

Ofcom Broadcast Bulletin

**Issue number 151
8 February 2010**

Contents

<u>Introduction</u>	4
Standards cases	
<u>In Breach</u>	
Sponsorship of Perfect Bride <i>STAR Plus, 11 November 2009 to 22 December 2009, various dates and times</i>	5
Associated Note to Broadcasters	7
Bang Babes <i>Tease Me, 20 June 2009, 01:15 to 02:45; 21 June 2009, 00:00 to 01:15; 21 June 2009, 01:15 and 22 June 2009, 01:00 to 02:00</i>	9
Elite Days <i>Elite, 4 November 2009, 19:45 and 25 November 2009, 14:00</i>	
Elite Nights <i>Elite TV, 2 October 2009, 22:00</i>	
Elite Days <i>Elite TV, 12 November 2009 09:00 and 12:59 and 6 December, 15:30</i>	17
Party People <i>Get Lucky TV, 29 November 2009, 17:25</i>	22
Failure to provide Licensee Transmission and Revenue Return <i>DM Digital</i>	24
Associated Note to Broadcasters	25
Euro Digital Corporation Limited <i>The Dating Channel, 17 October 2009, 20:30 to 21:30</i>	26
<u>Resolved</u>	
Jingle Bell Ball Competition <i>95.8 Capital FM (Greater London), 2 November 2009 to 4 December 2009, various times</i>	28
Heart Breakfast <i>Heart 97.6 FM, 28 October 2009, 08:55</i>	31

Other cases

In Breach

Breach of Licence Condition

Sunshine Radio (Hereford & Worcester) 32

Fairness & Privacy cases

Upheld

Complaint by Mr E made on behalf of F (his son)

Send in the Dogs, ITV1, 28 July 2009 34

Not Upheld

Complaint by Mr Ric Hilton and Mrs Maggie Hilton on their own behalf and on behalf of Ms Gillian Stockman

Four Weddings, Living, 13 July 2009 38

Complaint by Mr Ranes Kumar Sanyal

Tonight: Undercover Pets, ITV1, 16 March 2009 49

Complaint by Miss M

Tonight: Country Road 999, ITV1, 15 June 2009 59

Complaint by Mr Leslie Hemming

Watchdog, BBC1, 13 April 2009 68

Complaint by Mr Alan McKay and Mrs Rosemary McKay

Tonight: Mediterranean Nightmares, ITV1, 5 June 2009 76

Other programmes not in breach 81

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

Standards cases

In Breach

Sponsorship of Perfect Bride

STAR Plus, 11 November 2009 to 22 December 2009, various dates and times

Introduction

STAR Plus is a Hindi general entertainment channel. The programme *Perfect Bride* was sponsored by three companies: Yatra.com (an online airline ticket reservation booking service), Sanjeev Jewellers and Clay Oven restaurant.

Before the programme was broadcast, a voiceover stated "*Perfect Bride sponsored by...*". The following sponsorship credits were then broadcast consecutively:

Yatra.com credit

Visual/text: An image of the website at which users can book flights, as well as the text "*Fly to India. Fares starting £284*".

The final frame of the credit consisted of the Yatra.com logo and the text: "*Smarter way to travel*" and "*Call now [telephone number]*".

Voiceover: "*Fly to India with great value air fares from Yatra.com. The smarter way to travel to India*".

Sanjeev Jewellers

Visual/text: "*Sanjeev Jewellers. Specialist in gold buying*" and addresses and telephone numbers of two different branches of the jewellers.

Voiceover: "*Sanjeev Jewellers, a relationship of trust*".

Clay Oven

Visual/text: The first frame of the credit consisted of a table upon which food and candles were laid out and the caption "*From 7:30pm. For Booking and Enquiries [telephone number]*".

The final frame of the credit stated "*The perfect setting for any occasion*" and included the name, telephone number and website address of the restaurant.

Voiceover: "*Clay Oven banqueting. Enjoy festive dinner and dance only at Clay Oven*".

A viewer was concerned that the sponsorship credits contained calls to action.

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

Star TV said that following Ofcom’s request for comments under Rule 9.13 of the Code, it had reviewed the sponsorship credits and removed them from transmission because it considered them to be “clearly in breach of Rule 9.13” and therefore “should not have been run as sponsorship credits”.

The broadcaster continued that its staff are trained in all aspects of the Code and were aware of Ofcom’s recent findings in relation to Rule 9.13. It explained that the reason these credits were broadcast was because they arrived with little time to spare before transmission, and a junior member of the ‘Traffic team’ “presumed they had been cleared” by the ‘Sales Team’.

Star TV said that it takes compliance very seriously and the relevant staff have been informed that further serious compliance errors will result in disciplinary action. The broadcaster will also ensure that all future sponsorship credits are cleared for broadcast by its external consultant.

Decision

Previous Broadcast Bulletins¹ have stated that the purpose of a sponsorship credit is to inform the audience when a programme is sponsored and by whom. Credits are not permitted to be advertisements and should focus on the sponsorship arrangement and not the sponsor or its goods or services.

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

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

messages such as promotional statements about the sponsor or the products or services it offers.

Yatra.com credit

Ofcom noted that text *“Fly to India. Fares starting £284”* contained pricing information and was a clear advertising message.

Furthermore, the text *“Smarter way to travel”*, and the voiceover *“Fly to India with great value air fares from Yatra.com. The smarter way to travel to India”* promoted the positive attributes of the sponsor’s service.

These promotional references combined with the call to action for the viewer to contact the sponsor (i.e. *“Call now [telephone number]”*) resulted in the credit breaching Rule 9.13 of the Code.

Sanjeev Jewellers

Ofcom’s published guidance on Rule 9.13 states “If sponsor credits contain contact details, these should include the minimum information necessary to allow viewers to make initial contact with the sponsor should they so wish.”

In this case, Ofcom considered that providing the addresses and telephone numbers of two of the sponsor’s branches in the credit, exceeded the minimum information necessary to allow viewers to make initial contact with the sponsor.

Furthermore, while in isolation, *“Sanjeev Jewellers. Specialist in gold buying”*, could be considered to be a factual statement about the sponsor, when viewed in combination with the voiceover *“a relationship of trust”* and the excessive contact information, Ofcom considered that the overall effect of the credit was to promote the sponsor’s service, in breach of Rule 9.13 of the Code.

Clay Oven

Ofcom considered the caption *“The perfect setting for any occasion”* and *“Enjoy festive dinner and dance only at Clay Oven”* promoted the positive attributes of the sponsor’s service.

These promotional references combined with the call to action *“For Booking and Enquiries [telephone number]”* resulted in the credits breaching Rule 9.13 of the Code.

We note the measures the broadcaster has taken to improve its compliance procedures in relation to sponsorship credits. Ofcom does not expect further recurrences.

Breaches of Rule 9.13

Note to Broadcasters

As stated in previous Broadcast Bulletins, Ofcom recognises that when judging whether the various components of a sponsorship credit amount to the credit being sufficiently distinct from advertising, fine editorial judgements are often required.

In light of Ofcom’s recent monitoring exercises in this area, and recent guidance on this issue, Ofcom urges broadcasters to exercise caution when making such judgements.

Broadcasters should also be reminded that the European Commission has recently been taking a very active interest in this issue and is known to be monitoring the compliance of sponsorship credits in some Member States. Ofcom will continue to conduct ad hoc monitoring of sponsorship credits to assess compliance with Rule 9.13.

As reported in Broadcast Bulletin 148. Ofcom has recently incorporated its latest guidance on Rule 9.13 within the guidance to Section Nine of the Code, which can be accessed here: <http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/guidance9.pdf>.

In Breach

Bang Babes

Tease Me, 20 June 2009, 01:15 to 02:45 approximately; 21 June 2009, 00:00 to 01:15 approximately; 21 June 2009, 01:15 and 22 June 2009, 01:00 to 02:00 approximately

Introduction

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

Bang Babes, Tease Me, 20 June 2009, 01:15 to 02:45 approximately

Ofcom received a complaint about material broadcast on the dates and service detailed above.

Ofcom noted that the programme contained a range of strong sexual material including some graphic images of a sexual nature that were broadcast without mandatory restricted access. Between 01:15 and 02:10 the broadcast featured three female presenters. Two of the presenters were wearing only thongs and the other presenter was wearing a thong and a bra, however her breasts were exposed as she pulled her bra down below her breasts. At various times during this broadcast the three presenters were shown carrying out or participating in a number of sexual acts. These included: close up shots of three presenters licking each other's breasts; touching and licking each other's genital and anal areas; and one presenter was shown simulating in a realistic way the insertion of her fingers into a co-presenter's anus. Anal and genital detail of the various presenters was also featured on a number of occasions.

At 02:10 two of the presenters left and were replaced by a further presenter who was wearing a skimpy black thong and black fishnet stockings. The two presenters in shot were shown carrying out or participating in a number of sexual acts. These included: one presenter bunching her thong around her genitals while the other licked around her genital area; simulating oral sex on each other; sucking and licking each other's breasts; spitting on their own and each other's breasts; and spitting near each other's genital and anal areas. Anal and genital detail of the various presenters was also featured on a number of occasions.

Ofcom also noted that at 02:34 two new presenters joined, so there were four presenters in shot. One of the new presenters was wearing a skimpy black thong and a black vest top, with her breasts exposed. The other was wearing a black thong and bra with her breasts exposed also. The four presenters split into pairs and were shown simulating masturbation and oral sex on each other in a realistic way. This was followed by four presenters simultaneously opening their legs to camera and simulating masturbation (touching their genital area). One presenter then appeared to lick the genital area of all the other presenters in turn.

Bang Babes, Tease Me, 21 June 2009, 00:00 to 01:15 approximately and 21 June 2009, 01:15

Ofcom received two complaints about material broadcast on the dates and service detailed above. It should be noted that Ofcom considered these two cases together as they both relate to the same broadcast.

Ofcom noted that the programme contained a range of strong sexual material including some graphic images of a sexual nature that were broadcast without mandatory restricted access. Up to three female presenters were shown at any one time undertaking or participating in a number of sexual acts, including: licking and sucking co-presenters' breasts and nipples; simulating oral sex and masturbation in a realistic way on each other (for example by placing their heads between others' legs, and licking and touching other presenters' genital areas); spanking each other; licking each other's anal area; and massaging cream into each other's breasts and buttocks. The presenters also showed anal and genital detail on a number of occasions and some of the presenters are shown simulating in a realistic way the insertion of fingers into the anus of co-presenters.

Bang Babes, Tease Me, 22 June 2009, 01:00 to 02:00 approximately

A copy of this material was also sent to Ofcom by the broadcaster. After viewing this material Ofcom considered that the contents also raised potential issues under the Code.

Ofcom noted that the programme contained a range of strong sexual material including some explicit images of a sexual nature that were broadcast without mandatory restricted access. During the broadcast the presenter (dressed only in a pair of red knickers) was shown lying on her back with her legs apart. Viewers were shown a close up shot between the presenter's legs, while she bunched up her knickers to reveal genital and anal detail, and simulated masturbation. At various intervals the presenter touched her anal and genital area and pulled her buttocks apart to reveal more anal detail. The presenter also said:

"...if you want to talk about dirty things with me all you need to do is to call me. I would love to hear what your sexy fantasies are and what are you up to tonight. If you have been on the phone to me and have been disconnected why don't you try me again. I would love to finish you off tonight... I'm feeling horny."

Ofcom asked Bang Channels Limited for its comments on all the above broadcasts in respect of Rules 1.24¹ ('adult-sex' material is restricted to overnight services with mandatory restricted access); 2.1 (generally accepted standards) and 2.3 (material which may cause offence must be justified by context) of the Code.

Response

Bang Babes, Tease Me, 20 June 2009, 01:15 to 02:45 approximately

The broadcaster stated that presenters spitting on each other's breasts "is a violation of [its] internal guidelines and the presenters in question have been warned that such actions are not acceptable". However, it stated that it did not consider that any of the material broadcast during this programme constituted 'adult-sex' material, exceeded viewer expectations or caused offence.

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

The broadcaster also stated that it considered an Ofcom published decision regarding 'Bang Babes, Tease Me 2, 17 March 2008; 21:00–22:00' (published in Ofcom's Broadcast Bulletin Issue number 120, 27 October 2008) implied that genital detail and simulated masturbation are acceptable to broadcast after 22:00. This is because Ofcom's decision stated that these actions are not acceptable before 22:00. It continued that since the publication of this decision it has found no other published documentation which suggests Ofcom has changed its position.

Bang Babes, Tease Me, 21 June 2009, 00:00 to 01:15 approximately and 21 June 2009, 01:15

Bang Channels stated that "at times the actions may have exceeded [its] own internal guidelines". However it stated that it does "not accept that the broadcast was contrary to generally accepted standards and did not exceed viewer expectation for the genre and time of broadcast". Further, it considers a distinction should be made between mime and simulation and that it does "not believe that miming an action has the ability to cause offense [sic] in this context". The broadcaster said that it "take[s] umbrage at the suggestion that the broadcast might cause offense [sic]" and "categorically refute[s] the suggestion that the material broadcast could in any way be defined as 'adult sex' material" as "the primary purpose of the broadcast was to promote interaction, not to sexually arouse".

With regard to the broadcast of *Bang Babes, Tease Me, 21 June 2009, 01:15*, the broadcaster said that "the broadcast occurred long after the watershed, in a clearly signposted adult section in the adult section of the Sky EPG and therefore [it] believe[s] that the material broadcast did not exceed viewer expectation for a channel of this nature at this time of night".

Bang Babes, Tease Me, 22 June 2009, 01:00 to 02:00 approximately

The broadcaster stated that it considered the language used was "crude and does not serve to project the correct image for [its] channel" and that the presenter in question has been spoken to and advised to tone down her comments in future. However, it also stated that: "given the nature and position of the channel and the time at which it was broadcast [it] does not believe that the comments had the potential to cause offense [sic]". With regard to the other elements of the broadcast, it said it was "satisfied that the actions of the presenters conform to previous guidance issued by Ofcom for material broadcast at this time of night, did not exceed generally accepted standards and did not have the potential to cause offense [sic]".

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 isn't generally accepted is subject to change over time. When deciding whether or not particular broadcast content is likely to fall within generally accepted standards it is necessary to assess the character of the content itself and the context in which it is provided.

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

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

Rule 1.24 of the Code requires 'adult-sex' material to be broadcast only between 22:00 and 05:30, and then only if mandatory restricted access is in place. Through a series of published findings, and published decisions of the Content Sanctions Committee, Ofcom has made clear what constitutes 'adult-sex' material².

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 take appropriate steps to ensure that it was provided with sufficient contextual justification so as to ensure that it fell within generally accepted standards.

Bang Babes, Tease Me, 20 June 2009, 01:15 to 02:45 approximately

In relation to Rule 1.24, Ofcom examined the content of this broadcast and considered that it was of a very strong sexual nature and on some occasions explicit images of genital and anal detail. For example, the broadcast showed a presenter simulating in a realistic way the insertion of her fingers into a co-presenter's anus; images of presenters licking each other's genital areas; presenters spitting between and on each other's breasts and spitting on or near each other's genital and anal areas. Ofcom took account of the fact that the sequences were several minutes each in duration, and in some cases, were repeated. In Ofcom's view, the primary purpose of broadcasting this material was clearly sexual arousal. Having assessed the 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 1.24.

Ofcom is concerned that the Licensee considers material, such as genital detail and simulated masturbation, to be acceptable to broadcast after 22:00. Ofcom is also particularly concerned that the Licensee appears to have formed this view based on Ofcom's published decision regarding 'Bang Babes, Tease Me 2, 17 March 2008; 21:00–22:00' (Broadcast Bulletin Issue number 120, 27 October 2008), which states that such content in that particular broadcast was not suitable before 22:00. In Ofcom's opinion by stating content is not suitable before a particular time does not therefore suggest it is automatically acceptable to broadcast later. Ofcom considers broadcast content on a case by case basis as contextual factors may differ, particularly regarding the nature of the content. Ofcom has previously and repeatedly

² 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.

published clear guidance regarding content broadcast on both the 'adult' and 'adult' sex chat sector, where the material is free-to-view and broadcast without mandatory restricted access. This guidance has stated that material of a sexual nature broadcast after the 21:00 watershed must be appropriately limited and justified by the context to ensure compliance with generally accepted standards³.

This broadcast was therefore in breach of Rule 1.24 of the Code.

Ofcom then went on to consider whether the broadcast was also in breach of Rules 2.1 and 2.3 of the Code. In light of Ofcom's view that this material constituted 'adult-sex' material and 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 along time after the watershed and that viewers tend to expect stronger sexual material to be shown later at night. Ofcom also took account of the fact that the channel was positioned in the 'adult' section of the Sky EPG and that viewers tend to expect the broadcast of stronger sexual material on channels in this section of the EPG than would be expected to be included on other channels

However, in this case, given the prolonged and frequent scenes of a very strong sexual nature and the inclusion of explicit images of genital and anal details (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

³ The 6 July 2009 Note to Broadcasters; Breach finding on Bang Babes, Tease Me, Ofcom Broadcast Bulletin 137, http://www.ofcom.org.uk/tv/obb/prog_cb/obb137/; Breach Finding against LivexxBabes, Ofcom Broadcast Bulletin 118, dated 29 September 2008, http://www.ofcom.org.uk/tv/obb/prog_cb/obb118/; 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; The 6 July 2009 Note to Broadcasters; 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; 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; Breach Finding against Sex Station on Lucky Star, Ofcom Broadcast Bulletin 115, 11 August 2008, http://www.ofcom.org.uk/tv/obb/prog_cb/obb115/; 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; Sanctions decision against Connection Makers Limited dated 30 November 2007, http://www.ofcom.org.uk/tv/obb/ocsc_adjud/babeworld.pdf; The 6 July 2009 Note to Broadcasters; Breach Finding on Bang Babes on Tease Me 2, in Ofcom Broadcast Bulletin 120, 27 October 2008, http://www.ofcom.org.uk/tv/obb/prog_cb/obb120/; RHF sanctions decision, dated 18 May 2008, http://www.ofcom.org.uk/tv/obb/ocsc_adjud/rhfportland.pdf; Sex Station, Lucky Star, Broadcast Bulletin, 20 July 2009, http://www.ofcom.org.uk/tv/obb/prog_cb/obb138/; Playboy TV sanctions case dated 2 April 2009, http://www.ofcom.org.uk/tv/obb/ocsc_adjud/playboytv.pdf

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, 21 June 2009, 00:00 to 01:15 approximately and 21 June 2009, 01:15

In relation to Rule 1.24, Ofcom examined the content of this broadcast and considered that it was of a very strong sexual nature and on some occasions explicit images of genital and anal detail. Ofcom was particularly concerned with presenters licking each other's anal areas and simulating in a realistic way the insertion of their fingers into each other's anuses. It was also concerned by the presenters simulating oral sex and masturbation on each other (head between legs, licking and touching other presenters' genital area), and revealing genital and anal detail. In Ofcom's opinion, a viewer could reasonably have concluded that some of these sexual acts were real. As with the previous broadcast (above) Ofcom took account of the fact that the sequences were prolonged, and in some cases, were repeated. In Ofcom's view, the primary purpose of broadcasting this material was clearly sexual arousal. Having assessed the 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 1.24.

This broadcast was therefore a breach of Rule 1.24 of the Code.

Ofcom then went on to consider whether the broadcast was also in breach of Rules 2.1 and 2.3 of the Code. In light of Ofcom's view that this material constituted 'adult-sex' material and 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 a long time after the watershed and that viewers tend to expect stronger sexual material to be shown later at night. Ofcom also took account of the fact that the channel was positioned in the 'adult' section of the Sky EPG and that viewers tend to expect the broadcast of stronger sexual material on channels in this section of the EPG than would be expected to be included on other channels

The Licensee's response states that it "take[s] umbrage at the suggestion that the broadcast might cause offense [sic]" and that because the material was broadcast in the adult section of the Sky EPG it "believe[s] that the material broadcast did not exceed viewer expectation for a channel of this nature at this time of night".

However, in this case, given the prolonged and frequent scenes of a very strong sexual nature and the inclusion of explicit images of genital and anal details (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.

It is important to note that Ofcom has repeatedly made clear, however, that the broadcast of such strongly sexual material (unsuitable for showing unless there are

mandatory restricted access) cannot be justified simply by the channel being included in the 'adult' sector of the Sky EPG⁴.

In this case, the very strong and explicit nature of this content meant that was not suitable for broadcast on an unencrypted and freely available service without mandatory restricted access and therefore would have exceeded the expectations of any viewer, even those familiar with material in the 'adult' section of the Sky EPG. This content was therefore in breach of Rules 2.1 and 2.3 of the Code.

