

Ofcom Broadcast Bulletin

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Introduction

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

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

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

Standards cases

Notice of Sanction

ARY Digital UK Ltd

Alternative health claims, The Weekend Show, ARY Digital, 18 February 2006

On 1 November 2007, Ofcom published its decision to impose a statutory sanction on ARY Digital UK Ltd. The sanction was for breaches of Rule 2.1 (generally accepted standards must be applied to the contents of television services so as to provide adequate protection for the public from harmful material); Rule 10.3 (products and services must not be promoted in programmes); and Rule 10.4 (no undue prominence to be given to a product or service) of the Code.

Ofcom has found that these rules were breached due to the following conduct.

First, allowing an alternative health practitioner, Dr Surjeet Kaur, to make unfounded and unchallenged claims on *The Weekend Show* regarding:

- a) the ability of products she sold to cure cancer, and of the cancer-curing benefits of consuming garlic and of other alternative health practices; and
- b) the efficacy of her company's products in curing other serious medical conditions such as leprosy, sciatica, psoriasis and sterility. This created a material risk that potentially vulnerable viewers, and in particular any suffering from life threatening illnesses such as cancer, would follow this advice and might do so without seeking proper medical help. This risked serious harm to viewers.

Second, the disproportionate and extensive promotion of Dr Kaur's practice and medicines resulted in undue prominence being given to her products and her alternative health practice.

For the reasons set out in the adjudication, Ofcom imposed a financial penalty of £15,000 on ARY Digital UK Ltd. and directed it to broadcast a statement of its findings in a form determined by Ofcom on one specified occasion.

The full adjudication is available at:

http://www.ofcom.org.uk/tv/obb/ocsc_adjud/ary_digital.pdf

In Breach

Fizz Music

Fizz TV, 17 May 2007, 20:25

Introduction

Fizz TV is a music video channel. A viewer complained that a video entitled *All the Way* contained flashing images.

Certain types of flashing images present a danger of triggering seizures in viewers who are susceptible to photosensitive epilepsy (PSE). The Code therefore contains a rule aimed at minimising the risk to viewers who have PSE. Rule 2.13 states that “Broadcasters must take precautions to maintain a low level of risk to viewers who have PSE. Where it is not reasonably practicable to follow the Ofcom guidance (see the Ofcom website), and where broadcasters can demonstrate that the broadcasting of flashing lights and/or patterns is editorially justified, viewers should be given an adequate verbal and also, if appropriate, text warning at the start of the programme or programme item”.

We asked Fizz TV to comment on compliance with Rule 2.13.

Response

Fizz TV pointed out that the video had been preceded by a text warning, but acknowledged that it was unfortunate that it was unable to fully test this content before broadcast. The broadcaster wished to apologise if this video caused any viewer medical distress.

The broadcaster explained that while Fizz TV may be part of a very small broadcasting company, its compliance team receive regular training and updating in the requirements of the various areas of Code. The broadcaster also assured us that it is improving compliance in this area by, for example, requesting suppliers of videos that may cause PSE problems to provide the results of tests already carried out, or by starting to commission their own tests through external suppliers.

Decision

Ofcom has drawn up guidelines¹, following consultation with leading medical opinion in this area, with the aim of reducing the risk of exposure to potentially harmful stimuli in television images which can trigger PSE. The guidelines set various criteria to judge whether sequences of flashing images are potentially harmful. Content which contains rapid scene cuts or/and where there is a change in screen brightness between cuts, should be considered especially carefully.

Ofcom's tested the video and found that seven distinct sequences in the video were non-compliant with the technical criteria in the guidance, and that each of these sequences contained between four and ten flashes. Most of the non-compliant material took the form of close-ups of an actor, rapidly intercut with black frames. We

¹Guidance is available at: <http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/guidance2.pdf>

are therefore concerned that the video as a whole presented a risk of triggering PSE seizures in susceptible viewers.

Although a text warning was transmitted at the beginning of the video, Ofcom does not consider that this mitigated the seriousness of the flashing content in this case. A further concern is that, unlike general entertainment channels, music video channels are likely to repeat material on a frequent basis, increasing the risk of exposure.

We welcome the broadcaster's assurance that further measures would be put in place to identify material that could be problematic in this area. We nevertheless would remind broadcasters that, irrespective of the source, it is their responsibility to ensure that material it transmits complies with the Code. This responsibility is particularly important where there is potential for harm to viewers.

The broadcast of this video was therefore in breach of Rule 2.13.

Breach of Rule 2.13

Cash Call

The Hits, 17 April 2007, 00:00

Introduction

In this Call TV quiz service winners picked one of a number of boxes, each of which contained a cash prize, and then participated in a jackpot game for an additional prize of up to £3,000.

In the first competition, viewers were invited to “*spot the difference*” between two photographs of the actress Jennifer Aniston. Throughout the competition, a permanent on-screen message read: “*£450 GUARANTEED + £3000 JACKPOT.*” Intermittently, a flashing message, which stated, “*One box guaranteed!*”, was also screened. At the beginning of the competition, the presenter said: “*Not only do we play the jackpot game today but we also have some boxes lined up for you as well. The value of the boxes: £450. You choose a box, and a number, and it could be yours.*” A little later, he added: “*There’s actually £450 worth of money in there. They’re all in different boxes – loads of different amounts of money. I’m dying to have a look.*”

The winner picked a box, which contained a prize of £10. He then proceeded to participate in the jackpot game. His prize total was £20.

A viewer believed the programme had been “falsely advertising the guaranteed money you can win.”

Rule 2.11 of the Code requires that, “...prizes should be described accurately...”.

We therefore asked The Hits for its comments on the matter.

Response

The Hits acknowledged that the on screen graphics “could potentially be seen as contravening Rule 2.11 of the Code”, adding that the programme’s production company had used an incorrect graphic and confirmed that the correct on-screen message should have read, “£450 IN BOXES + JACKPOT £3000.”

The broadcaster said that it had recently engaged an independent verification company to conduct an audit of the production company’s processes and procedures. It said that the company had been reported to operate at a “high standard”, with a senior management that “demonstrated their commitment to fair play and compliance.” However, The Hits added that it had decided to terminate its contract with the production company on 19 April 2007, as it “felt that the vigour with which they were seeking to improve the financial performance of the programming was jeopardising the rigor with which they were adhering to the relevant codes of practice and regulations.”

Decision

The accurate description of a prize is essential, as it is a principal influence on a viewer’s decision whether to enter a competition.

Ofcom acknowledges the broadcaster's approach to the maintenance of Code compliance and that the mistake was made by the production company in this instance.

It appears that £450 was the total sum available as winners' initial prizes (i.e. excluding the possible jackpot) in the programme, although this was not clear to viewers on air or confirmed in the broadcaster's response.

The on-screen message clearly implied that the winner was guaranteed a prize of £450. The presenter's description of the guaranteed prize available to viewers was, at best, ambiguous and did not clarify adequately that the prize for any single competition would be less than £450.

The description of the prize was not accurate, in breach of Rule 2.11 of the Code.

Breach of Rule 2.11

James and Ali's Breakfast Blanks

Invicta FM, 10 October 2006

Introduction

In a competition to win a cash prize of £6,047, listeners were invited to call in and fill in the 'blanks' of a phrase. In this case the phrase was, "*When I get home there's nothing I like more than getting out my [blanks] and [blanking]*". The phrase concerned playing a record and the required answers were therefore "12 inches" and "spinning."

A listener claimed that there was a lack of consistency in the running of the competition, with its format appearing to change, depending on the presenter hosting it. He also found the competition rules unclear.

When trying to enter the competition, the complainant said he had got through to the station on a number of occasions and had been told by one particular presenter that he was "not line 103." However, on the final occasion he got through he was asked for his name, location and phone number. He also gave his answer. As his details had been taken and he was sure he had given the correct answer, he believed he had won the competition and would be called back by the station. However, a while later, the complainant's wife heard another listener give the same (correct) answer on-air.

The complainant said that the competition announcements and website had not made clear any relevance of "line 103" and that he could not understand why his details were taken on the final occasion if he was not to be given a chance to give his answer on air.

Rule 2.11 of the Code requires that: "Competitions should be conducted fairly, prizes should be described accurately and rules should be clear and appropriately made known." Ofcom asked GCap Media plc, which owns Invicta FM, for its comments.

Response

GCap said that the original process for selecting an entrant was to put the 103rd caller through to the studio (Invicta broadcasts on 103MHz) and that this was clear to entrants. However, on this occasion, the producer/presenter realised that there were unlikely to be 103 calls during the show and that the process would therefore have to be changed. GCap said this decision was made after the complainant had left his details. It added:

"The new selection process for a winner was based on a numbered caller within the remaining period of the show (e.g. caller 5). At this stage and due to the unavailability of adequate records, it appears that this was not necessarily followed up with sufficient notification to listeners about the change in process."

GCap said that, although the complainant may have given his answer, he had not been asked for it. GCap added that it did not have an audit trail to investigate why the complainant's details were taken on one occasion but not on others, but suggested that the presenter may also have taken down the details of other contestants.

Decision

The broadcaster stated that it had made clear that the original rule was to take the 103rd caller to air. However the rules were changed during the course of the competition and this was not made clear to listeners. This was in breach of the Code.

It is not unusual for callers to provide their answers unprompted, when attempting to enter competitions, and, on this occasion, Ofcom has no evidence to determine whether or not the caller was asked for the answer. However, we are not surprised that the complainant, who had given his answer and his details, believed he had won the competition.

GCap's lack of clarity and inconsistency in its process of selecting entrants to go to air was therefore unfair to the complainant and potentially unfair to other callers. The competition was not conducted fairly and rules were not appropriately made known, in breach of Rule 2.11 of the Code.

