conclusively demonstrate that Mr Keim continued to have contact with children in Auroville, as stated in the programme. However, the BBC said that it did not believe that any unfairness arose from that, as it was immaterial whether the children whom he had continued contact with were in Auroville or not.

The Complainants' comments on the BBC's case

In summary, the Complainants responded to the BBC's comments in relation to the head of complaint that the Complainants were portrayed unfairly as follows:

i) Rampant child abuse

In response to the BBC's statement that the word "rampant" did not appear in the programme, the Complainants said that a programme could not be judged only by the exact words that were used in it and that what mattered was what the viewers took home.

- The Complainants said that Mr Batra was not excluded from Auroville because he tried to have the matter of child abuse addressed. They said that he had never contacted them on the matter of perceived child sexual abuse, nor had he ever campaigned publicly for the Complainants to take the issue seriously and investigate allegations.

The Complainants said that Mr Batra had not been involved in the case of Mr Keim which was dealt with by them in 1996/1997, long before Mr Batra came to Auroville as a guest. Nor was he involved in a case dealt with by the Complainants in October/November 2004.

- The Complainants said that Mr Nandhivarman had never contacted them on the matter of perceived child sexual abuse and that he only started his attacks on the Complainants in 2008 after the BBC broadcast the programme on Auroville.
- The Complainants said that they believed that the witness Shiva was unreliable and was trying to "satisfy" the reporter. The Complainants said that another primary school existed a stones-throw from New Creation School where parents could have moved their children if they had had concerns.
- The Complainants said that they did not accept the reporter's statements that other witnesses had corroborated the allegations made.

The Complainants said that in relation to what went on at the beach, they considered that the opinions of local people on what they thought was happening were irrelevant.

The Complainants said that from the points made in the BBC's statement, they concluded that the BBC's allegation that there was a "serious problem of child abuse in Auroville involving some residents of Auroville" was incorrect.

The Complainants said that the BBC had not proven there was a serious problem of child abuse in Auroville which had not been effectively addressed by the Complainants. The Complainants said that over the last 15 years they had responsibly dealt with five cases of alleged or proven paedophilia. For a community of now 2,000 people that attracted thousands of guests a year, they considered that the figure did not amount to a serious problem of child abuse.

In relation to the first intranet extract, the Complainants said that the BBC omitted to refer to the opinions of other Aurovilians on the statement, e.g. of one who responded that "The petition has no substance at all and adds to a depressing

chain of rumours...” or of another who wrote “I hope that you have the correct evidence to back up your assertions”. The Complainants asked why was the opinion of one single resident of Auroville regarded by the BBC as the truth, while the comments on his posting by fellow residents were ignored.

The Complainants said they disagreed with the BBC’s statement about the second intranet posting. They said that the posting was taken from a report of the Auroville Security Service. The individual was fully identified in that report and was, as far as the Complainants were aware, never involved with paedophilia but was roaming the area in a mentally unstable state.

The Complainants said they objected to the BBC’s statement that “what was recorded in the posting applied equally to other Auroville residents”. The Complainants said that the BBC had misread an email from Outreach Media and that no allegations of child abuse had been made against one resident and that the other had been the subject of false allegations investigated and determined to be unfounded by the Complainants.

In relation to Mr Keim, the Complainants pointed out that the case of Mr Keim was more than 12 years old (more than 11 years when the reporter made the programme).

The Complainants said that the BBC’s statement that “Keim was allowed to work in Auroville for another five years after he was expelled” implied that Mr Keim would have travelled the (dangerous) road from Pondicherry to Auroville for a period of five years i.e. from 1997-2002, to teach at a place he was expelled from. The Complainants said that defied all logic.

The Complainants said in relation to the length of time Mr Keim was in Auroville, in fact Mr Keim joined Auroville on 14 December 1995, when he was granted Newcomer status, that status was revoked in September 1996, i.e. a few days more than the eight months Mr Thieme mentioned in the programme. The Complainants said that the observation by the Aurovilian that Mr Keim stayed longer was basically correct, in that Mr Keim, after attempts to come to an agreement with him were unsuccessful, only left Auroville in April 1997.

However, the Complainants said that the Aurovilian had not corroborated the statements of Mr Batra and Mr Nandhivarman that Mr Keim was allowed to work in Auroville for another five years after he was expelled.

- ii) The Complainants said that they did not believe that the reporter obtained evidence to support the claim that “*many local people say the place [Auroville] exploits them*”.

In relation to the number of Tamil villagers joining Auroville, the Complainants said that one of the conditions for living in Auroville was that people had to find a place to live. In the last 10 years, this had become a serious problem.

The Complainants said that many people from the local villages lacked the financial means to contribute to building an apartment and the Complainants did not have the means to offer many apartments “for free”. That was one of the reasons why the Complainants had been hesitant to admit people from the surrounding villages in recent years.

The Complainants said that another reason was that the Entry Group had often questioned the motivation of many people from the villages wanting to join Auroville, as quite a few had no other objective than to increase their material prosperity and status. The Complainants said that the Entry Group included Tamil Aurovilians, who often hailed from the same villages as the people who wished to join.

The Complainants said that they did not maintain separate statistics of where Indian Aurovilians come from, however by July 2009 Auroville had 2,120 residents, of which 904 were Indians. The Complainants said that a reliable estimate showed that of those 904 Indians, about 700 were Tamils, showing a preponderance of Tamil Aurovilians in the Auroville population.

Referring to the interview with the anonymous villager, the Complainants said that it was quite reasonable to request the villager to sell the land to them if the land was located in the city or greenbelt area marked in the Master Plan of the future city if the villager was planning to sell the land.

The Complainants said that it was illogical to even assume that they would take a villager to court if s/he didn't want to sell land to them. The Complainants had no legal grounds to acquire the land mentioned in the Master Plan. The Master Plan had no legal power whatsoever, it was just a plan, and the Complainants would not stand any chance of success in court.

- iii) The Complainants said that the programme gave the impression that they were an anarchic sect and that this was communicated to the BBC by many people.

The Complainants said that the BBC had ignored the condition that their original founder, The Mother, had made to achieving divine anarchy, namely that people need to be conscious of their psychic being and guided by it and that the ego's authority and influence must disappear. Only under those conditions was divine anarchy a possibility.

- iv) The Complainants said that they considered the number of inaccuracies in the programme was so large that it justified the use of the word unfairness. They also considered it was unfair for the BBC to have broadcast the programme without correcting many inaccuracies and mistakes that had been pointed out by the Complainants.

- c) In summary, the Complainants responded to the BBC's statement about no appropriate opportunity to respond as follows:

The Complainants said that the time given to the Working Committee to comment on the transcript – less than 24 hours – was not sufficient.

The Complainants said that they did not agree that the reporter was open about the allegations a month before the programme was broadcast. They said that it was only after the reporter was back in England, on 24 April 2008, less than a month before the broadcast, that she first requested Outreach Media to respond to allegations of paedophilia in Auroville and that the Complainants didn't scrutinise their members or their visitors. The Complainants said that the reporter was simply asking for more information, which she was given by Outreach Media. There was no statement such as "I have decided to make a programme on paedophilia in Auroville" and it was only during the correspondence that the

Outreach Media team started to get an inkling that the reporter had deceived them about the true purpose of her programme.

The Complainants said that they did not agree that there was any internal confusion. The issue was that most members of the Working Committee were on holiday or were going on holiday when the issue came to a head.

The Complainants' comments on the BBC's supplementary statement

In summary, the Complainants responded to the BBC's supplementary statement as follows:

Definition of Auroville

The Complainants said that the BBC's submission that the inclusion of the villages in the Master Plan showed that the population of Auroville exceeded by a considerable margin the 2,000 claimed by the Complainants was a misunderstanding of the situation. The Complainants said that the villagers lived their own lives on their own land and in their own houses, which had never been part of or relatable to Auroville as defined in the Auroville Act. Furthermore, the Complainants said that the Auroville Act specified that a resident was to be registered in the Register of Residents maintained by the Secretary of the Auroville Foundation. The Complainants said that none of the villagers living in the villages mentioned in the Master Plan were registered in the Register of Residents, except those who had made the decision to join Auroville and had been admitted as residents.