Breach of Rules 1.24, 2.1 and 2.3

Bang Babes, Tease Me, 22 June 2009, 01:00 to 02:00 approximately

In relation to Rule 1.24, Ofcom examined the content of this broadcast and considered that it was also of very strong sexual nature. However, it was not as strongly sexual or explicit (for example, the images of genital and anal detail included in this programme were less graphic) as the material included in the previous programmes (dealt with above). Additionally, the scenes of a sexual nature were not as frequent or prolonged in duration.

Although it was very finely balanced, Ofcom was satisfied that the content of this programme (though of a strong sexual nature) did not constitute adult sex material. Its broadcast, without mandatory restricted access, was not therefore in breach of Rule 1.24.

This broadcast was not in breach of Rule 1.24 of the Code.

Having decided that that the content of the programme did not constitute 'adult-sex' material Ofcom went on to consider the character of the content and whether or not the broadcaster had taken appropriate steps to ensure that the content was justified by context (or whether it was in breach of in breach of Rules 2.1 and 2.3 of the Code).

Although it did not constitute 'adult-sex' material, the content of this programme nevertheless of a very strong sexual nature and capable of causing considerable offence to viewers. The programme included scenes of simulated masturbation and close up shots of the presenter touching her genital and anal areas.

Ofcom therefore examined the extent to which there were any particular editorial or contextual factors that might have limited the potential for offence. Again, Ofcom noted that the programme was broadcast a long time after the watershed and that viewers tend to expect stronger sexual material to be shown later at night. Ofcom also took account of the fact that the channel was positioned in the 'adult' section of the Sky EPG and that viewers tend to expect the broadcast of stronger sexual

⁴ 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.

material on channels in this section of the EPG than would be expected to be included on other channels

However, given the very strong sexual nature of the material, the time of broadcast and location of the channel were not sufficient to justify the broadcast of the material (for example, the sexual material included in this programme was not presented as part of an editorial or educational narrative). Ofcom has provided extensive guidance to broadcasters stating that invasive close up shots of the anal and genital areas is in breach of generally accepted standards. Further, that guidance also made clear that – as in this case – the ‘adult’ section of the EPG does not in itself provide contextual justification for the inclusion of such strong sexual material on a service which is freely available.

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. It was therefore in breach of Rules 2.1 and 2.3.

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

Breach of Rules 2.1 and 2.3

In Breach

Elite Days

Elite, 4 November 2009, 19:45 and 25 November 2009, 14:00

Elite Nights

Elite TV, 2 October 2009, 22:00

Elite Days

Elite TV, 12 November 2009 09:00 and 12:59 and 6 December, 15:30

Introduction

The channels Elite TV and Elite Days (“the Channels”) are owned and operated by Prime Time TV Limited (“the Licensee”). The Channels broadcast interactive chat programmes that are freely available and without mandatory restricted access. They are located in the ‘adult’ section of the Sky Electronic Programme Guide (“EPG”). Elite is situated on Channel 911 of the EPG and Elite TV at Channel 965 of the EPG. Viewers can contact the onscreen female presenters via a premium rate telephone or text number (“PRS”). Generally the female presenters dress and behave in a provocative and/or flirtatious manner.

Ofcom received complaints about several programmes on the Channels as follows:

Pre-watershed

Elite Days, Elite, 4 November 2009, 19:45; and 25 November 2009, 14:00

Both of these daytime broadcasts featured the same presenter. In relation to the broadcast of 4 November 2009 the complainant said the presenter was behaving in a sexually suggestive manner. On viewing the material Ofcom noted that the presenter, seated on a sofa and dressed in a low cut gold lamé swimsuit and black high heeled shoes, had her legs wide apart while repeatedly stretching one leg above her head allowing viewers a more open shot of her crotch area. In addition, there were sequences in which the camera, in close-up, focused on the presenter’s crotch while the presenter slowly gyrated her pelvis.

In the second broadcast of 25 November 2009, the same presenter was seen in two sequences. Firstly she was dressed in black PVC underwear and subsequently she wore a blue swimsuit with knee length stiletto heeled boots. In both sequences she was positioned on a sofa with her legs apart. In the second sequence she was seen thrusting her buttocks for prolonged periods.

This material was brought to the Licensee’s attention after routine Ofcom monitoring. We asked the Licensee to comment on both broadcasts in relation to the following Code rules:

- Rule 1.3 – Children must...be protected by appropriate scheduling from material that is unsuitable for them; and
- Rule 2.3 – In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context.

Elite Days, Elite TV, 12 November 2009 09:00 and 12:59 and 6 December, 15:30

Ofcom received a complaint about each of these daytime programmes that the presenters were behaving in an overtly sexual manner. In relation to the 09:00

broadcast on 12 November 2009, the presenter wearing a black negligee and suspenders was seen to be lying on her stomach and gyrating her pelvis continuously. At times her face was obscured and the focus was on her buttocks. At 12:59 on 12 November 2009 a different presenter lay on a couch with her legs apart. At intervals she removed her underwear with the heel of her shoe, enabling viewers to see her buttocks. She also mimed sex by repeatedly thrusting her groin area in close-up to camera as though she was having intercourse, and stroked and caressed her body in a sexually provocative manner.

During the broadcast of 6 December 2009 the presenter was wearing a black bra and a black leather thong. During the programme she was seen lying on a sofa, gently gyrating her hips. At times she rubbed her body and touched her inner leg area. She was also seen pulling at her underwear to reveal part of her genital area.

Having viewed the material, Ofcom asked the broadcaster to comment in relation to Rules 1.3 and 2.3 as above.

Post 21:00 watershed

Elite Nights, Elite TV, 2 October 2009, 22:00

Ofcom received a complaint that during this programme "footage showed the presenter's underwear being pulled aside revealing exposure of genitals." Ofcom viewed the material and noted that the presenter, wearing a gold lamé swimsuit on several occasions pulled her underwear aside and exposed her genital area. In addition Ofcom noted prolonged close up shots of the presenter with legs wide apart and sequences where she placed her hands inside her underwear.

The Licensee was asked to comment on these areas as well as on the complaint itself, in light of Rule 2.3 of the Code (see above).

Response

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

Pre-watershed

Elite Days, Elite, 4 November 2009, 19:45 and 25 November 2009, 14:00

The Licensee did not differentiate between the two broadcasts. It said that although the content may have been of a slightly suggestive nature it felt that it did not breach either Rules 1.3 or 2.3. In relation to Rule 1.3 the Licensee said that in the very unlikely event of a child coming across this material, no harm would have been caused. In relation to Rule 2.3 and generally accepted standards, the Licensee argued that the viewing public is exposed to much stronger content throughout the day across all media platforms. In the Licensee's view, this meant that the content was within what is considered to be generally accepted standards in today's society.

The Licensee also pointed out that at no point in either of the broadcasts did the presenter expose any part of her body so that the scheduling of the material was completely appropriate.

Elite Days, Elite TV, 12 November 2009 09:00, and 12:59; and 6 December, 15:30

In relation to all three cases the Licensee acknowledged that the material could be deemed to be unacceptable as regards Rule 1.3. In relation to Rule 2.3 it said that the likelihood of harm to viewers was minimal. However it said that it had taken steps to ensure that content of this nature would no longer be broadcast on the Channels.

The Licensee went on to give details of steps it had taken to avoid content of this nature being broadcast in future. These steps included the re-training of all staff on pre- and post-watershed compliance and the issuing of a clear compliance document to all staff.

Post 21:00 watershed

Elite Nights, Elite TV, 2 October 2009, 22:00

In relation to the material overall, the Licensee said it regretted causing Ofcom concern. However it said that overall the material posed less risk of harm and offence when considered alongside some of the material highlighted in previously published Ofcom findings in this area. It pointed out that all of the material had been broadcast after the watershed and was on a channel within the adult section of the Sky EPG which meant the channel was capable of being restricted through the parental control facility on Sky set top boxes.

Overall, the Licensee said the entire programme consisted of a single presenter who at no point engaged in nudity. On the whole it said the content was of a teasing, rather than explicit nature and the likelihood of viewers being offended was extremely unlikely.

Decision

Rule 1.3 requires broadcasters to protect children by appropriate scheduling from unsuitable material. Rule 2.3 requires broadcasters to comply with generally accepted standards so as to provide adequate protection for members of the public from offensive material. While welcoming the steps taken by the Licensee to improve compliance procedures in the future, Ofcom had concerns about all of the broadcasts referred to in this finding.

Pre-watershed

Turning to the daytime or pre-watershed transmissions first, which Ofcom considered under Rules 1.3 and 2.3, Ofcom's concerns centred on sequences such as the following:

Elite Days, Elite, 4 November 2009, 19:45 and 25 November 2009, 14:00

In relation to the broadcast of 4 November 2009, broadcast at 19:45, the presenter was seen on a sofa with her legs apart in a sexually suggestive pose. The manner in which she raised one leg above her head, making the crotch area more visible was particularly suggestive. In addition Ofcom was concerned with the way in which the camera panned slowly over her body and lingered for lengthy periods on her crotch. While this was happening, the presenter gyrated her hips in a way which in Ofcom's opinion was sexually provocative and inappropriate for this time of day. At times the presenter placed her hands inside her swimsuit and appeared to touch her body in a sexually suggestive way. Later in the programme the presenter was on all fours in a sexual position and continued in a suggestive manner to gyrate her pelvis.

The broadcast of 25 November, at the earlier transmission time of 14:00, saw the same presenter appear in two sequences between 14:00 and 15:00. In the first sequence she was again on a sofa with her legs apart and again in a sexually suggestive pose. In this instance she was dressed in fishnet stockings and PVC underwear. In the second instance the presenter was dressed in a blue swimsuit cut in a revealing way at the crotch. She also wore knee length leather boots with stiletto heels. During this sequence she was seen on the sofa with her legs wide apart and

later on all fours. While on all fours she was seen to raise one of her heels close to her anus while moving her hand up and down the stiletto heel in a way which suggested masturbation. She was also seen thrusting her buttocks in a sexual manner for prolonged periods. The strength of this material was greater because of the cumulative effect of the following: the thrusting of the pelvis; the risqué nature of the presenter's clothing; her hand gestures as described above; and the presenter's sexually suggestive facial expressions, for example licking her finger in a suggestive manner.

Elite Days, Elite TV, 12 November 2009 09:00 and 12:59 and 6 December, 15:30

The broadcast of 12 November 2009 at 09:00 showed the presenter lying on her stomach and gyrating her pelvis continually. This was in an overtly sexual manner for a prolonged period. At various times her face was wholly or partly obscured for prolonged periods with a focus at times purely on her buttocks and upper torso, adding to the sexual nature of the imagery

At 12:59, a different presenter was seen lying on her back, similarly gyrating her pelvis for prolonged periods. On at least two occasions, the presenter used her high heeled shoe to lift her underwear while simulating sex. This meant her buttocks were visible. The second time this occurred it was done in a more explicit fashion and for a prolonged period.

In the broadcast of 6 December at 15:00 the presenter, lying on a mattress with her legs apart wore a black leather thong and a black bra. She made sexually explicit gestures and movements. These involved her caressing her body – including her inner leg area with her fingers. At times she lifted her underwear to reveal her genital area.

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

The behaviour of presenters for daytime chat services must not at any time appear to mimic or simulate sexual acts before the watershed. In all of these cases the female presenters dressed in skimpy underwear, adopted various sexual positions and made the sexually suggestive gestures described above. This was not editorially justified. In Ofcom's view the repeated actions and sexual positions of the presenter were intended to be sexually provocative in nature. In light of this behaviour, together with its lack of editorial justification, this material was clearly unsuitable for children.

Given the sexual nature of the content, the location of the channel in the 'adult' section of the EPG and the pre watershed scheduling were not sufficient to provide adequate protection to prevent children from viewing this material (Ofcom is aware that in relation to this particular broadcast the Licensee did not refer to the location of the channel in the EPG in its defence). The material breached Rule 1.3.

Post 21:00 watershed

Ofcom then considered the programme broadcast **after** the 21:00 watershed in light of Rule 2.3.

Elite Nights, Elite TV, 2 October 2009, 22:00

Here, the presenter wore a gold lamé swimming costume and spent considerable parts of this programme behaving in a strong sexually suggestive manner. On

viewing the material Ofcom was concerned at the graphic nature of the presenter's behaviour. This was because it was beyond what one would normally expect to see on this type of channel at this time of the evening. The type of behaviour and images that concerned Ofcom included numerous instances of extreme close ups of the presenter's bottom as well as the genital areas with outer labial area visible. The strength of these images was increased by the presenter's behaviour in lifting up the thin piece of her swimsuit which covered her anus. In addition the presenter repeatedly bunched up the material at the front crotch area of her swimsuit so that her genital area was partly visible. Also, Ofcom had further concerns about some of the actions of the presenter. These included prolonged close up shots of the presenter with legs wide open and sequences involving the presenter placing her hands inside her swimsuit and apparently touching her genitals.

In Ofcom's view, the strongly suggestive nature of this material together with the overtly sexual behaviour of the presenter was such that it went beyond generally accepted standards. Ofcom recognises that broadcasting this material in the 'adult' section of the EPG and after the 21:00 watershed were steps which helped to minimise the potential offence caused to viewers. However, Ofcom considered that these factors did not justify the broadcast of this material in this instance. Given the strength of the content, Ofcom also notes the possibility of viewers at this time coming across this material unawares. Ofcom therefore concluded that this offensive content was not justified by the context and so went beyond what could be considered generally accepted standards. It was therefore in breach of Rule 2.3 of the Code.

Ofcom has had a meeting with this Licensee to explain the concerns it has over the broadcaster's compliance. Prime Time TV Limited should note that further breaches may result in Ofcom taking further regulatory action.

Breaches of Rules 1.3 and 2.3

In Breach

Party People

Get Lucky TV, 29 November 2009, 17:25

Introduction

Party People is an interactive chat programme where viewers can contact the on-screen presenters via a premium rate telephone or text number ('PRS'). Generally, the female presenters dress and behave in a provocative and/or flirtatious manner. *Party People* is broadcast in the 'adult' section of the Sky electronic programme guide ('EPG') and is freely available without mandatory restricted access.

Ofcom received a complaint from a viewer who was concerned that the behaviour and attire of one of the presenters was unsuitable for the time of broadcast in the late afternoon.

Ofcom noted the presenter in question wore a pair of knickers and a halter-neck bikini top and lay variously on her front and side, facing the camera. During the broadcast, she pulled the side of her knickers down towards her upper thighs, stroked her body and appeared to mime sexual activity.

Ofcom viewed a recording of the programme and asked the broadcaster on behalf of the licensee, Grandiose Limited ("Grandiose"), to comment with regard to Rules 1.3 (children must be protected by appropriate scheduling from material that is unsuitable for them).

Response

Get Lucky TV said it took great care to ensure the content of the programme is not unsuitable for children. It said: the presenter on this occasion was substantially covered on the lower part of her body by a pair of white pants; her breasts were fully covered by her top; and that while the camera looked down the length of her body, it did not focus on any particular part.

Get Lucky TV said on occasion the presenter changed the position of her body to allow the camera to highlight the full length of her figure – for example, by leaning "slightly back and plac[ing] a thumb under her pants at the hip". Get Lucky TV said that at no point during the broadcast were any intimate body parts revealed. Overall, the broadcaster believed that other content on daytime chat services which Ofcom had found to have breached the Code in the past, was "radically different" to the material broadcast in this programme.

Decision

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

The behaviour of presenters for daytime chat services must not appear to mimic or simulate sexual acts before the watershed. In this case the presenter was dressed in knickers and a halter-neck bikini top and was shown lying on her front, facing

towards the camera. The presenter occasionally lay on her side and tucked her thumb under her knickers to pull them down to the top of her thigh. The broadcast contained numerous close-up, panning shots of her body, including of her cleavage and groin. The presenter also: thrust her hips and pelvis as though miming sexual activity; rubbed her hand over her thighs and bottom; arched her back to emphasise her breasts, and opened her legs while lying on her side.

In Ofcom's view the actions of, and positions adopted by, the presenter were intended to be sexually provocative in nature. The material was therefore not editorially justified, and Ofcom considered clearly unsuitable for children.

Given the sexual nature of the content, the location of the channel in the 'adult' section of the EPG and its scheduling at 17:25 were not sufficient to provide adequate protection to prevent children from viewing this material. Ofcom has made clear that the location of a channel in the 'adult section of the Sky EPG, available freely without mandatory restricted access, does not in itself provide adequate protection to under-eighteens from inappropriate material. Therefore the material was in breach of Rule 1.3.

Breach of Rule 1.3

In Breach

Failure to provide Licensee Transmission and Revenue Return

DM Digital

Introduction

Ofcom requires all its non-PSB television licensees to complete and return each year a transmission and revenue return ("T and R" return.) This is a record of the revenues earned, costs incurred and hours broadcast under a licence.

Ofcom uses the information collected for a number of purposes including the calculation of licence fees, assessing any obligation to offer access services (subtitling, signing and audio description) and to ensure compliance with European legislation and industry monitoring. Also, Ofcom is required under Section 358 of the Communications Act 2003 to carry out a review of the provision of broadcasting services and to publish an annual factual and statistical report of the broadcast industries and the state of the market in which broadcasting services are provided (Ofcom's "Communications Market Report").

Ofcom notifies licensees in early February each year that this return is due for each licence held and requires it to be completed by 31 March the same year.

DM Digital is the holder of a Television Licensable Service Licence ("TLCS licence"). Its 2008 T and R return was due on 31 March 2009. Between January and May 2009 Ofcom wrote to DM Digital seven times requesting that the broadcaster submit its T and R return. These requests went unanswered.

On 30 November 2009 Ofcom asked DM Digital to provide formal comments in response to a possible breach of Condition 12(1) of its TLCS licence. Condition 12(1) states:

"The Licensee shall furnish to Ofcom in such manner and at such times as Ofcom may reasonably require such documents, accounts, returns, estimates, reports, notices or other information as Ofcom may require for the purpose of exercising the functions assigned to it by or under the 1990 Act, the 1996 Act, or the Communications Act..."

Response

DM Digital did not provide any response.

Decision

A broadcaster is required to comply with all the conditions in its licence. It is the broadcaster's responsibility to ensure that it is aware of all of Ofcom's requirements. DM Digital's failure to provide important information requested by Ofcom – in the form of its 2009 T and R return – on numerous occasions, is a serious breach of condition 12(1) of its licence.

Ofcom notes that this breach is the second by DM Digital in a relatively short amount of time of a significant condition of its licence. On 7 December 2009, Ofcom found

DM Digital in contravention of Condition 11 of its licence for failure to provide programme recordings “forthwith” when requested by Ofcom.

The ASA has referred DM Digital to Ofcom for the consideration of a statutory sanction. This recent failure of the Licensee to comply with its licence conditions is serious and may be taken into account as part of its compliance record when the Broadcasting Review Committee considers whether a statutory sanction is appropriate in this case.

Breach of Licence Condition 12 (General provision of information to Ofcom)

Note to Broadcasters

All broadcasters are reminded of the requirement to comply fully with the condition of their Licence to furnish to Ofcom information that it requires for the purpose of exercising its statutory functions. This includes the information which Ofcom requests Licensees annually to set out in transmission and revenue returns. Ofcom requires this information for a number of purposes, including the calculation of licence fees, assessing any obligations to offer access services and to ensure compliance with European legislation and industry monitoring.

For the avoidance of doubt, all Licensees must complete and return their transmission and revenue returns by the deadline set each year by Ofcom. The obligation to provide this information is non-negotiable and compulsory. Ofcom is very concerned about Licensees who are not complying with this duty. Failure to adhere fully to this requirement may result in Ofcom considering the imposition of statutory sanctions.

In Breach

Euro Digital Corporation Limited

The Dating Channel, 17 October 2009, 20:30 to 21:30

Introduction

The Dating Channel is a teleshopping service owned and operated by Euro Digital Corporation Limited (“EDCL” or “the Licensee”). On the service, viewers seeking a partner can place short profiles or descriptions of themselves with the aim of finding a suitable ‘date’.

The regulation of the content of teleshopping services, such as The Dating Channel, is a function that has been contracted out by Ofcom to The Advertising Standards Authority (“the ASA”). In this case the ASA received a complaint about an advertisement on the channel, which featured an image of the actor Mel Gibson smoking what appeared to be an illegal substance. In the course of the investigation EDCL was asked by the ASA to provide a recording of the output. In response to this request the Licensee indicated that its systems only provided for recordings to be retained for 1 month after transmission. As the request had been received outside this timeframe EDCL explained to the ASA that it was unable to provide a copy of the output. As the failure to provide a recording of output represented a possible breach of its licence by EDCL, the ASA then referred the matter to Ofcom for investigation.

Ofcom asked The Dating Channel on behalf of the Licensee to provide formal comments in relation to Condition 11 of its Television Licensable Content Service (“TLCS”) licence, which states that:

“The Licensee shall adopt procedures acceptable to Ofcom for the retention and production of recordings in sound and vision and of any programme which is the subject matter of a Standards Complaint” and “the Licensee shall:...At the request of Ofcom forthwith produce to Ofcom any such recordings for examination or reproduction.”