Breach of Rule 2.11

Real Summer Quiz

Real Radio - Scotland (Central Scotland), 15 and 21 June 2007, 18:00

Real Football Phone In

Real Radio - Scotland (Central Scotland), 1 August 2007, 18:00

Introduction

Real Summer Quiz was a daily listener competition (excluding Sundays). On 15 June 2007 one of the presenters asked the question: *"In which range does People's Ford launch a new car next month? Is it ... the Fiesta – great car, the Focus – even better car, or the Mondeo – a wonderful car to drive."* After the correct answer (the Mondeo) had been provided by a caller, he then said: *"Yes, it's at all good Ford People's [sic] car showrooms at the end of this month – in Falkirk, Grangemouth and Edinburgh."*

Real Summer Quiz was sponsored by Sainsbury's. The prize each day was £100 of Sainsbury's goods. The highest scoring person over the week also won £1,000 in vouchers to spend at Sainsbury's. On 21 June 2007, after the prizes had been announced, one of the presenters joked about how he did not know the quality of the goods, as he had not received a personal hamper. He concluded by saying that he was, *"sure most of the stuff in the store [was] absolutely wonderful."* A little later, he then added: *"And do you know what I know as well about Sainsbury's? I was passing by, driving down the road the other day. You get wee Sainsbury's – you get wee Sainsbury's in garages. There's one at Charing Cross ... yes, wee ones dotted all over the place. So you don't have to go to a big, big one; there's a wee one. Keep your eyes out."*

Real Football Phone In is a daily programme (excluding Sundays) broadcast throughout the football season. On 1 August 2007 one of the presenters trailed a competition (to be run the following week) called 'Real Football Legends', which was sponsored by Coca Cola Zero. The other presenter interjected with comments, which included, *"Wow, great drink"*, and *"I love Coca Cola Zero, by the way – great drink!"*

A listener believed that the broadcast on the 15 June 2007 gave undue prominence to People's Ford and that the broadcast on 21 June 2007, "relating to the convenience and location of Sainsbury's stores around Glasgow, breached the rules for sponsorship." He was also concerned about the presenter's personal endorsement of Coca Cola Zero on 1 August 2007.

Section 10 of the Code concerns, among other things, commercial references in programmes. Rules 10.3, 10.4 and 10.5, respectively, prohibit the following in programming:

- the promotion of products and services;
- undue prominence being given to products and services; and
- product placement.

Section 9 of the Code concerns broadcast sponsorship. Rule 9.5 prohibits promotional references to a sponsor or its products and services in the sponsored programme and requires that non-promotional references are editorially justified and incidental².

² Rule 9.5 was previously Rule 9.6 (at the time of the broadcast).

We therefore sought Real Radio's comments on the matters raised by the complainant, with regard to Rules 10.3, 10.4 and 10.5 of the Code concerning the broadcast on 15 June 2007 and with regard to Rules 9.5 and 10.5 concerning the broadcasts on 21 June and 1 August 2007.

Response

Real Radio said that the *Real Summer Quiz* replaced its regular *Real Football Phone In* between football seasons. It featured the phone-in presentation team, which was known for being satirical. It added that the *Real Summer Quiz* presenter in question was a former Scottish international goalkeeper who was not a trained journalist or full time professional broadcaster but had been a football pundit on the phone-in since its launch. *Real Summer Quiz* was therefore "not overly-produced, scripted or particularly slick", but included presenter and audience banter, slight innuendo, obvious mistakes and tongue-in-cheek humour, in line with the expectations of regular listeners to the phone-in.

Real Radio added that no payment or other consideration had been received by the broadcaster or presenters in return for any of the comments made in the programmes.

Real Summer Quiz, 15 June 2007

The broadcaster said that the presenter had taken on the role of quizmaster as a 'one-off', with his colleagues helping the contestants. It added that the references to People's Ford and its products as a quiz question had been written by the presenter, "on the basis of a ... newspaper review of the new Ford Mondeo that morning" and were made, "without intent ... to ... contravene any aspect of the Broadcast Code." Real Radio claimed that the presenter's comments concerning People's Ford were made in the presentational style with which he would normally be associated within the football phone-in. The broadcaster therefore believed that it would have been clear to regular listeners that the presenter's comments were not meant as a serious endorsement or to be viewed as commercially credible, being delivered in the normal humorous style for which the phone-in had become known.

Nevertheless, Real Radio acknowledged that there was no editorial justification in the *Real Summer Quiz* for featuring the company name and its products. The presenter had been told this by the producer after the programme ended. The broadcaster added that the presenter had understood this requirement.

Real Summer Quiz, 21 June 2007

Real Radio said that the same presenter, "again without knowledge of or intent to breach any aspect of the Broadcast Code ... chose to engage in what he felt was acceptable and believed in his experience, fairly common and light hearted banter on the virtues of the programme sponsor" (i.e. Sainsbury's). The broadcaster added that the presenter believed "he was light heartedly engaging with contestants and audience alike in giving information on where they could exchange [the prize] vouchers" and was "clearly oblivious on this occasion to the sections of the Broadcast Code which indicate that neither he nor the station should ... promote in any way the sponsor's activities or locations." The presenter had therefore "been severely reprimanded by the station management for allowing this to happen" and sincerely regretted his comments.

Real Radio apologised, said that it considered non-compliance with the Code to be extremely serious and added that its Programme Director had therefore instigated additional safeguards and training in order to ensure no recurrence. The broadcaster assured Ofcom that it would “remain vigilant and diligent in all matters relating to compliance within the Code.”

Real Football Phone In, 1 August 2007

Real Radio said that, when the ‘Real Football Legends’ competition was trailed, the “additional remarks” made by one of the other presenters about the sponsor (i.e. Coca Cola Zero) was, “a personal utterance ... never intended to encourage purchase or be seen by listeners ... as a serious attempt at endorsing the product.” Nevertheless, the broadcaster was sorry if it appeared that this presenter had deliberately attempted personal endorsement, which it assured us was not the case. Real Radio added that it had again stressed to its presentational team the need for “vigilance, professionalism and adherence to the published rules.” In particular, it had reminded the *Real Football Phone In* team of the need to avoid inadvertent or unassuming references to a sponsor or its product or service.

The broadcaster assured us that it did not expect further recurrence and that any similar instance “may be subject to serious disciplinary action being taken against the presenter.”

Decision

The tone and style of broadcast content is a matter for the licensee, so long as the output complies with the Code. In the case of *Real Summer Quiz*, the broadcaster should have realised the potential pitfalls in relying on a radio presenter of limited experience in programming that fell outside his own area of expertise.

Real Summer Quiz, 15 June 2007

We agree that there was no editorial justification for the presenter to base a question on People’s Ford and its products. Irrespective of the presenter’s manner and style, Ofcom also believes his additional comment, in which he cited specific People’s Ford outlets, was promotional and unduly prominent. The programme therefore breached Rules 10.3 and 10.4 of the Code.

Real Summer Quiz, 21 June 2007

Rule 9.5 prohibits promotional references to a sponsor or its products and services in the sponsored programme and requires that non-promotional references are editorially justified and incidental. On 21 June 2007, the same presenter’s reference to the quality of Sainsbury’s (the sponsor’s) products was given in the context of light-hearted and passing comment related to the daily prize and appeared relatively incidental. However, his additional comment, which concerned a specific type and location of outlet, appeared to lack any editorial justification. The programme therefore breached Rule 9.5 of the Code.

Real Football Phone In, 1 August 2007

Ofcom did not believe the interjections of a different presenter appeared to be intentionally promotional. Nevertheless, the sponsor credit broadcast was “*Real Football Legends ... with Coca Cola Zero – the great Coke taste – zero sugar.*” The presenter’s comments were a personal endorsement of Coca Cola Zero, the sponsor

of the competition, and were not therefore editorially justified or incidental. The programme was in breach of Rule 9.5 of the Code.

Ofcom is disappointed that Real Radio's efforts to avoid recurrence were not effective, after the comments broadcast in *Real Summer Quiz*. However, we welcome the broadcaster's apologies and continued action and assurance concerning future compliance.

Real Radio has a generally good compliance record, especially considering its higher than average speech content for a local commercial radio station. Nevertheless, these Code breaches raise serious concerns and Ofcom will consider taking further regulatory action in the event of recurrence.

Breach of Rules 9.5, 10.3 and 10.4

Scottish Cup Final

Sky Sports HDX, 26 May 2007, 15:00

Introduction

A viewer complained that the second half of the Scottish Cup Final transmitted on a Sky High Definition (HD) channel was interrupted by footage unrelated to the match. In addition, the viewer was concerned by comments by a reporter which he found offensive to Scottish viewers. Ofcom asked Sky for a recording of the material in question but the broadcaster was unable to provide it.

It is a condition of Sky's licence for this channel that it makes and retains a recording of every programme for a period of 60 days from the date of transmission and provide Ofcom with a copy on request. Ofcom requested the recording within the 60 day period. Ofcom asked Sky to explain why it was unable to provide a recording.

Response

Sky informed Ofcom that it had broadcast the Scottish Cup Final in HD on a Sky Sports branded channel (Sky Sports HDX – which ceased broadcasting in May 2007) under the Sky Box Office licence. This was a simulcast of Sky Sports Xtra.

Sky confirmed that coverage of the match was accidentally interrupted by a short period of test footage from a different sporting venue – the JJB stadium in Wigan. When the signal was switched, viewers could hear a reporter attempting a Scottish accent in a light hearted way. Sky noticed the switch in signal at 16:20 and the HD signal was switched back at 16:27. Sky would have been able to provide a recording of Sky Sports Xtra. It did not however record its HD output (including Sky Sports HDX) separately and was not therefore recording the material complained of.

As a result of this incident Sky made arrangements for the separate recording of its HD programmes. This means that if the same technical error occurs in the future, it would be able to provide a recording of the material. Sky apologised for any inadvertent offence caused by the out of context voice-over, stating that the comments heard by the viewer were not intended in any way to be disrespectful to Scottish viewers.

Decision

Ofcom welcomes the apology offered and Sky's introduction of procedures to prevent the recurrence of similar incidents. However failure to supply a recording was a serious breach of Sky's Box Office licence which requires the broadcaster to retain and produce recordings. This breach will be held on record.