The Complainants said that Auroville did not own anywhere near all the land specified in the Master Plan. As much as 176 acres in the actual city area and approximately 2,000 acres in the encircling greenbelt area was owned by people from the surrounding villages.

The Complainants said that it was incorrect for the BBC to say that access to privately-owned land could only be obtained via land owned by Auroville. The Complainants said that villagers had normal access to their land and that most roads in the Auroville area were public and did not belong to Auroville.

The Complainants said that they could only account for what happened on the land and in the houses owned by them. They said that they had no control over, and nothing to say about what happened inside the villages, on village-owned land, on Government-owned land or on any public beach or road.

The "Auroville" beach

The Complainants said that Repos was a piece of land owned by Auroville which was located adjacent to the beach and was inhabited by residents of Auroville. They said it offered limited facilities to Aurovilians and Auroville guests on their way to and from the beach and that security guards posted near the Repos entrance gates checked if people were Aurovilians or guests of Auroville.

The Complainants said that as hooliganism was on the increase, and as certain Indian men liked to harass foreign women dressed in beachwear, it had become necessary to install a guard on the beach. The Complainants said that such measures did not in any way imply that they controlled the beach.

The Complainants said that non-Aurovilians and non-Auroville guests could walk around the perimeter of Repos (two minutes) to access the same stretch of beach in front of Repos or go to other parts of the beach. The Complainants had no authority to prevent anybody from using the beach in front of Repos, and as the BBC said, that often happened.

The Complainants said that as they did not have a proprietary attitude towards the beach, the BBC's suggestion that that attitude made the Complainants accountable for what happened on the beach was wrong.

Mr Keim

The Complainants said that they had not found in the files of the Working Committee or in the files of the Secretary of the Auroville Foundation any instruction from the Secretary to the Working Committee to co-operate with Mr Batra in this matter. In addition, they said that the note provided by the BBC was at certain points incorrect and did not contain full data. The Complainants therefore questioned whether Mr Batra had received the note from the Entry Group in 2004.

The Complainants said that the BBC had drawn conclusions from the note that were not borne out by the contents of the note. The Complainants said that the note did not show any evidence that Mr Keim's activities with children came to light between April and September 1996, it only stated that Mr Keim was granted Newcomer status on 14 December 1995 and that a six month extension letter was issued to the Indian High Commission in Sri Lanka in April 1996. The Complainants said that Mr Keim had arrived in India on a one year visa valid until 26 October 1996 and, in accordance with the then current regulations of the Government of India, the Visa Service of Auroville issued recommendations for a visa extension six months before the expiry of the visa. In the case of Mr Keim, that was April 1996.

The Complainants said that the note wrongly stated that Mr Keim's visa extension was refused in September 1996. His visa extension was granted until 25 April 1997 and in September 1996, Mr Keim's Newcomer process was terminated.

The Complainants said that attempts were made to come to an agreement with Mr Keim about his attitude to children. Pending the discussions, the Visa Service of Auroville issued, in October 1996, a second letter of recommendation for another six month extension (again six months before the expiry of the visa). The Complainants said that the attempts to come to an agreement with Mr Keim failed and the note specified the reasons why. Mr Keim left Auroville on 8 April 1997 and this was communicated by the Entry Group to the Secretary of the Auroville Foundation and to the RRO one day later. However, the Complainants said that Mr Keim's second visa extension had been granted in the meantime until 25 October 1997.

The Complainants said that they were not aware why the Pondicherry authorities did not take action against Mr Keim, or how Mr Keim managed to continue living in India for many years after the Indian authorities were informed that he had left Auroville.

The Complainants also noted that in the BBC's supplementary statement it blamed them for Mr Keim travelling through Auroville after he had been expelled. The Complainants said that since most of the roads that passed through Auroville were public and Auroville had no fence around it, it was possible that Mr Keim had travelled through or around Auroville at some point in time after he was expelled. The Complainants said that in their files was a note from a former Secretary to the Auroville Foundation to the RRO dated 20 September 1999, which stated:

“Dear Sir,

This is regarding the case of Mr Didier Keim, French national, who left Auroville on 08-04-1997. We have learned that this individual is still staying in the vicinity of Auroville. His presence is not desirable as he is suspected to be a paedophile. We have received reports from the Visitors’ Centre of Auroville that he was seen in this area with some local children. We request you to take urgent steps that such persons are not allowed to stay in and around Auroville / India and he may not be given visa to enter India again after he is deported”.

The Complainants said that the letter was clear evidence that they did pursue efforts to get Mr Keim evicted from India long after he had already been expelled from Auroville.

BBC’s response to the Complainants’ comments on the BBC’s case

In summary, the BBC responded to the Complainants’ comments as follows:

Rampant child abuse

The BBC said that it had nothing further to add to its statement in relation to this point.

- The BBC said that Mr Batra denied the claims made by the Complainants. The BBC said that when Mr Batra was declared *persona non grata* by the Complainants in December 2004 the reason given was indeed that stated by the Complainants. However, Mr Batra believed that was merely a pretext to remove him after he had assisted an individual in a legal action against an Auroville member and had raised issues of child abuse which the Complainants were reluctant to acknowledge and deal with.
- The BBC said that it was plain from the fact that Mr Nandhivarman was a source of information and contacts for the reporter that his concerns about child abuse at Auroville must have predated the broadcast of the programme, as indeed they did. The BBC said that the fact that he had not been writing a public blog on the issue did not mean that he did not have serious concerns. The BBC also said that the fact that Mr Nandhivarman was publicly criticising the Complainants did not undermine his status as a witness, given that the testimony which he provided to the programme was corroborated by other witnesses.
- In relation to Mr Keim, the BBC said that it believed that the case of Mr Keim clearly demonstrated that the Complainants’ approach to dealing with allegations of child abuse had been open to criticism, and had placed children at risk. The BBC said that it had now obtained, from the criminal court in Pondicherry, copies of documents gathered during the police investigation into the case of Mr Keim in 2002. From those documents, the BBC said that it became clear that the Complainants’ response to Mr Keim’s case had, at every significant stage, been wholly inadequate.

On the issue of whether Mr Keim continued to have access to children in Auroville for a further five years, the BBC said it had nothing to add to except to reiterate its belief, which was strengthened by the documentation from the court, that the Complainants’ behaviour was so irresponsible and reckless that no

material unfairness arose from any discrepancy in the time periods during which Mr Keim continued to be allowed to pose a risk to children in Auroville.

The Complainants' final response in respect of Mr Keim only

In summary the Complainants responded to the BBC's comments in relation to Mr Keim as follows:

The Complainants said that the BBC had not provided any evidence and therefore had no justification for its innuendo that they handled any other cases of alleged paedophilia in the same way as the BBC believed the Complainants handled Mr Keim's case.

The Complainants noted that the BBC had acknowledged that the "*five years*" statement in relation to Mr Keim was incorrect.

The Complainants said that the BBC's allegations about Mr Keim had made it necessary to do a complete investigation into the files of the Auroville Residents' Service, the Entry Group, the Auroville Archives and the Auroville Foundation.

The Complainants provided a chronology of Mr Keim's stay in Auroville and each point of the chronology was supported by a document.

The Complainants said that the chronology showed that Mr Keim first came to Auroville as a tourist on 1 December 1994 and that he did not leave Auroville because of allegations of paedophilia. The Complainants said that nowhere in the files could the words paedophilia or child sexual abuse be found. The Complainants said that Mr Keim left because he failed to honour an agreement reached between him, the Entry Group and an ad-hoc group.

The Complainants said that only in a letter of 20 September 1999 from the Secretary of the Auroville Foundation to the RRO, was there reference to rumoured paedophile activities of Mr Keim. Complaining about the presence of Mr Keim in the vicinity of Auroville, stating that "his presence is not desirable as he is suspected to be a paedophile", the Secretary asked the RRO to take urgent steps to see that such persons were not allowed to stay in and around Auroville/India and that he may not be given a visa to enter India again after he was deported. The Complainants said that the letter was written two years and five months after Mr Keim left Auroville on 8 April 1997.

The BBC's final response in respect of Mr Keim

In summary, the BBC responded to the Complainants' comments in relation to Mr Keim as follows:

In response to the Complainants' statement that the BBC was not justified in suggesting that the Complainants handled any other cases in the same way as Mr Keim's case because it had provided no evidence for the existence of other cases, the BBC attached a statement from a former teacher at the New Creation School, who described how the Complainants responded when she raised concerns of "highly inappropriate" behaviour by a teacher at the school. The BBC said it believed that the statement spoke for itself.

The case of Mr Keim

The BBC said that the Complainants' latest claims in respect of Mr Keim's case were astonishing. The BBC said that it followed, that the Complainants could not claim to have been unfairly treated by the programme where allegations made by the programme relied upon what was presented as fact by the Complainants themselves.

The BBC said that in response, the Complainants now claimed that they couldn't have taken any other action because they did not, after all, have any idea that he was abusing children. The BBC said that it believed that this argument was wholly specious.

The Complainants' final response in respect of the former teacher only

In response to the statement of the former teacher, the Complainants attached five statements which they said showed that her statement, as evidence of other cases, could not be sustained.

Decision

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

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

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

- a)i) Ofcom first considered the complaint that the Complainants were unfairly portrayed because the programme wrongly and unfairly suggested that paedophilia was "rampant" in Auroville and that "nothing" was being done about it.

Ofcom considered whether the programme makers' actions ensured that the programme as broadcast avoided unjust or unfair treatment of the Complainants, as set out in Rule 7.1 of the Ofcom Broadcasting Code ("the Code"). In particular, Ofcom considered whether the programme makers took reasonable care to satisfy themselves that material facts were not presented, disregarded or omitted in a way that was unfair to the Complainants (as outlined in Practice 7.9 of the Code).

Ofcom noted that the BBC accepted that the programme had suggested that there was a serious problem of child abuse involving some residents of Auroville which had not been effectively addressed by the Complainants, but that it did not accept that the programme suggested paedophilia was "rampant" in Auroville or that "nothing" was being done about it.

Having viewed the programme as broadcast, Ofcom considered that “rampant” was too strong a characterisation of the allegations of child abuse reported by the programme. In Ofcom’s view, the programme presented allegations that there was a serious and widespread problem of child abuse in Auroville. In addition, Ofcom considered that the suggestion that “nothing” was being done by the Complainants about child abuse in Auroville was not made by the programme. Instead, Ofcom considered that the allegations presented in the programme were that the Complainants’ response to the issue of child abuse in Auroville was ineffective and inadequate.

Ofcom noted that these were relatively fine distinctions, that the allegations presented were of a serious nature and that the BBC did not seek to rely solely on the precise wording of the complaint, but instead presented evidence addressing the issue of paedophilia and the Complainants’ response to it.

Ofcom therefore proceeded to consider whether the Complainants were unfairly portrayed because the programme suggested that child abuse was a serious and widespread problem in Auroville and that the Complainants’ response to it was ineffective and inadequate.

The parties submitted a substantial amount of material to Ofcom including material gathered after the broadcast of the programme. It should be noted, however, that Ofcom’s role was not to establish whether child abuse was in fact a serious and widespread problem in Auroville or whether the response to it by the Complainants was ineffective and inadequate. Ofcom’s role was to determine whether, in broadcasting the allegations, the programme makers took reasonable care not to present, disregard or omit material facts in a way that was unfair to the Complainants.

The Code recognises the freedom of broadcasters to broadcast matters of genuine public interest and seeks to ensure that, in presenting serious allegations, they take reasonable care not to do so in a way that causes unfairness to individuals or organisations. In this case, Ofcom recognised that it was in the public interest to report on allegations such as those covered by the programme, but that this needed to be consistent with the requirement of fairness and other requirements of the Code.

The programme presented a number of allegations regarding the Complainants and items of evidence, including statements from individuals and extracts from the Complainants’ intranet. The Complainants’ rejection of the allegations was noted at certain points in the report itself and more comprehensively in the broadcast interview by Mr Jeremy Paxman of Mr Carel Thieme at the end of the report.

The key items of evidence and the manner in which they were presented are set out below:

Interview with Mr Raj Batra

In summary, Mr Batra, a former guest in Auroville, said in the programme that after villagers complained to him about allegations of child abuse by Aurovilians and visiting tourists he had spoken to people in Auroville about it and had been asked whether the allegations concerned the children of villagers or of Aurovilians. Given it was the former, Mr Batra said they said “*then it’s nothing to do with us*”. He also noted that Auroville was “*the kind of environment in which*

every parasite is going to turn up and get away with a hell of a lot of abuse and exploitation” and was in an underdeveloped part of India with weak institutions, with the clear implication that the Complainants were not fulfilling their obligations in that context.

The Complainants stated that Mr Batra had a grudge against them and also stated in their response to the BBC after receipt of the proposed transcript of the programme that Mr Batra was asked to leave Auroville for making false representations about his passport and background and due to complaints about “anti-social and destructive behaviour”. The BBC stated that Mr Batra considered this to have been a pretext and that he believed the real reason for his removal related to his complaints about child abuse in the community.

Ofcom noted that Mr Batra and the Complainants disagreed about the reasons for his departure from Auroville and the motives for his statements in the programme. However, the fact that there was a dispute about Mr Batra’s motives, was not in itself necessarily a reason not to include his allegations.

Mr Thieme in his interview at the end of the report made it clear that the Complainants disputed the substance of Mr Batra’s allegations. He stated:

“I do not accept the statements which have been made in the ... transcript which we were shown this morning ... I think that the script was full of inaccuracies, innuendos and accusations without being substantiated in any way”.

“Well the question is why ... any of those witnesses haven’t come to any of the relevant authorities ... None of them have ever bothered to complain, so what’s the value of these kind of witnesses?”.

Ofcom noted that the reporter’s comment that *“He [Mr Batra] left [Auroville] after villagers complained to him about child abuse from Aurovilians and also visiting tourists”*, took at face value the reasons given by Mr Batra for his leaving Auroville, even though the Complainants’ response to the script made it clear those reasons were disputed.

Ofcom considered that there could have been merit in the BBC including a statement in the programme that the Complainants disputed not just the substance of Mr Batra’s allegations but also his motives for making them. However, Ofcom considered, given that it was clear from the programme that Mr Batra had left Auroville and was now making serious allegations about the Complainants, viewers would have been in a position to decide what weight to attach to Mr Batra’s contributions to the programme. As a result, Ofcom did not consider that the absence of a qualifying statement in the circumstances of the programme as a whole meant that the broadcaster had presented, disregarded or omitted material facts in relation to Mr Batra’s statements in a way that was unfair to the Complainants.

Interview with Mr N Nandhivarman

In summary, Mr Nandhivarman, a local politician, said paedophiles were not necessarily Aurovilians, but often tourists who heard about the availability of sex and came to stay in Auroville as visitors. He expressed concern that many were slipping through the net as the local police turned a blind eye and some people were simply being deported from Auroville. Following the allegations about Mr

Keim, he stated that *“until a man is publicly exposed, they [the Complainants] shield him”* before *“technically”* expelling him.

The Complainants stated that Mr Nandhivarman had a history of antipathy towards them and also stated in their immediate response to the BBC on receiving the transcript of the programme that the “shielding” statement was absolutely incorrect. The Complainants also said that Mr Nandhivarman was not referring to the situation in Auroville, but in nearby Pondicherry where the police may be turning a blind eye and where Auroville had no power to do anything about paedophilia.

Ofcom considered that Mr Nandhivarman’s status as a local politician (rather than an eyewitness for example) was made clear in the programme and that viewers would have understood his role in making the comments that he did. It was clear from the nature of Mr Nandhivarman’s comments that there was tension in his relationship with Auroville, whether because of the issue he referred to or for other reasons. In the circumstances, Ofcom considered that even if the programme had explicitly stated that Mr Nandhivarman had antipathy for the Complainants it would not have had a material effect upon viewers’ understanding of his comments. As a result, Ofcom did not consider that in relation to the comments of Mr Nandhivarman in the programme, material facts had been presented, disregarded or omitted in a way that resulted in unfairness to the Complainants.