Guidance makes clear that recordings must be retained for 60 days by holders of TLCS licences. In cases such as this where regulation has been contracted out to the ASA, the obligation to provide recordings under the above Condition is one owed by licensees to the ASA. Licensees are also obliged to provide recordings in this way under Section 334(1) the Communications Act 2003.

Response

The Dating Channel, on behalf of the Licensee responded by saying that, while at the time of the ASA request for a recording it had inadequate systems in place in relation to this condition, it had now modified its recording systems to cover the requisite period of 60 days. It added that although in this case it was not able to provide a recording of the output complained of it was able to locate a copy of the image complained of from its archive system so that to some extent the concerns raised by the complainant were addressed.

Decision

It is a condition of EDCL’s licence that recordings of all output are retained for 60 days after transmission and that the ASA (acting under its co-regulatory powers) is

provided “forthwith” with any material on request. Notwithstanding the fact that an image of the complained of material was provided in this instance, the licensee’s failure to have systems in place to ensure compliance with Condition 11 represents a serious breach of its licence by Euro Digital Corporation Limited.

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

Resolved

Jingle Bell Ball Competition

95.8 Capital FM (Greater London), 2 November 2009 to 4 December 2009, various times

Introduction

Global Radio (“Global”), which owns 95.8 Capital FM (“Capital”), notified Ofcom on 13 November 2009 of a problem it had identified with a broadcast competition it was currently conducting. Listeners were invited on air to enter the competition – a series of free prize draws – to win pairs of tickets for the broadcaster’s Jingle Bell Ball – a live music event held at the O2 Arena on 5 and 6 December 2009.

Global told Ofcom the following:

The competition was held each day, normally with a draw taking place once an hour between 06:00 and 23:00. For each draw, listeners were invited to text in a keyword (e.g. “WIN”) during the first quarter of the hour, after which a winner was randomly selected, contacted and taken to air, to be awarded their prize tickets.

Entrants’ texts were charged at their own mobile phone networks’ rates, and the broadcaster therefore raised no revenue from the entries it received.

When listeners submitted a text to the competition, a free response text was sent back to them, to thank them for entering. The broadcaster had asked the SMS (text service) provider to devise a system that sent only one response text back to any entrants who submitted more than one text entry. The automated system produced by the service provider also selected the winner of each draw randomly and provided the broadcaster with relevant contact details.

Global employees had submitted test entries in the first draw (which was held at 08:00 on 2 November 2009) and had established that:

- text entries had been received;
- entries had been routed into the correct database; and
- response texts had been sent out to participants’ initial entries.

On 7 November 2009, a listener, who had entered one of the draws approximately 40 times, contacted Capital. He was concerned that, despite his high number of entries, he had not won, and that therefore his entries may not have been entered correctly into that draw. The employee who took the call ran a manual check (via the online portal provided by the service provider) and found that only one entry from the entrant’s mobile phone had been included to date.

The matter was immediately escalated to Global management, which established that, due to a technical error, only the first ever entry made from any mobile phone number had been entered into a draw. Subsequent entries, whether made into the same draw or any further draw(s), had not been included. A total of 94 draws (from 08:00 on 2 November to 14:00 on 7 November, inclusive) had been affected.

Global therefore made additional tickets available and conducted new draws for those entries of the 94 affected draws that had been mistakenly excluded. It was of

the view that the situation had resulted from the draws requiring a different and automated system to its standard manual operating system for competitions, due to the size, duration and specific response requirement in this case.

Ofcom therefore sought further detail and clarification on the matter. Having received all the information we required to reach a decision on the matter, we asked Global if its submissions to date could be taken as its formal comments with regard to Rule 2.11¹ of the Code.

Response

Global said that 51,093 entrants had made a total of 196,430 entries into the affected draws. It added that it had changed the SMS (text) briefing form for its staff, which “now [prompted] the project owner to do a further check on the set-up and process to be followed for the [specific] campaign.”

The broadcaster said that whenever it contacted its service provider “to set up a campaign relating to a competition”, it would now be sending the provider a copy of the terms and conditions for that competition, to enable checks of its system setup against Global’s expectations.

In relation to the issue of a listener bringing the matter to Global’s attention, Global said that, in this case, “the particular nature of the problem” did not enable it “to see at a glance that there was a flaw in the system”. However, it added that, Capital held a weekly senior management meeting at which broadcast competition entry rates were normally discussed. It said that “the meeting scheduled to take place on Monday 9th [November] would undoubtedly have involved discussion of the entry levels and patterns for the [Jingle Bell Ball] competition, as it was the primary activity on the station at the time, at which point it would have become evident that the normal/expected patterns of entry were not being displayed in [the relevant] data.”

The broadcaster said that it had also taken a number of other steps, in this instance, to remedy the problem, including the following:

- Global made available additional pairs of tickets (as prizes);
- it identified all the entrants omitted from each of the affected draws;
- it re-ran each affected draw (with only previously omitted entrants included) in the late afternoon and early evening of 12 November 2009; and
- it then notified the winners.

Global noted that each of the 196,430 entries into the affected draws had been included in either the first or the second draw and that each entry had had a better chance of winning than it would have otherwise had, “given that it would have been drawn from a smaller pool of [entries in] either draw.” Global also stated that it was happy that it had provided the entrants to all executions with more than it had promised them, and “did not believe it would aid the expediency of rectifying the problem to explain the complicated nature of the issue and the solution to each of [its] listeners.”

Decision

¹ Please note that on 16 December 2009, a revised version of the Code was issued. For programmes broadcast on or after 16 December 2009, Rule 2.13 is relevant.

Ofcom welcomed the broadcaster's action in uncovering the problem, establishing its cause and arranging re-draws to rectify the matter. Ofcom accepts that Global acted in good faith at all times and that it appeared likely that the broadcaster would have noted the problem within two days, even if it had not been contacted by a listener on 7 November 2009.

We also acknowledge Global's notification of the matter to Ofcom and the openness and efficiency with which the broadcaster dealt with Ofcom's further enquiry. It is clear that the broadcaster had taken steps to mitigate the operational deficiency and its consequences.

However, Ofcom noted that a significant number of entrants were affected by the flawed draws, none of whom were made aware of the problems by the broadcaster. Nonetheless, we also noted that the matter was rectified expeditiously while the competition was still in progress and that, importantly, no entrant was materially disadvantaged.

Given the specific circumstances, Ofcom considers that the matter was appropriately resolved by the broadcaster in this instance.

Resolved

Resolved

Heart Breakfast

Heart 97.6 FM, 28 October 2009, 08:55

Introduction

Heart 97.6 FM is a contemporary chart music and information station in the Luton area. *Heart Breakfast* forms part of their weekday early morning entertainment schedule. During the programme, the pop singer Daniel Merriweather was interviewed live over the phone, prior to performing at the Heart FM Christmas Lights event that evening. During the course of the interview, the singer began to speak negatively about the fast food chain KFC, having worked there when he was younger, and used the word “*fuck*”. The station immediately apologised for the language.

There was one complaint from a listener.

Ofcom asked Global Radio (“Global”), which owns Heart FM and is responsible for its compliance, to comment with regard to Rule 1.14 (The most offensive language must not be broadcast when children are particularly likely to be listening.)

Response

Global said the interview was due to be pre-recorded, in accordance with Heart FM policy, but a flight delay meant it had to be conducted live. The singer was briefed by a producer prior to going on-air and the station was comfortable that he understood the standards expected of guests and staff during on-air broadcasts.

The broadcaster said that as soon as Daniel Merriweather spoke in disparaging terms about KFC, the presenters tried to steer the artist away from the subject. This however elicited the offending swear word. After the use of the word “*fuck*”, the presenters offered unreserved apologies on air, as did Daniel Merriweather. The singer again apologised to presenters and the producer off air afterwards. Global acknowledged that this language was inappropriate for broadcast, particularly at breakfast time. The broadcaster said it was sorry that this language had been accidentally broadcast.

Decision

Ofcom research indicates that the word “*fuck*” and its derivatives are an example of the most offensive language. The broadcast of this strong language during the morning schedules when children could have been listening therefore causes Ofcom concern in light of Rule 1.14 of the Code.

Ofcom however noted the swift action of the presenters in concluding this interview, and acknowledged the apologies from both the presenters and the singer. We also recognise the reasons why this interview was not pre-recorded, as is usually the case. In light of these circumstances and on this occasion, Ofcom has therefore decided that this case should be resolved.

Resolved

Other Cases

In Breach

Breach of Licence Condition

Sunshine Radio (Hereford & Worcester)

Introduction

Sunshine Radio is an AM commercial radio station that has been licensed to broadcast to the Hereford and Worcester areas.

It came to Ofcom's attention that Sunshine Radio's Hereford transmitter (which uses the 954 kHz frequency) has been off the air from at least 23 December 2008. This meant that the station had only been broadcasting to the Worcester area (on 1530kHz) and not to the Hereford area – i.e. a substantial part of the licensed area was not being broadcast to.

Ofcom wrote to Classic Hits Radio Limited ("Classic Hits"), which holds the AM licence for Hereford & Worcester, for its comments under Licence Condition 2(1) contained in Part 2 of the Schedule to the Licence. The relevant licence condition states that:

"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." (Section 106(2) of the Broadcasting Act 1990).

The 'Licensed Area' is defined as the "Hereford and Worcester area" in Part 1 of Annex 4 of the station's licence.

Classic Hits' parent company, Laser Broadcasting Ltd, is in Administration. (Notwithstanding Classic Hits remains the holder of the licence for Sunshine, and Sunshine continues to be broadcast to the Worcester area.)

Response

In response to Ofcom's letter, Classic Hits, through the Administrator of its parent company, confirmed that the station was not currently broadcasting to the Hereford area on its 954 kHz transmitter. This is because of an ongoing dispute with the owners of the transmitter site.

Decision

It is an important condition of Classic Hits licence that Sunshine Radio broadcasts to both the Hereford and Worcester areas. Ofcom did not consider that the dispute between Classic Hits and the owners of the transmitter site removed Classic's obligations under its licence. Therefore the ongoing failure to broadcast to the Hereford area on 954kHz is a clear breach of Licence Condition 2(1) contained in Part 2 of the Schedule to its licence.

We also noted that the breach remains an ongoing one as the station had still not resumed broadcasting on that frequency.

Ofcom has notified Classic Hits and the Administrator of its parent company that, given the seriousness of the breach – and its ongoing nature – we are considering the case for statutory sanction.

Breach of Licence Condition 2(1) contained in Part 2 of the Schedule to the Hereford & Worcester (AM) commercial radio licence by Classic Hits Radio Ltd (broadcasting as Sunshine Radio)

Fairness and Privacy Cases

Upheld

Complaint by Mr E made on behalf of F (his son)

Send in the Dogs, ITV1, 28 July 2009

Summary: Ofcom has upheld this complaint made by Mr E of unwarranted infringement of privacy in the programme as broadcast.

This edition included an incident in which the police followed a car that they believed was stolen and carrying armed men. The car was tracked using a helicopter equipped with heat sensitive surveillance technology, as well as police officers and dogs on the ground.

The driver of the car was F. During the search, F abandoned the car, (along with 3 passengers) and proceeded to hide in a nearby wheelie bin. By using the heat sensitive technology, the police were able to locate F's hiding place and a police officer, with assistance from his dog, was able to find and arrest him.

The programme stated that F was subsequently convicted of driving without insurance and without a licence. He was 16 years old at the time of his arrest and filming.

F's face was not obscured in the programme as broadcast.

Mr E, F's father, complained to Ofcom that his son's privacy had been unwarrantably infringed in the programme as broadcast.

In summary Ofcom found the following:

- As statutory reporting restrictions applied to F's convictions, he had a legitimate expectation that such information would not be included in a television programme. As the programme broadcast information about these convictions, his privacy was infringed. This serious infringement of his privacy was not warranted.

Introduction

On 28 July 2009, ITV1 broadcast an edition of its series *Send in the Dogs*, which followed the work of the Greater Manchester Police Dog Unit.

This edition included an incident in which the police followed a car that they believed was stolen and carrying armed men. The car was tracked using a helicopter equipped with heat sensitive surveillance technology, as well as police officers and dogs on the ground.

The driver of the car was F. During the search, F abandoned the car, (along with 3 passengers) and proceeded to hide in a nearby wheelie bin. By using the heat sensitive technology, the police were able to locate F's hiding place and a police officer, with assistance from his dog, was able to find and arrest him.

The programme stated that F was subsequently convicted of driving without insurance and without a licence. He was 16 years old at the time of his arrest and filming.

F was not referred to by name in the programme; however his face was not obscured and was identifiable.

Mr E, F's father, complained to Ofcom that his son's privacy had been unwarrantably infringed in the programme as broadcast.

The Complaint

In summary, Mr E complained that his son's privacy was unwarrantably infringed in the programme as broadcast in that:

- a) His son's arrest was shown in the programme without consent from his family.
- b) No attempt was made to disguise his son's face, despite his being 16 years old at the time of the incident.

Channel TV's case

In summary, Channel Television Limited ("Channel TV"), an ITV Licence holder, responsible for the compliance of the programme on behalf of the ITV Network ("ITV1") responded to Mr E's complaint of unwarranted infringement of privacy in the programme as broadcast.

Heads a) and b):

Channel TV dealt with both heads of complaint together. It said that in making observational films about the police and their work, producers traditionally rely on information supplied by the police, who in general have final approval on cases featured, to ensure accuracy and so that their operations are not compromised. Channel TV said that in the case of F the police indicated that he had been convicted of several offences following his arrest. It said the programme featured the police pursuit of F who, it transpired, had been driving a car uninsured and without having passed a driving test.

Channel TV said the police had confirmed to the producers of the series, Steadfast Television, F's subsequent conviction on May 6 2009. However, on receipt of the complaint from Ofcom and following subsequent checks with the Court, Channel TV informed Ofcom that the Court had confirmed that F had appeared in the Youth Court and that automatic reporting restrictions under section 49 of the Children and Young Persons Act 1933 applied. These restrictions stated that:

- a) no report shall be published which reveals the name, address or school of any child or young person concerned in the proceedings or includes any particulars likely to lead to the identification of any child or young person concerned in the proceedings;
- b) no picture shall be published or included in a programme service as being or including a picture of any child or young person concerned in the proceedings.

Channel TV informed Ofcom that it fully accepted and deeply regretted that a mistake was made which led, in the broadcast of the programme, to F's privacy being unwarrantably infringed. Channel TV stated that Steadfast Television had been in existence for nearly four years and had never previously had a complaint about one of its programmes upheld despite the complexity of the series it has previously produced. Channel TV said that it and Steadfast Television had introduced new research and record keeping procedures to ensure a similar error is never repeated. It stated that F's face has been 'blurred' in all copies of the programme to ensure that for any future repeats of the programme his identity will be concealed. Both companies deeply regretted the error and apologised for the upset caused to F and his family on broadcast.

Decision

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

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

Mr E's complaint was considered by Ofcom's Executive Fairness Group. In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included recordings of the programmes as broadcast and transcripts, both parties written submissions and recordings and transcripts of unedited material. In its considerations, Ofcom also took into account of its Broadcasting Code ("the Code").

Heads a) and b):

Ofcom considered F's complaint that his son's arrest was shown in the programme without consent from his family and that no attempt was made to disguise his son's face, despite his being 16 years old at the time of the incident.

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

This is reflected in rule 8.1 of the Code which states that any infringement of privacy in programmes or in connection with obtaining material included in programmes must be warranted. In considering complaints about the unwarranted infringement of privacy, Ofcom will therefore, where necessary, address itself to two distinct questions: First, has there been an infringement of privacy? Second, if so, was it warranted? (Rule 8.1 of the Code.) Ofcom also had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

Ofcom first considered whether F had a legitimate expectation of privacy over the information disclosed in the programme. Ofcom noted the programme showed the pursuit and subsequent arrest of F. The arrest itself took place once F had been located and found in a nearby wheelie bin. The programme showed the police officer asking F to come out of the bin, his emerging from it and subsequently being pulled down to the floor and arrested. He was 16 years old at the time of the arrest and filming, this was not mentioned in the programme.

Ofcom noted that F was ultimately convicted of the offences described in the programme, namely, driving without a licence and driving without insurance. Ofcom also noted that F was convicted in the Youth Court and in those proceedings court reporting restrictions applied, under s.49 of the Children and Young Persons Act 1933, which prohibited the identification of any child or young person concerned in the proceedings.

Ofcom took the view that in circumstances in which legal restrictions had been placed over the information regarding F's convictions due to his age and appearance in Youth Court, he could reasonably have expected such information not to have been included in a television programme.

Ofcom noted that the programme broadcast the pursuit and arrest of F and that his face was not obscured in the programme as broadcast. The programme also stated that he was subsequently convicted of driving without insurance and without a licence. Ofcom concluded that as the programme broadcast information about F's conviction, and it identified him by showing a clear image of his face, F had a legitimate expectation of privacy in such circumstances, which was infringed.

Ofcom then turned to whether this infringement of privacy was warranted and Ofcom considered the broadcaster's right to freedom of expression. The normal rule of thumb is that a criminal trial is a public event and the principle of open justice ensures that the media are able to report criminal trials without any restraint. However in a criminal trial in a Youth Court, where there are statutory reporting restrictions, the situation is clearly different. In such a case, Parliament has decided that the identity of a child or a young person concerned in the proceedings should not be published or broadcast.

In the particular circumstances of this case, Ofcom considered that F's right to privacy, given his age and the statutory reporting restrictions in place clearly outweighed the broadcaster's right to freedom of expression to report his conviction. Ofcom noted that Channel TV accepted that the programme unwarrantably infringed F's privacy. Ofcom took the view that given the legal restrictions that applied to F's conviction in a Youth Court, that his identification in the programme was a serious invasion of his privacy. Ofcom therefore concluded that the infringement of F's privacy was not warranted.

Accordingly, Ofcom has upheld Mr E's complaint of unwarranted infringement of privacy in the programme as broadcast.

Not Upheld

Complaint by Mr Ric Hilton and Mrs Maggie Hilton on their own behalf and on behalf of Ms Gillian Stockman

Four Weddings, Living, 13 July 2009

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

This programme featured four contestants (Emma, Adam, Kryisia and Jamie) who scored each other's weddings according to: venue; food; wedding outfit; and overall presentation. The contestant with the most points won a "five star" honeymoon. During Kryisia's wedding at the Enchanted Manor, the other contestants were shown commenting on various aspects of the day. Some made complimentary remarks but Adam made a number of criticisms and when he saw harpist, Ms Gillian Stockman, playing with fairy wings on her back, he commented that he felt like he was in "Disneyworld" and criticised her playing ability.

Mr Ric Hilton and Mrs Maggie Hilton ("Mr and Mrs Hilton"), owners of the Enchanted Manor, complained to Ofcom that they were treated unfairly in the programme as broadcast. Mr and Mrs Hilton also complained on behalf of Ms Stockman that she was treated unfairly in the programme.

Ofcom found as follows:

- Mr and Mrs Hilton were not misled as to the nature and purpose of the programme and gave their informed consent in participating in the making of the programme.
- The programme was not edited in a way that resulted in unfairness to Mr and Mrs Hilton and that neither they nor their business were portrayed unfairly in the broadcast.
- The programme made it clear that Adam's comments about the way Ms Stockman was dressed and her playing ability reflected his own personal view and this was not presented as forming part of the programme's factual narrative.

Introduction

On 13 July 2009, Living broadcast an edition of *Four Weddings*, a ten-part series of programmes in which contestants competed against each other by inviting the other contestants to their wedding. In each programme, four contestants scored each other's wedding according to: venue; food; wedding outfit; and overall presentation. At the end of the weddings, the contestant with the most points won a "five star" honeymoon.

This particular programme featured four contestants named Emma, Kryisia, Adam and Jamie. Emma's wedding was the first one shown, followed by Adam's civil partnership ceremony, Kryisia's wedding and, finally, Jamie's wedding. In the introduction to Kryisia's wedding, Adam said that Kryisia had made some "controversial" remarks about his own civil partnership ceremony and reception and that the "game's definitely on now".

The venue for Krysia's wedding was the Enchanted Manor on the Isle of Wight, owned by Mr Ric Hilton and Mrs Maggie Hilton ("Mr and Mrs Hilton"). The programme showed footage of the venue, the wedding ceremony and the wedding breakfast. On arriving at the Enchanted Manor, the three other contestants expressed how much they liked the venue and Adam was shown saying "*Enchanted Manor, wow. Wow, that's gorgeous isn't it*". During the wedding, the other contestants were shown commenting on various aspects of the day. Some made complimentary remarks but Adam made a number of criticisms and when he saw harpist, Ms Gillian Stockman, playing with fairy wings on her back, he commented that he felt like he was in "Disneyworld" and criticised her playing ability.

During the wedding breakfast, which was a buffet, Adam said that he had been to "*funerals with better running buffets*" and that the bread was stale. The programme then showed footage of Krysia's wedding reception, which was held at a different venue.

After Krysia's wedding was shown, the contestants scored the event. The other contestants made complimentary comments about Krysia's wedding, however, Adam said that "[it was] *like pulling teeth, plus piles, plus in-growing toenail[s], oh God, it was awful*".

Mr and Mrs Hilton, as owners of the Enchanted Manor, complained to Ofcom that they were treated unfairly in the programme as broadcast. They also complained on behalf of Ms Stockman, the harpist, that she was treated unfairly in the programme as broadcast.

The Complaint

Mr and Mrs Hilton's case

In summary, Mr and Mrs Hilton complained that they were treated unfairly in the programme in that:

- a) They were misled about the nature and purpose of the programme.

In particular, Mr and Mrs Hilton said that the programme makers had told them that it was a "feel good" programme and that it would not be negative. They said that they had agreed to take part in the programme on the assurance that it would not show their business in a negative light.

- b) Their business was portrayed unfairly and that the programme was edited unfairly to focus on Adam's comments. They said that the programme makers had deliberately selected "a gay, bitchy stereotype that hated buffets" to attend the wedding to "sensationalise it" at their expense. They also complained that Adam had referred to the venue as "*tacky*", the food "*awful*" and had referred to them as "*white trailer trash*".

In summary, Mr and Mrs Hilton complained to Ofcom on behalf of Ms Stockman that she was treated unfairly in the programme as broadcast in that:

- c) Ms Stockman, the harpist who played at the wedding, was insulted and referred to as an "*idiot*" by Adam, who also criticised her playing abilities unfairly.

Living's case

In summary, Living responded to Mr and Mrs Hilton's complaint that they were treated unfairly in the programme as follows:

- a) In response to the complaint that Mr and Mrs Hilton were misled about the nature and purpose of the programme, Living said that Mr and Mrs Hilton were made aware that the brides would be judging one another's weddings and that one of the factors to be judged would be the venue. Living said that the programme makers had explained the nature and format of the programme accurately to all the contributors, including Mr and Mrs Hilton. It said that the nature of the programme was clearly explained in numerous emails to Mr and Mrs Hilton over the course of the production. Living provided Ofcom with copies of this email correspondence. It said that Mr and Mrs Hilton had confirmed to the programme makers, in their post-broadcast email of 3 August 2009, that they had been aware that the programme format involved the brides judging one another's weddings.

Living said that contestant judging, by its very nature, may include both positive and negative critique and would involve subjective views derived from individual experiences. Living said that over the course of the series, 40 wedding venues were featured and that, aside from the Enchanted Manor, no other venue had complained that they had been misled as to the format of the programme or their involvement in it.

Living said that, as a broadcaster, it retained full and final editorial control of the programme and that it would not allow a contributor to a programme to influence and dictate what could or could not be featured in it. It said that the programme makers were also fully aware of the broadcaster's editorial control and would not have made promises to participants or contributors that the final programme would be anything other than a fair representation of the events on the day. Living said that no guarantees would have been given that there would only be positive comments unless that was the reality of the events.

- b) In response to the complaint that Mr and Mrs Hilton's business was portrayed unfairly in that the programme makers had deliberately selected a gay stereotype to attend the wedding to "sensationalise it", Living said that the programme series featured couples of different backgrounds, personality and sexual orientation. It said that this added to the diversity of the programmes and provided a range of likes and dislikes. Living said that Adam's sexuality was irrelevant and had no bearing on the views he expressed.

Living said the programme presented a fair, accurate and balanced depiction of Krysia's wedding ceremony at the Enchanted Manor. The programme made it clear that Adam had an "axe to grind" after he was made aware that Krysia had made "controversial" remarks about his civil partnership ceremony and that the "gloves were off". Living said that it believed that viewers would have been left in no doubt that Adam was going to find Krysia's wedding problematic. Living said that the programme acknowledged that Adam had an issue with Krysia following comments that she made about his civil partnership ceremony. Adam was shown stating that:

"At my wedding it came to light that Krysia had said a few controversial things in earshot of my friends and to the other brides, which I think was a bit stupid. So the game's definitely on now."

Living said that it would therefore have been clear to viewers that Adam was likely to be looking for faults with Krysia's wedding specifically. The programme purposely detailed this conflict in order to make it clear to viewers that perhaps some of Adam's views might be exaggerated. However, Living said that Adam was shown finding fault with aspects of all the wedding venues and that the Enchanted Manor was not singled out for critical comment.

Living said that there was no intent to sensationalise the wedding at Mr and Mrs Hilton's expense. The programme makers had been very mindful for the programmes in the series not to pass judgement on any of the venues as it was recognised that they are businesses operating in a difficult economic climate. Living said that it was only right that the only views expressed in the programme were from those who attended the weddings. Living said that at no point was Adam asked by the programme makers to "play up" for the camera or to say anything other than what he felt. The opinions that he expressed were his own and all of the contestants were encouraged to be as honest about the other wedding experiences as possible.

Living said that Adam was critical of all the weddings he attended, not just Krysia's. Living said that it was worth noting that even when Adam was being complimentary, his phrasing could come across as quite cutting. It said that he had described Emma's venue as, "...beautiful, it was camp, it was over-the-top, it looked like an accident in a Pepto Bismol factory. It was wonderful". Also, Living said that by the end of the episode, Adam and one of the other brides, Jamie, appeared to have become friends. However, despite this, Adam was less than complimentary about his new friend's wedding venue, saying that a "rugby club's for people that want to play rugby, not for somewhere that's meant to be the most special day of your life, to be honest."

In relation to the element of the complaint that the programme was edited unfairly to focus on specific negative comments made by Adam and referred to by Mr and Mrs Hilton in their complaint as relating to them and their business, Living responded as follows:

- Living said that the complaint that Adam had referred to Mr and Mrs Hilton's venue as "tacky" was incorrect. It said that the reference to "tacky" was made in connection with the releasing of love birds, an event which was not unique to the Enchanted Manor and was offered by a number of wedding venues. Living said that Adam's "tacky" comment was not directed at the venue itself, but specifically related to the releasing of love birds as a feature of a number of weddings.
- Living said that it agreed that Adam was not complimentary about the food provided at the Enchanted Manor and that he had made it clear that it was not to his taste. However, it said that viewers would have already seen Adam criticise the food at the weddings of the two other contestants. Living said that Adam had admitted in the programme that he was a food "snob" and so viewers would have been aware that he was unlikely to be pleased no matter what was on offer.
- Living said that Mr and Mrs Hilton's assertion that they were referred to as "white trailer trash" in the programme was also an incorrect one. The comment that Adam actually made in the programme was:

“Not being funny, God save me, I moved away from Bromley to get away from white trailer trash and it’s been the epitome of this tonight...”

Living said that Adam had said “*tonight*”, which was a clear reference to the evening reception which was held at a different venue. Living said that Adam was therefore referring to his perception of the evening reception along with the people in attendance. This was not a reference to either Mr and Mrs Hilton or the Enchanted Manor.

In summary, Living responded to the complaint made by Mr and Mrs Hilton on behalf of Ms Stockman that she was treated unfairly in the programme as broadcast as follows:

- c) Living said that it was clear that Adam was outspoken and quick to express his views in a somewhat cutting and over the top manner. In referring to Ms Stockman, Adam stated:

“I feel like I’m in Disney World, you know, the harpist playing with fairy wings on... What’s that all about? She looked like an absolute idiot!”

Living said that Adam was expressing his personal view that the harpist looked idiotic in her fairy wings costume. He did not say that she was an “*idiot*”. Living said that it was clear from the programme that this was his personal opinion and that such personal opinions were, of course, the whole premise of the programme.

Decision

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

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

Mr and Mrs Hilton’s complaint was considered by Ofcom’s Executive Fairness Group. In reaching its decision, Ofcom considered all the relevant material provided to it by both parties. This included a recording and transcript of the programme as broadcast, both parties’ written submissions and supporting documentation. In its considerations, Ofcom took account of Ofcom’s Broadcasting Code (“the Code”).

When considering complaints of unfair treatment, Ofcom has regard to whether the broadcaster’s actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of the Code. Ofcom had regard to Rule 7.1 when reaching its decisions on the individual heads of complaint detailed below.

- a) Ofcom considered the complaint that Mr and Mrs Hilton were misled as to the nature and purpose of the programme.

Ofcom also considered whether the programme makers were fair in their dealings with Mr and Mrs Hilton as potential contributors to the programme (as outlined in Practice 7.2 of the Code). In particular, it considered whether Mr and Mrs Hilton gave their informed consent to participate in the programme, as outlined in Practice 7.3 of the Code which sets out that in order for potential contributors to a programme to be able to make an informed decision about whether to take part, they should be given sufficient information about: the programme's nature and purpose; their likely contribution; be informed about the areas of questioning and wherever possible, the nature of other likely contributions; and, any changes to the programme that might affect their decision to contribute.

Ofcom recognised that there was an absence of any consent form signed by Mr and Mrs Hilton relating to their contribution to the programme. However, it is important to note that informed consent does not rest on the signing of a consent or release form. Rather, Ofcom assessed the type and degree of information available to Mr and Mrs Hilton when agreeing to participate.

Ofcom first considered the information that was available to Mr and Mrs Hilton about the nature and likely content of the programme and the nature of their contribution to it in advance of them taking part. Ofcom was provided with copies of a number of emails between Mr and Mrs Hilton and the programme makers during the programme making process provided to it by Living.

Ofcom noted that the programme makers sent a speculative email on 14 January 2009 to a number of venues on the Isle of Wight which invited the proprietors to contact the production team if any couples getting married at their venue would like to be considered for the programme, in each episode of which one of the four couples would win "an amazing honeymoon". Mr and Mrs Hilton responded that they had a number of brides who might be interested. In a subsequent exchange of emails between Mr and Mrs Hilton and programme makers, Krystia and her partner were identified as being keen to take part in the programme.

Ofcom also noted that on 6 March 2009, the programme makers visited the Enchanted Manor and that the following day Mr and Mrs Hilton emailed the programme makers to say that they had made them "feel happy about everything". An email from the programme makers dated 20 April 2009 stated that "the main focus [of the programme] is on the judging brides..." to which Mr and Mrs Hilton replied that they looked forward to seeing the programme. In a further email dated 4 June 2009, the programme makers explained that:

"As you know the show is a light hearted series and you were aware that each of the judging brides must score and comment on the venue, food, dress and overall presentation".

Ofcom has not been provided with any contemporaneous notes of the initial telephone conversation the programme makers had with Mr and Mrs Hilton or of their meeting at the Enchanted Manor. Nevertheless, taking into account the email exchanges prior to the broadcast and referred to above, Ofcom considered that Mr and Mrs Hilton were provided with sufficient information about the nature and purpose of the programme and their likely contribution to it.

As a result of the information provided to Mr and Mrs Hilton by the programme makers during the programme making process as outlined above, Ofcom was satisfied that Mr and Mrs Hilton were sufficiently informed about the programme and that they had given their informed consent to participate in it.

Ofcom then considered the programme as broadcast and whether its content reflected the nature and purpose as explained to Mr and Mrs Hilton during the programme making process. Ofcom noted that the programme included four contestants who judged each others' weddings by appraising the venue, food, outfits and overall presentation. Ofcom took the view that the nature of the programme, namely a contest judged by the participants, meant that it was likely that there would be both positive and negative comments from the contestants. Ofcom therefore was satisfied that the content of the programme was in line with the information Mr and Mrs Hilton were given when agreeing to take part.

In light of the factors referred to above, Ofcom did not consider that Mr and Mrs Hilton were misled about the nature and purpose of the programme and found no unfairness to them in this regard.

Ofcom went on to consider the recollections of Mr and Mrs Hilton and the programme makers as to the assurance that their business would not be shown in a negative light. Ofcom noted that Mr and Mrs Hilton contacted the programme makers following the broadcast of the first programme in the series and said that they had been told that it would be "a positive TV show" and were now concerned that the programme would portray them in a negative light. Ofcom considered the description of a programme as being positive did not amount to a guarantee about the nature of the judging format of the programme or that the only comments that would be included in the programme would not be controversial or critical.

Ofcom recognised that there was a conflict between the complainants' recollection and that of the programme makers and that there was no documentary material provided in the written submissions that assisted it as to whether such assurances were given. In the particular circumstances of this case, it was not possible for Ofcom to conclude whether or not Mr and Mrs Hilton were given specific assurances about the manner in which their business would be portrayed.

However, Ofcom is not required to resolve conflicts as to the accuracy of particular accounts of events but to adjudicate on whether a complainant has been treated unfairly in a programme. The issue for Ofcom was to consider whether the inclusion of the footage taken at the Enchanted Manor and the comments made by the contestants resulted in unfairness to Mr and Mrs Hilton. (See decision head b) below for Ofcom's findings on the portrayal of the Enchanted Manor and the editing of comments made about it.)

Ofcom therefore found that Mr and Mrs Hilton gave informed consent for their participation in the making of the programme and that there was no evidence regarding any specific assurances. Ofcom therefore found no unfairness in this respect.

- b) Ofcom considered the complaint that Mr and Mrs Hilton's business was portrayed unfairly by the inclusion of Adam's comments and that the programme was edited unfairly to focus on Adam's negative comments.

In considering this head of complaint, Ofcom had regard to whether the portrayal of Mr and Mrs Hilton's business was consistent with the broadcaster's obligation to ensure that material facts had not been presented in a way which was unfair (as outlined in Practice 7.9 of the Code). It also had regard to Practice 7.6 of the

Code which states that when a programme is edited, contributions should be represented fairly.

Ofcom agreed with Living's assertion that Adam's sexuality was irrelevant to the nature of the comments he made in the programme.

Ofcom noted Adam's comments about Krysia's wedding, particularly those relating to the Enchanted Manor:

Adam: *"I actually thought I was at a bad taste convention. I've never seen anything like it in my life. It's like an explosion in a gay factory."*

"I thought the doves were absolutely horrendous. When Nick and Krysia set them off, acceptable, but it didn't stop. There were doves just coming out of everywhere. I thought I'd died and was at St Peter's Gates, do you know what I mean? Terrible, awful. Tacky, tacky, tacky. Urgh!"

"It's difficult for me not to come across as bitchy when talking about things like the food."

"I've been to funerals and wakes with better running buffets than that."

Jamie: *"There was nothing that you liked on that table?"*

Adam: *"No. The bread was stale and they had cold prawn things that tasted like battered rubber. They had melon, a melon carriage, can you believe that? I didn't think people actually did that. I'm going to go to McDonalds in a minute, can anyone give me a lift?"*

Ofcom noted that Adam's comment about *"white trailer trash"* was a reference to Krysia's wedding reception which was held at a different venue and was not an opinion relating to the Enchanted Manor.

Ofcom considered whether or not the broadcaster had taken reasonable care to satisfy itself that material facts were not presented in the programme in a way that was unfair to Mr and Mrs Hilton and their business. In doing so, Ofcom first examined the contextual basis for Adam's comments. It then considered whether the programme's presentation of his comments could have resulted in unfairness to them.

Ofcom noted that the programme contained the views and opinions of all four contestants as they judged each other's weddings. Both positive and negative comments were made about all the weddings, all of which were subjectively derived from the contestants' own experience and preferences. Adam, as one of the contestants, gave his views on aspects of Krysia's wedding.

Ofcom also noted that the commentary had made it clear, as did Adam himself, that Krysia had been overheard making some *"controversial"* comments about Adam's civil partnership ceremony, that he had an *"axe to grind"* and that *"the game's definitely on now"*. Ofcom took the view that these comments, which preceded the footage of Krysia's wedding, clearly signposted to viewers that Adam was out to find fault with aspects of Krysia's wedding and that he was likely to be very critical of it. It also took note of the positive comments made by the other contestants, one of whom described the venue as *"amazing"* and the releasing of the doves as being a *"really sweet touch"*. In relation to the food,

Ofcom noted that another contestant bride said in the programme that: *“the people at this place, they’ve really made the effort, they’ve done all like little character things and bits and pieces, so that’s quite good”*. Ofcom considered therefore that Adam’s critical comments were balanced with positive comments from the other brides, who did not have an *“axe to grind”*. The various comments, along with the footage of Krysia’s wedding would, in Ofcom’s view, have left viewers in a position to form their own opinions of the Enchanted Manor and Krysia’s wedding.

Ofcom noted that Adam expressed his comments about Krysia’s wedding venue and the food served in an exaggerated way, in keeping with his comments about the weddings of the two other contestants. While appreciating that the comments caused offence to Mr and Mrs Hilton, Ofcom considered that the programme’s format made it clear to viewers that the views expressed by the contestants were their own personal opinions. Ofcom also took the view that the programme’s commentary made it clear to viewers that Adam’s attitude towards Krysia’s wedding was influenced by negative comments he believed that she had made about his own civil partnership ceremony. In Ofcom’s view, therefore, Adam’s comments about the aspects of Krysia’s wedding that were provided by Mr and Mrs Hilton were not presented in the programme as forming part of its factual narrative or as a serious allegation of wrongdoing or other significant allegation about them or their business.

In these circumstances, Ofcom went on to consider whether or not the presentation in the programme of Adam’s comments resulted in unfairness to Mr and Mrs Hilton. Ofcom was satisfied that, despite the emotive language used by Adam, his comments would not have materially affected viewers’ understanding of Mr and Mrs Hilton or their business in a way that was unfair to them. It considered that in the context of a programme that included the subjective opinions of four contestants judging aspects of each others’ weddings, viewers would have been in no doubt that Adam was voicing his own personal opinion and that it was not intended to be a factual depiction of the venue or the food provided.

In relation to the complaint that the programme was edited unfairly to focus on Adam’s negative comments, again, Ofcom considered that the programme included both negative critique and positive comments from all the contestants about each others’ weddings. While Ofcom understood Mr and Mrs Hilton’s feelings about Adam’s comments, it was satisfied that the programme was not edited in such a way as to focus on Adam’s comments in a way that was unfair to them. As already set out above, Ofcom considered that the programme made it clear to viewers that Adam had an ulterior motive in his criticism of Krysia’s wedding and it noted that the comments of the other two contestants about Krysia’s wedding were also included, as were the views of Krysia herself, all of which presented a positive experience of her wedding day.

Given all the factors detailed above, Ofcom was satisfied that Mr and Mrs Hilton’s business was not portrayed unfairly in the programme as broadcast and that the programme was not edited unfairly to focus on Adam’s negative comments. Ofcom therefore found no unfairness to Mr and Mrs Hilton in this respect.

- c) Ofcom considered the complaint made on behalf of Ms Stockman that she was insulted and her playing ability criticised unfairly in the programme.

In considering this particular head of complaint, Ofcom took into account whether the portrayal of Ms Stockman was consistent with the broadcaster's obligation to ensure that material facts were not presented in a way that was unfair to her (as set out in Practice 7.9 of the Code).

Ofcom noted that Adam said of Ms Stockman in the programme:

"I feel like I'm in Disney World, you know, the harpist playing with fairy wings on...what's all that about? She looked like an absolute idiot! She couldn't play the harp. It's like Les Dawson on the harp, if I'm honest with you."

The narrator then said:

"Sorry Les, he's got a bee in his bonnet because someone slated his wedding".

Ofcom considered whether or not the broadcaster had taken reasonable care to satisfy itself that material facts were not presented in the programme in a way that was unfair to Ms Stockman. In doing so, Ofcom first examined the contextual basis for Adam's comments. It then considered whether the programme's presentation of his comments could have resulted in unfairness to Ms Stockman.

Ofcom noted that the programme contained the views and opinions of all four contestants as they judged each other's weddings. Both positive and negative comments were given about all the weddings by the contestants, all of which were subjectively derived from their own experience and preferences. Adam, as one of the contestants, gave his views on aspects of Krysia's wedding.

Ofcom noted that Adam expressed his comments about Ms Stockman (which we did not doubt caused offence and upset to her) in an exaggerated way, in keeping with the rest of his comments not only about Krysia's wedding but also the weddings of the two other contestants. However, it considered that the programme's format made it clear to viewers that that the views expressed by the other contestants were their own personal opinions. Ofcom also noted that the programme's commentary made it clear to viewers that Adam's attitude towards Krysia's wedding was influenced by "*controversial*" comments he believed that she had made about his own civil partnership ceremony. In Ofcom's view, therefore, Adam's comments about the way Ms Stockman was dressed and her playing ability was not presented in the programme as forming part of its factual narrative or as a serious allegation of wrongdoing or other significant allegation about her.

In these circumstances, Ofcom went on to consider whether or not this presentation in the programme of Adam's comments about Ms Stockman resulted in unfairness to her. Again, Ofcom examined Adam's comments about Ms Stockman and it was satisfied that despite his emotive language, his comments would not have materially affected viewers' understanding of Ms Stockman's part in Krysia's wedding in a way that was unfair to her. In the context of a programme that included the subjective opinions of four contestants judging each others' weddings, viewers would have been in no doubt that Adam was voicing his own personal opinion and that it was not intended to be a factual depiction of Ms Stockman or her ability to play the harp.

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

Accordingly, Ofcom has not upheld this complaint of unfair treatment in the programme as broadcast made by Mr and Mrs Hilton on their own behalf and on behalf of Ms Stockman.

Not Upheld

Complaint by Mr Ranesh Kumar Sanyal

Tonight: Undercover Pets, ITV1, 16 March 2009

Summary: Ofcom has not upheld this complaint of unfair treatment and unwarranted infringement of privacy made by Mr Ranesh Kumar Sanyal.

This programme looked at allegations that some veterinary surgeons were overcharging clients or charging them for work not carried out. It focused on the case of one particular veterinary surgeon, Mr Ranesh Kumar Sanyal, who had been “struck off” the Register of the Royal College of Veterinary Surgeons (“the RCVS”) for “disgraceful professional conduct” and was reinstated 14 months later. The programme detailed a number of allegations against Mr Sanyal including an incident in which he had charged a dog owner for treatment for a fractured pelvis when, in fact, the dog’s pelvis had not been fractured.

In summary, Ofcom found the following:

- Ofcom was satisfied that Mr Sanyal was allowed to present his case and that his response to the allegations made in the programme, although summarised, reflected his position in relation to the allegations made about him. It was also made clear in the programme that Mr Sanyal had chosen not to comment about his reinstatement to the Register. Ofcom therefore found no unfairness to Mr Sanyal in this regard.
- Ofcom considered that the broadcaster took reasonable care to satisfy itself that the programme presented the circumstances behind the RCVS’s disciplinary action against Mr Sanyal in a way that did not result in unfairness to him, and that therefore neither Mr Sanyal nor the events in which he was involved were presented misleading or unfairly.
- Given that: Mr Sanyal was given an opportunity to respond to the allegations made about him in the programme; his response was presented fairly in the programme; and that the broadcaster had taken reasonable steps to satisfy itself that the material facts were not presented in a way that was unfair to him, Ofcom considered that the fact that no other veterinary surgeons were named or shown in the programme did not, in itself, result in unfairness to Mr Sanyal.
- Ofcom was satisfied that Mr Sanyal’s privacy was not unwarrantably infringed in the programme as broadcast in that Mr Sanyal’s full name, photograph image of him and his surgery and the telephone number of his surgery was information already in the public domain.

Introduction

On 16 March 2009, ITV1 broadcast an edition of its current affairs programme *Tonight*, entitled *Undercover Pets*. The programme investigated allegations that some veterinary surgeons were overcharging for their services. The programme also included interview footage of Ms Jill Nute, President of the Royal College of Veterinary Surgeons (“the RCVS”), who discussed the programme’s allegation that financial incentives existed for veterinary surgeons to recommend unnecessary treatment.

The programme had used a reporter to take three different pets to four different veterinary practices for a consultation and to compare the diagnosis and cost of treatment with the programme's consultant veterinary surgeon. One of the animals featured, a rabbit, had been taken for a consultation on the pretence that it was not eating. Three of the veterinary surgeons suggested minor treatments, the cheapest being £25, though the fourth veterinary surgeon recommended a course of injections, monitoring overnight and teeth filing for £130. The rabbit was then taken to the programme's veterinary surgeon who examined it. He stated that he could not see any dental reason for the animal not to be eating and that, in his professional opinion, there was no reason to keep the rabbit in the surgery overnight or to give it an anaesthetic to carry out the dental work.

The programme also included a number of incidents in which, it claimed, unnecessary veterinary treatment had been advised and carried out. One such incident, used to illustrate the issues raised by the programme, concerned a dog (named "Lennox") that had been taken to Mr Ranee Kumar Sanyal, sole veterinary practitioner at the Ancare Veterinary Surgery ("the surgery") in Canterbury following a road accident. The dog's owner explained that Mr Sanyal had diagnosed that the dog had broken its pelvis in three places and was suffering from internal bleeding. The programme said that the owner was charged £500 for the dog's treatment. Some months later, the dog was taken to another veterinary surgeon who found no evidence of a previous pelvic fracture.

The programme also featured an interview with a former nurse at Mr Sanyal's surgery, who had given evidence against him to the RCVS at a disciplinary hearing. Her testimony supported the central allegation that Lennox did not require any treatment and that Mr Sanyal had deliberately misdiagnosed the problem in order to charge more money from the owner.

The programme then looked at other allegations made against Mr Sanyal and the circumstances which had led to him being "struck off" the Register of Veterinary Surgeons ("the Register") by the RCVS in 2006 for "conduct disgraceful in a professional respect". It included excerpts from the presenter's interview with Ms Nute, who talked specifically about Mr Sanyal being "struck off" the Register and the reasons for his reinstatement 14 months later¹.

The part of the programme that featured Mr Sanyal's case concluded with the presenter stating that:

"Mr Sanyal told us he disputes the allegations that led to him being struck off and he refused to comment on his reinstatement".

Footage of the outside of the surgery and a photograph of Mr Sanyal were shown in the programme.

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

¹ The RCVS decided to "restore" Mr Sanyal to the Register in May 2007 after he accepted that the sanction imposed by the RCVS in March 2006 was appropriate. It was also satisfied that the welfare of animals would not be prejudiced by Mr Sanyal's restoration and that it was not in the public interest to prolong his removal from the Register.

The Complaint

Mr Sanyal's case

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

- a) He was not allowed to present his case. Mr Sanyal said that the broadcaster had written to him on 23 February 2009 inviting his response to the allegations to be made in the programme. Mr Sanyal said that he had replied to the letter at length but that none of his response was broadcast in the programme. Mr Sanyal said that the programme had stated wrongly that he did not wish to respond to the allegations made against him.
- b) The programme unfairly portrayed him by alleging that he had over-charged clients and had charged them for treatment not given. He said that the allegations in the programme were only supported by an unqualified nurse who had cause to be vindictive.
- c) No other veterinary surgeons were mentioned by name or shown in the programme.

In summary, Mr Sanyal complained that his privacy was infringed in the broadcast of the programme in that:

- d) Pictures of Mr Sanyal and his surgery were broadcast, together with his telephone number.

ITV's statement

In summary, ITV Broadcasting Limited ("ITV"), responsible for the compliance of the programme on behalf of the ITV Network ("ITV1"), responded to Mr Sanyal's complaint that he was treated unfairly in the programme as broadcast as follows:

- a) In response to the complaint that Mr Sanyal was not allowed to present his case, ITV responded that Mr Sanyal's assertion that none of his response was broadcast in the programme was untrue.

ITV said that the programme makers first wrote to Mr Sanyal on 23 February 2009 setting out in detail the allegations they intended to make against him in the programme. That letter offered Mr Sanyal the opportunity of taking part in a pre-recorded interview for inclusion in the programme, or alternatively, providing a statement in answer to the allegations, which would be fairly reflected in the programme.

ITV said that an email response sent on Mr Sanyal's behalf by Mr Tim Wilshire dated 2 March 2009 was provided to the programme makers. ITV said that the email suggested that Mr Sanyal did not accept the original findings of the RCVS, disputed the evidence that had been accepted by the RCVS in preference to his own evidence, and maintained that the pet owners and a former veterinary nurse (whose evidence had been accepted by the RCVS) were not to be believed. He also refused to comment on his reinstatement after being struck off for fourteen months.

ITV said that in the circumstances, the programme makers were entitled to rely on the findings of the RCVS, which had heard the evidence before it and had determined, on the basis of that evidence, that Mr Sanyal should be removed from the Register. ITV said that it was clear that there was never any appeal or reversal of this finding on the basis of re-appraisal of that evidence, and that Mr Sanyal's reinstatement was, as Ms Nute said in the programme, because he had shown "contrition".

ITV said that the programme makers therefore took the view that it was not a requirement of fairness to rehearse Mr Sanyal's detailed views on the evidence that had been accepted by the RCVS as sufficient grounds to remove him from the Register. Nevertheless, it said that a fair reflection of Mr Sanyal's response was represented in the programme, namely that *"Mr Sanyal told us he disputes the allegations that led to him being struck off – and he refused to comment on his reinstatement."*

- b) In response to the complaint that the programme unfairly portrayed Mr Sanyal by alleging that he overcharged clients and charged them for work not done, ITV said that the programme commentary contained the following lines:

"Veterinary nurse Inger Sparrow was working at the Ancare surgery – at the time Lennox was admitted.

She says the real reason Lennox was kept in for four days wasn't because of any injuries – but so Mr Sanyal could run up a bill for several hundred pounds."

ITV said that Ms Sparrow's account was accepted by the RCVS which found that Mr Sanyal had "acted with conscious impropriety...when he told untruths to clients about procedures supposedly undertaken and diagnoses made". In respect of "Lennox", ITV said that the RCVS had found that Mr Sanyal had falsely represented to its owner that the dog had sustained three fractures to its pelvis, when his diagnosis was that the dog had not sustained these fractures.

In addition, ITV said, Mr Sanyal was charged with falsely representing that a cat had been x-rayed, when he knew this was not the case. ITV said that the RCVS rejected Mr Sanyal's account of what had occurred and preferred to believe Ms Sparrow who maintained that an x-ray had not been taken, but that the cat's owner had nevertheless been charged for it.

ITV said that the RCVS had rejected Mr Sanyal's contention that "former members of his staff and certain clients have joined together to discredit him" and they determined that all the witnesses they heard from (including Ms Sparrow – who was known by them to be bringing a claim for constructive dismissal against Mr Sanyal) were "witnesses of truth" whereas Mr Sanyal's evidence "was not credible".

ITV said that this was the basis upon which the allegations in the programme were made. As the RCVS who had heard Ms Sparrow's testimony found her credible, the programme makers had no reason to doubt that what she told them was true. ITV said that the portrayal of Mr Sanyal in this respect was not unfair.

- c) In relation to Mr Sanyal's complaint that no other vets were mentioned by name or shown in the programme, ITV said that this complaint was correct, but did not of itself lead to any unfairness to Mr Sanyal.

ITV said that the programme looked at several causes for the rising cost of vets' fees. One cause identified was that there appeared to be a small number of vets who were overcharging their clients.

ITV said that the decision was taken by the programme makers to feature a case study of a vet who had been found by his professional body (the RCVS) to have behaved dishonestly. ITV said that Mr Sanyal's case being said by the RCVS to be at the "upper end of the spectrum of professional misconduct", coupled with the fact that he had been reinstated 14 months after being "struck off", was of public interest and called for a response from the RCVS as well as Mr Sanyal, so that legitimate questions could be asked as to how a vet who had been "struck off" in these circumstances could be readmitted within a relatively short space of time.

ITV said that it became clear in the correspondence with the programme makers prior to broadcast that Mr Sanyal continued to dispute the RCVS's findings, despite apparently previously assuring it that he had accepted its original findings and the appropriateness of the sanction imposed against him.

In the circumstances, ITV said that it maintained it was not unfair to Mr Sanyal to feature his case as an example of the unprofessional behaviour the programme was exploring.

In summary, ITV responded to Mr Sanyal's complaint that his privacy had been unwarrantably infringed in the programme as broadcast as follows:

- d) In response to the complaint that Mr Sanyal's privacy was unwarrantably infringed in that pictures of him and his surgery were broadcast, together with his telephone number, ITV said that there was no infringement of his privacy in broadcasting this information.

ITV said that Mr Sanyal's surgery contact details were publicly available in the telephone directory and on his website. ITV added that photographs of Mr Sanyal and his surgery appeared on his website. ITV said that the information and photographs disclosed in the programme were already in the public domain and as such Mr Sanyal did not have any reasonable expectation of privacy in these details.

Mr Sanyal's response

In summary, Mr Sanyal commented on ITV's statement as follows:

- a) Mr Sanyal said that although he and Mr Wilshire had responded to the programme makers' request for comments on the six allegations contained in their letter of 23 February 2009, it transpired that none of the responses to the allegations, to which very full explanations were given, were broadcast.
- b) Mr Sanyal said that he had made several requests for the programme makers to consider the full transcript of the RCVS restoration hearing before any broadcast. However, no reference was made to the transcript or its contents in the programme.

Mr Sanyal said that the transcript revealed that he had never said that the dog, "Lennox" had a pelvic fracture; he had said that it had internal bleeding. Mr

Sanyal said that the RCVS had accepted that he should not have been charged for this “[false] allegation”.

ITV’s final statement

In summary, ITV responded to Mr Sanyal’s response as follows:

- a) ITV said that contrary to Mr Sanyal’s assertion, the matters raised in the programme makers’ letter of 23 February 2009 were for the most part subsequently included in the programme. ITV said that it was apparent that Mr Sanyal was given an adequate opportunity to respond from the fact that he did provide what he described as a lengthy response, within the timeframe given.
- b) ITV said that the programme fairly represented Mr Sanyal’s general point that he disputed the findings of the RCVS. ITV also said that Mr Sanyal had not explained in terms what matters he believed were considered at the restoration hearing that should, as a matter of fairness, have been included in the programme. ITV said the programme makers were entitled to rely on and reflect the decision of Mr Sanyal’s professional body which, after hearing all of the evidence, found that he was guilty of five out of six charges of “disgraceful professional misconduct”, which misconduct was said to be at the upper end of the spectrum.

Decision

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

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

Mr Sanyal’s complaint was considered by Ofcom’s Executive Fairness Group. In reaching its decision, Ofcom considered all the relevant material provided to it by both parties. This included a recording and transcript of the programme as broadcast, both parties’ written submissions and supporting documentation. In its considerations, Ofcom took account of Ofcom’s Broadcasting Code (“the Code”).

Unfair treatment

- a) Ofcom first considered the complaint that Mr Sanyal was not allowed to present his case in that his response to the allegations to be made in the programme was not represented in the programme.

Ofcom had particular regard to whether the broadcaster’s actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals, as set out in Rule 7.1 of the Code. In considering this particular head of the complaint, Ofcom took account of Practice 7.11 of the Code which states that if a programme alleges wrongdoing, incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond. It also took account of Practice 7.13 which states that

when representing the views of a person who is not participating in the programme, it must be done in a fair manner.

Ofcom noted that the programme makers' letter of 23 February 2009 set out the allegations against Mr Sanyal they planned to include in the broadcast. The letter included the allegation that Mr Sanyal misdiagnosed "Lennox" for financial gain and it referred to the charges of disgraceful professional conduct that the RCVS found against him. It noted that Mr Wilshire, who acted on Mr Sanyal's behalf, provided a response to each of the allegations in an email to the programme makers sent on 2 March 2009. Ofcom noted that in the email, each allegation raised by the programme makers was disputed and that the response contained counter-allegations about the witnesses and evidence that had been heard by the RCVS in Mr Sanyal's disciplinary hearing.

Ofcom noted the reference made in the programme to Mr Sanyal's response to the allegations made about him:

"Mr Sanyal told us he disputes the allegations that led to him being struck off – and he refused to comment on his reinstatement."

Ofcom recognises that programme makers can quite legitimately select and edit material provided to it by way of written statement for inclusion in a programme. This is an editorial decision and it would be unreasonable for an individual to expect a broadcaster to cede editorial control or to include a written statement in full. Programme makers must, however, ensure that where it is appropriate to represent the views of a person that it is done in a fair manner.

In this case, the programme makers chose to summarise Mr Sanyal's response by using the words *"Mr Sanyal told us he disputes the allegations that led to him being struck off..."*. Ofcom considered that, although the programme makers chose not to present Mr Sanyal's response to the allegations in detail, the summary of his response set out his position regarding the allegations made in the programme in a way that was sufficient for viewers to have been left in no doubt that Mr Sanyal disputed the allegations that led him to being removed from the Register.

Taking all of the factors detailed above into account, Ofcom was satisfied that Mr Sanyal was allowed to present his case and that his response to the allegations made in the programme, although summarised, reflected his position in relation to the allegations made about him in the programme. It was also made clear in the programme that Mr Sanyal had chosen not to comment about his reinstatement to the Register.

Ofcom therefore found no unfairness to Mr Sanyal in this regard.

- b) Ofcom considered the complaint that the programme portrayed Mr Sanyal unfairly by alleging that he over-charged clients and charged them for work not done.

In considering this head of complaint, Ofcom had particular regard to Practice 7.9 of the Code, which provides that, before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

Ofcom noted that the programme stated that Mr Sanyal had charged “Lennox’s” owner for the treatment of her dog’s supposed broken pelvis, when it was alleged that its pelvis was not actually broken and that therefore the treatment was unnecessary. In particular, Ofcom noted the following commentary:

“Veterinary nurse Inger Sparrow was working at the Ancare surgery – at the time Lennox was admitted...She says the real reason Lennox was kept in for four days wasn’t because of any injuries – but so Mr Sanyal could run up a bill for several hundred pounds”.

Ofcom noted that the RCVS had found that Mr Sanyal had falsely represented to “Lennox’s” owner that it had sustained three fractures to its pelvis, when, in fact, “Lennox” had not sustained any such fractures. It noted that Ms Sparrow had given her testimony to the RCVS in relation to this charge against Mr Sanyal and that her evidence was accepted by the RCVS over that of Mr Sanyal. It also noted that the RCVS had preferred the testimony of the owner of “Lennox” over that given by Mr Sanyal. Ofcom also noted that Mr Sanyal had faced another charge not included in the programme which related to an allegation of misrepresenting to an owner of a cat that x-rays had been taken and that the RCVS had found proven against him. In both cases, Ofcom took the view that there was an implication that Mr Sanyal had charged both owners for the x-rays which had not, in fact, been taken and that the extent of the animals’ injuries had been exaggerated in order to justify unnecessary treatment.

Ofcom recognised that the RCVS’ disciplinary powers grant it the authority to consider allegations of disgraceful professional conduct and that its Disciplinary Committee (which considers such cases) is a constituted judicial tribunal which follows rules of evidence similar to those used by a court of law². Given the nature of the RCVS disciplinary proceedings and its findings, Ofcom took the view that it was reasonable for the broadcaster to rely on the RCVS findings and the testimony it had found credible at the hearings.

Ofcom considered that the broadcaster took reasonable care to satisfy itself that the programme presented the circumstances behind the RCVS’s disciplinary action against Mr Sanyal in a way that did not result in unfairness to Mr Sanyal, and that therefore neither Mr Sanyal nor the events in which he was involved were presented misleading or unfairly.

- c) Ofcom considered the complaint that the programme was unfair to Mr Sanyal in that no other veterinary surgeons were mentioned by name or shown in the programme.

In considering this head of complaint, Ofcom took account of Practice 7.9 of the Code, which provides that, before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

Ofcom recognised that it was a matter of editorial discretion as to who or what programme makers decide to include in a programme. However, such editorial discretion comes with the responsibility to ensure that the material facts have not been presented unfairly.

² Schedule 2, Part 2, of the Veterinary Surgeons Act 1966,

Ofcom noted that, while this programme referred to a number of allegations about alleged over-charging, charging for unnecessary work and for work not done, by some veterinary surgeons, Mr Sanyal was the only veterinary surgeon to be named and shown as having been investigated by the RCVS and subsequently removed from the Register for his conduct. Ofcom noted that ITV said that the programme makers had decided to use Mr Sanyal's case as an example of the wider allegations made against veterinary surgeons as a group of professionals. Mr Sanyal had been investigated by the RCVS which found that: he had caused animals to suffer; had acted with "conscious impropriety"; and had told untruths to owners about procedures supposedly undertaken and diagnoses made.

Ofcom noted that the programme makers had given Mr Sanyal an opportunity to respond to the allegations to be made in the programme prior to broadcast and that his response was included, albeit in a summarised form, in the programme as broadcast (see head a) of the Decision above) and that his position was fairly presented in the programme. It also noted that the broadcaster had taken reasonable steps to satisfy itself that the material facts surrounding Mr Sanyal's case, the disciplinary sanction taken against him by the RCVS and the allegations made about him were not presented in a way that was unfair to him (see head b) in the Decision above).

In these circumstances, Ofcom considered that the fact that no other veterinary surgeons were named or shown in the programme did not, in itself, result in unfairness to Mr Sanyal.

- d) Ofcom considered Mr Sanyal's complaint that his privacy had been unwarrantably infringed in the programme as broadcast in that pictures of him and his surgery, including his telephone number, were shown in the programme.

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

Ofcom also had particular regard to Practice 8.6 of the Code, which states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast unless the infringement of privacy is warranted.

In considering whether the broadcast of the programme infringed the complainant's privacy, Ofcom considered whether Mr Sanyal had a legitimate expectation of privacy about the images of him and his work premises that were broadcast.

Ofcom acknowledged that Mr Sanyal's full name was referred to several times in the programme and that his photograph was shown and that the telephone number of the surgery was disclosed. In Ofcom's view, a person's name or identity is not in itself information that necessarily attracts a significant expectation of privacy. However, the context in which a person is named or identified could afford them an expectation of privacy.

However, Ofcom noted that Mr Sanyal's photograph and the telephone number of his surgery were available on the surgery's publicly accessible website and was therefore information already in the public domain. Furthermore, it considered that the information included in the programme concerning his involvement in disciplinary proceedings with the RCVS and his subsequent restoration to the Register was a matter of public record. Ofcom also noted that the RCVS disciplinary case against Mr Sanyal had been published on the RCVS website and had been covered by the media at the time. Ofcom also noted that information such as his full name and business address had already appeared on press websites reporting the case. In Ofcom's view, therefore, Mr Sanyal's name, photograph and the telephone number of his surgery were all matters of public record.

Taking all these factors into account, Ofcom was satisfied that Mr Sanyal did not have a legitimate expectation of privacy in the disclosure of this information in the programme.

Having concluded that Mr Sanyal did not have a legitimate expectation of privacy in this regard, Ofcom found that his privacy was not infringed in the programme as broadcast. It was therefore not necessary for Ofcom to further consider whether any infringement of privacy was warranted or not.

Accordingly Ofcom has not upheld Mr Sanyal's complaint of unfair treatment or his complaint that his privacy was unwarrantably infringed in the broadcast of the programme.

Not Upheld

Complaint by Miss M

Tonight: Country Road 999, ITV1, 15 June 2009

Summary: Ofcom has not upheld this complaint of unfair treatment and unwarranted infringement of privacy made by Miss M.

This edition of *Tonight* broadcast by ITV1 examined the government's proposal to reduce the speed limit on rural roads from 60mph to 50mph in an effort to reduce road traffic deaths. One accident considered by the programme was an accident in which motorcyclist Mr Joshua Holmes died in a head-on collision with a car. The programme reported that Mr Holmes had been travelling at around 34mph and had been on the wrong side of the road at the time. Miss M, the driver of the car, complained that she had been unfairly treated and that her privacy had been unwarrantably infringed in the programme as broadcast.

In summary, Ofcom found the following:

- In the context in which the accident was referred to in the programme, it did not suggest that Miss M's speed was the problem and did not result in unfairness to her.
- Although the programme makers did not speak to either Miss M or the police about the accident prior to broadcast, they did take reasonable care to satisfy themselves that material facts were not presented or omitted in a way that was unfair to Miss M.
- As no information of a private or sensitive nature was broadcast about Miss M in the programme, she had no legitimate expectation of privacy in the information broadcast and so her privacy was not infringed by the programme.

Introduction

On 15 June 2009, ITV1 broadcast an edition of its documentary series *Tonight*. This edition, entitled *Country Road 999*, looked at the government's proposal to reduce the national speed limit from 60mph to 50mph in a bid to reduce the number of road traffic deaths on rural roads.

The programme considered the death of 18-year-old Mr Joshua Holmes, who died in September 2008 when his Kawasaki motorbike was involved in a head-on collision with a car on a rural road. In the programme, his mother said that the police had concluded that Mr Holmes had taken a bend too wide and the accident had occurred as Mr Holmes attempted to make his way back to his side of the road. The programme then included the following:

Programme presenter: *"But would a 10mph reduction in the maximum speed limit on this road actually help to save lives? Might it have saved Josh's?"*

Mr Holmes' mother: *"He was doing 34, something, so he wasn't even doing the speed limit on that road, so it was down to human error. So when I look at it from Josh's point of view, was it the speed? But then again, I suppose the slower you're going, the more chance of survival you've got."*

The driver of the car involved in the accident, Miss M, who neither participated in, nor was referred to in the programme, complained to Ofcom that she had been treated unfairly and that her privacy had been unwarrantably infringed in the broadcast of the programme.

The Complaint

Miss M's case

In summary, Miss M complained that she was treated unfairly in the programme as broadcast in that:

- a) In the context of the programme, by incorrectly stating that Mr Holmes was only travelling at 34mph at the time of the accident (well below the proposed new speed limit), the programme unfairly suggested that it was the speed at which Miss M was travelling that was the problem in this case.
- b) The programme makers made no attempt to contact the police to obtain a factual account of the accident and failed to take relevant facts into consideration.
- c) The programme makers made no attempt to contact Miss M to discuss her version of events.

By way of background, Miss M said she had been travelling at 20mph below the speed limit and was never considered a suspect. Mr Holmes, on the other hand, had been travelling in excess of the speed limit, on the wrong side of the road, wearing a dark visor at night and riding illegally without the restrictor which would have limited the horsepower of his motorbike. Miss M was severely injured in, and traumatised by, the accident.

In summary, Miss M complained that her privacy was unwarrantably infringed in the programme as broadcast in that:

- d) The broadcaster failed to inform her that, as a surviving victim of the accident, the programme was to be broadcast.

ITV's case

- a) In summary, ITV Broadcasting Limited ("ITV"), licensee responsible for the compliance of the programme on behalf of the ITV Network ("ITV1"), responded to Miss M's complaint of unfairness as follows:

ITV said that the programme was not incorrect to suggest that Mr Holmes had been travelling at 34mph, nor was there any suggestion in the programme that the speed at which Miss M had been travelling was the cause of the accident.

ITV said that the Fatal Road Traffic Accident Report ("the Accident Report") (prepared by police experts after the accident) concluded that:

"Calculations using a number of reasonable assumptions give **an indicated** speed of the Kawasaki at impact of between 34 and 43 miles per hour."

ITV said that the figure of 34mph stated by Mr Homes' mother in the programme clearly fell within that range and reflected her understanding of what the investigation into her son's death had discovered about his speed at the time.

ITV said that the physical evidence examined by the police showed that the motorbike was on the wrong side of the road entering a left hand bend with the rider then unable to avoid the car travelling in the opposite direction, which was completely within its own lane at the time of impact. ITV said that it was made clear in the programme that Mr Holmes had lost control of his motorbike and had crossed to the wrong side of the road, where he collided with the car.

ITV said that the programme suggested that because Mr Holmes was on the wrong side of the road, the collision could have occurred regardless of the speed of the vehicles. ITV said that there was no suggestion that the car was travelling too fast or that this had caused the accident. Rather, ITV said that the cause of the accident had clearly been that Mr Holmes had lost control of his motorbike and had driven on the wrong side of the road coming around a bend, despite travelling well under the speed limit.

ITV said that the programme featured this accident because it occurred, despite the fact that neither party was exceeding the speed limit, and due to human error on Mr Holmes' part in crossing onto the wrong side of the road. ITV said that the accident therefore raised the question whether a reduction in the speed limit would save lives and, in particular, whether it might have saved Mr Holmes' life.

- b) ITV said that the programme makers did make attempts to contact the police, but did not receive a response, and therefore did not discuss the case with them before broadcast. However, ITV said that this did not of itself lead to any failure to take relevant facts into account or to any unfairness to the complainant.

ITV said that the programme did obtain a factual account of the accident from Mr Holmes' mother, who had been in contact with the police family liaison team, had attended the inquest and was well aware of the facts of the accident. ITV said that the programme corroborated this account from newspaper reporting of the inquest, which reflected the salient points of the Accident Report.

ITV said that the newspaper report in the Burnley Express, for example, included a quote from the Police Accident Investigator stating that:

“Irrespective of the type and nature of the vehicles involved, the physical evidence showed the Kawasaki was on the wrong side of the road when entering the left hand bend.”

ITV said that this information, combined with the finding that the motorbike was travelling below the speed limit were the key factual elements necessary to assess the significance or otherwise of speed in the accident. ITV said that this informed the manner and context in which the accident was discussed in the programme, in examining whether a proposed reduction in the speed limit on country roads would help reduce the accident rate, given that it demonstrated that accidents still happened at speeds well under the existing or the proposed speed limit.

ITV said that having now seen a copy of the Accident Report, and having considered Miss M's complaint, it did not appear to it that there was any additional information that it would have considered relevant to the story in the context of the point it was making about the proposed changes to the speed limit. ITV said that other additional facts that may have been relevant to the causation of the crash or to the fatality (e.g. Mr Holmes' visor, or the fact his motorbike's

power output was not restricted) were not relevant in the context of the programme.

- c) ITV said that its understanding of the incident had always been that Miss M was a blameless and innocent victim who had the misfortune to be involved in an accident caused by another driver's loss of control. ITV said that the account of the accident as presented in the programme did not contradict Miss M's account of events, save for her suggestion that Mr Holmes was in fact travelling in excess of the speed limit, a belief that was not supported by the Accident Report.

ITV said that given that the programme makers had no reason to think that Miss M was anything other than a victim of circumstances, accordingly they had no reason to believe there was any alternative version of events that, as a matter of fairness, needed to be represented, or that they were therefore required to approach Miss M to obtain this alternative account.

ITV said that there was no discourtesy intended by not contacting Miss M before broadcast to seek to discuss her account of the accident, but it did not accept that the omission led to any actual unfairness to her in the programme.

- d) In summary, ITV responded to Miss M's complaint of unwarranted infringement of privacy as follows:

ITV said that it fully accepted that the accident in which Miss M was injured and in which Mr Holmes tragically lost his life must have been a traumatic experience for the complainant, and it regretted any distress caused to her by the broadcast referring to it. ITV said it accepted it would have been courteous in the circumstances to have sought to inform Miss M in advance that the programme would refer to the accident and said it regretted that it had not done so.

ITV said that the programme deliberately made no reference to Miss M, did not name or otherwise identify her or her car and did not refer to any injuries sustained by her.

ITV said that it did not therefore believe that the failure to notify Miss M about the programme prior to transmission in fact led to any actual infringement of her privacy in the programme. ITV said that the discussion of the accident itself was a discussion of events that were entirely a matter of public record, having already been examined in the coroner's court and in the local press.

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.

Miss M's complaint was considered by Ofcom's Executive Fairness Group. In reaching its decision, Ofcom considered all the relevant material provided by both

parties. This included a recording and transcript of the programme as broadcast and both parties' written submissions and supporting material.

Unfair treatment

- a) Ofcom considered Miss M's complaint that in the context of the programme, by incorrectly stating that Mr Holmes was only travelling at 34mph at the time of the accident (well below the proposed new speed limit), the programme unfairly suggested that it was the speed at which she was travelling that was the problem in this case.

Ofcom considered whether the programme makers' actions ensured that the programme as broadcast avoided unjust or unfair treatment of Miss M, 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 Miss M (as outlined in Practice 7.9 of the Code).

Ofcom first examined whether the programme incorrectly stated that Mr Holmes was only travelling at 34mph at the time of his accident.

Ofcom noted that Mr Holmes' mother stated in the programme:

"he was doing 34, something"

Ofcom also noted that the conclusion of the Accident Report, a copy of which was provided to Ofcom by ITV, stated:

"Calculations using a number of reasonable assumptions give **an indicated** speed of the Kawasaki at impact [of] between 34 and 43 miles per hour."

In the circumstances, Ofcom was satisfied that, although the description of Mr Holmes' speed by his mother was at the lowest end of the range indicated in the Accident Report, it could not be said to be incorrect. Ofcom noted that even if Mr Holmes' speed had been at the upper end of the police estimate, he would still have been travelling well within the speed limit for the road (60mph) and below the government's proposed new speed limit (50mph).

Ofcom then considered the context in which the accident was referred to in the programme. Ofcom noted that while the programme had been prompted by the government's proposal to reduce the speed limit on rural roads from 60mph to 50mph in an effort to reduce road traffic deaths, the programme investigated whether that was the solution or whether it would be more effective to address other causes of accidents.

Ofcom took account of the fact that the programme looked at various other causes of accidents where the proposed reduction in the speed limit would make no difference. For example, human error, poorly engineered roads and drivers who exceed the current speed limit, tailgate or fail to obey other road traffic laws. It was suggested in the programme that driver education and training, engineering roads to make them safer and/or enforcement of current road traffic laws could be alternative solutions.

In Ofcom's view, Mr Holmes' accident was referred to in the programme in the context of an accident where the government's proposal to reduce speed limits

would have made no difference. The programme stated that Mr Holmes had been travelling below the proposed new speed limit and that human error on Mr Holmes' part was the cause. He had "*just gone too wide*" and had been on the wrong side of the road when the collision occurred.

Ofcom noted that no mention was made of the other vehicle involved in the accident. Given this, and the fact that the programme had made clear that Mr Holmes had been at fault, Ofcom considered that viewers would not have formed any negative view of the actions of the other driver, namely Miss M.

Taking the above factors into account, Ofcom considered that it was not incorrect for the programme to state that Mr Holmes was travelling at "*34 something*" and that, in the context in which the accident was referred to, the programme did not suggest the other driver's speed was the problem.

In these circumstances therefore, Ofcom was satisfied that the broadcaster had taken reasonable care to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to Miss M.

- b) Ofcom then considered Miss M's complaint that she had been treated unfairly because the programme makers made no attempt to contact the police for a factual account of the accident and had failed to take relevant facts into consideration in the programme as broadcast.

In considering this head of the complaint, Ofcom took account of Rule 7.1 and Practice 7.9 of the Code, as outlined in decision head a) above.

Ofcom noted that the programme makers had attempted to contact the police but, after receiving no response, they did not obtain an account of the accident from the police before the programme was broadcast.

Ofcom also noted that the programme makers' primary source of information about the accident was Mr Holmes' mother who they considered was familiar with the relevant facts as she had been in contact with the police family liaison team and had attended her son's inquest.

Ofcom took into account that the Accident Report and local newspaper reports of the inquest had all verified the material facts relating to the accident that were included in the programme as broadcast, namely the speed at which Mr Holmes had been travelling and that he had been on the wrong side of the road at the time of the accident.

Ofcom also considered the other factors Miss M complained had not been taken into consideration in the programme:

- *Mr Holmes had been riding in a dark visor at night.*
In Ofcom's view, the programme had made it clear that Mr Holmes had caused the accident. Ofcom acknowledged that the wearing of the dark visor could have additionally contributed to the accident, however, given that the programme had made clear that Mr Holmes had been at fault, the inclusion of additional information about the visor was unlikely to have materially affected viewers' understanding of the accident or of the fact that Mr Holmes' actions had been the cause. As a result, Ofcom considered that the omission of this information did not result in unfairness to Miss M.

- *Mr Holmes had been riding without a restrictor on his motorbike.*
In Ofcom's view, as the programme had made it clear that speed was not a factor in the accident, the inclusion of the additional information that, lacking a restrictor, Mr Holmes was able to travel faster, would not have materially affected viewers' understanding of the accident. As a result, Ofcom considered that the omission of this information did not result in unfairness to Miss M.
- *Miss M was travelling at approximately 40mph, was never considered a suspect and was herself seriously injured.*
In circumstances where, as set out in decision head a) above, Ofcom was of the view that the programme did not suggest fault on the part of the other driver, Ofcom did not consider that the inclusion of this additional information would have materially affected viewers' understanding of the accident. As a result, Ofcom considered that the omission of this information did not result in unfairness to Miss M.

Taking the above factors into account, Ofcom was satisfied that the programme makers had taken reasonable care to satisfy themselves that material facts were not presented, disregarded or omitted from the programme in a way that was unfair to Miss M.

- c) Ofcom then considered Miss M's complaint that she had been treated unfairly because the programme makers made no attempt to contact her to discuss her version of events.

In considering this head of the complaint, Ofcom took account of Rule 7.1 and Practice 7.9 of the Code, as outlined in decision head a) above. Ofcom also considered Practice 7.11 of the Code which states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

While Ofcom noted that ITV had expressed its regret for the distress caused to Miss M by not contacting her before the programme was broadcast, Ofcom had to consider whether, by not contacting Miss M, the programme as broadcast resulted in unfairness to her.

Ofcom considered the facts that Miss M alleged that the programme makers had failed to reflect and also whether the programme had made any allegations of wrongdoing against Miss M.

In relation to the first, having considered all the information provided and the context of the programme, as set out in decision head b) above, Ofcom considered that there were no facts omitted from the programme that resulted in unfairness to Miss M.

As regards any allegation of wrongdoing, as set out in decision head a) above, Ofcom considered that viewers would not have formed any negative view of Miss M as a result of the programme. In Ofcom's view, it was not therefore necessary for the programme makers to contact Miss M in order to provide her with an opportunity to respond.

Privacy

- d) Ofcom considered Miss M's complaint that her privacy had been unwarrantably infringed in the programme as broadcast because the broadcaster failed to inform her that the programme was to be broadcast.

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

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

In considering this element of the complaint, Ofcom also took into account Practice 8.19 of the Code which states that broadcasters should try to reduce the potential distress to victims when making or broadcasting programmes intended to examine past events that involve trauma to individuals unless it is warranted to do otherwise. Practice 8.19 goes on to state that surviving victims whose experience is to feature in a programme should be informed of the plans for the programme and its intended broadcast even if the events or the material to be broadcast have been in the public domain in the past.

Ofcom recognised that the programme, broadcast as it was, without any prior warning to Miss M, would have been extremely distressing for her. She had suffered serious injuries and trauma in the accident and at the time the programme was broadcast was beginning to come to terms with what had happened. Ofcom also acknowledged that ITV had accepted that it would have been courteous to have forewarned Miss M about the programme, had expressed its sincere regret for any distress caused to Miss M as a result of the programme and had voluntarily undertaken not to re-broadcast the footage relating to the accident.

However, as this head of complaint was that the programme as broadcast had unwarrantably infringed the privacy of Miss M, it was necessary for Ofcom to consider whether Miss M had a legitimate expectation of privacy in relation to any of the information broadcast about the accident. Ofcom found that details of Mr Holmes' part in the accident were already in the public domain as a result of local publicity surrounding the accident, the inquest and a subsequent charity event in his memory. With regard to Miss M, Ofcom considered that as no reference was made to her in the programme by name or otherwise, only those people who knew her and were aware of her involvement in the accident would have been able to identify her as being the driver of the car. In addition, Ofcom noted that the programme did not reveal any information of a personal or sensitive nature about Miss M, for example, the injuries she had suffered. In the circumstances, Ofcom found that Miss M had no legitimate expectation of privacy in relation to the information broadcast in the programme.

Having concluded that Miss M did not have a legitimate expectation of privacy in this regard, Ofcom found that her privacy was not infringed in the programme as

broadcast. As a result, it was not necessary for Ofcom to further consider whether any infringement of privacy was warranted.

Accordingly, Ofcom has not upheld Miss M's complaint of unfair treatment or unwarranted infringement of privacy in the broadcast of the programme.

Not Upheld

Complaint by Mr Leslie Hemming

Watchdog, BBC1, 13 April 2009

Summary: Ofcom has not upheld this complaint of unfair treatment and unwarranted infringement of privacy in the broadcast of the programme made by Mr Leslie Hemming.

This edition followed complaints made by various entertainment acts who had dealt with Mr Leslie Hemming, who owned an entertainment consultancy business called Hemmings Leisure (“the company”). The company offered to facilitate bookings of acts for corporate events and private functions. The programme interviewed three acts, namely: “The Rats in the Kitchen”, Peter Methab and Tom O’Connor. The acts complained that Mr Hemming had not paid them for their services and had used “*acts of embezzlement*”, “*cash flow problems*” and the “*current economic climate*” as excuses.

Mr O’Connor told the programme he had taken Mr Hemming to the county court in 2005 and obtained a judgment against him for monies owed. The programme said Mr Hemming still had county court judgements against his name totaling £14,500.

The presenters also reported that Mr Hemming said he and Mr O’Connor “*got on famously*”. The programme however then held a second interview with Mr O’Connor who said he had “*never met the man [Mr Hemming]*”.

Mr Hemming complained to Ofcom that he was treated unfairly and that his privacy was unwarrantably infringed in the making and broadcast of the programme.

In summary Ofcom found the following:

- That the programme makers took reasonable care to satisfy themselves that material facts regarding the county court judgements against Mr Hemming had been presented accurately.
- The comments made by Mr O’Connor during his second interview of the programme were presented as his reaction to Mr Hemming’s view of their relationship, and were unlikely to affect viewers’ perception of Mr Hemming’s business practice.
- Both Hemmings Leisure and its website had been presented fairly.
- As Mr Hemming’s county court judgements were a matter of public record, he had no legitimate expectation of privacy as regards this information.

Introduction

On 13 April 2009 BBC1 broadcast an edition of *Watchdog*, a consumer series that investigates viewers’ complaints about traders, retailers and other companies around the country.

This edition followed complaints made by various entertainment acts who had dealt with Mr Lesley Hemming, who owned an entertainment consultancy business called

Hemmings Leisure (“the company”). The company offered to facilitate bookings of acts for corporate events and private functions. The programme interviewed three acts, namely: “The Rats in the Kitchen” (an eight-piece UB40 tribute band), Peter Methab (a magician) and Tom O’Connor (former game show host). The acts complained that Mr Hemming had not paid them for their services and had used “*acts of embezzlement*”, “*cash flow problems*” and the “*current economic climate*” as excuses.

Mr O’Connor told the programme he had taken Mr Hemming to the county court in 2005 and obtained a judgment against him for monies owed. The programme said Mr Hemming was fined £2,000, ordered to pay four more artists their outstanding fees and, “*on top of that*”, still had county court judgments against his name totaling £14,500.

The presenters said that Mr Hemming explained he had suffered from acts of embezzlement and the current economic climate, but that he had successfully raised hundreds of thousands of pounds for the entertainment industry. They also reported that Mr Hemming said he and Mr O’Connor “*got on famously*”. The programme then held a second interview with Mr O’Connor, an excerpt of which said:

- Nicky Campbell: “*Have you got any sympathy for Les Hemmings?*”
Mr O’Connor: “*Absolutely none, no.*”
Nicky Campbell: “*He says that you two still get on famously. Doesn’t sound like it?*”
Mr O’Connor: “*(LAUGHS) Yeah, is that what he said?*”
Nicky Campbell: “*Yeah.*”
Mr O’Connor: “*No, no, no, no, I’ve never met the man. And I, I, well, what is wonderful, I hear all the excuses he’s giving, I mean, he owes me money from 2005, you can’t call that a recession.*”

Mr Hemming complained to Ofcom that he was treated unfairly in the programme and that his privacy was unwarrantably infringed in the broadcast of the programme.

The Complaint

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

- a) He was unfairly portrayed and was not given an opportunity to respond to certain allegations.

By way of background, he was told by the programme makers that the deadline for submitting a response to the allegations was 3 April 2009 but on the day no one at the programme was available to receive his response.

- i) In Mr O’Connor’s second interview he questioned Mr Hemming’s excuse of the “*current economic climate*”, remarking that there was no economic problem in 2005 (the date of their dispute). This remark was made despite Mr Hemming clearly stating that the cause of this particular debt was a substantial act of embezzlement against him.
- ii) In the same interview, Nick Campbell, the presenter, asked Mr O’Connor whether he agreed with Mr Hemming’s claim that they “*got along famously*”. Mr O’Connor refuted this, asserting that they had never met. Mr Hemming said they had actually met on three occasions. Mr Hemming was given no

opportunity to respond to this claim. As a result of this, Mr Hemming was unfairly portrayed as a liar and a sycophant.

- iii) The programme stated Mr Hemming held county court judgement debts against him worth £14,500. This was a historic amount owed three years previous to the broadcast of the programme. Furthermore, Mr Hemming clearly stated to the programme makers that the debts were as a direct result of embezzlement from his company and that the vast majority had been settled. The BBC chose to omit this information.
- iv) The company's website was misrepresented on the programme. The programme stated that the "index and listings" page of the website claimed that the company represented and managed the artists listed. The BBC did not read the legal statement on the welcome page of the site which states, "All artistes presented on this website are available direct through Hemmings Leisure and their respective management." Further, the programme makers did not ask for clarification on this point. These assertions unfairly accused Mr Hemming of making false claims and lying.

By way of background, Mr Hemming said the company's website only offered the viewer ideas, information and the choice to book the artists listed. If they chose to book a listed artist through the website it would be with the consent and agreement of the artist and/or their management or representative, and Mr Hemming would act as a third party only. The transaction itself would be between the client and the artist.

In summary, Mr Hemming complained that his privacy was unwarrantably infringed in the programme as broadcast in that:

- b) The BBC made public the amount of money he once owed to the county court.

The BBC's case

In summary, the BBC responded to Mr Hemming's complaint of unfair treatment as follows:

- a) In relation to the complaint that Mr Hemming was unfairly portrayed and not given an opportunity to respond to certain allegations.

By way of background, the BBC said its office was appropriately staffed on 3 April and would have answered any calls made to the number provided to Mr Hemming. On the occasions a member of staff was away from their desk, any callers could have left a voicemail message and none were left by Mr Hemming.

- i) As regards Mr O'Connor's comment "*you can't call that a recession*" the BBC said Mr O'Connor was making a general comment about the variety of different reasons offered by Mr Hemming for failing to pay artists he had booked:

"And I, I, well, what is wonderful, I hear all the excuses he's giving, I mean, he owes me money from 2005, you can't call that a recession."

The BBC said it believed the audience would have understood that Mr O'Connor was making a general point that it was unreasonable for Mr Hemming to blame forces apparently beyond his control for his failure to meet

his financial commitments. It said there was no question that Mr Hemming claimed the recession played a part in the financial difficulties and this had been explained by the programme only moments before Mr O'Connor's passing comment. Ms Anita Rani, the presenter, said:

"This was the only time he hadn't paid him, and he says that's because someone was embezzling money from his bank account. But he insists, as instructed by the courts, he is now paying up."

The BBC therefore argued there was no unfairness to Mr Hemming or any requirement to offer him a separate right of reply to Mr O'Connor's comment.

- ii) In response to Mr O'Connor's comment that he and Mr Hemming had never met, the BBC said it was Mr O'Connor's genuine belief that he had never met Mr Hemming. The BBC said that it was not in a position to know whether Mr Hemming was correct when he said the two men have met on a number of occasions, but maintained that was clearly not Mr O'Connor's recollection. On this basis, the BBC argued it was reasonable to question Mr Hemming's claim that "the last time I saw him we got on famously as always" (email 1 April 2009) which suggested a closeness of relationship and a degree of familiarity at odds with the fact that Mr O'Connor has no memory of meeting him.

The BBC did not accept that Mr Hemming should have been offered a right of reply on this matter. It said viewers would have been aware that Mr Hemming claimed to know Mr O'Connor, but Mr O'Connor did not believe this to be the case. It argued any further contribution from Mr Hemming would simply have reconfirmed the position as already stated and was therefore unnecessary. The BBC also argued that the question as to whether the two men had met was secondary to the fact that Mr Hemming had failed to pay Mr O'Connor on one of the occasions that he had booked him to perform.

- iii) As regards the programme's statement that Mr Hemming held county court judgments against him worth £14,500, the BBC said the programme makers carried out a search of the Register of Judgments, Orders and Fines for England and Wales on 3 April 2009. This, it said, revealed that there were 19 separate "Unsatisfied judgments" against the company dating back to 12 May 2005, and amounting to £14,561. The BBC said the register is a public record and that it believed it was reasonable for it to assume that if the debts had been cleared by Mr Hemming, as he claims, he would have informed Registry Trust Limited, which maintains the register, to ensure it was updated.

The BBC also asked Ofcom to consider that a subsequent search of the same register it carried out on 10 June 2009 (after the broadcast of the programme) showed six "Unsatisfied judgments" against the company amounting to £4,377 between 19 May 2005 and 30 March 2009, and a further four "Unsatisfied judgments" against Mr Leslie Hemming between 28 February 2008 and 23 January 2009 to the sum of £17,467.

The BBC argued this proved that Mr Hemming and his company have a long and continuing history of failing to honour financial commitments.

As to Mr Hemming's complaint that the programme failed to reflect his reason for the debt (i.e. embezzlement) the BBC said the programme contained a summary of Mr Hemming's explanation for why he had failed to pay his debts

which included his claim that someone was embezzling money from his bank account. The BBC maintained the programme had not been unfair to Mr Hemming.

- iv) As regards the portrayal of Mr Hemming's website, the BBC said there were two references to the Hemmings Leisure website in the programme. The first was in reference to a booking made by Mr Hemming for the UB40 tribute band Rats In The Kitchen:

"The man who booked them, Leslie Hemmings, who runs Birmingham based Hemmings Leisure. According to his website, "your first call for live entertainment", Mr Hemmings claims he can book any artiste or band in the world. Clearly a showbiz giant, so what could go wrong?"

And later to explain the scope of Mr Hemming's business:

"Hemmings Leisure doesn't just provide bands. On his website Mr Hemmings boasts he'll provide any entertainment for weddings and other big events. And look at the big names it seems he can book. Bruce Forsyth, Barbara Windsor, even eh? Nicky Campbell, I don't think so. As for Brucie and Babs, their agents say they've never heard of Hemmings Leisure and Barbara's agent says he wants her name removed from this site immediately".

The BBC said that at no stage did the programme claim or suggest that Mr Hemming represents or manages any of the entertainers listed on his website. Rather, the programme said that he was able to "book any artiste or band in the world" or that "he'll provide any entertainment for weddings and other big events". It said the three case studies included in the programme also explained that Mr Hemming's role was limited to booking the acts in question. The BBC said it did not accept that the programme gave an unfair impression of Mr Hemming's role or any claim made on his website.

In summary, BBC responded to Mr Hemming's complaint of unwarranted infringement of privacy in the programme as broadcast as follows:

- b) In relation to the complaint that the BBC made public the amount of money he once owed from county court judgments.

The BBC said that county court judgments are a matter of public record and are available to any member of the public who wishes to see them. The BBC therefore do not believe that Mr Hemming had a legitimate expectation of privacy in this regard.

The BBC said that in the case of Ofcom considering that Mr Hemming did have a right of privacy, it believed it was warranted to include the details of outstanding debts that he had been ordered to pay back to clients by the courts. This, it said, demonstrated to viewers that Mr Hemming had a history of not paying his clients and confirmed that the case studies featured in the programme were part of a pattern of behaviour over many years, rather than isolated incidents.

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.

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

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

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

Fairness

- a) Ofcom first considered the complaint that Mr Hemming was unfairly portrayed and not given an opportunity to respond to certain allegations.

In the context of this head of complaint Ofcom noted that Rule 7.1 of Ofcom's Broadcasting Code ("the Code") provides that broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes. In considering this part of the complaint, the Committee took account of, in particular, Practice 7.9 of the Code, which states that broadcasters must take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation and that anyone whose omission could be unfair to an individual or organisation has been offered an opportunity to contribute.

For the sake of completeness Ofcom took account of the background information of Mr Hemming's complaint that no one at the BBC was available to receive his response on 3 April 2009. Ofcom noted that Mr Hemming had previously submitted detailed e-mail responses to the programme makers before this date and that excerpts from them were referred to in the programme. Ofcom also found no evidence that the information submitted on 3 April had not been received or considered by the programme makers.

- i) Turning to the actual heads of complaint, Ofcom considered Mr Hemming's complaint that in Mr O'Connor's second interview he questioned Mr Hemming's excuse of the "*current economic climate*", remarking that there was no economic problem in 2005 (the date of their dispute). This was despite Mr Hemming clearly stating that the cause of this particular debt was a substantial act of embezzlement against him.

Ofcom considered the following passage:

Nicky Campbell: *"Have you got any sympathy for Les Hemmings?"*
Mr O'Connor: *"Absolutely none, no."*
Nicky Campbell: *"He says that you two still get on famously. Doesn't sound like it?"*
Mr O'Connor: *"(LAUGHS) Yeah, is that what he said?"*

Nicky Campbell: *"Yeah."*

Mr O'Connor: *"No, no, no, no, I've never met the man. And I, I, well, what is wonderful, I hear all the excuses he's giving, I mean, he owes me money from 2005, you can't call that a recession."*

Ofcom took the view that this was a passing comment about the range of excuses Mr Hemming used. Ofcom also noted the programme, previous to Mr O'Connor's second interview, did accurately represent Mr Hemming's statement on this point. Ms Rani said:

"As for Tom O'Connor Mr Hemmings says they'd always got along famously. This was the only time he hadn't paid him, and he says that's because someone was embezzling money from his bank account. But he insists, as instructed by the courts, he is now paying up."

Ofcom took the view that given the clear information provided before Mr O'Connor's comment, the viewer would not have been materially misled. Ofcom was therefore satisfied that the programme makers did take reasonable care in presenting the material facts and that Mr O'Connor's comment about Mr Hemming's failure to pay would not have resulted in unfairness.

- ii) Ofcom considered Mr Hemming's complaint that he did not have an opportunity to respond to the claim that he had never met Mr O'Connor. Ofcom noted that in Mr O'Connor's second interview he was effectively responding to Mr Hemming's reported assertion – that the two of them "still get on famously" – and giving his view of that assertion. Moreover, Ofcom considered that the main issue raised by the programme was the substantiated assertion that Mr Hemming was found, on several occasions, unable to remunerate various parties. Ofcom therefore took the view that within such a context, the issue as to whether Mr Hemming had or had not met Mr O'Connor was not significant and was unlikely to effect the viewers perception of Mr Hemming's business practice. In Ofcom's view, therefore, it was not incumbent on the programme makers, in the interest of fairness, to provide the complainant with a further opportunity to respond to this point.

In the circumstances, Ofcom concluded that no unfairness resulted from the programme from the inclusion of Mr O'Connor's recollection that he had never met Mr Hemming.

- iii) Ofcom considered Mr Hemming's complaint that the programme failed to reflect the true accuracy of Mr Hemming's debts. Ofcom noted that the programme makers conducted a search of the Registry Trust prior to broadcast on 3 April 2009 and found a list of judgements, categorised as unsatisfied, against Hemmings Leisure, which amounted to £14,561. Ofcom noted that, as with all records, there was scope for them to be outdated but felt the onus of ensuring the records were up to date was on Mr Hemming, not the programme makers. Consequently, Ofcom were satisfied that the programme makers took reasonable care to satisfy themselves that material facts had been presented accurately.
- iv) Ofcom considered Mr Hemming's complaint that the company's website was misrepresented on the programme.

Ofcom noted Nicky Campbell's introduction of Mr Hemming in the programme:

"The man who booked them Leslie Hemmings who runs Birmingham based Hemmings Leisure. According to his website, your first call for live entertainment, Mr Hemmings claims he can book any artiste or band in the world. Clearly a showbiz giant, so what could go wrong?"

Ofcom found that the programme did not claim that Mr Hemming could "represent and manage" the acts listed on the website. Ofcom found that the reference was a factual point about the contents of the website and it was reasonable for the programme to reflect what was publicly available.

Privacy

- b) Ofcom considered the complaint that the BBC made public the amount of money he once owed from county court judgments.

Ofcom's recognises that the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about the unwarranted infringement of privacy, Ofcom will therefore, where necessary, address itself to two distinct questions: First, has there been an infringement of privacy? Second, if so, was it warranted? (Rule 8.1 of the Code).

Ofcom noted that Mr Hemming's county court judgments were a matter of public record. In the circumstances Ofcom considered that Mr Hemming did not have a legitimate expectation of privacy as regards this information. Having found no legitimate expectation of privacy, Ofcom found that Mr Hemming's privacy was not infringed in the broadcast of the programme.

Ofcom also took the view that Mr Hemming's county court judgments were directly relevant to the programme as the subject of the story was the financial reliability of his company.

Having found no infringement of privacy it was not necessary for Ofcom to further consider whether any such infringement was warranted.

Accordingly, Ofcom has not upheld Mr Hemming's complaint of unfair treatment and infringement of privacy in the programme as broadcast.

Not Upheld

Complaint by Mr Alan McKay and Mrs Rosemary McKay

Tonight: Mediterranean Nightmares, ITV1, 5 June 2009

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

This programme reported on a number of disputes involving British people in Northern Cyprus over land and property that had been abandoned by Greek Cypriots after the Turkish invasion of Northern Cyprus in 1974. The programme included footage of Mr Alan McKay and Mrs Rosemary McKay which had been filmed in 2007 for the programme *Holiday Homes From Hell* in which they were interviewed about money they had lost through a British builder that they had engaged to work on their home in Southern Cyprus. Part of this interview footage was re-used and included in the opening minutes of the *Tonight* programme.

Mr and Mrs McKay complained to Ofcom that they were treated unfairly in the programme as broadcast in that footage of them originally filmed for one programme was re-used in another programme without their consent and in a manner which was misleading and portrayed them unfairly.

In summary, Ofcom found that the interview footage of Mr and Mrs McKay remained unaltered and that its context was sufficiently explained to viewers, who were likely to have understood that the opening sequences of the programme in which they appeared were intended to introduce, in general terms, the issues to be explored further in the programme. Ofcom was satisfied therefore that Mr and Mrs McKay were not treated unfairly as a result of the programme's re-use of the original interview footage of them.

Introduction

On 5 June 2009, ITV1 broadcast an edition of *Tonight* entitled *Mediterranean Nightmares*, which looked at the implications of a recent European Court of Justice decision that a British couple should return the land that they had bought and developed in Northern Cyprus to its original owner. The programme examined the origins of this particular dispute and explained that such land disputes had arisen as a result of the Turkish invasion of Northern Cyprus in 1974, and that many Greek Cypriots had left the Turkish-held north of the island for the Greek-controlled south, abandoning their land and property. It went on to state that Northern Cyprus had become a popular place for British holiday home owners to buy property and develop land, much of which had originally been confiscated by the Turkish authorities at the time of the invasion. The programme included interview footage of a number of contributors, including British expatriates and holiday home owners, who discussed the political and legal background to the dispute and the general issues surrounding the purchase of property and land in Northern Cyprus.

The programme also included archive footage of Mr Alan McKay and Mrs Rosemary McKay ("Mr and Mrs McKay"). This footage had been filmed in 2007 for the programme *Holiday Homes From Hell* in which Mr and Mrs McKay were interviewed about money they had lost through a British builder that they had engaged to work on their home in South Cyprus. Part of this footage was re-used and included in the

opening sequences of the *Tonight* programme. Mr and Mrs McKay were not named, nor were they referred to in the rest of the programme.

Mr and Mrs McKay complained to Ofcom that they were treated unfairly in the programme as broadcast.

The Complaint

Mr and Mrs McKay's case

In summary, Mr and Mrs McKay complained that they were treated unfairly in the programme in that footage taken of them in 2007 for another programme about a different topic (namely, the problems they experienced with a British builder in Southern Cyprus) was used without their consent. The manner in which this footage was re-used in the later programme was misleading and portrayed them unfairly.

Mr and Mrs McKay said that they had been contacted by the programme makers two weeks before the broadcast of *Tonight* programme to inform them that footage of them was to be used. Mr Mackay said that he had told the programme makers that he was not happy for it to be re-used in the *Tonight* programme.

ITV's case

In summary, ITV Broadcasting Limited ("ITV"), responsible for the compliance of the programme on behalf of the ITV Network ("ITV1"), responded to Mr and Mrs McKay's complaint that they were treated unfairly in the programme as broadcast as follows:

ITV said that the footage of Mr and Mrs McKay that was included in the programme had been taken from an earlier programme entitled *Holiday Homes From Hell* shown in 2007. ITV said that both the earlier programme and the programme complained about shared a common theme, namely that British people had bought properties in Mediterranean locations only to discover problems with their new homes. ITV said that the programme broadcast in 2007 looked at a range of different stories, including the problems Mr and Mrs McKay had experienced when they had a home in South Cyprus, while the programme complained about dealt specifically with the predicament of British purchasers of disputed land in North Cyprus. ITV said that the similarity of the theme of the two programmes meant that there was nothing intrinsically unfair about using the earlier footage of Mr and Mrs McKay as an example of British home-buyers who experienced problems abroad following the purchase of property in the Mediterranean.

ITV said that, prior to focusing on the Northern Cyprus issue, the programme had put the subject into the context of the general concern about buying a holiday home in the Mediterranean. This concern was expressed by way of an introduction which consisted of a montage of footage of interviews with British expatriates and holiday home owners who had found themselves in difficulty. This montage included interview footage from the earlier 2007 programme as the issues covered were similar. ITV said that the programme's commentary accompanying this montage stated:

"Buying a place in the sun has never been so popular, nor, it seems, so risky. There's no shortage of horror stories – Brits being duped by dodgy developers, falling foul of planning law; helpless and waiting for the bulldozers to arrive. But despite the property scandals and the plummeting pound, we Brits just cannot resist the lure of life in the sun. Since the Tonight programme came on air ten

years ago, well over a million if us have packed our bags and bought a place in the sun”.

ITV said that it was this section of the programme that included the interview footage of Mr and Mrs McKay. It said that they were not identified, nor was the country in which they had made their purchase revealed. Along with the other interview footage (with other contributors), ITV said that it demonstrated the range of problems experienced by British purchasers of foreign properties and that the reference made about *“Brits being duped by dodgy developers”* referred to the 2007 programme that reported on the problems Mr and Mrs McKay had with a builder in Southern Cyprus. ITV said that the inclusion of the footage of Mr and Mrs McKay in this part of the programme was, therefore, distinct from the subsequent report on the disputed ownership problems in Northern Cyprus.

In relation to what Mr McKay claimed that he had told the programme makers about not wanting the footage to appear in the programme, ITV said that there was a clear difference in recollection of the programme makers and Mr McKay. It said that the programme makers had contacted Mr McKay to ascertain whether he would be happy for them to re-use the footage in the programme. The context was explained to him as a general introduction to the problems faced by British property buyers abroad, and his permission was sought. ITV said that the programme makers were satisfied that Mr McKay understood the context in which the footage would be re-used and that he explicitly granted permission for the footage to be reused on the condition that it was only to be used in the introductory montage. ITV said that the programme makers were therefore under the impression that Mr McKay had given his informed consent for the footage to be re-used in the programme. ITV concluded that the context in which the footage was used was not unfair to Mr and Mrs McKay and that Mr McKay’s agreement for it to be re-used in the way it was had been obtained.

Decision

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

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

Mr and Mrs McKay’s complaint was considered by Ofcom’s Executive Fairness Group. In reaching its decision, Ofcom considered all the relevant material provided to it by both parties. This included a recording and transcript of the programme as broadcast, both parties’ written submissions and supporting documentation. In its considerations, Ofcom took account of Ofcom’s Broadcasting Code (“the Code”).

Ofcom considered Mr and Mrs McKay’s complaint that they were treated unfairly in the programme in that they did not consent for the interview footage of them to be re-used in the programme and that the manner in which it was re-used was misleading and portrayed them unfairly.

In considering this complaint, Ofcom had particular regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals, as set out in Rule 7.1 of the Code. It also had regard to Practice 7.8 of the Code which states that broadcasters should ensure that the re-use of material originally filmed or recorded for one purpose and then used in a programme for another purpose, or used in later or different programmes, does not create unfairness.

Ofcom noted that there was a conflict of evidence between Mr and Mrs McKay and the programme makers as to whether or not Mr McKay gave his permission for the interview footage of him and his wife to be re-used in the programme. Ofcom recognised that there was no documentary material provided by either party in their written submissions that assisted it in as to whether any such permission was sought by the programme makers and/or given by Mr McKay. However, Ofcom is not required to resolve conflicts of evidence as to the nature or accuracy of particular accounts of events but to adjudicate on whether a complainant has been treated unfairly in a programme.

In the particular circumstances, it was not possible for Ofcom to conclude whether or not Mr McKay told the programme makers that he did not want the footage of him and his wife to be re-used and included in the programme. The issue for Ofcom was to consider whether the re-use of the interview footage of Mr and Mrs McKay in the programme led to them being portrayed in a way that was unfair.

Ofcom first noted that Mr and Mrs McKay had agreed to participate in *Holiday Homes From Hell*, broadcast by ITV in 2007. Ofcom watched this programme which, it noted, included testimony from a number of British people who had experienced a range of problems arising out of buying and building property in Mediterranean locations. It noted that Mr and Mrs McKay were shown in this earlier programme recounting the building problems they had encountered in Southern Cyprus.

Ofcom then went on to consider the context in which this interview footage of Mr and Mrs McKay was re-used and included in the programme complained about. It noted from the recording of the programme provided to it by ITV (although absent from the transcript of the programme also provided by ITV) that the programme began with the introductory statement "*Tonight, Mediterranean nightmares*", immediately followed by brief footage of British people involved in land disputes in Northern Cyprus and advice from a property expert on buying land and property abroad and in Northern Cyprus specifically.

Ofcom noted that the programme then included a further introduction to the topic after the opening music sequence, and that it was in this second introduction that the interview footage of Mr and Mrs McKay was featured. The commentary in this section of the programme began with the observation that "*buying a place in the sun had rarely been so popular*" accompanied by footage of a building site abroad. Immediately after this, Ofcom noted that the footage of Mr and Mrs McKay was shown accompanying the comment that:

"There's no end of horror stories of Brits being duped by dodgy developers".

Mr and Mrs McKay were then shown standing on a piece of undeveloped land and then in interview. Mrs McKay was shown saying:

"At the beginning we thought we were the only stupid people, but you realise that we're not stupid and neither are these other people".

Ofcom noted that the programme then featured another British property owner who had experienced problems with planning issues and had had his property demolished. This section of the programme concluded by stating that *“But, despite the property scandals and the plummeting pound, we Brits just can’t resist the lure of life in the sun”*. The programme’s focus then shifted to looking at the specific land and property disputes in Northern Cyprus.

Ofcom acknowledged that the main focus of the programme was the issue of land and property disputes in Northern Cyprus and, in particular, the experience of a number of British expatriates and holiday home owners who had faced a range of problems over the properties they had purchased. However, on examining the programme as broadcast and the transcript of it, Ofcom took the view that it was clear that the sequence in which the interview footage of Mr and Mrs McKay appeared was intended to introduce in general terms the type of problems encountered by British people who purchase land and property abroad. Although this sequence was immediately preceded by a short introduction with contributors who had experienced problems specific to Northern Cyprus, Ofcom was satisfied that the interview footage of Mr and Mrs McKay, although edited, remained unaltered and its context was sufficiently explained to viewers who were likely to have understood that the opening sequences were intended to introduce the issues to be explored further in the programme.

Taking all these factors referred to above into account, Ofcom considered that the re-broadcast of the interview footage of Mr and Mrs McKay in the programme did not amount to unfairness to them in that they were presented in an appropriate context and were not misrepresented or portrayed unfairly. Ofcom therefore found no unfairness to Mr and Mrs McKay in this respect.

Accordingly, Ofcom has not upheld Mr and Mrs McKay’s complaint of unfair treatment programme as broadcast.

Other Programmes Not in Breach

Up to 18 January 2010

Programme	Transmission Date	Channel	Category	Number of complaints
118 118 Sponsor Credits	n/a	ITV1	Generally Accepted Standards	1
3 Minute Wonder	04/01/2010	Channel 4	Inaccuracy/Misleading	1
8 Out of 10 Cats	12/01/2010	Channel 4	Generally Accepted Standards	1
8 Out of 10 Cats	15/01/2010	Channel 4	Generally Accepted Standards	1
A Room with a View	06/01/2010	More 4	Sex/Nudity	1
Above Suspicion	04/01/2010	ITV1	Violence	1
Above Suspicion	05/01/2010	ITV1	Violence	1
Adult Channel	13/11/2009	Adult Channel	Sex/Nudity	1
Age 8 and Wanting a Sex Change	19/10/2009	Channel 4	Generally Accepted Standards	12
Age 8 and Wanting a Sex Change (trailer)	13/10/2009	Channel 4	Scheduling	1
Age 8 and Wanting a Sex Change (trailer)	14/10/2009	Channel 4	Sex/Nudity	1
All Star Family Fortunes	03/01/2010	ITV1	Competitions	1
All Star Mr and Mrs	09/01/2010	ITV1	Generally Accepted Standards	1
American Pie: Beta House	23/12/2009	Viva	Sex/Nudity	1
ARY News	04/09/2009	ARY News	Due Impartiality/Bias	2
Baby TV	02/01/2010	Baby TV	Generally Accepted Standards	1
Bang Babes	17/12/2009	Tease Me TV (Freeview)	Sex/Nudity	1
Best of Impressions Show with Culshaw & Stephenson	08/01/2010	BBC 1	Generally Accepted Standards	1
Big Brother's Big Mouth	03/01/2010	E4	Generally Accepted Standards	1
Big Brother's Big Mouth	08/01/2010	E4	Substance Abuse	1
Big Brother's Little Brother	05/01/2010	E4	Religious Offence	1
Big Brother's Little Brother	11/01/2010	E4	Generally Accepted Standards	2
Bill Bailey's Birdwatching Bonanza	07/01/2010	Sky1	Animal Welfare	1
Bo Selecta promotion	28/11/2009	Channel 4	Unconscious influence/hypnosis/subliminal	1
Catherine Tate	25/12/2009	BBC 1	Offensive Language	7
Celebrity Big Brother	04/01/2010	Channel 4	Religious Offence	1
Celebrity Big Brother	05/01/2010	Channel 4	Religious Issues	1
Celebrity Big Brother	06/01/2010	Channel 4	Religious Offence	3
Celebrity Big Brother	06/01/2010	Channel 4	Animal Welfare	5
Celebrity Big Brother	06/01/2010	Channel 4	Generally Accepted Standards	2
Celebrity Big Brother	07/01/2010	Channel 4	Generally Accepted	3

			Standards	
Celebrity Big Brother	08/01/2010	Channel 4	Sex/Nudity	1
Celebrity Big Brother	09/01/2010	Channel 4	Sex/Nudity	1
Celebrity Big Brother	12/01/2010	Channel 4	Generally Accepted Standards	2
Celebrity Big Brother	13/01/2010	Channel 4	Generally Accepted Standards	1
Celebrity Big Brother	14/01/2010	Channel 4	Generally Accepted Standards	1
Celebrity Big Brother	14/01/2010	Channel 4	Religious Offence	1
Celebrity Big Brother	15/01/2010	Channel 4	Offensive Language	1
Celebrity Big Brother	15/01/2010	Channel 4	Generally Accepted Standards	1
Celebrity Big Brother	16/01/2010	Channel 4	Generally Accepted Standards	1
Celebrity Big Brother	17/01/2010	Channel 4	Offensive Language	1
Celebrity Big Brother	05/01/2010	Channel 4	Generally Accepted Standards	1
Celebrity Big Brother Live	04/01/2010	Channel 4	Generally Accepted Standards	1
Celebrity Big Brother Live	09/01/2010	Channel 4	Generally Accepted Standards	1
Celebrity Big Brother Live	16/01/2010	Channel 4	Generally Accepted Standards	1
Celebrity Come Dine with Me Extra Portions	04/01/2010	Channel 4	Offensive Language	1
Channel 4 News	07/01/2010	Channel 4	Violence	2
Channel 4 News	07/01/2010	Channel 4	Offensive Language	9
Channel 4 News	09/01/2010	Channel 4	Sex/Nudity	1
Channel 4 News	06/01/2010	Channel 4	Generally Accepted Standards	1
Coach Trip	05/01/2010	More4	Generally Accepted Standards	1
Come Dine with Me	02/01/2010	Channel 4	Generally Accepted Standards	1
Come Dine with Me	09/01/2010	Channel 4	Offensive Language	1
Come Dine with Me Extra Portions	28/12/2009	Channel 4	Generally Accepted Standards	1
Comedy Showcase	27/11/2009	Channel 4	Religious Offence	1
Continuity announcement	11/01/2010	ITV1	Generally Accepted Standards	1
Country House Rescue	05/01/2010	More4	Generally Accepted Standards	1
Crossfire	28/12/2009	Peace TV Urdu	Generally Accepted Standards	1
Dances with Wolves	19/12/2009	BBC 2	Violence	1
Dancing on Ice	10/01/2010	ITV1	Generally Accepted Standards	1
Dancing on Ice	10/01/2010	ITV1	Offensive Language	2
Dare to Ask	15/12/2009	Peace TV	Crime (incite/encourage)	1
DFS sponsorship credit	n/a	ITV1	Sponsorship	1
Doctor Who	01/01/2010	BBC 1	Generally Accepted Standards	7
Doctors	08/01/2010	BBC 1	Sex/Nudity	1

Doctors	07/01/2010	BBC 1	Violence	1
Domino Day 2009	10/01/2010	Five	Generally Accepted Standards	1
E4 Christmas Comedy trailer	18/12/2009	E4	Religious Offence	1
E4 Christmas Comedy trailer	21/12/2009	E4	Religious Offence	1
E4 Christmas Comedy trailer	22/12/2009	E4	Religious Offence	1
E4 Christmas Comedy trailer	n/a	E4	Religious Offence	1
EastEnders	07/01/2010	BBC 1	Sex/Nudity	1
EastEnders	25/12/2009	BBC 1	Violence	1
EastEnders	14/01/2010	BBC 1	Generally Accepted Standards	1
EastEnders	01/01/2010	BBC 1	Generally Accepted Standards	1
Eastenders (trailer)	09/01/2010	BBC 1	Violence	1
Elmo's World	09/01/2010	Five	Animal Welfare	1
Emmerdale	14/01/2010	ITV1	Violence	1
Emmerdale	14/01/2010	ITV1	Suicide/Self Harm	1
Entertainment News	06/12/2009	ITV2	Generally Accepted Standards	12
Entertainment News	06/12/2009	ITV2	Generally Accepted Standards	1
Foxy Bingo Sponsorship of The Jeremy Kyle Show	04/01/2010	ITV2	Generally Accepted Standards	1
Giant Snake Invasion With Nigel Marven	23/12/2009	Five	Animal Welfare	1
Grizzly Tales for Gruesome Kids	06/12/2009	CITV	Generally Accepted Standards	1
Harry Hill's The Best of TV Burp	03/01/2010	ITV1	Violence	1
Hirsty's Daily Dose	09/12/2009	Galaxy 105FM	Generally Accepted Standards	1
Hirsty's Daily Dose	14/12/2009	Galaxy 105FM	Generally Accepted Standards	1
Holby	05/01/2010	BBC 1	Religious Offence	1
Holiday Airport: Orlando	09/01/2010	ITV2	Offensive Language	1
Horrible Histories	14/01/2010	BBC 1	Generally Accepted Standards	1
I'm a Celebrity, Get Me Out of Here!	15/11/2009	ITV1	Animal Welfare	101
ITV News	25/12/2009	ITV1	Inaccuracy/Misleading	1
Jon Holmes	19/12/2009	BBC 6 Music	Religious Offence	1
Jonathan Ross	12/12/2009	BBC Radio 2	Generally Accepted Standards	1
Jools' Annual Hootenanny	31/12/2009	BBC 2	Generally Accepted Standards	2
Kill It, Cook It, Eat It: Fast Food	08/01/2010	BBC 3	Animal Welfare	1
Knight Rider	31/12/2009	Five	Offensive Language	1
Law and Order: UK	11/01/2010	ITV1	Religious Offence	3
Little Shop of Horrors	31/12/2009	Living	Offensive Language	1
Live At Five	04/01/2010	Sky News	Due Impartiality/Bias	1
Live at the Apollo	24/12/2009	BBC 1	Generally Accepted Standards	1

Live Debate	11/01/2010	Sikh Channel	Offensive Language	1
Live from Studio Five	19/10/2009	Five	Generally Accepted Standards	1
Live from Studio Five	04/01/2010	Five	Generally Accepted Standards	2
Live from Studio Five	11/01/2010	Five	Generally Accepted Standards	1
Livingit promotion	09/12/2009	Living +1	Generally Accepted Standards	1
London Tonight	06/01/2010	ITV1	Generally Accepted Standards	1
Loose Women	05/01/2010	ITV1	Generally Accepted Standards	1
Loose Women	05/01/2010	ITV1	Sex/Nudity	1
Loose Women	14/01/2010	ITV1	Sex/Nudity	1
Macleans sponsors Dancing on Ice	10/01/2010	ITV1	Generally Accepted Standards	1
Maltesers sponsorship of Loose Women	n/a	ITV1	Generally Accepted Standards	1
Mike Parry and Andy Townsend	22/12/2009	Talksport	Due Impartiality/Bias	1
Miranda	09/11/2009	BBC 2	Sex/Nudity	1
Most Haunted Live: Halloween 2009	28/10/2009	Living	Offensive Language	1
Muslim Driving School	12/01/2010	BBC 2	Generally Accepted Standards	1
My Big Fat Diet Show	05/01/2010	Channel 4	Harm/Food	3
National Space Security Command promo	22/12/2009	Disney XD	Unconscious influence/hypnosis/subliminal	1
New Year Live 2009	31/12/2009	BBC 1	Generally Accepted Standards	1
News	04/01/2010	BBC Radio 2	Religious Offence	1
Newsround	08/01/2010	BBC 1	Violence	1
Only Fools and Horses	04/01/2010	Gold	Sex/Nudity	1
Only Fools and Horses	11/01/2010	Gold	Sex/Nudity	1
Piers Morgan's Review of the Year	01/01/2010	ITV1	Crime (incite/encourage)	1
QI	24/12/2009	BBC 1	Generally Accepted Standards	1
QI	08/01/2010	BBC 1	Sex/Nudity	1
QI	01/01/2010	BBC 1	Generally Accepted Standards	1
Regional News and Weather	05/01/2010	BBC 1	Dangerous Behaviour	1
River City	12/01/2010	BBC 1 Scotland	Generally Accepted Standards	1
Romancing the Stone	31/12/2009	Channel 4	Sex/Nudity	1
Ross King in LA	13/12/2009	Forth One	Generally Accepted Standards	1
Royal Institution Christmas Lectures	23/12/2009	More 4	Animal Welfare	2
Rude Tube 2010	03/01/2010	Channel 4	Generally Accepted Standards	1
Russell Howard's Good News	19/11/2009	BBC 3	Generally Accepted Standards	1

Scott Mills	22/12/2009	BBC Radio 1	Sex/Nudity	2
Scottish Premier League: Hibernian v Rangers	27/12/2009	Sky Sports 3	Offensive Language	1
Sky News	26/12/2009	Sky News	Advertising	1
Sky News	31/12/2009	Sky News	Violence	1
Sky News	04/12/2009	Sky News	Due Impartiality/Bias	1
Sleep with Me	31/12/2009	ITV1	Sex/Nudity	1
Small Island	06/12/2009	BBC 1	Sex/Nudity	1
So You Think You Can Dance	09/01/2010	BBC 1	Use of Premium Rate Numbers	1
Spooks	09/12/2009	BBC 1	Generally Accepted Standards	1
SportxxxGirls	10/11/2009	Northern Girls	Sex/Nudity	1
Steel Roots	12/12/2009	My Channel	Advertising	1
Sunrise	30/12/2009	Sky News	Due Impartiality/Bias	1
Switch	20/12/2009	BBC Radio 1	Animal Welfare	1
Take Me Out	09/01/2010	ITV1	Generally Accepted Standards	1
Take Me Out	09/01/2010	ITV1	Sex/Nudity	1
Test Cricket: South Africa v England	27/12/2009	Sky Sports 2	Generally Accepted Standards	3
The Alan Titchmarsh Show	11/01/2010	ITV1	Offensive Language	2
The Alan Titchmarsh Show	11/01/2010	ITV1	Generally Accepted Standards	1
The Big Fat Quiz of The Year 2009	01/01/2010	Channel 4	Generally Accepted Standards	6
The Big Fat Quiz of The Year 2009	01/01/2010	Channel 4	Offensive Language	4
The Big Fat Quiz of The Year 2009	04/01/2010	Channel 4	Generally Accepted Standards	1
The Boudoir promo	18/12/2009	Sport XXXWives	Sex/Nudity	1
The Chronicles of Narnia	24/12/2009	BBC 1	Violence	1
The Daily Show with Jon Stewart	06/01/2010	More4	Information/Warnings	1
The Day of The Triffids	29/12/2009	BBC 1	Religious Offence	1
The F Word	06/01/2010	Channel 4	Generally Accepted Standards	1
The Fattest Man in Britain	20/12/2009	ITV1	Offensive Language	1
The Graham Norton New Year's Eve Show	31/12/2009	BBC 1	Generally Accepted Standards	2
The Killers Live at The Royal Albert Hall	01/12/2009	Channel 4	Unconscious influence/hypnosis/subliminal	2
The Late Show With Ian Collins	06/01/2010	Talksport	Inaccuracy/Misleading	1
The Nutty Professor	02/01/2010	ITV2	Offensive Language	1
The Pad	13/11/2009	Tease Me	Sex/Nudity	1
The Pad	06/11/2009	Tease Me 2	Sex/Nudity	1
The Pad	14/08/2009	Tease Me	Sex/Nudity	1
The Pad	18/08/2009	Tease Me	Sex/Nudity	1

The Pad	19/08/2009	Tease Me	Sex/Nudity	1
The Simpsons Movie	03/01/2010	Channel 4	Sex/Nudity	1
The Simpsons Movie	03/01/2010	Channel 4	Generally Accepted Standards	1
The Trisha Show	08/01/2010	Five	Due Impartiality/Bias	1
The Weakest Link	14/01/2010	BBC 1	Generally Accepted Standards	1
The Wright Stuff	11/01/2010	Five	Offensive Language	1
The X Factor	08/11/2009	ITV1	Offensive Language	279
The X Factor	13/12/2009	ITV1	Inaccuracy/Misleading	1
This Morning	06/01/2010	ITV1	Generally Accepted Standards	1
This Morning	14/01/2010	ITV1	Generally Accepted Standards	1
This Morning	07/01/2010	ITV1	Sex/Nudity	1
This Morning	01/02/2010	ITV1	Generally Accepted Standards	1
Tim Minchin Live	09/01/2010	E4	Generally Accepted Standards	1
TNA Wrestling: Destination X	17/12/2009	Bravo 2	Sex/Nudity	1
Top Gear	06/12/2009	BBC 2	Generally Accepted Standards	1
Victorian Farm Christmas	24/12/2009	BBC 2	Animal Welfare	1
Volkswagen sponsors Channel 4 Documentaries	30/12/2009	Channel 4	Generally Accepted Standards	1
Welcome to Yorkshire sponsors ITV3 Peak	n/a	ITV3	Generally Accepted Standards	1
Wild Fishing with Henry	14/01/2010	Discovery Shed	Offensive Language	1