Breach of Licence Condition 11

Win Win TV

iPlay, 8 May 2007, 21:30

Introduction

A viewer was concerned about the conduct of an interactive hangman-style game in which viewers were invited to text in letters of the alphabet. Ofcom asked Transact TV Limited, which owns iPlay, to provide a recording of the programme.

Response

Transact TV said that the recording no longer existed. The organisation that could have supplied it retains recordings for a period of 90 days, however that period had passed by the time Transact TV requested it.

Decision

It is a condition of a television broadcaster's licence that recordings of its output are retained for 60 days after transmission and that Ofcom is provided with any material on request. The failure by Transact TV Limited to supply the recording in this instance is a serious and significant breach of Condition 11 (Retention and production of recordings) of its licence to broadcast, especially since the broadcaster had been put on notice, but simply failed to request the recording from its supplier. This breach will be held on record.

Breach of Licence Condition 11

Resolved

Supernatural trailer

ITV2, 2-31 May 2007, various times

Introduction

A trailer for the science fiction series *Supernatural* was shown frequently between 2 and 31 May before the 21:00 watershed. The trailer included some brief shots of people turning into werewolves and a threatening scene with a gun.

Eight viewers complained that this trailer was too scary to be shown during the day when young children watch television. Some were particularly concerned that it was shown during the film *The Flintstones* which appeals to a family audience including younger children.

Ofcom asked ITV for a response with reference to Rule 1.3 (appropriate scheduling) of the Code.

Response

The broadcaster explained that the trailer followed the theme, style and conventions of other promotions for this popular science fiction/fantasy series. The usual slogan was employed which refers to *Supernatural* being both “scary” and “sexy”. The “scary” aspect included a hand with fingernails growing into talons, several faces of werewolf creatures baring their teeth and the hero confronting these creatures with a gun. “Sexy” was represented by a kiss and a brief shot of two women clad in non-revealing lingerie.

The series is shown post-watershed and the shots selected for the trailer were chosen to indicate the subject matter but remain suitable for a pre-watershed audience. ITV believed the shots were sufficiently brief and suggestive, rather than explicit. On this basis, it was considered suitable for daytime viewing, although it was decided to avoid scheduling the trailer around children’s programmes.

The trailer was shown during programmes which would not generally appeal to young children, such as *The Jeremy Kyle Show*. On two occasions, though, the trailer was shown during *The Flintstones* and, although not a children’s programme, the broadcaster did accept that it would be of interest to children.

ITV regretted that the trailer upset any younger children. However, the broadcaster believed that the content was less explicit and, consequently, less disturbing or frightening than many US fantasy programmes, such as *Angel* or *Buffy the Vampire Slayer*.

However, the broadcaster appreciated the concerns of parents about the scheduling of this trailer during *The Flintstones* and, with hindsight, recognised that this could be seen as inappropriate. ITV has, therefore, taken the decision not to run similar content and scheduling of *Supernatural* trailers in future.

Decision

Rule 1.3 states that “Children must also be protected by appropriate scheduling from material that is unsuitable for them.”

When considering the suitability of the content of a trailer in relation to Rule 1.3, Ofcom has to take into account that trailers come upon viewers unexpectedly and the nature of the programmes scheduled around the trailer. From audience research, we also know that younger children, in particular, are easily frightened by the ‘morphing’ of characters into threatening creatures.

Ofcom accepts that ITV took care on the majority of occasions to avoid scheduling the trailer during programmes that would appeal to young children. However, the trailer was shown during a film (*The Flintstones*) with a likely wide appeal to families and, consequently, could be disturbing to younger children.

We welcome ITV’s decision not to broadcast *Supernatural* trailers in future during programmes which would specifically appeal to children. On this basis, we consider the matter resolved.

Resolved

The Cosmos: A Beginner's Guide

BBC2, 10 August 2007, 19:30

Introduction

This was the first programme in a new series in which Adam Hart-Davies examined the nature of the universe. It looked at efforts by scientists to detect life elsewhere in the cosmos and whether aliens portrayed in films bore any resemblance to real life.

Two viewers complained that the clip from the film *Alien*, where the alien creature bursts out of John Hurt's stomach, was too frightening in a programme before the 21:00 watershed. Both viewers were watching with young children.

Ofcom asked the BBC for comments in relation to Rule 1.3 (Children must be protected by appropriate scheduling from material that is unsuitable for them).

Response

The BBC explained that only a brief clip was shown from the film. It was used to illustrate a parallel between gestation of the creature in *Alien* and the breeding habits of a species of parasitic wasp. The serious editorial purpose of the programme and the comments of the scientists provided a very different context from that of viewing the film itself. An earlier clip from the film had been shown at the beginning of the programme and the later sequence was part of a wider examination of Hollywood "aliens", mentioning their "scary" nature. This gave some indication of what was to come.

The broadcaster, though, regretted the distress this clip caused young viewers. The BBC decided that this sequence would be re-edited to remove the "alien" emerging from any repeat of the programme before the watershed.

Decision

Rule 1.3 requires that children should be protected from unsuitable material by appropriate scheduling. In this case, although only a short clip of this 15-rated film was shown, it could be particularly frightening to some young children who would not be familiar with this film.

Ofcom welcomes the action taken by the BBC to re-edit the programme to remove this sequence for any future pre-watershed broadcast.

Ofcom therefore considers the matter resolved.

Resolved

Not in Breach

Big Brother Series 8

Channel 4, 7 June 2007, 22:00, 1 July 2007, 21:00; 4 July 2007, 21:00

Introduction

During this latest series, which ran for 14 weeks from Wednesday 30 May to Friday 31 August 2007, viewers complained to Ofcom about two incidents relating to the broadcast of potentially offensive language.

7 June 2007, 22:00, Emily Parr

Around 450 viewers complained about issues relating to an incident in which housemate Emily Parr used the word “nigger”.

The conversation involving Charley Uchea, Nicky Maxwell and Emily Parr began with Emily Parr commenting, in what appeared to be a light-hearted way, on Charley Uchea’s dancing, “*You pushing it out you nigger...*” The other two reacted in a shocked and surprised manner and Emily Parr insisted that she used the word jokingly.

Further conversations related to the incident, which included the use of the expression by other housemates, were broadcast throughout the programme. The episode culminated in Emily Parr being summoned out of bed to the Diary Room. Here, Big Brother told her that it would not tolerate racist language or behaviour and then evicted her.

In summary, complainants expressed a variety of concerns:

- Channel 4’s decision to broadcast the incident in the first place was unjustified and offensive; particularly in the light of the furore caused by racial offence in the previous series of *Celebrity Big Brother*;
- Channel 4, by evicting Emily Parr, over-reacted, and ignored its duty of care for her welfare outside the House;
- the censure of Emily Parr was racially imbalanced since her use of the word was not racially motivated; in addition other housemates, using the same word and behaving in a way that may have been racially motivated, were not given similar treatment; and
- the repetition of the offending word by other housemates was equally offensive.

1 July 2007 and 4 July 2007, Laura Williams

Around 200 viewers complained about two separate incidents in which Laura Williams used the word “poof”.

In the first incident on 1 July 2007, Laura Williams was tickling Liam McGough’s feet. When he squirmed, she called him a “poof”. There was no intervention by any of the housemates or Big Brother.

In the second incident on 4 July 2007, Laura Williams used the word when she was in the bedroom of the House with Gerry Stergiopoulos discussing Liam McGough and how he had removed a collar and chain; items which were part of a challenge in which housemates were expected to wear various objects related to more unusual sexual practices.

In summary, complainants were concerned that:

- The word “poof” is as offensive to members of the gay community as the word “nigger” is to members of the black community; and
- given the above, Channel 4’s reaction towards Laura Williams should have been similar to its reaction to Emily Parr; that this was not the case resulted in discriminatory treatment by the broadcaster towards members of the gay community.

Decision

In the light of the complaints, we considered the material against the following Code Rules:

2.1: “Generally accepted standards must be applied to the contents of television...services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material”;

2.3: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...such material may include...offensive language...discriminatory treatment or language (for example on the grounds of race...and sexual orientation)...”; and

2.4: “Programmes must not include material...which, taking into account the context, condones or glamorises...seriously antisocial behaviour and is likely to encourage others to copy such behaviour”.

In considering this material, Ofcom is clear that it must fulfil its duties in a way which is consistent with Article 10 of the European Convention on Human Rights. This provides for the broadcaster’s right to impart information and ideas, and the audience’s right to receive them, without interference by public authority, as long as the broadcaster complies with relevant Codes and the requirements of statutory and common law.

In coming to its decision, Ofcom also bore in mind its previous adjudications and findings where it has considered similar issues: in particular, its adjudication in respect of *Celebrity Big Brother 5* (published 24 May 2007); and its findings in respect of *Big Brother 7* (published in Bulletin 69, 18 September 2006), and *Shipwrecked* (published in Bulletin 87, 18 June 2007).

The Code does not prohibit the broadcast of language or behaviour even if it is, or is perceived to be, offensive. This material can be transmitted, provided that members of the public have adequate protection from its inclusion. In the provision of this protection, the Code requires that broadcasters must apply generally accepted standards and that the inclusion of any offensive material be justified by context. Context includes but is not limited to: the editorial content of the programme or series; the service on which the material is broadcast; the degree of offence likely to be caused by the inclusion of any particular sort of material; and the likely expectation of the audience.

We considered the two issues separately, as set out below. However, in coming to our decisions, we also bore in mind some complainants’ concerns that the broadcaster had treated each incident differently and that this was, in some way, discriminatory.

Emily Parr's use of the word "nigger", 7 June 2007 22:00

A transcript of two of the conversations relevant to this finding follows:

Conversation One

Voice Over: 8.03pm, Charley and Emily Parr are at the smoking area...

Charley and Emily: [Singing] U G L Y you ain't got no alibi you ugly, yeah, yeah, you ugly...

Charley: That sounds good.

Emily: Yeah you slipped up at the end to a high note. Try stay on one level.

[Laughter]

Both: [Singing] U G L Y...

[More laughing]

Charley: ...fuck's sake, your voice!

[Laughing]

Conversation Two

Charley, Emily and Nikki are in the smoking area.

Charley: I hope I'm not pregnant, I feel like...

Emily: You're pushing it out you nigger... oh, no I just called you a nigger.

[Charley, Emily and Nikki laugh uncomfortably].

Emily: I'm so...

Nikki: Oh Emily, I can't believe you just said that!

Charley: You're in trouble.

Emily: Don't make a big deal out of it though...

Charley: You're in trouble.

Emily: I was joking.

Charley: I know you were, but you're in some serious shit, sorry.

Emily: Oh, why?

Charley: Oh my God, I'm not even saying anything.

Nikki: No, just don't talk about it anymore.

Charley: yeah, shush.

Emily: I was joking.

Nikki: Do you not even remember Big Brother last year?

Emily: I didn't watch it.

Charley: Oh my God... do you know how many viewers would watch that, that's probably going to be broadcast.

Nikki: Don't make a big deal out of it.

Charley: Sorry...fancy you saying that....

Emily: Someone's already used that word in the house.

Charley: No way...yeah me. I'm a nigger, I am one. Fancy you saying it. I know you maybe you see the rap song or something, or maybe you and your friends sit there saying it.

Emily: I'm friends with plenty of black people.

Nikki: Do you call them niggers?

Emily: Yeah, they call me niggers...yeah they do, they call me wiggers as well.

Nikki: I'm quite shocked.

Charley: Yeah I'm fucking in shock.

Emily: It's not a big deal though it is?

Charley: Not for us it ain't. Fuck me on the open sides, what, ah...

Nikki: [laughs] you fucking nutter.

Emily: I'm not the only one who's said it.

Charley: But what made you say that? That is a bit racist Emily.

Nikki: *What made you just pop out with it?...*

Charley: *Sorry I'm in shock.*

Emily: *You're not offended?*

Charley: *Well...no not really but, blimey.*

Nikki: *She might have been, but she's not.*

Emily: *Yeah.*

Nikki: *[laughs] Fucking hell....*

Taking each group of complaints in turn, Ofcom decided as follows:

- **Channel 4's broadcasting of the incident and subsequent events and conversations.**

Ofcom has made clear in previous adjudications and findings that the broadcasters' right to broadcast such material and the audience's right to receive it is an important principle. It has been established over many series that the *Big Brother* audience expects to see all aspects of the housemates' characters exposed during their stay in the house. Channel 4 would not have been expected to keep key character information from viewers, since it is the viewers who decide who to vote for. By including these scenes, Channel 4 offered viewers an insight into all the housemates' characters, not just Emily Parr's. In Ofcom's view this context is in line with the editorial content of the series and audience expectations, and there was therefore no breach of Rules 2.1 and 2.3.

There is no ban on the broadcast of potentially offensive material. However, if such material is broadcast, generally accepted standards must be applied. In this case, such language should be justified by the context. The context in this case was that the material was broadcast in a reality series - *Big Brother* (as outlined above) - and the editorial of the programme was clear that use of the word "nigger", in these circumstances, was offensive and unacceptable. Ofcom therefore considered that there was appropriate justification and there was no breach of the Code.

Turning to the complaints by viewers that Channel 4 over-reacted by evicting Emily Parr: in such instances, the regulator considers only whether any given potentially offensive material is justified by context. The levels or extent to which a broadcaster provides such justification is an editorial matter for broadcasters.

- **Whether the welfare of Emily Parr was compromised in this incident.**

In our view, adults make informed decisions about their participation in such programmes. People who participate in a programme (and others directly affected by a programme) can complain to Ofcom if they feel that they have been treated unfairly in the programme. In the course of considering such complaints of unfairness or infringement of privacy, Ofcom may consider the circumstances surrounding the complainant's agreement to participate. However, in law, Ofcom cannot consider complaints of unfairness made by the general public on behalf of participants in programmes. We are therefore not able to consider whether these scenes were unfair to Emily Parr.

Subject to the limitations outlined above, however, it is still open to Ofcom, if it considers it appropriate, to consider complaints from viewers concerning issues under Rule 2.3 (generally accepted standards) of the Code. As stated above, there was no breach of Rule 2.3.

- **Whether the treatment of Emily Parr was racially imbalanced, as others used the expression and may have been racially motivated to do so, and:**
- **Whether its repetition by other housemates was equally offensive.**

The further use of the word was clearly in the context of reported speech: the other housemates discussing the incident among themselves. It was justified in this context in that the editorial decision was to witness the other housemates exploring the issue. The degree of offence would have been lessened by the fact that people were shocked by the expression and clearly understood its use to be wrong. This was reinforced by Emily Parr's eviction. There is no evidence that the further use of this expression, or subsequent behaviour by the other housemates, was racially motivated.

Finally, we considered whether any of the material condoned or glamorised seriously antisocial behaviour and encouraged others to copy it; putting it in breach of Rule 2.4. In our opinion, whilst the expression itself is certainly antisocial, its use was censured by both the other housemates and by Big Brother. It was therefore made clear that the use of the expression was unacceptable. For this reason, the programme could not be said to have condoned its use or encouraged others to copy this behaviour.

Not in Breach

Laura Williams' use of the word "poof"; 1 July 2007, 21:00 and 4 July 2007, 21:00
A transcript of two of the conversations relevant to this finding follows:

Conversation One: 1 July 2007

Voice Over: *Some of the housemates are in the bedroom.*

[Laura and Liam are lying together on the bed].

Laura: *O you want tickling do you?*

Liam: *Right, right, I'll see how long I can hack.*

[Liam is lying on the bed, hand over his face].

[Laura Laughs].

Laura: *Tickle tickle tickle!*

[Liam moans and squeals and wriggles on the bed].

Laura: *You poof.*

Liam: *Mental as!*

Conversation Two: 4 July 2007

Voice over: *10:36pm Laura, Sam and Amanda are in the bedroom.*

[Liam walks out of the diary room, he is dressed in a white vest with a leather waistcoat and leather flat cap].

Liam: *Well!...*

Nikki: *Are you allowed to take it off now?* [referring to the collar and lead he has been wearing].

Liam: *Yeah because it's hurting my neck...but I have to keep this on for now* [points to waistcoat]...

[Cut to bedroom: Laura, Sam and Amanda are lying on the beds. Gerry walks in with the collar and starts tying it around Sam's legs].

Amanda: *Gerry - is he allowed to take this off now, yes?*

Gerry: *Yes.*

Laura: *It's because his neck is hurting like a big poof. O!* [Laura puts her hand over her mouth] *Not allowed to say that word. No poof words! No P words.*

Gerry: *What poof? Poof. Oh it doesn't matter. He did look like...*

Sam: *I'm actually stuck.*

Laura: *Look at him he's such a, what's the word for it? Floozie? No.* [Liam walks into the bedroom].

Laura: *Was your neck hurting you?*

Liam: *Yeah it was.*

As part of its investigation into the use of the word “poof” by Laura Williams, Ofcom asked Channel 4 to respond to complaints related to the Emily Parr and Laura Williams incidents in the light of Rule 2.3 of the Code (generally accepted standards). We asked the broadcaster particularly to bear in mind viewers’ concerns that Laura Williams had been treated differently from Emily Parr and that consequently, this was believed by some complainants as discriminating against the gay community.

Response

Channel 4 told us that the obligations imposed by Ofcom’s Code Rules are taken very seriously by the Channel, hence the considerable amount of time and resources that it has employed over the years to set up procedures and systems to ensure its best possible compliance with them. The issue of offence to viewers as a result of the broadcast of potentially discriminatory language had been of particular concern to the Channel after the events surrounding the last series of *Celebrity Big Brother* and the subsequent Ofcom investigation and findings. In the run up to *Big Brother 8*, a number of additional measures had been introduced to minimise the recurrence of similar issues, and throughout the series they told us that very careful attention had been paid to balancing the editorial needs of the programme, with the risk of offence to viewers in this area.

With regard to the Laura Williams incident broadcast on 1 July 2007 the broadcaster told us that following new procedures (introduced in the wake of *Celebrity Big Brother 2007*), a rough cut of this show had been viewed on site at Elstree Studios with senior production staff, in the presence of the Channel 4 commissioning editor and the Channel 4 duty lawyer for the show. It had been immediately recognised that the inclusion of the word “poof” could potentially be offensive to some viewers.

Accordingly, the broadcaster told us, very careful consideration had been given to whether its inclusion in the show could be justified by its editorial context, what degree of harm or offence was likely to be caused to viewers by its inclusion, and what the likely expectation of the audience would be.

Editorially the scene and Laura Williams’ use of the word was considered very important: Until this time Liam McGough and Nicky Maxwell had been developing an intimate friendship and it was clear that Nicky Maxwell, a self confessed “man-hater”, had developed a crush on Liam McGough. Accordingly, showing him engaging in an intimate exchange with Laura Williams in front of Nicky Maxwell - an exchange in which Laura Williams appeared to be using the word “poof” flirtatiously, to tease him – had been, in the broadcaster’s view, a key part of this ongoing storyline.

In considering potential viewer offence the broadcaster had decided that regular viewers were unlikely to find Laura Williams’ use of the word “poof”, in the manner she did, unjustifiably offensive. The reasoning behind this, it said, was that up until this point there had been no indication that Laura Williams was in any way

homophobic. To support this view, the broadcaster had pointed out Laura Williams' best friend and ally in the house had been the openly gay housemate Seany O'Kane, who had been very comfortable using the word "poof" in front of Laura Williams to describe himself and the only other openly gay housemate, Gerry Stergiopoulos.

Channel 4 decided that the inclusion of Laura Williams' use of this word also revealed more about her character, going to the root of the *Big Brother* show concept in which viewers see housemates "warts and all" and can accordingly make an informed decision as to whether they should be evicted or not.

In the days immediately following the broadcast of this episode the broadcaster had received a number of complaints, from which it became clear that the degree of offence caused by the broadcast of this word, in particular without any formal reprimand from *Big Brother*, had been underestimated. Accordingly the decision had been taken, in consultation with senior commissioning, production and legal staff, that if Laura Williams were to use this language again that she should be dealt with by *Big Brother* (depending on the context of the use) in line with the show's policy on unacceptable behaviour. In addition it had been agreed that any such incident and reprimand should be broadcast in order to reassure offended viewers.

Turning to the incident broadcast on Wednesday 4 July 2007, Channel 4 told us that several days after the first incident Laura Williams did indeed repeat the offending word in a very similar context. On this occasion, *Big Brother*, later in the programme, is seen to call Laura Williams into the Diary Room to reprimand her for this language. *Big Brother* said: "*Laura, Big Brother would like to remind you that Big Brother does not tolerate inappropriate or offensive language being used in the Big Brother House*". *Big Brother* went on to say that "*inappropriate or offensive language would include homophobic language such as 'poof'*". Laura Williams had explained that although she understood the potential to offend, this was not what she had meant by using it. *Big Brother* reiterated: "*Big Brother does not tolerate inappropriate or offensive language being used in the Big Brother House*", to which Laura Williams responded "OK".

The broadcaster said that this reprimand had been immediately followed by the end credits for the show, which had included an invitation to vote for a housemate to evict. The two housemates that were up for eviction were Laura Williams and Chanelle Hayes. On Friday 6 July 2007, Laura Williams was evicted from the *Big Brother* house following the public vote.

Channel 4 went on to say that although it acknowledged the concerns raised by some viewers that Laura Williams had been treated differently from housemate Emily Parr, who had been evicted in the first week of the series for using a highly offensive racist term directly to a black housemate Charley Uchea, it did not agree with them. The decision on how to reprimand Laura Williams had not been taken lightly. Each instance of unacceptable behaviour in the series had been carefully judged on its own facts. It had been considered at senior levels in both the Channel and the production company. For the broadcaster, the important distinction had been made that Laura Williams, in contrast to Emily Parr, had not used this term directly against a gay housemate (Liam McGough is not gay) and it had been very clear that the gay housemate whom it had been used in front of had not been offended by her use of the term, unlike Charley Uchea in the Emily Parr incident. It had therefore been judged appropriate by the broadcaster to first issue Laura Williams with a formal reprimand, rather than to proceed to an immediate eviction. This had been considered the most appropriate and effective course of action. Given that Laura Williams was up for eviction that week, viewers would therefore have been able to

retain the right to evict by public vote. Accordingly, in Channel 4's view, a core editorial tenet of the series ("*who goes? you decide*") had been preserved, whilst at the same time an unequivocal message had been sent to viewers that such language, no matter how intended, is unacceptable to Big Brother.

The broadcaster concluded by saying that it regretted any offence caused to viewers as a result of either broadcast.

Decision

We first considered the incidents related to Laura Williams in the light of Rules 2.1 and 2.3 (generally accepted standards). In Ofcom's opinion, generally accepted standards were applied to this material and adequate context was given.

In our view, it is not possible or appropriate at present to establish definitively the degree of offence use of the word "poof" can cause in all contexts. For example, it is clear that within the gay community itself, the word "poof" can be used in a playful, affectionate or self-deprecating way. This is evidenced, for example, by the use of the word in *Friday Night with Jonathan Ross* (BBC1), with its resident band *Four Poofs and a Piano*. In Ofcom's view, there is insufficient or no evidence to suggest that Laura Williams used the word complained of in a denigratory way.

In coming to this decision, we took into account:

- the expectations of the audience - that they would be able to see housemates "warts-and-all" and choose to vote for their eviction, which they subsequently did in the case of Laura Williams;
- that, in the first incident, there was no indication that Laura Williams' use of the word "poof" was intended as a homophobic reference;
- that when it became clear that such language ran the risk of being homophobic or offensive, the broadcaster reprimanded Laura Williams, thus ensuring the broadcast of such material was justified by context; and
- that the use of the word "poof" was not directed at a gay person, unlike the use of the word "nigger", which was directed at a black person.

We then went on to consider the material in the light of Rule 2.4 (seriously antisocial behaviour). Ofcom is sympathetic to the concerns voiced by complainants about the use of the word "poof"; especially where it might be emulated by younger viewers, with the consequent risk of bullying at school. Broadcasters are therefore reminded to exercise care about the frequency with, and context in, which the word is broadcast.

Not in Breach

Smile

CBBC, 19 March 2006

Introduction

Smile is a children's entertainment programme broadcast on Sunday mornings on CBBC. It incorporates a variety of interactive elements including competitions involving viewer participation. One such competition is *Jambusters*, a video game in which contestants use voice commands to control a jam firing cannon.

There are two versions of the game. In *Jambusters*, individual contestants compete against a high score. In *Jambusters: The Rivals*, two connected individuals compete against each other in order to settle a score.

Jambusters and *Jambusters: The Rivals* were competitions which viewers could apply to enter via a premium rate telephone service. In live broadcasts, contestants usually competed from home, though some would be invited to the studio. With regard to *Jambusters* contestants could either apply to enter on the day of transmission and take part that day or in a future programme. With regard to *Jambusters: The Rivals* viewers were consistently invited to apply to participate in a future programme.

A number of allegations about *Smile* on CBBC were made in the media. In summary, they alleged that:

- **Pre-recording:** a number of episodes of *Smile* were pre-recorded, even though the programme represented itself as a 'live' programme which runs 'live' competitions;
- **Encouraged to Enter:** viewers were encouraged to call the programme via a premium rate service to take part in an interactive competition which had already taken place; and,
- **Theatrical Agency:** the competition winners were supplied by a theatrical agency (Stagecoach), were given an unfair advantage by being allowed to practise beforehand, and were guaranteed prizes.

The BBC provided Ofcom with written comments in response to the allegations.

Response

Pre-recording

The BBC stated that five editions of the programme *Smile* were typically pre-recorded in the course of a year to take account of major public holidays and live sporting coverage. It said that it took from media reports that its source related to a studio session recorded on 10 March 2006 in which the broadcasts for the 19 and 26 March 2006 were pre-recorded. However, it said that of these two programmes only the edition of 19 March 2006 was relevant (i.e. involved participating children) as the edition transmitted on 26 March 2006 featured the competition between the presenter and her mother.

Encouraged to Enter

The BBC stated that it was not the case, as was alleged in the article, that children were encouraged by presenters to call to participate in what was knowingly a pre-recorded programme. It explained that the invitation to participate (by the presenters) in the edition of 19 March 2006 was phrased generically and not in terms which generated false expectations, e.g.

“If you want to settle an argument then get in touch and play Jambusters: The Rivals. 09011 900 500. Don’t forget to ask permission and all that malarkey. If you want to go to the website it is bbc.co.uk/cbbc and click on Smile. You’ll find all the games there and you can get in touch as well.”

Moreover, on 19 March 2006 the invitation to participate in *Jambusters: The Rivals* was placed after the game had been played, so the broadcaster said there could be no question of giving viewers the impression that they could participate that day.

There were no further invitations to participate prior to *Jambusters* being played at the end of the programme on that day.

Viewers who did contact the programme as a result of the programme broadcast on 19 March 2006 were considered for future editions of the programme.

Theatrical Agency

With regard to the claim that this edition of the programme’s winning competitors were supplied by an agency (Stagecoach), the broadcaster stated that the claims were presented in a distorted form. It said that typically over 90% of the children who participate in *Smile* are from the audience who contact the programme by phone, letter, email or via its website. In addition to them, a few participants are drawn from other sources such as schools and children’s groups in the UK. Members of the programme’s production team visit and film on a weekly basis at many schools and children’s groups and they invite children to apply to participate in the programme. Among the groups visited by the production team is Stagecoach Theatre Arts PLC’s Saturday Schools (of which there are 600 in the UK with 40,000 children attending). It confirmed that these children were therefore not “supplied by an agency” and no fee was either offered or requested.

The broadcaster went on to explain that in live broadcasts, *Jambusters* contestants are able to compete from home so competitors would *not* normally be drawn from the children invited to the studio. However, pre-recording renders participation from home impossible. Therefore the contestants in the pre-recorded 19 March 2006 programme were drawn from the studio audience and participated from a separate area of the studio. They watched the action on a monitor and gave their instructions by phone, as they would have if they had been at home. Because children are required to attend the studio for four hours during recording, they were allowed to play any of the *Smile* website games on two computers during unoccupied time, to prevent them from becoming bored. It continued that because the same games are available on its website, that no unfair advantage was available to the children in the audience as children at home are able also to practice on their home computers.

The broadcaster confirmed that the children were not “guaranteed prizes”, if that infers that they were guaranteed to win their games. It said that every child who visits the studio receives a “goody bag” as a souvenir which is the same bag given to every child who participates in the competition. Additionally, those children who score more than 60 or 120 points in the game receive a more valuable prize.

Decision

Rule 2.11 of the Code states that “Competitions should be conducted fairly, prizes should be described accurately and rules should be clear and appropriately made known”.

Pre-recording

The practice by the BBC to very occasionally pre-record editions of *Smile* to allow for disruption to the schedule due to public holidays or major sporting events would appear to be standard practice for dealing with such circumstances and should not appear in itself (and in the particular circumstances of this case) to raise any issues against the Code.

However, broadcasters must be alert to the potential for misleading their audience as to whether a programme is pre-recorded or live, where this may give rise to issues of compliance with the Code. This is particularly important when a programme contains an element of audience participation where viewers or listeners may mistakenly believe that they are able to participate in the programme and it could result in a competition being run unfairly.

The need for transparency is even greater when dealing with a child audience who are unlikely to understand that programmes (or sections of programmes) might be pre-recorded and shown ‘as live’.

In this case, the scripting of the programme clearly gave the impression that the pre-recorded programme was ‘live’. In Ofcom’s view it would have been preferable for the programme to have provided the viewers with sufficient information (taking into account the nature of the viewers) to enable them to understand that the programme was not live and that they could not participate in any element of the programme that day. Nevertheless, in the circumstances of the case, the pre-recording of this programme did not result in an unfair competition being run (see below).

Encouraged to Enter

Ofcom noted that in this edition of the programme the only invitation for audience participation was carefully placed after one interactive element of the programme, *Jambusters: The Rivals*, had already concluded. The invitation was sufficiently separated within the programme from the other interactive element of the programme, *Jambusters*, and importantly contained no explicit suggestion that viewers would be able to participate in the programme on that same day.

In Ofcom’s view there was, nevertheless, still a possibility as a result of the impression that the programme was ‘live’ that members of the audience, and in particular children, would mistakenly believe that they could call the programme and participate in some element of the programme on that day.

However, and in any event, all viewers who did contact the programme as a result of the programme broadcast on 19 March 2006 were considered for future editions of the programme and, as such, were in no way materially disadvantaged.

Theatrical Agency

The BBC stated that it occasionally used children from schools or Saturday groups for reasons of convenience in a non-‘live’ situation where it was necessary to use children who were available in the studio and not at home. Ofcom did not consider that this amounted to the programme makers colluding with any organisation to deliberately deceive viewers or exclude them from taking part. The broadcaster

confirmed that whilst it is common practice to include children from schools and groups throughout the UK as studio guests, in general 90% of its studio audience members are viewers who have contact the programme directly.

Ofcom also did not consider the presentation of a “goody bag” to all the children in the studio and additional prizes for high scoring winners, which the broadcaster confirmed is usual practice for all guests and participants, raised any issues against its Code.

Not in Breach

Fairness and Privacy Cases

Not Upheld

Complaint by Mr Russell Foster

Inside Out, BBC1 North East, 26 January 2007

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

Mr Foster complained that he was treated unfairly in this edition of *Inside Out* in that: the programme had included old footage of him filmed and broadcast at the time when his timeshare company collapsed; inferred that he owned a company called Work Talent, and that therefore he was responsible for trying to evict allotment holders from Work Talent's land; and, the programme had given disproportionate coverage to the views of the allotment holders and had inadequately represented the offer made to them by Work Talent.

Ofcom found as follows:

The story of the collapse of Mr Foster's timeshare company was described fairly; had been a high profile event in the local area with which Mr Foster was associated; and was properly contextualised in the programme. In the circumstances, the use of this archive footage and details given about it in the programme did not result in unfairness to Mr Foster.

It was clear to Ofcom that the broadcaster did allege that Mr Foster either owned or had de facto control of Work Talent but Ofcom found this did not result in unfairness to him. Ofcom based this finding on the following: the programme maker asked Mr Owen, Work Talent's company Secretary, about the ownership of Work Talent; fairly reported Mr Owen's views on the matter; offered Mr Foster a timely and appropriate opportunity to respond to this and, in the absence of a formal response, clearly represented his denial of the allegation.

The programme's treatment of the offer made to the allotment holders did not result in unfairness to Mr Foster because the broadcaster paid due regard to material facts in its portrayal of the offer made to the allotment holders in the programme.

Introduction

On 26 January 2007, BBC1 broadcast an edition of *Inside Out* a current affairs and investigative programme with separate regional output for each specific region. This complaint concerns the North East output. This edition of *Inside Out* included a feature looking at the potential eviction of a group of pigeon fanciers and gardeners who hold leases on a piece of land in Back Ryhope Street (which is south of Sunderland) owned by a company called Work Talent Ltd. ("Work Talent").

The programme indicated that the allotment holders believed that Mr Foster (the complainant) owned or had control of Work Talent and was therefore responsible for the actions taken to try to evict them from their location in Back Ryhope Street. Archive footage of Mr Foster was included in the programme and the presenter outlined his position with regard to the dispute with the allotment holders.

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

The Complaint

Mr Foster's case

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

- a) Despite having more recent footage the programme also included archive material (from 1990) and explained that it showed the complainant at the point when a timeshare company which he then owned had failed leaving debts of £1m. Mr Foster noted that the use of this material and provision of this information was completely irrelevant to the topic featured in the programme, namely the potential eviction of the leaseholders at Back Ryhope Street, and that it simply served to blight his established reputation as a successful businessman with a track record of donating to local charities and to cause him considerable embarrassment.
- b) He told the programme-makers that he owned a piece of land (close to the existing allotments) which Work Talent was planning to buy and then offer to the leaseholders as a place to which to relocate and, that he did not own either Work Talent or the land on which the lease-holders were currently sited, however, the programme had unfairly and incorrectly inferred that he did own this land and that he was responsible for trying to evict the leaseholders from their current position. Mr Foster added that the programme incorrectly asserted that his solicitor had confirmed that he (Mr Foster) owned the land in question.
- c) The programme lacked balance in that the reporter concentrated on the allotment holders and did not clearly indicate that the offer for them to move included all removal costs to an area of land only 300 metres away". In addition, Mr Foster noted that the broadcaster "did not include the fact that this area of land would be made considerably more secure than the present area and the land would be given to the allotment holders," whom he commented do not own their current site.

The BBC's case

In summary the BBC responded to Mr Foster's complaint as follows:

The BBC first set out its view of the background to the programme. Namely, that: there had been a dispute between the allotment holders and their landlord (Work Talent) dating back to 1998; the dispute had garnered a lot of local publicity; it had been temporarily resolved in 1998 when Work Talent gave the allotment holders a 10-year extension to their leases; the allotment holders had recently been asked to move off the site before their leases expired at the end of 2007; and, notwithstanding the fact that Mr Foster had always denied having any involvement with the company, the allotment holders believed that he was behind Work Talent's development proposals.

- a) In response to the first head of complaint regarding the use of archive news footage, the BBC noted that when the dispute started (in 1998) newspapers and broadcasters in the area reported local speculation, particularly amongst the affected allotment holders, that the land was actually owned by Mr Foster and that he was behind the move to evict them. The broadcaster stated that Mr Foster was

well known in the area and had been featured on the news on several occasions, one of which was in connection with a council scandal which led to the resignation of the deputy council leader. However, it argued that the most highly publicised event with which Mr Foster had been associated was in 1990, when his timeshare company went into liquidation with debts of more than £1 million. The BBC added that it was widely reported that while many local people had lost considerable sums of money, Mr Foster had not suffered any financial loss.

The BBC stated that this was the context in which *Inside Out* ran the footage of Mr Foster from 1990 and, using quotations from the transcript to illustrate its position, noted that that the programme had summarised the key points of the original campaign by pigeon-fanciers and allotment holders.

It disputed Mr Foster's position that this information was irrelevant on the basis that the tenants have always believed that Mr Foster was behind the plans to evict them and their assessment of him has always been based on his reputation as the businessman behind the timeshare collapse.

To reinforce its stance on Mr Foster's local reputation the BBC submitted an article from the Sunderland Echo published in May 2000 (i.e. a decade after the collapse of his timeshare company) in which he was referred to as a "timeshare tycoon".

The BBC argued that rather than having an established reputation as a successful businessman with a track record of donating to local charities as he claimed, Mr Foster had been connected to a string of controversies and scandals over many years. It stated that while the timeshare collapse was the most well known many others had received local coverage. The BBC listed four examples argued that all the information included in this edition of *Inside Out* would have been well known to viewers and would not have altered his standing in the local community. These examples, taken unedited from the BBC's response, are listed below:

- The resignation of the Deputy Leader of Sunderland Borough Council over undisclosed links to local businessmen, including Mr Foster.
 - The collapse of Bonnersfield Nightclub in Sunderland in October 1990, which was owned by Mr Foster, leaving debts of several hundred thousand pounds. (This was reported twice on the BBC's *Look North* programme.)
 - A fine of £10,000 plus costs in July 1994 for felling trees protected with tree conservation orders. Mr Foster was represented by Mark Gilbert Morse Solicitors. The fine was reduced on appeal to the Crown Court.
 - A two-year battle with environmental protestors over the development of a new £1.6 million headquarters for his Tyne and Wear Youth Football Leagues, including plans to cut down thousands of trees on the proposed site. This is currently the subject of judicial review and was the subject of a poll in the local newspaper in which 91% of people objected to the tree-felling proposal.
- b) In relation to the complaint about responsibility for the proposals to evict the allotment holders, the BBC noted that the land in question belonged to Work Talent and therefore centred its response on the issue of who owned Work Talent.

It acknowledged that the following statement:

"when we asked... the company secretary Geoffrey Owen, who owns Work Talent, he said Mr Foster",

which was included in the programme, was not strictly accurate as a reflection of what Mr Owen had said during his telephone conversation with Mr Morrison (the producer) on 10 January 2007. However, it did not believe that the inaccuracy was such as to give rise to unfairness to Mr Foster.

The BBC claimed that it had understood Mr Owen to have meant that irrespective of ownership Work Talent was Mr Foster's company in the sense that he effectively controlled it. However, it noted that for accuracy's sake, the wording of the programme's script should have reflected this distinction albeit that it felt that in terms of any reflection upon Mr Foster it was a distinction without a difference.

By way of explanation, the broadcaster noted that it had established: that Mr Foster had been involved in negotiations to buy the land in 1993 (and had even written to the tenants at the time); that Work Talent (which had purchased the land in 1996) appeared to be a "shell company" (i.e. a company with no significant assets or operations often formed to obtain financing before beginning business³) and that there were a number of links between Work Talent and Mr Foster (see below).

The BBC noted that it was against this background that it had evaluated the information given by Mr Owen to Mr Morrison (a local producer for *Inside Out*). The key exchange from which was included in its response.

In relation to this conversation the BBC argued that the speed with which Mr Owen felt able to confirm that Work Talent was in effect Mr Foster's company, taken with his professed ignorance of activities at Work Talent (and even of the fact that he was its company secretary) was entirely consistent with the picture the programme team had already established - that Work Talent had every appearance of being a "shell company", with strong links to Mr Foster. The BBC then listed what it described as a number of links between Work Talent and Mr Foster. These are included (unedited) below:

- Company records show that in 1998 (the time of the first eviction notice) the director of Work Talent was a businessman called John Mark.
- John Mark was a director of Russell Foster plc, the timeshare company that went bust in 1990.
- John Mark was listed in 2006 as a director of Work Talent, and also as a director of Durham Estates Ltd (the company owned by Mr Foster) and the Russell Foster Tyne and Wear Sports Foundation.
- In 1998, the registered office of both Work Talent and Durham Estates were 53 Grey Street, Newcastle, the offices of the solicitors Mark Gilbert Morse, of which John Mark is a partner. This is also the address of the Russell Foster Tyne and Wear Sports Foundation.
- Mr Foster's personal solicitor, Geoffrey Owen, is the registered company secretary of Work Talent Ltd and the company secretary of Durham Estates.

Finally, the broadcaster added that, in any event, the programme had not offered a conclusion on this point but merely reported the tenants' belief that Mr Foster was behind Work Talent and also Mr Foster's denial, which it felt was a fair way of reflecting the situation.

³ Definition sourced from the Practical Law Company Database by Ofcom

- c) In relation to the complaint that imbalance in the reporting of the offer made to the allotment holders resulted in unfairness to Mr Foster, the BBC noted that this head of complaint was entertained only in so far as related to potential unfairness and not as regards due impartiality.

The broadcaster added that if Mr Foster did not own Work Talent it could not see how the omission of details regarding an offer made by that company could have resulted in unfairness to him. Nonetheless, it noted that the programme had referred to the offer three times but that the main point was that, irrespective of the attractions of the offer in Mr Foster's eyes, it was entirely unacceptable to the tenants for reasons which had also been made clear in the programme.

Mr Foster's comments in response to the BBC's statement

In summary Mr Foster responded to the BBC's statement as follows:

- a) In relation to the response to the complaint about the use of archive news footage, Mr Foster argued that the fact that when one of the tenants heard of his alleged connection to the plans he immediately thought of timeshares (as noted in the BBC's submission) did not make it relevant for the BBC to have used the archive footage in this context.

Mr Foster also noted that rather than having suffered no financial loss as a result of the collapse of his timeshare business, he had lost £1.6 million initially and a further £3 million as a result of having had to sell assets at "less than their value" in order to meet banking covenants.

With regard to the examples given by the BBC to support its view of his local reputation, Mr Foster noted the following:

- Council Scandal – It was "incorrect to say that at the time of the first dispute in 1998 [he] had featured in the news on a number of occasions referring to a Council scandal" because that event, which concerned the resignation of Councillor John Donnelly, occurred in 1990. Mr Foster added that he had been "brought into the situation because [he] was newsworthy at the time" and that police investigations had proved that any accusations against him were "totally unfounded".
- Bonnersfield Nightclub – He did not own the Bonnersfield nightclub (actually a complex of two restaurants, a pub and a piano bar) at the time it collapsed. It had been sold at least 18 months before it went into receivership.
- Felling Trees - He felled five trees (three of which were dead) out of 524 trees in the grounds of Burdon Hall without permission. These were replaced with 24 new trees and the £10,000 fine was reduced on appeal to £2,500.
- Land and facilities for the Russell Foster Tyne and Wear Youth League – He had had permission from the Council and the Forestry Commission to cut down 7,000 out of 33,000 trees he had planted on his land in 1997. The Sports Foundation had awarded a grant of £1 million to an independent charity to build 21 football pitches with associated changing rooms and internal facilities. Following negotiations with the environmental campaigners the plan was re-arranged so that only 800 trees would be lost. When this was rejected it was "quite clear that the objectors had other motives".

Lastly, Mr Foster indicated that if asked what they associated him with, the vast majority of local people would say one of the following things: The Russell Foster

Tyne and Wear Youth league; the refurbishment of the Roker Hotel in Seaburn (as well as his ownership of a number of Hotels and bars and/or restaurants in the region); sponsorship of the Sunderland Rugby Club (thereby saving it from closing); sponsorship of the Chester-le-Street Brass Band; and, a wide range of charitable donations.

b) In relation to the response to the complaint about responsibility for the proposals to evict the allotment holders, Mr Foster noted the following about two of the alleged links between Work Talent and himself that were listed by the BBC in its response:

- The office of Mark Gilbert Morse Solicitors is a registered office for hundreds, if not thousands, of limited companies.
- Mr Mark is his personal solicitor not Mr Owen who normally works as a conveyancing solicitor.

With regard to the telephone conversation on 10 January 2007 between Mr Morrison (the producer) and Mr Owen (Work Talent's company secretary), Mr Foster firstly argued that it was quite clear that Mr Owen did not understand, first of all, whether he was company secretary of Work Talent, or secondly, that he (Mr Foster) was the owner. Mr Foster added that it was the manner of Mr Morrison's questions and conversation which drew the comment from Mr Owen.

Secondly, he suggested that Mr Owen may have made his comment because he is a director and company secretary of Durham Estates Limited and, in that role, has been involved in the purchase of many properties. Mr Foster added that over the last 12 months conveyancing contracts of over £10 million have been handled by him (Mr Owen).

Thirdly, Mr Foster noted that Mr Owen was also aware that he (Mr Foster) owned land in the vicinity of Ryhope.

He added that he was sure that if one were to ask Mr. Owen now, after he has had time to look into the matter, he would confirm that he (Mr Foster) was not the owner of the land in question.

c) In respect of the response to the complaint that imbalance in the reporting of the offer made to the allotment holders resulted in unfairness to him, Mr Foster suggested that imbalance in the programme was confirmed by the amount of time allocated to the allotment holders and their case as opposed to the alternative site which was on offer to them.

He commented that he understood that Work Talent had offered the allotment holders the sum of £50,000 and all removal expenses to another site 300 yards up the road – a site which they would own as opposed to renting and a site which would be far more secure than their present site.

Mr Foster noted that it was obvious that he had had a financial interest in the plan because Work Talent would have had to have purchased his land for the deal to work.

Finally, he indicated that Mr Morrison had asked him to appear on the programme but that he had not felt that the time allotted to him (two minutes) was sufficient.

The BBC's second statement in response to the complaint

In summary the BBC responded to the complainant's comment as follows:

It did not consider that Mr Foster's additional comments supported his claim that he was treated unfairly and noted that these comments primarily addressed "the background information supplied in the BBC statement rather than the information which was broadcast by the programme".

- a) In relation to the complaint about the use of archive news footage, the BBC addressed the issue of why it had been relevant for it to broadcast a brief mention of previous events in which Mr Foster had been involved as part of its summary of the original dispute.

In particular the BBC made a number of observations about several points made in Mr Foster's comments on its first statement regarding the specific events which the BBC claimed had contributed to his reputation.

- Council Scandal – The BBC reiterated its position that Mr Foster's reputation, notably with regard to the timeshare collapse, had affected the allotment holders' view of him. It also argued that because the timeshare collapse had been widely reported (a claim it supported with contemporary (1990) extracts from the Daily Mail and the Northern Echo), it was relevant to the summary of the 1998 dispute. The BBC added that in contrast to Mr Foster's suggestion, it did not (within its original statement) say that his involvement in the council scandal took place in 1998.
- Timeshare Collapse – The BBC noted that it had not said that the allotment holders' association of Mr Foster with the timeshare collapse justified a casual use of the footage from time to time, as was claimed by Mr Foster in his comments on its first statement. Rather, it had said that this association meant that "it was, therefore, relevant to refer to the collapse and use the footage from the time in a summary of the previous campaign". It also noted that it had not said that Mr Foster had suffered no financial loss but that "it was widely reported that while many local people had lost considerable sums of money, Mr Foster had not suffered any financial loss". The BBC added that it had not made any comment in the programme about Mr Foster's personal finances but had fairly and accurately reported the fact that "his timeshare company went bust owing more than a million pounds".
- Bonnersfield Nightclub – The broadcaster challenged Mr Foster's recollection of the collapse of the Bonnersfield pub and restaurant business. It noted that two local BBC news reports from 1990 (which were supplied) indicated that: the business had gone into liquidation with debts of several hundred thousand pounds; the collapse was due to misjudgement of the market; and, the business had been sold after it went into liquidation.
- Tree Felling – The broadcaster believed that Mr Foster's comments confirmed that it had accurately summarised the two occasions on which he had been involved with tree felling. However, the broadcaster noted that while it had mentioned these events in its statement to illustrate its view that they had contributed to Mr Foster having a reputation for being frequently involved in high profile controversy they had not been included in the programme.

- Other activities – The BBC did not deny that Mr Foster had been involved in a range of other activities (for example his sponsorship of a local football league and ownership of a local hotel). However, it questioned his claim that the vast majority of people would associate him with these activities rather than the ones it had highlighted.
- b) In relation to the complaint about responsibility for the proposals to evict the allotment holders, the BBC looked at the discussion of Mr Owen's comments to the reporter, Mr Morrison. It argued that Mr Foster's claim about the large number of companies registered at 53 Grey Street (the office of Mark Gilbert Morse Solicitors) was irrelevant.

The broadcaster stated that what was relevant was the connection between Mr Foster, Work talent, Durham Estates [Ltd.] and Mark Gilbert Morse Solicitors. It supported this comment by noting that the programme maker had established that: Work Talent was a shell-company with strong links to Russell Foster; and that, Mr Owen (who had a long business relationship with Mr Foster) readily confirmed that that Work Talent was Mr Foster's company.

The BBC acknowledged that Mr Owen may not have been aware of his official position as Work Talent's secretary but noted that he was aware of Work Talent and the fact it owned the allotment land. It added that from the telephone conversation of 10 January 2007 between Mr Owen and Mr Morrison (which was recorded by the BBC) it was apparent that Mr Foster's connection to the company was well known to Mr Owen.

The BBC again quoted from the key exchange in this pre-transmission conversation as it had within its first round statement (see below):

Mr Owen: "I wouldn't have thought that we would actually be particularly useful to you either, basically because directors and secretaries of companies are often just sort of the officers etc who sign things as and when necessary. They don't usually; sometimes they don't have any say about the running of a company".

Mr Morrison: "Well I've already spoken to Russell Foster"

Mr Owen: "Oh yeah".

Mr Morrison: "Because I mean it's his..."

Mr Owen [interrupts]: "It's his, yes"

Mr Morrison: "It's his company isn't it?"

Mr Owen: "Yes, that's, yes..[indistinct].. thought so"

The BBC argued that Mr Owen was quick to confirm that the company was Mr Foster's and denied any leading questioning.

The broadcaster noted that Mr Owen's responses might have gone beyond what he in fact knew, but it could see no grounds for concluding that he said "Yes" when he actually meant "No".

Finally, it indicated that notwithstanding the above concerns Mr Owen's response was accurately reported in the programme and the programme-makers were fair to Mr Foster by immediately reporting his subsequent denial.

- c) In relation to the complaint that imbalance in the reporting of the offer made to the allotment holders resulted in unfairness to Mr Foster, the BBC again indicated that it could not see how unfairness could have resulted to Mr Foster from the way in which it had reported the offer if he had no involvement with Work Talent.

The BBC pointed to Mr Foster's detailed knowledge of Work Talent's offer to the allotment holders in support of its view that there was likely to have been a link between Mr Foster and Work Talent.

It indicated that Mr Foster's summary of the offer made to the allotment holders differed from that detailed in the letter (dated 29 March 2006) sent by Mark Gilbert Morse Solicitors to the allotment holders, notably with regard to whether or not they would become the owners of the new site.

The broadcaster noted that even if Mr Foster had been involved with Work Talent the programme had not been unfair because it gave the details of Work Talent's offer on three occasions and made it clear that the offer was unacceptable to the tenants.

The BBC noted that it had invited Mr Foster to be interviewed and that he had refused to be interviewed and indicated that he would only provide a statement of a specific duration (three minutes) if the broadcaster guaranteed that it would remain unedited. The BBC said that when he was told this would not be possible but that any comments he made would be presented fairly and accurately Mr Foster refused to comment.

Decision

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

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

The case was considered by Ofcom's Executive Fairness Group. In reaching its decision, the Group had regard to a copy of the programme, the programme transcript, both parties' written submissions (which included a recording and transcript of a telephone conversation between Mr Morrison (a local producer from

Inside Out) and Mr Owen (Work Talent's company secretary), a copy of the offer letter sent to the allotment holders by Mark Morse Gilbert Solicitors, several newspaper articles each of which made reference to Mr Foster, a recording and transcript of two BBC *Look North* news reports from 1990 (both of which related to Mr Foster), the transcript of a telephone conversation between Mr Morrison and Mr Foster; and, a letter from Mr Morrison to Mr Foster (sent after this telephone conversation) repeating his offer of an interview).

- a) Ofcom first considered the complaint that it had been unfair for the programme to have included old footage of Mr Foster filmed and broadcast at the time when his timeshare company collapsed.

Ofcom had particular regard to whether the programme maker's actions were consistent with its obligation to avoid unjust or unfair treatment of individuals in programmes, as set out in Rule 7.1 of the Code, and whether then BBC had ensured both that the re-use of material did not create unfairness and that that material facts had not been presented in a way which was unfair (as outlined in Practices 7.8 and 7.9 of the Code, respectively).

In Ofcom's view the submissions from the complainant and the broadcaster regarding both the extent of Mr Foster's personal financial losses as a result of the timeshare collapse and the list of events or activities with which he might or might not have been associated was not relevant to the consideration of this complaint as neither element was included in the programme as broadcast.

Ofcom was concerned with whether the portrayal of material facts relating to the collapse of Mr Foster's timeshare company resulted in unfairness to him.

Ofcom noted that over seven years had elapsed between the time when Mr Foster's timeshare company collapsed in August 1990 and Work Talent's initial dispute with the allotment holders began in January 1998.

It took account of the extent to which Mr Foster was associated with the collapse of the timeshare company in the local area among the wider public including among the allotment holders about whom the report was made.

On the evidence before it, it recognised that the collapse of the timeshare company appeared to have been a high profile event in the area. In particular, it noted local news coverage at the time of the collapse, and in the months afterwards, as well as the fact that in an article published in *The Sunderland Echo* in May 2000, over a decade after the collapse of his timeshare company, Mr Foster was referred to as a "timeshare tycoon".

Ofcom observed that Mr Foster was clearly shown in the programme in the context of the allotment holders' belief that he was principally responsible for the actions which Work Talent had taken with regard to the land on which their gardens and pigeon crees (a cree is a word used to denote a shed or shelter) were sited.

In Ofcom's view, notwithstanding the fact that the timeshare collapse had occurred some seven years before the dispute on which the report was focused had begun, and was not strictly related to it, the fact that it was a high profile event in the local area and that the allotment holders' had closely associated Mr Foster with it meant that it was not irrelevant to the report's portrayal of the background to the dispute.

With regard to the programme's treatment of material facts relating to the timeshare collapse, Ofcom observed that the programme did not dwell on this incident but showed a brief clip from a contemporary (1990) edition of the local news programme, *Look North*, at the time of the collapse accompanied by the following explanation:

Presenter: *"Mr Foster, a Sunderland property developer, had been in the news after his timeshare company went bust owing more than a million pounds".*

Ofcom noted that the information given in this statement did not appear to be unfair in that Mr Foster had not disputed the fact that his timeshare company had gone bankrupt and that it had owed more than a million pounds within his complaint or subsequent comments.

It also recognised that the fact of the collapse of the timeshare company was clearly contextualised as part of Mr Foster's local background and that, as noted above, the programme maker had taken a legitimate editorial decision to include such background information given the allotment holders' belief illustrated in one of the interviews for the programme that Mr Foster was responsible for the dispute over their land.

Taking the factors above into account Ofcom considered that neither the re-use of the archive footage of the timeshare collapse nor the way in which material facts regarding this event had been presented in the programme had resulted in unfairness to Mr Foster.

Ofcom did not uphold this head of complaint.

- b) Ofcom then considered the complaint that the programme had unfairly inferred that Mr Foster owned Work Talent, and that therefore he was responsible for trying to evict the allotment holders on Work Talent's land, and that it had incorrectly asserted that his solicitor, Mr Owen, had confirmed that he owned the land in question.

Ofcom took particular account of Practice 7.9 of the Code, which concerns the treatment of material facts (see head a) above).

Ofcom first considered the programme's portrayal of the ownership of Work Talent.

It noted that the programme made the following statements:

Presenter: *"Well the Company Secretary and a Director of Mr Foster's company, Durham Estates, also run Work Talent".*

Presenter: *"Mr Foster did say though that Work Talent had offered to buy some of his land so they could move the men".*

Presenter: *"Last year it [Work Talent] offered the men fifty grand in compensation –even though in its last accounts it had assets of just fifteen and a half thousand pounds. The men believe there's somebody else with money behind the company".*

Ofcom then went on to consider the presenter's assertion in the programme that:

“When we asked ... company secretary Geoffrey Owen, who owns Work Talent, he said Mr Foster”.

This statement was an encapsulation of a pre-transmission telephone conversation between Mr Morrison (the producer) and Mr Owen (Work Talent’s company secretary) which took place on 10 January 2007.

Ofcom noted that the BBC had acknowledged within its response to the complaint that the broadcast statement was not strictly accurate as a reflection of what Mr Owen had said. However, the broadcaster had also stated that it did not believe the inaccuracy was such as to give rise to unfairness to Mr Foster.

Ofcom noted that the BBC had explained that while Mr Owen had said that Work Talent was Mr Foster’s company, its view was that Mr Owen could not have meant that Mr Foster was the legal owner of the company, because Mr Foster was not listed among its shareholders. Ofcom noted that the BBC went on to explain that it had therefore taken Mr Owen to mean that, irrespective of ownership, Work Talent was Mr Foster’s company in the sense that he effectively controlled it.

Ofcom listened carefully to the recording of the relevant section of Geoffrey Owen’s pre-transmission conversation with the programme’s producer about the ownership of Work Talent.

Mr Morrison: *“It’s his [Mr Foster’s] company isn’t it?”*

Mr Owen: *“Yes, that’s, yes..[indistinct].. thought so.”*

It is arguable in Ofcom’s view as to whether Mr Owen’s comments were as clear on this issue as the BBC suggested in the programme. Nonetheless, the BBC took appropriate steps, in Ofcom’s opinion, to comply with the Code and avoid treating Mr Foster unfairly. It asked Mr Owen for his opinion - a person who might be expected to know about the ownership of Work Talent because he was its company secretary; and, it reported a reasonable interpretation of Mr Owen’s comments on the matter (i.e. that he agreed that the company was Mr Foster’s).

In addition, Ofcom recognised that the programme had clearly reflected his position that Work Talent *“was not his company and ... did not act under his instruction”*.

In Ofcom’s view, the comments relating to Mr Foster’s connection to Work Talent, notably that relating to the assurance given by Mr Owen that Work Talent was his [namely, Mr Foster’s] company, constituted a significant allegation that Mr Foster either owned the company or had de facto control over its actions in relation to the allotment dispute.

In view of this allegation, Ofcom took account of Practices 7.11 and 7.12, which require that if a programme makes a significant allegation the individual concerned should normally be given a timely and appropriate opportunity to respond; and, that if he or she chooses not to make a comment or to appear in the programme the broadcaster should make this clear; and explain why if it would be unfair not to do so.

Ofcom considered that it had been incumbent upon the broadcaster to have given Mr Foster an opportunity to respond to this allegation that, by association with Work Talent, he was responsible for the dispute with the allotment holders.

With regard to this point, the panel observed that during a telephone conversation on 9 January 2007, Mr Morrison asked Mr Foster for an interview regarding the dispute. It also noted that Mr Foster had declined this offer.

Specifically, