

# **Ofcom Broadcast Bulletin**

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## Introduction

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

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

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

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

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

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

## Standards cases

### Notice of Direction

Bang Channels Limited (“Bang Channels”) holds a broadcasting licence for television services known as Tease Me, Tease Me 2, Tease Me 3. These services are transmitted by satellite on Sky in channel numbers 912, 948 and 959 respectively.

Bang Media (London) Limited (“Bang Media”) holds a broadcasting licence for the television service on Freeview known as Tease Me TV.

Ofcom has recently published in Broadcast Bulletins 151, 152 and 153 various breaches of the Broadcasting Code against each of Bang Channels and Bang Media. Ofcom also published various breaches of Condition 11 (retention and production of recordings) of their Licences. Since these breaches were serious and repeated, Bang Channels and Bang Media were warned that Ofcom was considering these contraventions for statutory sanction.

Despite these published findings, Ofcom was concerned that Bang Channels and Bang Media were continuing to transmit content that is in breach of the Code in that it appears similar in nature to that has already found in breach of the Code on a number of occasions.

On 12 March 2010, under the terms of its licence, Ofcom directed Bang Channels and Bang Media to comply with the following Directions.

#### **Pursuant to Condition 17(1) of TLCS licences numbers 933, 1015 and 1231:**

##### **OFCOM NOW FORMALLY DIRECTS:**

Bang Channels Limited, the holder of TLCS licences 933, 1015 and 1231 – in respect of the provision of the services known as ‘Tease Me’, ‘Tease Me 2’ and ‘Tease Me 3’ (‘the Licensed Services’)

- to comply forthwith with the Broadcasting Code (in particular sections 1 and 2) and Condition 11 of its licence (retention and production of recordings) and to act in accordance with any guidance published or provided by Ofcom concerning material broadcast by daytime and adult sex chat television services, including (but not limited to) that provided in or by: the Guidance Notes to section 1 and 2 of the Broadcasting Code, the letter dated 3 August 2009 from Ofcom to all daytime and adult sex chat channels; the Ofcom breach findings against Bang Channels Limited published on 6 July 2009 and accompanying Note to Daytime and Adult Sex Chat Service Broadcasters in Ofcom Broadcast Bulletin 137; the breach findings against Bang Channels Limited published on 26 October 2009 and accompanying Note to Adult Sex Chat Broadcasters in Broadcast Bulletin 144; the breach findings against Bang Channels Limited published on 8 February 2010 in Bulletin 151; the breach findings against Bang Channels Limited and Bang Media (London) Limited published on 22 February 2010 in Bulletin 152; and the breach findings against Bang Channels Limited published on 8 March 2010 in Bulletin 153;
- to stop transmitting forthwith any content which, either by its nature or in the manner in which it is broadcast (e.g. pre-watershed or without mandatory restricted access), is materially similar to that already found in breach of the

Broadcasting Code by Ofcom in the published breach findings against Bang Channels Limited and Bang Media (London) Limited referred to immediately above; and

- immediately to confirm these actions to Ofcom in writing by no later than 5pm on Monday 15 March 2010.

**Under Conditions 28 and 29 of the above mentioned TLCS licences, failure to comply with a Direction given by Ofcom could give rise to consideration of a statutory sanction and may result in the revocation of the licences referred to above.**

**Pursuant to Condition 17(1) of DTPS licence number 078:**

**OFCOM NOW FORMALLY DIRECTS:**

Bang Media (London) Limited, the holder of DTPS licence 078 – in respect of the provision of the service known as ‘Tease Me TV’ (‘the Licensed Service’):

- to comply forthwith with the Broadcasting Code (in particular sections 1 and 2) and Condition 11 of its licence (retention and production of recordings) and act in accordance with any guidance published or provided by Ofcom concerning material broadcast by daytime and adult sex chat television services, including (but not limited to) that provided in or by: the Guidance Notes to section 1 and 2 of the Broadcasting Code, the letter dated 3 August 2009 from Ofcom to all daytime and adult sex chat channels; the Ofcom breach findings against Bang Channels Limited published on 6 July 2009 and accompanying Note to Daytime and Adult Sex Chat Service Broadcasters in Ofcom Broadcast Bulletin 137; the breach findings against Bang Channels Limited published on 26 October 2009 and accompanying Note to Adult Sex Chat Broadcasters in Broadcast Bulletin 144; the breach findings against Bang Channels Limited published on 8 February 2010 in Bulletin 151; the breach findings against Bang Channels Limited and Bang Media (London) Limited published on 22 February 2010 in Bulletin 152; and the breach findings against Bang Channels Limited published on 8 March 2010 in Bulletin 153;
- to stop transmitting forthwith any content which, either by its nature or in the manner in which it is broadcast (e.g. pre-watershed or without mandatory restricted access), is materially similar to that already found in breach of the Broadcasting Code by Ofcom in the published breach findings against Bang Channels Limited and Bang Media (London) Limited referred to immediately above; and
- immediately to confirm these actions to Ofcom in writing by no later than 5pm on Monday 15 March 2010.

**Under Conditions 28 and 29 of the above mentioned DTPS licence, failure to comply with a Direction given by Ofcom could give rise to consideration of a statutory sanction and may result in the revocation of the licence referred to above.**

## In Breach

### GMTV with Lorraine

GMTV, 14 January 2010, 08:30

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#### Introduction

*GMTV with Lorraine* is a weekday morning programme featuring discussions on lifestyle, fashion and entertainment. The programme includes a regular feature called *Deals of the Week*, in which guest Martin Lewis offers viewers advice on current consumer deals. A viewer objected to these features on the following grounds:

“How does GMTV keep editorial and advertising separate given that its money expert Martin Lewis broadcasts what listeners will trust is editorial but always directs viewers to his business moneysavingexpert.com which is a sales business?”

We viewed an example of *Deals of the Week* broadcast on 14 January 2010. During this item Mr Lewis discussed gym membership deals, referring to free passes that were available, and told viewers:

*“...to chose a gym make sure you get one of the free passes. Now these are some of those that are available with vouchers you can print off the internet now. Guess what, all on GM.TV”*

Mr Lewis also discussed current restaurant deals and referred to specific vouchers, stating:

*“...all of those available via the website”.*

Ofcom viewed GMTV’s web page at the time of broadcast. The page contained information on the deals discussed in the programme, including the information provided in the programme. However, to obtain full details of these offers, including the relevant vouchers, viewers were required to click through using “Useful Links” to Mr Lewis’ own website, moneysavingexpert.com.

We sought GMTV’s comments on the complaint under Rule 10.3 of the Code – which states that products and services must not be promoted in programmes.

#### Response

GMTV explained that it received no payment from Martin Lewis in respect of either his appearance on GMTV or any reference to moneysavingexpert.com on GMTV’s website. GMTV said that, in common with most expert contributors to the programme, Martin Lewis is paid for his appearances.

GMTV stated that during the programme in question, Martin Lewis provided a considerable amount of information potentially helpful to those contemplating gym membership, referring directly to a gym savings website and advising viewers to avoid locking themselves into a 12 month contract. He also mentioned a number of fitness chains that offered free trials. GMTV said it would be open to viewers to take this information and research offers of free passes at any of the chains mentioned without visiting gm.tv. GMTV believed that to suggest the “thrust” of the item was to direct viewers to gm.tv and ultimately moneysavingexpert.com was inaccurate and

disingenuous. Viewers could obtain the benefits of the advice offered without visiting [moneysavingexpert.com](http://moneysavingexpert.com), with the reference to [gm.tv](http://gm.tv) being secondary to the information provided by Mr Lewis on the subject during the programme. GMTV considered that the references to its website, [gm.tv](http://gm.tv), within the item were entirely justified editorially in providing GMTV's viewers with more detail.

GMTV submitted that a reference within the programme to the programme website, which in turn referred the viewer (if they so wished) to [moneysavingexpert.com](http://moneysavingexpert.com) was far less a call to action or commercial reference than references to a retailer as part of any consumer item broadcast by GMTV or another broadcaster. For example, during a fashion item, it is usual for [gm.tv](http://gm.tv) to list stockists of clothing that has been shown in the programme. Both research and information obtained from GMTV's website confirm that viewers like the facility of obtaining such information, details of money saving deals or other information relating to items broadcast on GMTV. GMTV believed that the suggestion that references to goods or services in consumer items amount to the "promotion" of such goods and services where the reference is brief and secondary and does not contain a call to action or advertising claims appears ill-conceived. GMTV argued that, by its very nature, consumer advice will involve references to commercial goods and services. GMTV also expressed concern that, should a web reference of the sort at issue be judged to amount to a breach of the Code, this would eliminate a source of information which GMTV believes is of great value to, and greatly valued by, its viewers. GMTV believed that the logical conclusion of such a finding of a breach of Rule 10.3 in this case would appear to prevent GMTV listing stockists or providers of goods or services online.