Interview with an anonymous villager, “Sundrun”

In summary, Sundrun, the name applied to an anonymous local villager, said he had been abused from the age of 10 by an Aurovilian white man and that abuse was still occurring involving other children at a beach near Auroville and areas around it. It was clear from the fact that the programme depicted Sundrun as an adult and his use of the past tense when describing his own experience that the events described happened some time ago.

The Complainants, in their immediate response to the BBC on receiving the transcript of the programme, expressed sympathy for Sundrun’s personal situation but said that had he informed the Complainants of the allegations, the offender would have been removed from Auroville and a police case would have been started immediately. In their complaint to Ofcom, the Complainants claimed that the programme had suggested that Sundrun had reported the abuse to the Complainants who had taken no action.

Ofcom did not consider the programme implied Sundrun had reported his allegations to the Complainants at the time. As a result, in Ofcom’s view, the broadcaster took reasonable care not to present, disregard or omit material facts in relation to Sundrun’s personal situation in a way that resulted in unfairness to the Complainants.

Interview with an anonymous villager, “Shiva”

Shiva, the name applied to an anonymous local villager, stated in the programme:

“Some children here are currently being abused, particularly in the New Creation School. Men come in and ask them to stay after school and have

sex with them, giving food and paying them. The children get used to this life, to the money and they're going back for more".

The Complainants, in their immediate response to the BBC on receiving the transcript of the programme (which featured the more specific allegation by Shiva that "one in five" children were being abused) stated that it was untrue and unimaginable that one in five children were being abused. The Complainants said that the management would not tolerate it and that no parent would send their child to such a school given there were other schools in the area.

In addition, prior to broadcast a number of other people associated with Auroville wrote to the Editor of *Newsnight* expressing disbelief at this allegation including the Secretary of Auroville International UK, a registered charity.

Ofcom noted that as a result of these submissions, the BBC removed the reference to "one in five children" from the transcript and this element of the allegation was not included in the programme as broadcast.

In respect of the general allegation of child abuse that was included, Ofcom recognised that Shiva was not speaking from first-hand experience and that he remained anonymous which made it harder for Auroville to respond in full to his allegations. However, the programme did not suggest Shiva was relaying first-hand experience of abuse, and Ofcom considered there was clear justification for anonymity given the tensions between the Complainants and others living locally (whether or not the allegations about fear of reprisals considered below were in fact well founded).

The fact that the Complainants denied Shiva's more general allegations was made clear in the programme in Mr Thieme's interview (see above) and Ofcom considered that the BBC had taken reasonable care not to present, disregard or omit material facts in relation to Shiva's allegations in a way that resulted in unfairness to the Complainants.

Interview with Mr Gilles Guigan

Mr Guigan stated in the programme:

"Basically the project of Auroville is the ideal society and any society can only reflect the quality of its members. You cannot have an ideal society with non-ideal members".

The Complainants considered Mr Guigan's comments were used out of context to support the programme's allegations regarding child abuse in Auroville. Mr Guigan himself provided a statement, via the Complainants, in support of the complaint stating his objections to the manner in which the reporter secured an interview and the fact his interview was used in a programme reporting serious allegations about the Complainants which he did not support.

Ofcom considered it was clear from the context in which Mr Guigan's comments appeared in the programme as broadcast that they did not relate specifically to allegations of child abuse made earlier in the programme, but referred to the aspiration of Auroville to become an ideal society. In the circumstances, Ofcom did not consider that Mr Guigan's comments were presented out of context and did not result in unfairness to the Complainants.

Interview with Mr Ram Kumar Raj

Mr Raj stated in the programme:

“The sexual abuse issue has to be taken seriously by this Foundation, Auroville Foundation, they should scrutinise people stepping into their Foundation or visiting their Foundation, or they want to stay at their Foundation, make it very clear their intention – that if you are coming to our Foundation, you should follow the things and we will be watching you”.

Mr Raj said, in a letter to the Working Committee after the programme was broadcast (included in the Complainants’ submission to Ofcom), that his broadcast statement was taken out of context and that he did not have specific concerns about child abuse in Auroville, but had instead told the reporter that Auroville, like everyone else in the area, had to take the problem seriously and scrutinise visitors staying there.

The BBC indicated that from his interview it was quite clear that Mr Raj had concerns directed specifically at issues of child abuse in and around Auroville itself.

Ofcom viewed the unedited interview with Mr Raj and noted that, as the programme said, part of his work related to educating children about child abuse and how to avoid it. It appeared to Ofcom that Mr Raj’s concern about child abuse stemmed from the increase in tourism to the Pondicherry and Auroville areas which he said had attracted a percentage of tourists who were involved in child abuse. In Ofcom’s view, during the interview, both Mr Raj and the reporter made little distinction between Pondicherry and Auroville, and the reporter stated in the interview “well they are almost interlinked”.

It was clear that Mr Raj was aware that a number of tourists booked accommodation in the area via the Complainants’ website and Ofcom noted that when he was asked specifically about what Auroville could do about the child abuse problem, he said that the Complainants should scrutinise the tourists they attracted more thoroughly and warn them that they would be doing so.

The issue for Ofcom was whether the programme took reasonable care to ensure the extract of the interview with Mr Raj was presented in a way that was fair to the Complainants.

Ofcom accepted that Mr Raj was concerned about child abuse in the Pondicherry and Auroville area rather than only in Auroville. However, Ofcom did not consider that his broadcast remarks about steps the Complainants could take about the issue were presented out of context, or gave an exaggerated view of Mr Raj’s concerns about Auroville as expressed in the unedited interview. In Ofcom’s view, Mr Raj’s concerns were not presented in the programme as relating only to Auroville, but simply relating to the steps he would like to see Auroville take to address the wider issue of child abuse by foreign visitors to the area. In those circumstances, Ofcom did not consider there was any unfairness to the Complainants.

Comments of the reporter

The reporter said that she herself had seen, in the space of two hours at a beach near Auroville, two separate men with two young Indian boys, one of whom was

taken to a beach hut. She said that, when she asked locals what was going on, she had been told “boyfriends”. She prefaced her personal observations with the comment that, *“This is the beach where Aurovilians hang out with family and friends. It’s also the beach where westerners come to pick up young Indian children”*.

The Complainants stated that what the reporter said she saw was not evidence that child abuse took place on the beach and also stated in their immediate response to the BBC on receiving the transcript of the programme that the reporter’s comments implied Aurovilians were the abusers, that the reporter had “malicious intent” and that the beach was 5 km outside Auroville, was a public beach accessible by anyone and was not under their control.

The reporter presented herself as a witness and described what she said she saw. Ofcom did not agree that the reporter’s comments implied Aurovilians themselves or their guests were the abusers. In Ofcom’s view, the clear implication was that child abuse was taking place in the beach huts and that was a fair implication to draw from what the reporter said she witnessed.

The parties agreed that the beach described by the reporter was not owned by Auroville and presented significant amounts of evidence regarding its status. In essence, the issue was whether the BBC ought to have appreciated that it had so little connection with Auroville that it should not have presented the reporter’s comments as having any bearing on whether child abuse was a serious and widespread problem in Auroville and whether the Complainants’ response to it was effective or adequate.

Ofcom noted that the programme did not state that the beach was owned by Auroville, merely that it was used by Aurovilians and other westerners. However, the reporter asked while still at the beach, *“so is Auroville doing enough to address a practice that seems so brazen?”*, which indicated to viewers that the Complainants should do something in response to activities which the reporter alleged happened quite openly on the beach frequented by Aurovilians and guests as well as others.

Ofcom considered that the issue of legal ownership of the beach did not render the inclusion of the reporter’s description of what she had seen at the beach unfair. In this context, the question raised by the reporter as to whether the Complainants’ response was sufficient did not result in unfairness to the Complainants.

Extracts from the Complainants’ intranet

The programme referred to postings on the Complainants’ intranet. The reporter stated:

“One posting openly refers to worries about abuse at the New Creation School where village children are taught”.

Ofcom noted that the posting was dated 2003 and stated that there had been such problems in the past. The Complainants stated in response to the BBC on receiving the transcript of the programme that the intranet extract showed deep concern about the possibility of sexual abuse and that due to the problems with Mr Keim, the Complainants took the prevention of abuse seriously.

Over scrolling footage of another posting from the Complainants' intranet "*visa has been cancelled. He has ... and deported*" the reporter stated:

"Auroville admits that allegations of sexual abuse have been made against several of their members. Some have been told they can no longer work in India. But they say such allegations are unfounded".

In an email dated 16 May 2008 in response to an enquiry from the reporter, the Complainants stated that the man to whom the posting referred had no connection with Auroville, but had been causing trouble in the area.

The BBC stated that the posting referred to an individual who had not been identified, but that the information applied equally to other Auroville residents and that as a result the posting did not give rise to unfairness.

The Complainants stated in response to the BBC on receiving the transcript of the programme, but not having seen the footage of the second intranet posting, that while allegations had been made of sexual abuse against Aurovilians, no proof had been offered and individuals had been advised to leave and reported to the RRO in Pondicherry demonstrating effective action.

Ofcom considered that the programme made it clear that the Complainants considered the allegations to be unfounded, but also that they had advised individuals to leave in the past.

In Ofcom's view, even though the first extract from the Complainants' intranet was from 2003, it was not unfair to include it in the programme to support an assertion that there were concerns within the community about alleged abuse. In addition, even though the second extract did not in fact relate to child abuse allegations, the Complainants had admitted (including in the broadcast interview with Mr Thieme) they had asked people to leave and reported them to the RRO following what they said were unproven allegations of child abuse, so the second extract did not result in unfairness to the Complainants.

Description of the case of Mr Didier Keim

The programme described the case of Mr Keim, a French citizen who the Complainants stated was given "Newcomer" status in December 1995 and who had contact with children at the New Creation settlement.

The reporter stated in the programme:

"One man who worked at this school was Frenchman Didier Keim. Despite having a previous conviction for paedophilia in France he moved to Auroville in 1995 and began working with children. Auroville say they expelled Keim immediately they became suspicious of his behaviour. But witnesses say he continued to work with children in Auroville for another five years. He was finally arrested and sentence for paedophilia in the nearby town of Pondicherry in 2004".

The Complainants stated in their immediate response to the BBC on receiving the transcript of the programme and in their complaint to Ofcom that Mr Keim had his Newcomer status terminated in September 1996 because of alleged "misbehaviour with children", that he had no further contact with the school, that he was told not to return to Auroville, that the RRO was informed and that his

conviction in 2004 was for offences committed away from Auroville, in Pondicherry. They did not dispute the BBC's assertion that Mr Keim had a previous conviction for paedophilia in France but stated they had not known about it at the time.

Ofcom noted that the factual circumstances behind Mr Keim's case were disputed between the parties and that much of the evidence submitted to Ofcom about Mr Keim was collated after the programme was broadcast. It did appear from evidence subsequently submitted that, in fact, the information supplied to the BBC by Mr Batra and Mr Nandhivarman that Mr Keim continued to work with children in Auroville for five years after he was expelled was incorrect.

The issue for Ofcom was whether the BBC took reasonable care to ensure that by reporting what witnesses claimed at the time of broadcast it did not present, disregard or omit material facts in relation to Mr Keim in a way that was unfair to the Complainants.

Ofcom noted that the programme made it clear that the Complainants maintained they had expelled Mr Keim as soon as they became aware of allegations about his behaviour, that Mr Keim had been in Auroville for "*not more than eight months*" (as stated in Mr Thieme's interview) and that he had been tried and convicted in Pondicherry. In relation to the reporter's statement that "*witnesses say he continued to work with children in Auroville for another five years*", this was indeed what witnesses had told the reporter. In the circumstances, Ofcom did not consider the description of Mr Keim's case was unfair to the Complainants.

Interview with Mr Carel Thieme

Mr Thieme of the Working Committee was also interviewed as part of the programme. This is considered by Ofcom below in relation to the Complainants' opportunity to respond, but Ofcom noted that Mr Thieme made some points immediately in response to the allegations made by the programme.

In particular, Mr Thieme made it clear that the Complainants did not accept the allegations made and considered that there were inaccuracies in the programme. He also pointed out the distinction between occurrences in Auroville itself and "*around my community*". In relation to specific allegations, he stated Mr Keim was removed within eight months of his arrival in Auroville and the Pondicherry authorities were informed. Mr Thieme also confirmed a couple of other individuals had been asked to leave Auroville since Mr Keim, but noted allegations against them had not been proved.

Ofcom considered that Mr Thieme's interview, together with comments made in the programme about the Complainants' rejection of allegations, provided an important response to the allegations reported in the programme against the Complainants.

As mentioned above, Ofcom recognised the importance of freedom of expression and the freedom to broadcast matters of genuine public interest such as the allegations contained in this programme. However, it also recognised that in presenting such serious allegations the Code requires that broadcasters take reasonable care not to do so in a way that causes unfairness to individuals or organisations. In this case, taking into account each of the specific items of evidence considered above and the submissions of the parties, Ofcom did not

consider that the programme presented, disregarded or omitted material facts in a way that was unfair to the Complainants in respect of the portrayal of the issue of child abuse and the Complainants' response to it and has not upheld the complaint in this respect.

- a)ii) Ofcom considered the complaint that the Complainants were unfairly portrayed because it was suggested wrongly and unfairly that they exploited the local Tamil villagers, that few ever become members of Auroville and that they feared reprisals from the Complainants if they spoke out.

Ofcom considered whether the programme makers' actions ensured that the programme as broadcast avoided unjust or unfair treatment of the Complainants, as set out in Rule 7.1 of the Code. In particular, Ofcom considered whether the programme makers took reasonable care to satisfy themselves that material facts were not presented, disregarded or omitted in a way that was unfair to the Complainants (as outlined in Practice 7.9 of the Code).

The programme reported allegations made by Tamil villagers that, as well as the alleged child abuse referred to above, there was exploitation and that local people were afraid to speak out for fear of reprisals by Aurovilians.

In response to the transcript sent to them, the Complainants stated it was untrue that there was exploitation and that they were an "excellent neighbour".

Ofcom noted that the programme included a statement at the end of the report reflecting some of the positive aspects of the Complainants' involvement in the local community, stating that:

"It is also clear that Auroville has a good record in helping the local community. They run schools, employ villagers and when the Tsunami struck South India, they played a large part in the relief effort. Yet allegations of child abuse threaten to ruin that carefully crafted relationship".

Ofcom recognised that there may be a variety of reasons for villagers to make allegations about their neighbours in Auroville, and, as previously noted above, the programme made it clear, by the inclusion of Mr Thieme's interview, that the Complainants rejected those complaints. Ofcom also noted that the programme made clear that the Complainants had a positive record in the community.

Ofcom noted that the Complainants had specific concerns about the statement in the programme that few local Tamils became members of Auroville. Ofcom recognised that only a small percentage of local villagers become members of Auroville, but that this was partly because Auroville's population is small relative to the local Tamil population, and in fact around 30% of Aurovilians were Tamil. Ofcom considered this could have been phrased more carefully, however, it did not consider it led to unfairness in itself.

With regard to the claim that the local villagers feared reprisals from the Complainants, Ofcom noted that the BBC said that the reporter had been told of several incidents of violence between Aurovilians and local Tamils and that many Tamils gave the clear impression to the reporter that they were scared of upsetting the Complainants because their livelihoods depended on them and because they felt vulnerable to acts of reprisal.

In response to this claim, Ofcom noted that that prior to broadcast the Complainants informed the BBC that there was no question of recriminations, that there had never been an incident of reprisal by them and that they depended upon the goodwill of their neighbours.

While Ofcom noted that the Complainants' response on this particular point was not included in the programme, it recognised that the statement of Sundrun included in the programme made clear that concerns about reprisals were directly linked to the villagers' dependence upon the Complainants for work. Ofcom considered that viewers would have understood a reluctance by villagers to criticise the source of their employment and benefits and, in that context, Ofcom did not consider that the claims about fear and reprisals would have materially affected viewers' understanding of the Complainants in a way that was unfair to them.

The programme also did not allege that local people's fear of reprisals or for their livelihoods, or their view that exploitation took place was justified, merely that the concern had been expressed by local Tamil villagers. The Complainants themselves accepted in their response to the BBC script that there was a degree of tension at times which they put down to distrust of the "internationalism" of Auroville and unequal income levels.

In the circumstances, Ofcom considered that the BBC had taken reasonable care not to present, disregard or omit material facts in relation to this allegation in a way that resulted in unfairness to the Complainants.

- a)iii) Ofcom considered the complaint that the Complainants were unfairly portrayed because the programme suggested wrongly and unfairly that they were an anarchic sect.

Ofcom considered whether the programme makers' actions ensured that the programme as broadcast avoided unjust or unfair treatment of the Complainants, as set out in Rule 7.1 of the Code. In particular, Ofcom considered whether the programme makers took reasonable care to satisfy themselves that material facts were not presented, disregarded or omitted in a way that was unfair to the Complainants (as outlined in Practice 7.9 of the Code).

Ofcom noted that the statements made at separate points in the course of the programme that the Complainants took exception to and which they considered portrayed them as an anarchic sect were:

"the anarchic utopian vision", "Aurovilians aspire to something called divine anarchy – no rules, no leaders", "one of the issues is that Auroville doesn't really have a leadership structure", "but many feel Auroville and Pondicherry have slipped beneath the radar", "induction takes one year" and "they undergo a year's induction before they become full members".

In response to the transcript sent to them, the Complainants made clear that they had a complex leadership and management structure, as set out in the Auroville Act, that they had rules, such as their detailed Admission Policy, that they had no aspiration for no rules and no leaders and that they were not a sect as suggested by the word "initiation" which the BBC changed to "induction" in the programme as broadcast

While Ofcom noted that it was incorrect to say that the Complainants had no leadership structure, it did not consider that, when looking at the programme as a whole, it made allegations that the Complainants were anarchic or that the use of the term “induction” portrayed them as a sect in the pejorative sense. Instead, the “anarchic” references had been to the vision and aspiration of the Complainants, rather than to their current status. In the circumstances, Ofcom did not consider that the programme portrayed the Complainants as an “anarchic sect” or that the references resulted in unfairness to the Complainants.

Ofcom has not therefore upheld the complaint in this respect.

a)iv) Ofcom considered the complaint that the Complainants were unfairly portrayed because the programme contained numerous other inaccuracies which contributed to the unfair portrayal, including suggestions that:

- 16,000 Tamil villagers lived in Auroville;
- The Complainants were partly financed by the Indian Government; and
- Auroville’s members paid no tax.

Furthermore, much of the footage broadcast was not of Auroville, but of surrounding farmland, villages and Pondicherry.

Ofcom considered whether the programme makers’ actions ensured that the programme as broadcast avoided unjust or unfair treatment of the Complainants, as set out in Rule 7.1 of the Code. In particular, Ofcom considered whether the programme makers took reasonable care to satisfy themselves that material facts were not presented, disregarded or omitted in a way that was unfair to the Complainants (as outlined in Practice 7.9 of the Code).

In relation to two of the specific alleged inaccuracies, Ofcom considered they were not inaccurate. First, the Complainants accepted they received a contribution from the Indian Government representing approximately 10% for some projects, so it was correct to say they were partly financed by the Indian Government. Secondly, having viewed the programme carefully, Ofcom considered no attempt was made in the programme to pass off footage of Pondicherry and of farmland and villages surrounding Auroville as being footage of Auroville.

In relation to the other two points, Ofcom considered that there were minor inaccuracies. First, it recognised that it was incorrect to state that 16,000 Tamil villagers lived in Auroville as opposed to the area surrounding Auroville. Secondly, it noted that the BBC accepted the statement that Auroville members paid no tax may have been misleading.

However, in Ofcom’s view, it was unlikely that either statement would have materially affected viewers’ understanding of the Complainants or resulted in unfairness to them.

Ofcom has therefore not upheld the complaint in this respect.

b) Ofcom considered the complaint that the Complainants were treated unfairly because the programme broadcast material obtained by deception.

Ofcom considered whether the programme makers' actions ensured that the programme as broadcast avoided unjust or unfair treatment of the Complainants, as set out in Rule 7.1 of the Code. In particular, Ofcom took into account Practice 7.14 of the Code, which states that programme makers should not normally obtain or seek material through misrepresentation or deception, but provides that it may be warranted to do so without consent if that is in the public interest and the material cannot reasonably be obtained by other means.

Ofcom noted that the reporter represented herself as making a programme about the philosophy and idealism of Auroville on its 40th anniversary, rather than about allegations of child abuse. The Complainants only found out about the agenda of the programme after the reporter had left India.

The BBC accepted in its submissions to Ofcom that a very limited amount of background information supplied by the Complainants was obtained by deception. It said that early disclosure of the nature of the allegations might have resulted in a lack of co-operation from the Complainants and perhaps measures to thwart the investigation. It also noted that the bulk of the material on which the allegations reported in the programme was based was obtained openly and with informed consent from parties other than the Complainants.

Ofcom recognised that the use of misrepresentation or deception can in some circumstances be an important and legitimate tool for investigative journalists and that at the time the reporter was planning her visit to Auroville, she could not have known the type of reception she would receive. Ofcom also recognised that the Code does not in all cases require programme makers to spell out the content of their programme particularly where, as in this case, the programme covers a matter which is clearly in the public interest. To the extent that there was misrepresentation or deception in this case (and the BBC accepted there was to some degree), Ofcom considered that it was in the public interest and the material would be unlikely to have been obtainable by other means. In Mr Guigan's case, as noted above, his general statements led to no unfairness to the Complainants.

In the circumstances, Ofcom has not upheld the complaint in this respect.

- c) Ofcom considered the complaint that the Complainants were treated unfairly because they were not given an appropriate and timely opportunity to respond to the allegations made in the programme as broadcast.

Ofcom considered whether the programme makers' actions ensured that the programme as broadcast avoided unjust or unfair treatment of the Complainants, as set out in Rule 7.1 of the Code. In particular, Ofcom considered Practice 7.11 which requires 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.

The programme reported serious allegations and, in fairness to the Complainants, it was therefore particularly important to provide them with an appropriate and timely opportunity to respond. However, Ofcom recognised that what constitutes an appropriate and timely opportunity to respond depends on the circumstances and that there was no requirement for the reporter necessarily to raise the allegations with the Complainants during her time in India.

Ofcom noted that after the reporter returned to the UK, on 24 April 2008, 27 days before the programme was broadcast, she emailed Outreach Media noting in general terms allegations regarding child abuse and asking for an interview with Dr Karan Singh about them, or for a statement from Outreach Media.

On 29 April 2008, Outreach Media responded by email to the various issues raised by the reporter. They said that as Dr Singh had not been Chairman of the Governing Board at the time of the issues with Mr Keim, he may not be able to shed further light on the matter.

On 1 May 2008, the reporter sent a further email to Outreach Media which raised the allegation that villagers said child abuse was still going on but that they were fearful of speaking out because of possible recriminations. Outreach Media responded the same day expressing concern about the allegations of abuse, asking for details so they could investigate, assuring the reporter that there would be no such thing as recriminations from the Complainants and asking for details. However, due to issues of confidentiality the reporter said she was unable to supply the details requested.

On 13 May 2008, the reporter emailed Outreach Media regarding allegations about Mr Keim and three further individuals who the reporter referred to as teachers. Outreach Media provided a detailed response to this email on 16 May 2008.

Auroville International UK and the Working Committee then entered into correspondence with the editor of *Newsnight* and requested sight of the programme and an opportunity to provide an interview response.

The BBC sent a script of the proposed programme to the Complainants on 20 May 2008 and the Working Committee sent a detailed response on 21 May 2008.

Ofcom also noted that arrangements were also made for an interview with Mr Thieme of the Working Committee. Mr Thieme was interviewed over Skype telephone and four questions and Mr Thieme's responses to them were broadcast with a static picture of Mr Thieme at the end of the programme.

Ofcom considered that the email correspondence, the provision of the script and the interview with Mr Thieme ultimately provided the Complainants with an appropriate and timely opportunity to respond to the serious allegations raised in the programme.

Ofcom noted that the time allowed for the Complainants to respond to the script was quite brief, but that from the email correspondence between the reporter and Outreach Media, the Working Committee already had an indication of some of the allegations and did manage to produce a detailed response to the script in the time allowed. The Complainants had concerns that the arrangements the BBC put in place around Mr Thieme's interview were poor and resulted in the interview being conducted over a Skype connection broadcast over a static image of Mr Thieme. However, this did not, in Ofcom's view, amount to a failure to give a timely and appropriate opportunity to respond, nor did it result in unfairness to the Complainants.

In the circumstances, Ofcom has not upheld the complaint in this respect.

Accordingly, Ofcom has not upheld Mr Thieme's complaint on behalf of The Auroville Foundation and the community of Auroville of unfair treatment in the programme as broadcast.

Other Programmes Not in Breach

Up to 19 April 2010

Programme	Date	Broadcaster	Categories	Number of complaints
4music Meets Rihanna	11/04/2010	Channel 4	Generally accepted standards	1
A League of Their Own	11/03/2010	Sky 1	Generally accepted standards	1
A League of Their Own	09/04/2010	Sky 1	Offensive language	1
A Touch of Frost	02/04/2010	ITV1	Nudity	1
A Touch of Frost	04/04/2010	ITV1	Violence and dangerous behaviour	3
Abrantee	01/04/2010	Choice FM	Race discrimination/offence	1
Anglia Tonight	24/03/2010	ITV1 Anglia	Crime	2
Ant and Dec's Push the Button	13/03/2010	ITV1	Animal Welfare	87
Ant and Dec's Push the Button	03/04/2010	ITV1	Disability discrimination/offence	1
Ant and Dec's Push the Button	27/03/2010	ITV1	Gender, including Transgender discrimination/offence	1
Archer (trailer)	16/03/2010	Fiver	Religious/Beliefs discrimination/offence	2
Aschberg	26/11/2009	TV8 (Sweden)	Sponsorship	1
BBC News	22/02/2010	BBC News Channel	Religious/Beliefs discrimination/offence	1
BBC News at Six	17/03/2010	BBC 1	Generally accepted standards	11
Bean	27/02/2010	ITV1	Religious/Beliefs discrimination/offence	1
Big Babies	17/03/2010	CBBC	Offensive Language	1
Bing.com's sponsorship of The Simpsons	23/03/2010	Channel 4	Materially misleading	1
Brainiac: Science Abuse	02/04/2010	Sky 3	Generally accepted standards	1
Breakfast	16/03/2010	BBC 1	Violence and dangerous behaviour	1
Broadcasting House	04/04/2010	BBC Radio 4	Generally accepted standards	1
Bruce Forsyth: A Comedy Roast	07/04/2010	Channel 4	Offensive language	2
Challenge Tommy Walsh	13/04/2010	Quest	Violence and dangerous behaviour	1
Channel 4's Comedy Gala	05/04/2010	Channel 4	Generally accepted standards	25
Channel ident	14/04/2010	E4	Elections/Referendums	1
Chris Tarrant: A Comedy Roast	09/04/2010	Channel 4	Generally accepted standards	19
Coach Trip	13/04/2010	Channel 4	Generally accepted standards	2
Cocaine Cowboys	16/03/2010	More 4	Drugs, smoking, solvents or alcohol	1
COI Domestic Abuse Ad	n/a	n/a	Due Impartiality/Bias	1
Cops Uncut	23/03/2010	Bravo	Generally accepted standards	1

Coronation Street	26/03/2010	ITV1	Gender, including Transgender discrimination/offence	1
Coronation Street	09/04/2010	ITV1	Religious/Beliefs discrimination/offence	1
Coronation Street	04/04/2010	ITV1	Generally accepted standards	2
Coronation Street	11/04/2010	ITV1	Generally accepted standards	5
Coronation Street	15/04/2010	ITV1	Generally accepted standards	2
Coronation Street	05/04/2010	ITV1	Generally accepted standards	1
Coronation Street	19/02/2010	ITV1	Violence and dangerous behaviour	1
Cougar Town (trailer)	25/03/2010	Living	Offensive Language	1
Crocodile Dundee	30/03/2010	Film4	Religious/Beliefs discrimination/offence	1
Daily News	25/03/2010	Bangla TV	Generally accepted standards	1
David Mellor	18/03/2010	LBC 97.3	Due Impartiality/Bias	1
Doctor Who	03/04/2010	BBC 1	Race discrimination/offence	1
Doctor Who	03/04/2010	BBC 1	Generally accepted standards	2
Doctor Who	10/04/2010	BBC 1	Generally accepted standards	1
EastEnders	01/04/2010	BBC 1	Race discrimination/offence	1
EastEnders	06/04/2010	BBC 1	Generally accepted standards	1
EastEnders	12/04/2010	BBC 1	Generally accepted standards	1
EastEnders	16/04/2010	BBC 1	Generally accepted standards	1
EastEnders	06/04/2010	BBC 1	Offensive language	2
EastEnders	22/03/2010	BBC 1	Violence and dangerous behaviour	1
EastEnders	26/03/2010	BBC 1	Violence and dangerous behaviour	1
EastEnders	29/03/2010	BBC 1	Violence and dangerous behaviour	1
EastEnders	05/04/2010	BBC 1	Violence and dangerous behaviour	1
EastEnders Omnibus	28/03/2010	BBC 1	Generally accepted standards	1
EastEnders Omnibus	18/04/2010	BBC 1	Generally accepted standards	1
Elite Nights	16/01/2010	Elite	Sexual material	1
Embarrassing Bodies	02/04/2010	Channel 4	Nudity	2
Embarrassing Bodies	21/03/2010	Channel 4	Sexual material	18
Embarrassing Bodies	26/03/2010	Channel 4	Sexual material	1
Embarrassing Bodies	09/04/2010	Channel 4	Under 18s in programmes	1
Emmerdale	07/04/2010	ITV1	Crime	1
Emmerdale	02/04/2010	ITV1	Religious/Beliefs discrimination/offence	1
Emmerdale	12/04/2010	ITV1	Generally accepted standards	1

Emmerdale	08/04/2010	ITV1	Sexual material	1
Emmerdale	26/03/2010	ITV1	Drugs, smoking, solvents or alcohol	1
Evening Show with Steve Harris	29/03/2010	XFM London	Materially misleading	1
Facejacker (trailer)	05/04/2010	Channel 4	Disability discrimination/offence	1
Five News update	06/04/2010	Five	Elections/Referendums	1
Four Weddings (trailer)	12/03/2010	Living	Sexual material	1
Foxy Bingo's sponsorship of The Jeremy Kyle Show	25/03/2010	ITV2	Gender, including Transgender discrimination/offence	1
Foxy Bingo's sponsorship of The Jeremy Kyle Show	n/a	ITV2	Generally accepted standards	1
Frank Skinner	05/04/2010	Channel 4	Generally accepted standards	1
Glee (trailer)	06/04/2010	Channel 4	Offensive language	1
GMTV	05/03/2010	ITV1	Sexual material	3
Golf	02/04/2010	Sky Sports HD3	Generally accepted standards	1
Greene King's sponsorship of Dave primetime	05/04/2010	Dave	Animal welfare	1
Have I Got News for You	08/04/2010	BBC 1	Race discrimination/offence	1
Have I Got News for You	08/04/2010	BBC 1	Generally accepted standards	1
Hawksbee and Jacobs	01/04/2010	Talksport	Crime	1
Heston's Chocolate Factory Feast	06/04/2010	Channel 4	Sexual material	1
Hollyoaks	09/04/2010	Channel 4	Generally accepted standards	1
Home and Away	07/04/2010	Five	Crime	1
Honda's sponsorship of Channel 4 documentaries	23/03/2010	Channel 4	Generally accepted standards	1
Horrible Histories	01/04/2010	BBC 1	Violence and dangerous behaviour	1
How I Met Your Mother	08/03/2010	E4	Sexual material	1
Islamic Documentary	27/03/2010	Peace TV	Sexual orientation discrimination/offence	1
ITV News	26/03/2010	ITV1	Crime	1
ITV News	05/04/2010	ITV1	Due accuracy	1
ITV News at Ten	31/03/2010	ITV1	Due accuracy	2
ITV News at Ten	07/04/2010	ITV1	Elections/Referendums	1
Jergens Naturals' sponsorship of Supersize v Superskinny	23/03/2010	Channel 4	Generally accepted standards	1
Jerry Springer	09/04/2010	CBS Reality	Generally accepted standards	1
Joan Rivers Comedy Roast	12/04/2010	Channel 4	Race discrimination/offence	1
Joan Rivers Comedy Roast	12/04/2010	Channel 4	Generally accepted standards	1
Joan Rivers Comedy Roast	12/04/2010	Channel 4	Offensive language	3
Justin Lee Collins: Good Times	02/04/2010	Five	Offensive language	3
Keeping Up With The Kardashians	14/04/2010	4Music	Offensive language	1
Kia Motors' sponsorship of NCIS	10/04/2010	Five	Generally accepted standards	1

Kill It, Skin It, Wear It	28/03/2010	Really	Generally accepted standards	1
Laughtershock	31/03/2010	BBC 3	Sexual material	1
Leaders' Debate (trailer)	13/04/2010	Sky News	Elections/Referendums	1
Let's Celebrate!	25/03/2010	CBeebies	Generally accepted standards	1
Live from Studio Five	31/03/2010	Five	Race discrimination/offence	1
Live from Studio Five	31/03/2010	Five	Sexual material	1
Loose Women	29/03/2010	ITV1	Generally accepted standards	1
Loose Women	31/03/2010	ITV1	Sexual material	1
Maltesers' sponsorship of Loose Women	n/a	ITV1	Generally accepted standards	1
Married Single Other	08/03/2010	ITV1	Race discrimination/offence	1
Married Single Other	29/03/2010	ITV1	Race discrimination/offence	1
Michael McIntyre: Live and Laughing	04/04/2010	BBC 1	Race discrimination/offence	1
Missing Person's Unit	06/04/2010	CBS Reality +1	Generally accepted standards	1
Mock the Week	18/02/2010	BBC 2	Disability discrimination/offence	1
Nestlé's sponsorship of GMTV Weather	01/04/2010	ITV1	Generally accepted standards	1
One Born Every Minute	30/03/2010	Channel 4	Generally accepted standards	1
Operation Repo	15/04/2010	Bravo	Offensive language	1
Panorama	24/03/2010	BBC 1	Generally accepted standards	1
Party Election Broadcast by the Labour Party	12/04/2010	ITV1	Generally accepted standards	1
Party Election Broadcast by the Labour Party	16/04/2010	BBC 2	Offensive language	1
Party Election Broadcast by the Labour Party	16/04/2010	ITV1	Offensive language	1
Partybingo.com's sponsorship of Neighbours	09/04/2010	Five	Sexual orientation discrimination/offence	1
Police Interceptors	19/04/2010	Fiver	Offensive language	1
Policing Pledge Advertisement	n/a	n/a	Due Impartiality/Bias	1
Renault's sponsorship of films on 4	27/03/2010	Channel 4	Violence and dangerous behaviour	1
Rob Ellis	16/03/2010	Galaxy Manchester	Disability discrimination/offence	1
Rosemary and Thyme	08/04/2010	ITV1	Offensive language	1
Rosemary and Thyme	09/04/2010	ITV1	Offensive language	1
Rude Tube 2009	12/04/2010	E4	Animal welfare	1
Seven Ages of Britain	29/03/2010	BBC 2	Offensive Language	1
Sexcetera	20/03/2010	Virgin 1	Sexual material	1
Shameless	30/03/2010	E4	Sexual orientation discrimination/offence	1
Sharon Osbourne: A Comedy Roast	08/04/2010	Channel 4	Generally accepted standards	2
Sharon Osbourne: A Comedy Roast	08/04/2010	Channel 4	Offensive language	19
Sharon Osbourne: A Comedy	08/04/2010	Channel 4	Sexual material	1

Roast				
Short Circuit	18/04/2010	Five	Offensive language	1
Sky News	03/04/2010	Sky News	Advertising/editorial separation	1
Sky News	08/04/2010	Sky News	Due accuracy	1
Sky News	01/04/2010	Sky News	Due Impartiality/Bias	1
Sky News	30/03/2010	Sky News Active	Materially misleading	2
Sky News	04/04/2010	Sky News	Race discrimination/offence	1
Sky News	07/04/2010	Sky News	Race discrimination/offence	1
Sky News	01/04/2010	Sky News	Generally accepted standards	1
Sunday Live	04/04/2010	Sky News	Due impartiality/bias	2
Sunrise	26/03/2010	Sky News	Due Impartiality/Bias	2
Sunrise	04/04/2010	Sky News	Religious/Beliefs discrimination/offence	1
Supersize v Superskinny	13/04/2010	Channel 4	Harm	1
Surviving	19/03/2010	Sky 3	Violence and dangerous behaviour	1
The Alan Titchmarsh Show	19/03/2010	ITV1	Due Impartiality/Bias	37
The Bubble	12/03/2010	BBC 2	Generally accepted standards	1
The Bubble	26/03/2010	BBC 2	Offensive Language	1
The Football League Show	05/04/2010	BBC 1	Generally accepted standards	1
The Graham Norton Show	12/04/2010	BBC 1	Generally accepted standards	1
The Jeremy Kyle Show	13/04/2010	ITV2	Generally accepted standards	1
The Moral Maze	10/03/2010	BBC Radio 4	Generally accepted standards	1
The Now Show	27/03/2010	BBC Radio 4	Religious/Beliefs discrimination/offence	1
The Official Chart with Reggie Yates	04/04/2010	BBC Radio 1	Offensive language	1
The One Show	14/04/2010	BBC 1	Age discrimination/offence	1
The One Show	07/04/2010	BBC 1	Generally accepted standards	1
The Politics Programme	24/03/2010	Genesis	Due Impartiality/Bias	1
The Secret Millionaire	29/03/2010	Channel 4	Materially misleading	2
The Simpsons	15/03/2010	Channel 4	Sexual material	1
The Simpsons	30/03/2010	Sky 1	Sexual material	1
The Vampire Diaries (trailer)	n/a	ITV2	Scheduling	1
The Weakest Link	02/04/2010	BBC 1	Generally accepted standards	8
The World's Most Offensive Joke	06/04/2010	Channel 4	Generally accepted standards	1
The Wright Stuff	12/04/2010	Five	Religious/Beliefs discrimination/offence	1
The Wright Stuff	15/04/2010	Five	Religious/Beliefs discrimination/offence	1
The Wright Stuff	15/04/2010	Five	Generally accepted standards	6
This Morning	15/04/2010	ITV1	Generally accepted	7

			standards	
This Morning	15/03/2010	ITV1	Sexual material	28
This Morning	16/03/2010	ITV1	Sexual material	5
This Morning	17/03/2010	ITV1	Sexual material	32
This Morning: Sunday	11/04/2010	ITV1	Disability discrimination/offence	1
Tony Horne in the Morning	22/03/2010	Metro Radio	Generally accepted standards	1
Unreported World	02/04/2010	Channel 4	Violence and dangerous behaviour	1
various	19/10/2009	Fashion One	Sponsorship	1
Warlords of Atlantis	26/03/2010	Channel 4	Generally accepted standards	1
Waste Awareness Wales advertisement	n/a	ITV1	Elections/Referendums	1
What Katie Did Next	01/04/2010	ITV2	Violence and dangerous behaviour	1
Yazid Murdabad	14/12/2009	AHLEBAIT TV	Crime	1
Yeovil Town v Leeds United	05/04/2010	Sky Sports 1	Generally accepted standards	46
Young, Autistic and Stagestruck	12/04/2010	Channel 4	Disability discrimination/offence	1
You've Been Framed!	05/04/2010	ITV1	Animal welfare	1