GMTV commented that the objection in this case appeared to be that the ultimate destination ([moneysavingexpert.com](http://moneysavingexpert.com)) is owned by the contributor. GMTV disputed that [moneysavingexpert.com](http://moneysavingexpert.com) is a sales business in any greater sense than the website of any broadcaster, all of which contain banner advertising and pre-roll advertisements and many of which contain information referred to briefly in programming. GMTV stated that [moneysavingexpert.com](http://moneysavingexpert.com) provides information without the necessity to purchase any good or service or to subscribe to receive information. GMTV submitted that if it was the case that this website required a subscription, there would be no link or reference to it on [gm.tv](http://gm.tv).

Finally, GMTV stated that, although it was firmly of the view that there was no breach of Rule 10.3 in this case, as a responsible broadcaster, it had taken steps to remove those references pending the outcome of Ofcom's investigation. However, it stressed that this action in no way implied that GMTV considered the practice to have been dubious or that it amounted to anything other than the provision of information that was both useful to and very popular with its viewers.

## **Decision**

Section Ten of the Code contains rules that apply to commercial references within programmes. The rules are based on principles that seek to ensure that:

- the independence of editorial control over programme content is maintained;
- programmes are not distorted for commercial purposes; and
- advertising and editorial are kept separate.

Rule 10.3 of the Code prohibits the promotion of products and services, unless they meet the Code's definition of programme-related material<sup>1</sup>.

In the context of a consumer affairs programme, there is clear editorial justification for broadcasters to include details about reviewed items, such as availability and cost: this information is provided in the interest of the viewer. Ofcom would not generally consider such information to be promotional in this editorial context. However, such references should avoid giving undue prominence to any one particular product, manufacturer or supplier and reviews should not be subject to any commercial agreement with a manufacturer/supplier.

It is also acceptable for broadcasters to provide this kind of information as part of programme-related material, for instance on a programme-related website.

In this case, the programme promoted the availability of discount vouchers and directed viewers to GMTV's programme-related website to obtain them, for example when Martin Lewis stated: "...*Now these are some of those that are available with vouchers you can print off the internet now. Guess what, all on GM.TV*".

However, Ofcom noted that the GMTV website did not provide viewers with direct access to the vouchers. Instead viewers who accessed the programme website to obtain the vouchers in fact had to follow a further weblink to a third party website - the guest's own business, moneysavingexpert.com - to find the necessary links to access the vouchers.

As to whether moneysavingexpert.com was a sales business, Ofcom noted that while the website does not operate on a subscription basis, the following information about how the website generates income is stated on the site:

"MoneySavingExpert.com is free to use and free of advertising - you can't pay to have content put on the site. Articles are written based on specialised editorial research of the best ways to save money.

The income comes from links that generate revenue when clicked. Once articles are finished, where possible 'affiliated links' to the top products are used and have a \* by them. Yet if no affiliate link is available a non-paying link is used; i.e. if the top pick doesn't pay, it remains the top pick regardless"

Irrespective of whether or not the site generated revenue as a result of the deals promoted within the programme, Ofcom considers that this third party website is nevertheless a commercial business.

By inviting viewers to obtain further information and vouchers on the GMTV website, and then re-directing them to Martin Lewis' commercial website to obtain that information, the programme was effectively promoting his business. As a result of this promotion, the programme was in breach of Rule 10.3 of the Code.

### **Breach of Rule 10.3**

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<sup>1</sup> Programme-related material is defined in the Code as "...products or services that are both directly derived from a specific programme and intended to allow listeners or viewers to benefit fully from, or interact with, that programme".



## In Breach

### Vicky Gill

*Radio XL 1296 AM (West Midlands), 19 December 2009, 18:00*

### Navrang

*Radio XL 1296 AM (West Midlands), 4 January 2010, 13:00*

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## Introduction

Radio XL is a station that provides a music, news, views and information service for the Asian community in the West Midlands.

### Vicky Gill

Vicky Gill's show broadcast on 19 December 2009, included an hour-long segment discussing family law during which listeners were able to call the studio to put questions to a lawyer from a company called Charles & Co. Solicitors. At the end of the programme, the presenter told listeners to "get a pen and paper". The presenter then went on to say:

*"...But eventually from all sides, if one has to divorce, then it is better one consults a proper person and Charles & Co. are in Birmingham. First, write down their address: Charles & Co. Solicitors. 16-17 Caroline Street, Birmingham. Caroline Street is a very famous street, it is located in the jewellery quarter – 16-17 Caroline Street, Birmingham. And write down Gurjeet Chahal's phone number: [phone number provided]. Please who want to write this in Hindi and Urdu, I will say it in these languages very slowly [number repeated in Urdu]..."*

The presenter also added:

*"Next week, same time, same day, once again Gurjeet Chahal will attend this programme to meet you."*

A listener complained to Ofcom that the comments promoted the lawyer.

We sought Radio XL's comments with regard to the following Code Rules:

- Rule 10.3 – "Products and services must not be promoted in programmes. This rule does not apply to programme-related material."
- Rule 10.4 – "No undue prominence may be given in any programme to a product or service."

### Navrang

On 4 January 2010, just before 14:30, the presenter asked listeners to have a pen and paper ready because she was going to broadcast a special message from S&S Bargains after playing some music. After two songs the presenter said:

*"Now let us go towards this message – and this message we are delivering to you is on behalf of S&S Bargains. S&S Bargains is in Sparkhill and their grand opening has taken place on Saturday 2<sup>nd</sup> January and they have a special offers for new year, for example: a large bag of chapatti flour is only £6.99; Daz powder, 90 wash, is only £11.99 any loaf of bread – 2 loaves for a pound; milk, 2 litre bottle – 2 bottles for a pound. So hurry up and go and take advantage of their*

*special offers. I will tell their address again: S&S Bargain Centre, whose opening has taken place on 2<sup>nd</sup> January, S&S Bargain Centre, Unit B, 181 Percy Road, Sparkhill, B11 3JS. Telephone: [phone number provided]. that is [phone number repeated]. We have given you the telephone number of S&S Bargain Centre and their address also. They are S&S Bargain Centre based in Sparkhill. Their grand opening has already taken place on 2<sup>nd</sup> January. They have special offers for the new year – the products which we have already told you. If you need these products – why should you not require these products?! – every individual needs these products – go and take advantage of their sale. OK – now we go towards our next song...”*

A listener complained that an advertisement was not separated from editorial content and sounded more like an endorsement by the presenter.

Radio XL confirmed that the promotional material in question was a presenter-read paid-for advertisement.

We therefore sought the broadcaster’s comments with regards to Rule 10.2 of the Code, which states:

“Broadcasters must ensure that the advertising and programme elements of a service are kept separate.”

## **Response**

### Vicky Gill

Radio XL considered that it had ensured that independence of editorial control had been maintained and that the programme has not been distorted for commercial purposes.

With regards to Rules 10.3 and Rule 10.4, Radio XL stated the programme was “used to provide information to [its] listeners regarding family law and not a programme designed to promote the guest” and therefore it was “editorially justified in mentioning the guest’s details at the end of the programme”. The broadcaster continued that “as an example, in answering questions [the guest] encouraged one listener to contact any family law specialist and any immigration specialist and not her own practice.” Radio XL also stated that the guest’s legal practice was referred to for just a few minutes at the end of the hour-long programme.

Radio XL continued that the “practitioner [could not] answer everybody’s question over the phone; there may be listeners who need[ed] to provide a more detailed history. For their benefit [the lawyer]...mentioned her phone number at the end of the programme”, which Radio XL believed was editorially justified and not unduly prominent.

### Navrang

Radio XL said that it was made aware of the XL complaint in relation to this programme while Ofcom’s investigation into a similar complaint was ongoing<sup>1</sup>. The broadcaster explained that it began to amend its procedures to avoid further breaches of the Code.

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<sup>1</sup> Following the previous investigation, Ofcom recorded a breach of Rule 10.2 of the Code in relation to similar promotional content broadcast on Radio XL. See Broadcast Bulletin 149, published on 11 January 2010 ([http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb149/Issue149.pdf](http://www.ofcom.org.uk/tv/obb/prog_cb/obb149/Issue149.pdf)).

However, Radio XL also said that in this case “the presenter did make a separation between the programming and live read by saying, *‘Now let us go towards this message – and this message we are delivering to you is on behalf of S&S Bargains...’*”

## **Decision**

### Vicky Gill

The Code prohibits broadcasters promoting, or giving undue prominence to, products and services in programmes. This is to ensure there is clear separation between programmes and advertising and to prevent programmes from being distorted for commercial purposes.

In this case, Ofcom recognises that the lawyer from Charles & Co. Solicitors was providing general advice as part of the phone-in programme covering family law. Ofcom also noted Radio XL’s explanation that during the majority of the programme Charles & Co. Solicitors was not referred to, and that the guest lawyer had encouraged one listener to contact family law and immigration specialists generally, rather than one specifically working for Charles & Co. Solicitors.

While it may be acceptable for the presenter or the guest to refer to the guest’s credentials and the company name, for example to introduce the guest to the audience and explain the guest’s speciality or area of experience, such references must not be promotional or unduly prominent. The duration of the references to the guest’s company in relation to the duration of the entire programme is only one factor which Ofcom takes into account when judging whether or not a programme has complied with Rules 10.3 and 10.4 of the Code. For instance, we would also consider whether there was editorial justification for referring to the company’s contact details, and the manner in which those details were given on air.

In this case, irrespective of the relatively small amount of the programme used to refer to the guest’s legal practice, Ofcom considered the references to be problematic under the Code. We judged that telling listeners to “*get a pen and paper*” before proceeding to describe the solicitor’s specialism, (i.e. “*if one has to divorce, then it is better one consults a proper person and Charles & Co. are in Birmingham*”), and then providing the name, address and telephone number of the solicitors firm, contained the type of information likely to be included in an advertisement. The content was therefore promotional and provided undue prominence for the company without sufficient editorial justification. Ofcom therefore found the programme in breach of Rules 10.3 and 10.4 of the Code.

### Navrang

Broadcast output is defined either as editorial (programming) or advertising. One of the two principles upon which Section Ten of the Code is based is to ensure that the advertising and programme elements of a service are clearly separated. To reflect this principle and to ensure transparency in programming, Rule 10.2 of the Code requires that:

“Broadcasters must ensure that the advertising and programme elements of a service are kept separate.”

Radio presenters may read advertisements (live or recorded) but broadcasters should ensure that the distinction between advertising and programming is not blurred and that listeners are not confused between them. It is therefore advisable for

presenter-read advertisements to be separated from programming by, for example, a jingle or station ident, or by scheduling them in the middle of a commercial break.

In Broadcast Bulletin 149, published on 11 January 2010<sup>2</sup>, Ofcom recorded a breach of Rule 10.2 of the Code in relation to an insufficiently separated presenter-read advertisement broadcast on Radio XL. Ofcom noted that this new content, regarding a presenter-read live advertisement for S&S Bargain Centre, had been broadcast on Radio XL before its decision on the previous case had been published. However, given that Radio XL's response to Ofcom's investigation of the current case was submitted after the publication of Ofcom's previous decision, Ofcom was concerned that Radio XL still considered that "the presenter did make a separation between the programming and the [presenter-read live advertisement for S&S Bargain Centre]".

Ofcom considered that the 40 second presenter-read paid-for advertisement promoting the S&S Bargain Centre directly followed the broadcast of two songs and was presented seamlessly as programming. Ofcom judged that the words "*Now let us go towards this message – and this message we are delivering to you is on behalf of S&S Bargains...*" was insufficient to separate the advertisement from programming. As the presenter-read advertisement was not separated from programming, the broadcast was in breach of Rule 10.2 of the Code.

**Vicky Gill: Breach of Rules 10.3 and 10.4**

**Navrang: Breach of Rule 10.2**

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<sup>2</sup> See [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb149/Issue149.pdf](http://www.ofcom.org.uk/tv/obb/prog_cb/obb149/Issue149.pdf)

## In Breach

### Hot Country

*Rural TV, 28 December 2009, 22:00*

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#### Introduction

Rural TV is a channel which focuses on outdoor and countryside interest programming, and country and western music.

Ofcom received a complaint that the sponsor credit for a country and western music programme, *Hot Country*, contained information which could be deemed to be calls to action. The complainant was also of the view that advertising had appeared within the programme itself.

On reviewing the material, we noted the sponsor credit, which was a single title card, included the caption: “*For more information call...*”, before giving the sponsor’s telephone number. We also observed that the same title card was used during a paid-for advertisement for the company which appeared in an advertising break during the same programme.

Ofcom asked the broadcaster for its comments on Rule 9.13 of the Code which requires that sponsorship is clearly separated from advertising, and that sponsor credits must not contain advertising messages or calls to action.

In addition, within the programme itself, a singer talked about a country music weekend holiday and gave details of its location, the services offered and booking information. This appeared to Ofcom to be advertising.

Ofcom sought the broadcaster’s comments on this aspect of the material under Rule 10.2, which requires that advertising and programme elements are kept separate.

#### Response

Rural TV accepted the sponsor credit included a call to action and the advertising for the company placed in the advertising break was the same as the sponsor credit. It also said the country music weekend segment should have been placed in an advert break. The breaches were, it said, due to insufficient compliance checking on its part. The broadcaster apologised for all of the lapses.

The broadcaster said *Hot Country* was produced by a production company which was not entirely familiar with the Code, although Rural TV said it had endeavoured to ensure the company was familiar with Ofcom’s requirements.

Rural TV said the programme was supplied very close to the broadcast deadline and, unusually, also included advertising. The broadcaster acknowledged that although it had checked the programme for technical and regulatory compliance, this check had not been sufficient.

Since this incident occurred, the broadcaster said it has ensured the production company fully understands the requirements of the Code. All relevant staff have been reminded that the late receipt of a programme is not an excuse for inadequate compliance checks.

## Decision

European legislation, the Audiovisual Media Services (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.

As made clear in previous Broadcast Bulletins (see Bulletins 130 and 146), Ofcom's guidance<sup>1</sup> on the rules relating to sponsorship states that the purpose of a sponsor credit is to inform viewers about the sponsorship arrangement between the sponsor and the programme. Credits should not be used as a vehicle to promote the sponsor's products or services, nor should they directly invite the audience to contact the sponsor.

Under Rule 9.13, sponsor credits should not contain calls to action. While basic contact details can be given in credits (such as a website address or a telephone number), this should not be accompanied by language which could be seen as inviting the audience to contact the sponsor. In this case Ofcom found that the use of the phrase, "*For more information call...*" invited viewers to contact the sponsor and was therefore a call to action, in breach of Rule 9.13.

Additionally, Ofcom noted the same title card that was used in this sponsor credit was also used within a paid-for advertisement for the company that appeared in an advertising break during the same programme. This did not amount to a clear separation of sponsorship from advertising, and for this reason a further breach of Rule 9.13 has been recorded.

Broadcasters are required to keep advertising and programme elements separate to ensure programmes are not distorted for commercial purposes. Rural TV admitted the segment where a country music holiday was promoted was an advert incorrectly placed within programme time. Therefore the programme was also in breach of Rule 10.2.

Ofcom welcomes the tighter compliance measures introduced by Rural TV to ensure its output remains compliant with the Code.

## Breaches of Rules 9.13 and 10.2

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<sup>1</sup>See [www.ofcom.org.uk/tv/ifi/guidance/bguidance/section9\\_2009.pdf](http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/section9_2009.pdf)

## Resolved

### Dickinson's Real Deal

ITV1, 19 January 2010, 14:00

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#### Introduction

*Dickinson's Real Deal* is a daytime entertainment programme based on the valuation of antiques. Each edition features a viewer competition that requires participants to answer a multiple choice question correctly to enter a prize draw. Viewers can enter via a premium rate telephone number (costing £1 from a BT line) or text message (costing £1 each plus the user's standard network rate), or for free via ITV's website. The competition is promoted four times at regular intervals during the programme.

Ofcom received one complaint from a viewer who noted that the question posed by the voiceover did not correspond to the question on-screen. The complainant said that this would have affected the fairness of the competition as it was unclear which question viewers were supposed to answer.

Ofcom asked ITV Broadcasting Limited ("ITV"), who compiled the programme on behalf of the ITV Network, for its comments under Rules 2.13 (competitions must be conducted fairly) and 2.14 (broadcasters must ensure that viewers are not materially misled about any competition) of the Code.

#### Response

ITV explained that because this was a repeat of a previously broadcast series, each episode was re-edited by the production company, RDF Television, to include new competition questions. The programme in question contained three correct promotions of the competition. However, the final promotion featured the correct graphic but the voiceover related to a previous competition. This was identified by the production team but owing to an error in the dubbing process, it was not corrected. Further, the ITV Compliance adviser responsible for *Dickinson's Real Deal* did not detect the discrepancy when clearing the programme for transmission.

The broadcaster said it was alerted to the matter by a small number of complaints that it had received. It concluded that there was a clear possibility of viewer confusion caused by the error and so cancelled the competition for that day and implemented a refund procedure. It broadcast an on air announcement about the cancellation during the end credits of the following day's edition, referring viewers to its website for details of how to obtain a refund. It added that it was able to automatically reimburse entrants who called from a BT account and that it had established a call centre to contact other telephone entrants to arrange repayment. Further, ITV said that it had sent text message entrants instructions on how to obtain a refund. At the time of its response, ITV said it had already refunded 5,026 of the 15,984 entrants eligible and that any monies not claimed within three months would be donated to charity.

ITV apologised for any confusion to viewers caused by this oversight and has since introduced an additional check made by the Series Editor if any changes have been made to the original programme. It also pledged to be extra-vigilant when checking this particular element of the show to prevent a repeat incident.

## **Decision**

Rule 2.13 of the Code requires broadcasters to conduct competitions fairly. Rule 2.14 states that viewers should not be materially misled by competitions.

Ofcom was concerned that the discrepancy between the competition question broadcast in vision and in audio had been identified, but was then not corrected during post-production. Further, the error also went undetected by ITV's compliance adviser. This led to the broadcast of materially misleading information which could have impacted the fairness of the competition, and had the potential to cause viewers financial loss.

However, Ofcom accepted that this was an isolated incident arising from an unusual sequence of human errors. Further, we noted the prompt refund procedures put in place to compensate entrants, and that the broadcaster had improved its processes to prevent a recurrence. We therefore considered the matter resolved.

## **Resolved**



## Not In Breach

### Dispatches: Inside Britain's Israel Lobby

Channel 4, 16 November 2009, 20:00

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#### Introduction

This edition of *Dispatches* was presented by journalist Peter Osborne. It sought to establish the extent of the alleged influence of the pro Israel lobby on British politicians and asked what effect this influence had on the Middle East policies of the Conservative and Labour parties in particular. The presenter began the programme with the following:

*"Dispatches reveals the activities of the most effective lobby working inside British political parties....we investigate the Israel lobby's bankrolling of British politicians."*

He then said:

*"I resolved to ask questions. How does the pro-Israel lobby in Britain work? Who runs it? And how does it get results?"*

The programme was an investigation into several individual organisations, and the people who ran them. The programme said that these groups formed part of the pro-Israeli lobby in Britain and sought to demonstrate how they "bankrolled" some British politicians. The programme also questioned the attitude of some lobby groups to elements of the British press, describing what it said were aggressive methods of complaint to the Press Complaints Commission against "anti-Israeli reporting".

Ofcom received 50 complaints about certain aspects of the programme. These complaints fell into four groups:

- a) the programme was biased against Israel and/or the Israeli government;
- b) it did not adequately explain fully the background to the current situation in the Middle East;
- c) it was anti-Semitic; and
- d) it was overly critical of certain lobby groups.

Ofcom viewed the programme in light of these complaints. We examined the material under the due impartiality rules in Section Five of the Code; and the rules on offensive material in Section Two.

#### Decision

##### a) Due Impartiality

Complainants believed that the programme lacked balance and was one sided.

In exercising its functions Ofcom must take account of the right to freedom of expression. This encompasses the broadcasters' right to transmit and the audience's right to receive creative material, information and ideas without interference but subject to restrictions prescribed by law and necessary in a democratic society. This right is enshrined in the European Convention on Human Rights. The rules in the Code seek to balance this right to freedom of expression against the need to apply

restrictions. These restrictions include such statutory duties as the requirement for broadcasters to preserve “due impartiality” on certain matters. Ofcom recognises that Section Five of the Code, which sets out how due impartiality must be preserved, acts to limit, to some extent, freedom of expression. This is because its application necessarily requires broadcasters to ensure that neither side of a debate relating to matters of political or industrial controversy and matters relating to current public policy is unduly favoured.

Ofcom also acknowledges that Channel 4’s statutory remit requires it to provide “...a broad range of high quality and diverse programming which, in particular ....exhibits a distinctive character.”

Ofcom considers it of paramount importance that broadcasters, such as Channel 4, continue to explore controversial subject matter. While such programmes can polarise opinion, they are essential to our understanding of the world around us.

Section Five states that due impartiality must be preserved by the broadcaster on “matters of political or industrial controversy and matters relating to current public policy.” The Code explains in summary that these are “political or industrial issues on which politicians, industry and/or the media are in debate...”

Ofcom had first to establish whether *Dispatches, Inside Britain’s Israel Lobby* contained subject matter requiring the application of the due impartiality rules. We noted that several complainants considered this programme was biased against the Israeli State and its policies. However, we considered that the programme was not a discussion about arguments for and against Israeli policy. Rather, it was clearly an ‘investigation’ into the activities of organisations and individuals who allegedly lobby UK political parties from a pro-Israeli perspective to influence political debate and public policy.

In this case, taking into account all the circumstances, and bearing in mind the context of the programme described in the Introduction above, Ofcom concluded that on balance the programme was subject to the due impartiality rules. This is because an issue of political controversy was being discussed. This was not the politically controversial debate surrounding the policies and actions of the Israeli State in the Middle East and beyond. Rather the issue of political controversy was: the alleged effect of political lobby groups, supportive of the state of Israel, and its policies; and the methods of those lobby groups, and their attempts to influence political debate and public policy in this country.

Given that the programme’s investigative format, looking into activities of certain individuals and organisations, the editorial narrative of the programme reflected what the reporter had discovered. It focussed on the methods of these lobby groups and the effect these organisations had on the policies of particular political parties. Such investigative programmes will always take on a certain editorial approach to the subject matter, but nevertheless, such programming must always ensure that due impartiality is maintained.

For example footage was shown of the Conservative Shadow Foreign Secretary, William Hague, describing the Israeli response to attacks from Hezbollah as “*disproportionate*”. The programme then sought to demonstrate what it saw as pro-Israel lobby groups’ over reaction to Hague’s criticism. It described how Mr Hague’s “*moderate*” comment met strong reaction from the Conservative Friends of Israel (“CFI”): a letter was published in *The Spectator* magazine strongly criticising his

remark; there was a cessation of donations to Mr Hague by the CFI; and the director of the CFI (according to the programme):

*“...had a meeting with David Cameron at which it was understood that terms such as ‘disproportionate’ are not the sort that Conservatives should use to describe Israeli military action.”*

Another example of this approach by the programme occurred when the presenter, seen at the Conservative party Conference, said:

*“the longer I’m here, the more I’m beginning to feel that the CFI’s purpose is to make sure David Cameron’s Middle East policy is in step with the political agenda of the current Israeli government.”*

In this , the programme, although not offering a view on Conservative policy on the Middle East, expressed a view on what certain lobby groups would *like* that policy to be. In demonstrating, in its view, the lobby groups’ attempts to influence political process and public policy, we considered that it was incumbent on the broadcaster to maintain due impartiality in this case.

Given the above, Ofcom considered whether the programme complied with Rule 5.5, which states that: “Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service...”.

We noted that during the programme where allegations were made against particular lobby groups or individuals, the viewpoints of those groups or individuals were included in the programme. For example, the programme included statements from: the CFI; and Poju Zabłudowicz, an individual who the programme alleged was connected to an organisation called Britain’s Israel Communications and Research Centre (“BICOM”). In addition, the programme included an interview with Lorna Fitzsimons, Chief Executive of BICOM.

Overall the reporter set out a series of legitimate questions. Such as:

*“How does the pro-Israel lobby work? Who runs it? And how does it get results?”*

The programme then aimed to answer these questions by gathering evidence. However, importantly it did so while still ensuring that opposing views were also recognised.

Given the above, we considered that the programme included views from the organisations and individuals highlighted in the programme as being active as lobbying in sympathy to the Israeli State. In Ofcom’s view this was a legitimate investigation into the activities of lobby groups, which approached the subject with “due impartiality” in accordance with Rule 5.5.

Several complainants were also concerned that groups featured in the programme – notably the CFI, Labour Friends of Israel and BICOM – were treated unfairly. Others objected to the broadcast of footage of the residences of individuals connected to these organisations. In Ofcom’s view these complaints were related to fairness and privacy. Ofcom will normally only consider such complaints when they are made by a “person affected” by a programme, for example a member of one of the organisations concerned or someone authorised by them. We have not received any such complaint and so did not to investigate these concerns further.

b) The Middle East

Some viewers complained that the programme did not fully explain the background to the Middle East situation. However, what areas a programme does and does not cover is purely an editorial decision for the broadcaster and not a matter for Ofcom (so long as the programme complies with the requirements of the Code). In any event, it should be noted that this programme was an investigation into the alleged influence of the Israeli lobby on British politics and did not seek to examine the Middle East issue.

c) and d) Offence

Some complainants were offended by the programme because they believed it was anti-Semitic. Ofcom considered these complaints under Rule 2.3 of the Code which requires that material which may cause offence is justified by the context. Under “meaning of context” the Code lists a number of factors. These include the editorial content of the programme and the service on which it is broadcast.

It is inevitable that a programme of this nature will include frequent references to Israel and Judaism. It can also be expected to refer to prominent figures in the Jewish community and portray groups that are pro-Israel. Given the editorial content of this programme described above, and the way the programme sought to expose what it said was the way pro-Israel lobbyists use financial means to gain political influence, it is almost inevitable that many of the references to prominent figures and groups would be critical. However, such a critical analysis does not, in Ofcom’s view, constitute anti-Semitism. Importantly, Ofcom found that these references, and the programme overall were directed towards individuals or organisations because of their alleged actions and activities and not because of their religion. In this case generally accepted standards were applied by the broadcaster and there was no breach of Rule 2.3.

**Not in Breach of Rule 5.5 and Rule 2.3**

## Advertising Scheduling cases

### In Breach

#### Advertising scheduling

*Sci-Fi Channel, 20 December 2009, 12:00*

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#### Introduction

Rule 4 of the Code on the Scheduling of Television Advertising (“COSTA”), states: “time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes”.

This rule implements the requirements of European legislation, the Audiovisual Media Services (AVMS) Directive.

As part of Ofcom’s routine monitoring of broadcasters’ compliance with COSTA, Ofcom noticed that a total of 16 minutes of advertising was transmitted on the Sci-Fi Channel during one clock hour. This is 4 minutes more than is permitted. Ofcom wrote to NBC Global Universal Networks (“NBC Universal”), the licence holder for the Sci-Fi Channel, for its comments under Rule 4 of COSTA.

#### Response

NBC Universal, having investigated the incident further, acknowledged that in this instance, the Sci-Fi Channel had not complied with Rule 4 of the Code. The broadcaster explained that due to human error the length of programme broadcast between 11.00 hours and 13.00 hours had not been properly checked and as a result a five minute commercial break was broadcast during the incorrect hour period. This created a 4 minute overrun of advertising in the 12.00 hour (and left the 11.00 hour 5 minutes short of advertising).

Whilst normally, such an anomaly would be identified through the daily minutage report, the broadcaster explained that in this instance the anomaly was not noticed. The broadcaster said it would ensure further training is delivered and will stress the need for greater diligence amongst employees in order to minimise the risk of a recurrence.

#### Decision

Ofcom notes that NBC Universal has taken further steps to ensure compliance with COSTA. However, this failure followed an earlier minutage overrun on the Sci-Fi Channel, on 22 November 2009. In that case, NBC Universal had informed Ofcom that sufficient procedures had been implemented to minimise the risk of a recurrence.

Ofcom is concerned that NBC Universal’s procedures were not robust enough to prevent this second overrun (in one month) from occurring, and in the circumstances has found the channel in breach of Rule 4 of COSTA.

Ofcom may consider further regulatory action if this problem recurs. This breach will be held on record.

#### Breach of Rule 4 of COSTA

## Fairness and Privacy Cases

### Upheld

#### Complaint by Mr G

*Big Trouble in Thailand, Bravo, 19 October 2009*

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

This episode included a story about Mr G, who visited a police station in Thailand to report that he had been the victim of fraud. There was a programme making team at the police station and, whilst he was there, Mr G gave an interview in which he described his ordeal. He said that he had been visiting Thailand for eight years and had befriended a local woman working as a hotel manageress. The woman asked Mr G to contribute money to a property venture and he paid a total of £50,000 into a bank account created by the woman, who subsequently absconded with the money. Mr G said that the interview was not to be broadcast.

Mr G complained that his privacy was unwarrantably infringed in the broadcast of the programme.

In summary Ofcom found that, given the nature of the subject matter together with the express agreement Mr G had with the programme makers for his interview not to be broadcast, he had a legitimate expectation of privacy in relation to the interview footage. His privacy was infringed as a result of the broadcast of the interview. Ofcom did not consider that there was a sufficient public interest in the broadcast of the footage of Mr G, or any other justification which outweighed his right to privacy. Ofcom therefore found that Mr G's privacy was unwarrantably infringed in the broadcast of the programme.

#### Introduction

On 19 October 2009, Bravo broadcast an edition of its investigative entertainment programme *Big Trouble in Thailand*. The series followed police volunteers who worked in the tourist resorts of Thailand supporting the Thai police service. The introduction for the programme said:

*“To combat Thailand’s reputation as a dangerous holiday destination 500 tourist police volunteers have been drafted in from around the world... we have exclusive access to this unique law enforcement unit as they take on drugs, drug users, victims of violence, sex tourists and home travellers who are in big trouble”.*

The programme included a story about Mr G, who visited a police station in Thailand to report that he had been the victim of fraud. There was a programme making team at the police station and, while he was there, Mr G gave an interview in which he described his ordeal. He said that he had been visiting Thailand for eight years and had befriended a local woman working as a hotel manageress. The woman asked Mr G to contribute money to a property venture, which included the building of 10 retirement homes. Mr G paid a total of £50,000 into a bank account created by the woman, who subsequently absconded with the money. Mr G's interview was included in the programme and he was clearly identifiable.

Mr G complained that his privacy was unwarrantably infringed in the programme as broadcast.

### **The Complaint**

In summary, Mr G complained that his privacy was unwarrantably infringed in the programme as broadcast in that the interview, in which he disclosed information about the crime he was reporting, was still shown despite stipulating that his contribution was not for broadcast. Mr G said that he had signed a consent form, before giving his interview which stated “on condition of non broadcast or distribution”.

### **Bravo’s case**

Virgin Media Television (“Virgin”), responsible for compliance at Bravo, responded to Mr G’s complaint. Virgin said that an instruction by Mr G that his contribution was not to be included in the broadcast of the programme was overlooked and was included in error. It said this occurred towards the end of the production of the programme, with the production team extremely busy in post production. Virgin said that this was a mistake for which the production company apologised for directly to Mr G and took immediate steps in its attempt to remedy. It said that it was unusual for an interviewee to agree to be filmed and then amend a release form to request that the material not be used. Virgin said that in the final segment of the unedited footage Mr G stated that he was hopeful that the publicity of telling his story would motivate the authorities to not want to “lose face”. Virgin said that the edit of the show was completed in London and the interview was filmed in Thailand. It said that the cameraman/interviewer was not in attendance at the edit.

### **Decision**

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

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

In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast, both parties’ written submissions and recordings and transcripts of unedited material. In its considerations, Ofcom also took into account its Broadcasting Code (“the Code”).

Ofcom considered Mr G’s complaint that the programme broadcast information about a crime he was reporting despite him stipulating that his contribution was not for broadcast.

In Ofcom’s view, the individual’s right to privacy has to be balanced against the competing rights of the broadcasters to freedom of expression. Neither right as such has precedence over the other and where there is a conflict between the two, 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 how Ofcom applies 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 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 Mr G had a legitimate expectation of privacy in relation to the information disclosed in the programme. Ofcom noted that the programme included footage of the interview that Mr G had given to the programme makers as he was reporting that he had been a victim of crime in a police station. Ofcom noted that in the interview, Mr G discussed how he had been defrauded by a local hotel manageress in Thailand. Ofcom noted in particular, the following commentary in the programme:

*“Mr G is visiting the police to report the woman for defrauding him in a bogus property venture. He is now £50,000 out of pocket”.*

Ofcom also noted the following excerpt of Mr G’s broadcast interview that was included in the programme:

*“My business plan was to build some bungalows as a retirement village. It was going to be approximately 10 bungalows. She said she had the land, would I help her to develop it. I provided the money to develop the land”.*

Ofcom took the view that the information that Mr G disclosed, namely the details behind the fraud he fell victim to, was of a distinctly personal nature. Ofcom further noted that Mr G had stated in his complaint that he had signed a consent form in which he stipulated that his consent for the interview to be recorded was “on condition of non broadcast or distribution”. Ofcom then noted that Virgin accepted that this was the case and explained that Mr G’s inclusion in the programme was as a result of a mistake made by them in the editing process.

Ofcom took the view that in circumstances in which Mr G had discussed very personal information with the programme makers and had signed a form which stipulated that his contribution should not be broadcast, he had a legitimate expectation of privacy in relation to his interview. The broadcast of footage of the interview was an infringement of his privacy.

Ofcom then turned to whether this infringement of privacy was warranted and took into account the broadcaster’s right to freedom of expression. Ofcom considered that there was a degree of public interest served in the reporting of how individuals could become the victims of crime when holidaying overseas. However, in light of the particular circumstances of this case where the broadcaster acknowledged that the material was included in error contrary to its agreement with Mr G, and the nature of the information broadcast, Ofcom did not consider that there was a sufficient public



interest in the broadcast of the specific footage of Mr G, or any other justification which outweighed his right to privacy. Ofcom therefore found that Mr G's privacy was unwarrantably infringed in the broadcast of the programme.

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

## Not Upheld

### Complaint by Miss Dawn Brown

*Brit Cops: Frontline Crime, Bravo, 22 September 2009*

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**Summary:** Ofcom has not upheld this complaint made by Miss Dawn Brown of unfair treatment and unwarranted infringement of privacy in the making and broadcast of the programme.

This edition of *Brit Cops: Frontline Crime* included a report into a police investigation of a man suspected of being in possession of a firearm. Officers arrested the man and then attempted to locate the weapon. During their search for the weapon, police officers raided the address at which the man was known to be living. Footage of this property, which was the home of Miss Dawn Brown, was included in the programme.

Miss Brown complained that she was treated unfairly in the programme and that her privacy was unwarrantably infringed in the making and broadcast of the programme.

In summary Ofcom found the following:

- The programme makers did not mislead Miss Brown about the nature and purpose of the filming.
- Miss Brown was not shown, her home was not identified and there was no suggestion that she was involved in any criminal activity. There was therefore no unfairness to her as a result of the inclusion of images of her home.
- Miss Brown did not have a legitimate expectation of privacy in relation to the making or the broadcast of the programme, as the footage was all filmed from the public highway and her home was not identifiable to viewers.

### Introduction

On 22 September 2009, Bravo broadcast an episode of its police reality series, *Brit Cops: Frontline Crime*. This episode featured the work of the Metropolitan Police's Hammersmith and Fulham Robbery Squad ("the Robbery Squad") in west London and followed them as they pursued suspects for variety of criminal offences.

One of the incidents faced by members of the Robbery Squad involved a man suspected of possessing what appeared to be an Uzi sub-machine gun. The police had been alerted to by a photographic processing laboratory that had developed a number of photographs of a man posing with the firearm. Two of the photographs were shown in the programme and while the police could not ascertain whether the firearm was genuine or a replica, they decided to search the man's address. One of the officers involved in the investigation said in the programme: "*the idea is just do a Section 18 on that 117 and look for it there*"<sup>1</sup>.

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<sup>1</sup> A "Section 18" refers to Section 18 of the Police and Criminal Evidence Act 1984 which provides that a constable may enter and search premises occupied or controlled by a person who is under arrest on reasonable grounds of suspecting there is evidence on the premises related to an offence.

In their attempt to locate the firearm after the man's arrest, the officers searched what they believed to be his home address. Images of the front of the property were shown as the officers searched it and a woman could be heard talking to the police in the background. The firearm was not found in this particular search; however, another man was arrested at the property in connection with a mobile phone found in his possession which the police believed to have been connected to a robbery. The property search and shown in the programme belonged to Miss Dawn Brown.

Miss Brown complained to Ofcom that she was treated unfairly and that her privacy was unwarrantably infringed both in the making and broadcast of the programme.

### **The Complaint**

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

- a) She was misled as to the nature and purpose of the filming and its subsequent broadcast, as when she asked why her house was being filmed she was told the police filmed every raid. She later found out the filming was for the purposes of a television programme.
- b) She was portrayed unfairly in that identifiable images of her house were broadcast in a programme about the work of the police and their arrest of suspected criminals, despite the police failing to find the suspected firearm at her house, and in spite of the fact that the man arrested at her house was not charged with any offences.

By way of background, Miss Brown said that the programme had been repeated, which compounded the unfair treatment.

In summary, Miss Brown complained that her privacy was unwarrantably infringed in the making of the programme in that:

- c) Her house was filmed without her consent.

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

- d) Images of her house were clearly seen in the programme in connection with police activities searching for a firearm at her home. No firearm was found nor was anyone who lived in the house charged following the search of her home.

### **Virgin Media's case**

Virgin Media Television ("Virgin Media"), responsible for compliance at Bravo, provided a response to the complaint along with recordings and transcripts of the programme as broadcast and unedited material.

In summary, Virgin Media responded to the complaint of unfair treatment as follows:

- a) In respect of the complaint that Miss Brown was misled as to the nature and purpose of the filming and subsequent broadcast, Virgin Media said that no one from the production team said anything to Miss Brown about the filming, as the camera man was outside her house and did not engage with her in any way.

However, Virgin Media said that it had discovered from the audio recordings of the raid that a police officer had told Miss Brown that neither her face nor the front of her house would be shown. Virgin Media said that, as the police were searching for a firearm in the house, their first concern would have been their duties as police officers and not the filming. In any event, Virgin Media said that, although the outside of Miss Brown's house was shown and her voice was heard briefly, she did not contribute to the programme in anyway that could have been induced by a false representation.

- b) In response to the complaint that Miss Brown was portrayed unfairly in the programme as broadcast in that identifiable images of her house were broadcast, Virgin Media accepted that footage of Miss Brown's home was shown in a programme about crime, but said that every effort had been made to make the house look like thousands of others in London. Virgin Media said that the footage was filmed from a public highway and that the broadcast material excluded any wide-angle views. It also said that there was a 'cutaway' of a police dog handler filmed away from the house to give the impression that the house raided was elsewhere. Furthermore, Virgin Media said that: no street name or number was seen; the house resembled many thousands of houses in London; and, the district the house was situated in was not disclosed (other than that it was in west London). Virgin Media said that the house would have been recognisable only to those who were likely to have witnessed the police raid on it. Virgin Media said that although no firearm was found during the search, the police did arrest a man who had been living at the property in connection with a robbery.

With regard to identification of Miss Brown's home and the police officer's briefing in which the officer in charge was heard to say "*But mainly the idea is just do a Section 18 on that 117 and look for it there*", Virgin Media said that the programme makers did not understand the reference to "*that 117*" and had assumed it was a reference to police protocol, such as a "*Section 18*". However, Virgin Media said that immediately after these comments, the programme cut to images of a speeding police car passing blocks of flats similar to homes in which hundreds of thousands of Londoners lived. The programme featured the raid on Miss Brown's house nearly three minutes after these images and after covering other stories. Virgin Media said that viewers would have been likely to think that the reference to "*that 117*" referred to the blocks of flats shown rather than to the sequence some three minutes later of Miss Brown's home.

Virgin Media said that it regretted that a police officer misled Miss Brown about the nature of the filming, but said that had the truth been told, it was difficult to see how it would have affected the outcome in Miss Brown's favour. Virgin Media said that all reasonable effort had been made to reduce the risk of identification and that, to any extent that the property was revealed as Miss Brown's house, any unfairness was outweighed by the public interest in seeing police work in combating crime, and in particular, how they have to handle possible firearm offences.

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

- c) & d) With regard to the complaint that Miss Brown's privacy was infringed in the making and broadcast of the programme in that her house was filmed and images of it broadcast without her consent, Virgin Media said that the programme makers made every effort not to identify Miss Brown. If her privacy had to any extent been infringed in the filming from a public highway of her house as the

police raided it, such infringement was warranted by the public interest. However, in view of the police officer's comments to Miss Brown, Virgin Media said that it had taken steps to remove the story and all footage of Miss Brown's house from any future broadcasts 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.

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 reaching its decision, Ofcom considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and recordings of unedited material and transcripts of these, and both parties' written submissions.

### *Unfairness*

- a) Ofcom first considered the complaint that Miss Brown was misled as to the nature and purpose of the filming and its subsequent broadcast as she was told that the police film every raid but later found out the filming was for the purposes of a television programme.

Ofcom considered 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 Ofcom's Broadcasting Code ("the Code"). In considering this part of the complaint, Ofcom took account of Practice 7.3 of the Code. Practice 7.3 states that where a person is invited to make a contribution to a programme (except when the subject matter is trivial or their participation minor), they should normally be told about the nature and purpose of the programme and what kind of contribution they are expected to make, in order to obtain informed consent for their participation.

In deciding whether Miss Brown was treated unfairly, Ofcom considered whether the programme makers were required to obtain her consent or tell her about the nature and purpose of the programme.

Ofcom noted that Miss Brown's house was filmed during the course of a police raid in search for a firearm that police suspected may have been in the possession of a man who lived at the property and who they suspected of committing a firearms offence. Ofcom noted that no footage of Miss Brown herself was actually filmed or broadcast in the programme. Ofcom also noted that footage of the outside of Miss Brown's house was broadcast in the programme and that the voice of a woman was heard in the background. A man was also shown being escorted under arrest from the house (with his face obscured).

Ofcom noted, however, that Miss Brown's house number and the name of the street in which it was located were not visible from the footage shown, although around three minutes earlier in the programme, a police officer had referred to doing "*a Section 18 on that 117*" (i.e. Miss Brown's house number), a reference to their intention to search a property for what the police suspected to be a sub-machine gun.

In these circumstances, Ofcom took the view that Miss Brown's participation in the programme was minor and only incidental to the events being reported. Ofcom also took the view that, given that Miss Brown was not shown and her house number and street name were not visible, she was not identifiable in the programme. Ofcom therefore considered that the programme makers were not obliged to seek her consent or to tell her about the nature and purpose of the programme.

Ofcom noted that a police officer had assured Miss Brown during the raid that neither she nor the front of her house were being filmed and that the information given by the officer to Miss Brown about the nature and purpose of the filming and his reassurance that her house would not be filmed or included in a programme were incorrect. Ofcom took the view that, while the police officer's comments were regrettable, they were not the responsibility of the programme makers.

Ofcom has therefore not upheld this head of complaint.

- b) Ofcom then went on to consider whether Miss Brown was portrayed unfairly in that identifiable images of her house were broadcast in a programme about the arrest of suspected criminals despite the firearm not being found and the arrested man not being charged.

Ofcom noted that the outside of Miss Brown's home was broadcast and that the voice of a woman was heard in the background co-operating with the police in their search for a firearm. Ofcom also noted that Miss Brown did not appear in the report nor was she referred to in any way. There was no suggestion in the programme that Miss Brown was suspected of any involvement in the offences being investigated. Ofcom also noted that the narrator said that "*an extensive search with the dogs reveals no gun*" and that a man was arrested at the property in relation to a suspected robbery. In these circumstances Ofcom took the view that there was no reference whatsoever to Miss Brown in the programme and she was not in any way implicated in any offence.

Furthermore, Ofcom considered that neither Miss Brown nor her property would have been recognisable from the reports to anyone who was not already aware of the police raid on her property or who knew her property very well. Ofcom noted that the reference to Miss Brown's door number was included some minutes before the footage of the outside of her house was shown and considered that the programme makers had taken care to ensure that the footage of Miss Brown's property that was broadcast was treated in such a way as to conceal its identity and hers so as to cause no unfairness to her on the programme that was broadcast.

In Ofcom's view, notwithstanding the police officer's incorrect assurance that the front of Miss Brown's house would not be shown, the broadcaster took sufficient steps to prevent any identification of Miss Brown or any suggestion that she was involved in any crime.

In these circumstances, Ofcom found no unfairness to Miss Brown in respect of this head of complaint.

### *Privacy*

- c) Ofcom next considered the complaint that Miss Brown's privacy was infringed in the making of the programme in that her house was filmed without her consent.

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

This is reflected in Rule 8.1 of the Code which states that any infringement of privacy in programmes or in connection with obtaining material included in programmes must be warranted. In considering complaints about the unwarranted infringement of privacy, Ofcom will therefore, where necessary, address itself to two distinct questions: First, has there been an infringement of privacy? Second, if so, was it warranted? Ofcom also took into account Practice 8.5 of the Code which states that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted.

In considering whether Miss Brown's privacy was infringed in the making of the programme, Ofcom considered first whether she had a legitimate expectation of privacy in relation to the filming of her house in the course of a police raid.

Ofcom considered the nature of the footage recorded of Miss Brown's house. Ofcom noted that the programme makers had filmed the exterior of her house and the surrounding area of it as they followed police officers looking for a man suspected of being in possession of a firearm. Ofcom recognised that the events Miss Brown had unwittingly found herself caught up in were potentially distressing and embarrassing and that the information obtained, namely that there was a search for a firearm at her property, was information that could be considered to be of a personal and sensitive nature and could attract an expectation of privacy. However, Ofcom noted that programme makers were filming a police raid and were not filming Miss Brown herself and that, as set out under decision head a) above, her participation in the making of the programme was incidental. Furthermore, only the exterior of her home, which was visible from the public highway, was filmed.

In these circumstances, Ofcom took the view that Miss Brown did not have a legitimate expectation of privacy with regard to filming the outside of her home. Ofcom therefore found that there was no infringement of Miss Brown's privacy in the making of the programme. Having found no expectation of privacy, it was not necessary for Ofcom to consider whether any infringement of privacy was warranted.

Ofcom has not upheld this head of complaint.

- d) Ofcom finally considered the complaint that Miss Brown's privacy was unwarrantably infringed in the broadcast of the programme in that images of her

house were clearly seen in connection with police activities searching for a firearm at her home, but that no firearm was found nor was anyone who lived in the house charged following the search.

In considering this complaint, Ofcom took into account 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 also took into account Practice 8.2 of the Code which states that information which discloses the location of a person's home or family should not be revealed without permission, unless it is warranted.

Ofcom again considered whether the complainant had a legitimate expectation of privacy. Ofcom noted that the outside of Miss Brown's house was broadcast in connection with police search for a firearm at her home. She was not shown in the programme, however, a woman's voice was heard from inside the house and a man was arrested who lived at the house and was seen led away from it with his face blurred.

Ofcom noted that footage of Miss Brown's house was broadcast in connection with a police investigation into potential criminal activity. Ofcom took into account the steps the programme makers took to ensure her home was not identifiable in the programme. Although an earlier reference to number 117 in the programme may have provided some potential for Miss Brown's home to be identifiable, this was earlier in the programme and separated from the footage relating to the search at Miss Brown's home. In these circumstances, viewers were unlikely to identify that number with Miss Brown's house. Furthermore the footage broadcast showed only the outside of the house and the alley way near to it. The programme did not include the street name or the house number and the location was described only as being in "*west London*". There was no footage of Miss Brown herself in the programme. Ofcom noted that the broadcaster did not seek Miss Brown's consent to the broadcast. However, since neither she nor her home were identifiable, such consent was not necessary. In these circumstances, Ofcom considered that Miss Brown did not have a legitimate expectation of privacy in relation to the broadcast. Having found no expectation of privacy, it was not necessary for Ofcom to consider whether any infringement of privacy was warranted.

Ofcom has not therefore upheld this head of complaint.

**Accordingly, Ofcom has not upheld Miss Brown's complaint of unfair treatment and unwarranted infringement of privacy in either the making or broadcast of the programme.**



## Other Programmes Not in Breach

Up to 1 March 2010

Programme	Transmission Date	Broadcaster	Categories	No. of complaints
8 Out of 10 Cats	19/02/2010	Channel 4	Generally Accepted Standards	1
A Girl's Guide to 21st Century Sex	18/02/2010	Fiver	Sex/Nudity	1
Afternoon Live	11/02/2010	Sky News	Generally Accepted Standards	1
Afternoon Live	17/02/2010	Sky News	Religious Offence	3
Alan Carr: Chatty Man	18/02/2010	Channel 4	Generally Accepted Standards	1
Andrew Peach	11/02/2010	BBC Radio Berkshire	Generally Accepted Standards	1
Austin Steven's Adventures	29/01/2010	Five	Animal Welfare	1
BBC News	26/02/2010	BBC 1	Generally Accepted Standards	1
BBC News at Six	18/02/2010	BBC 1	Other	1
BBC News at Ten	09/02/2010	BBC 1	Generally Accepted Standards	1
BBC Wales Today	12/02/2010	BBC 1 Wales	Sex/Nudity	2
Bear Grylls: Born Survivor	16/02/2010	Discovery	Animal Welfare	1
Beauty Simplified	07/01/2010	Sunrise TV	Commercial References	1
Bet365.com sponsorship of FA Cup coverage on ITV	03/02/2010	ITV1	Sponsorship	1
Bindi the Jungle Girl	02/12/2009	Pop Girl	Advertising	1
Boxing	13/02/2010	Sky Sports 1	Generally Accepted Standards	1
Brain Box	15/02/2010	UTV	Competitions	1
Breakfast	29/01/2010	BBC 1	Generally Accepted Standards	1
Breakfast	19/02/2010	BBC 1	Other	1
Breakfast Show	27/02/2010	Wyvern FM	Offensive Language	1
Celtic v Rangers	03/01/2010	Sky Sports 3	Commercial References	1
Channel 4 News	23/02/2010	Channel 4	Generally Accepted Standards	2
Channel 4 News	11/01/2010	Channel 4	Inaccuracy/Misleading	8
Chris Evans	16/12/2009	BBC Radio 2	Offensive Language	2
Chris Moyles	17/02/2010	BBC Radio 1	Dangerous Behaviour	1

Come Dine with Me	27/02/2010	Channel 4	Offensive Language	2
Cooking It	10/02/2010	Channel 4	Offensive Language	6
Coronation Street Omnibus	21/02/2010	ITV1	Animal Welfare	1
Crime Central	18/02/2010	Crime Investigation Network	Offensive Language	1
Dancing on Ice	14/02/2010	ITV1	Generally Accepted Standards	1
Dancing on Ice	21/02/2010	ITV1	Sex/Nudity	1
Derren Brown: The Gathering	18/02/2010	Channel 4	Unconscious influence/ hypnosis/ subliminal	1
Derren Brown: Trick or Treat	02/07/2009	Channel 4	Generally Accepted Standards	1
Dispatches	08/02/2010	Channel 4	Inaccuracy/ Misleading	1
EastEnders	15/02/2010	BBC 1	Dangerous Behaviour	1
EastEnders	19/02/2010	BBC 1	Violence	1
EastEnders	19/02/2010	BBC 1	Generally Accepted Standards	3
Embarrassing Bodies (trailer)	25/02/2010	Channel 4	Sex/Nudity	2
Embarrassing Bodies (trailer)	26/02/2010	Channel 4	Sex/Nudity	1
Embarrassing Bodies (trailer)	18/02/2010	Channel 4	Sex/Nudity	1
Extreme Fishing with Robson Green	11/02/2010	Five	Religious Offence	1
Extreme Fishing with Robson Green	18/02/2010	Fiver	Animal Welfare	1
Five News with Natasha Kaplinsky	24/02/2010	Five	Due Impartiality/Bias	1
Friday Night with Jonathan Ross	19/02/2010	BBC 1	Animal Welfare	1
Geoff Lloyd's Hometown Show	11/02/2010	Absolute Radio	Generally Accepted Standards	1
Glee	22/02/2010	E4	Advertising	1
GMTV	18/02/2010	ITV1	Inaccuracy/ Misleading	1
Harry Hill's TV Burp	18/02/2010	ITV2	Religious Offence	1
Hidayat TV	17/01/2010	Hidayat TV	Commercial References	1
Hollyoaks	22/02/2010	Channel 4	Inaccuracy/ Misleading	1
iCarly	28/01/2010	Nickelodeon	Generally Accepted	1

			Standards	
Islam's Greatest Imams	07/01/2010	Ummah Channel	Inaccuracy/ Misleading	1
ITV News at Ten	12/02/2010	ITV1	Due Impartiality/Bias	1
Kia Motors' sponsorship of CSI	16/02/2010	Five	Generally Accepted Standards	1
Knight Rider	27/02/2010	Fiver	Offensive Language	1
Leaving Home at 8	11/02/2010	Channel 4	Inaccuracy/ Misleading	1
Macleans sponsorship of Dancing on Ice	21/02/2010	ITV1	Sex/Nudity	1
Married Single Other	22/01/2010	ITV1	Inaccuracy/ Misleading	1
Married Single Other (Trailer)	21/02/2010	ITV1	Sex/Nudity	1
Married Single Other (Trailer)	22/02/2010	ITV1	Sex/Nudity	1
Married Single Other (trailer)	27/02/2010	ITV1	Sex/Nudity	1
Married Single Other (Trailer)	13/02/2010	ITV2	Sex/Nudity	1
Material Girl	04/02/2010	BBC 1	Generally Accepted Standards	1
Midsomer Murders	24/02/2010	ITV1	Sex/Nudity	1
Most Haunted: The Live Series	27/02/2010	Living	Generally Accepted Standards	1
Muslim Driving School	16/02/2010	BBC 2	Religious Offence	1
My Big Fat Gypsy Wedding	18/02/2010	Channel 4	Offensive Language	1
My Dream Farm	18/02/2010	Channel 4	Generally Accepted Standards	1
News	15/02/2010	BBC Radio 5 Live	Offensive Language	1
News on the Hour	16/02/2010	Sky News	Generally Accepted Standards	1
Newsnight	22/02/2010	BBC 2	Offensive Language	1
Nick Ferrari	19/01/2010	LBC 97.3FM	Commercial References	1
One Born Every Minute	23/02/2010	Channel 4	Advertising	1
Pakeezah	22/01/2010	DM Digital	Generally Accepted Standards	1
Pineapple Dance Studios	14/02/2010	Sky 1	Sex/Nudity	1

Pineapple Dance Studios	21/02/2010	Sky 1	Sex/Nudity	1
Press Preview	14/02/2010	Sky News	Generally Accepted Standards	1
Programming	28/01/2010	Jack FM 106.5 (Bristol)	Commercial References	1
Question Time	11/02/2010	BBC 1	Generally Accepted Standards	1
Ramsay's Kitchen Nightmares USA	12/02/2010	Channel 4	Animal Welfare	1
Relocation, Relocation	24/02/2010	Channel 4	Offensive Language	1
Sabras Radio	17/12/2009	Sabras Radio	Commercial References	1
Shameless	23/02/2010	Channel 4	Sex/Nudity	2
Shameless	24/02/2010	Channel 4	Sex/Nudity	2
Shameless	24/02/2010	Channel 4	Generally Accepted Standards	1
Silent Witness	12/02/2010	BBC 1	Generally Accepted Standards	1
Sky News	22/02/2010	Sky News	Generally Accepted Standards	1
Sky News at Ten	17/02/2010	Sky News	Generally Accepted Standards	1
Slackers (trailer)	03/02/2010	E4	Generally Accepted Standards	1
Slumdog Millionaire	13/01/2010	Channel 4	Commercial References	1
Snog, Marry, Avoid?	25/02/2010	BBC 3	Generally Accepted Standards	1
Something for the Weekend	14/02/2010	BBC 2	Offensive Language	1
Sorry, I've Got No Head	22/02/2010	BBC 1	Offensive Language	1
South Park (trailer)	15/02/2010	Viva	Other	1
Station ident	17/02/2010	Jack FM (Oxfordshire)	Generally Accepted Standards	1
Sunrise	18/02/2010	Sky News	Generally Accepted Standards	1
The Alan Titchmarsh Show	27/01/2010	ITV1	Substance Abuse	3
The Alan Titchmarsh Show	11/02/2010	ITV1	Sex/Nudity	1
The Alan Titchmarsh Show	15/02/2010	ITV1	Sex/Nudity	1
The Alan Titchmarsh Show	18/02/2010	ITV1	Sex/Nudity	1
The Alan Titchmarsh Show	19/02/2010	ITV1	Sex/Nudity	1
The Alan Titchmarsh Show	23/02/2010	ITV1	Animal Welfare	1

The Bill	18/02/2010	ITV1	Violence	1
The Football League Show	20/02/2010	BBC 1	Crime (incite/encourage)	8
The Home Show	23/02/2010	Channel 4	Offensive Language	1
The Jeremy Kyle Show	15/02/2010	ITV2	Generally Accepted Standards	1
The Krypton Factor	18/02/2010	ITV1	Generally Accepted Standards	1
The Krypton Factor	30/01/2010	ITV4	Violence	1
The Man Who Shot the 60s	14/01/2010	BBC 4	Generally Accepted Standards	1
The Morning Glory	26/01/2010	Afan FM	Offensive Language	1
The Secret Millionaire (trailer)	22/02/2010	Channel 4	Sex/Nudity	1
The Truth Behind the Ark	10/02/2010	Quest	Due Impartiality/Bias	1
The Wright Stuff	24/02/2010	Five	Generally Accepted Standards	1
The Wright Stuff	11/02/2010	Five	Generally Accepted Standards	1
The Wright Stuff	25/02/2010	Five	Generally Accepted Standards	2
The Wright Stuff	19/02/2010	Five	Religious Offence	10
The Wright Stuff	15/02/2010	Five	Generally Accepted Standards	1
This Morning	01/02/2010	ITV1	Generally Accepted Standards	1
This Morning	17/02/2010	ITV1	Generally Accepted Standards	1
This Morning	16/02/2010	ITV1	Generally Accepted Standards	2
Today	17/02/2010	BBC Radio 4	Offensive Language	1
Toonattik	21/02/2010	ITV1	Generally Accepted Standards	1
UK Border Force	15/02/2010	Sky 3	Generally Accepted Standards	1
What Katie Did Next	18/02/2010	ITV2	Dangerous Behaviour	1
What Katie Did Next	23/02/2010	ITV2	Dangerous Behaviour	1
Wildlife SOS	27/02/2010	Animal Planet	Dangerous Behaviour	1
Working Lunch	11/02/2010	BBC 2	Generally Accepted Standards	1
XXX Naked Extreme	18/02/2010	Babeworld.tv	Inaccuracy/Misleading	1
Young, Angry and White	12/02/2010	Channel 4	Generally Accepted Standards	1
Young, Angry and White	12/02/2010	Channel 4	Inaccuracy/Misleading	2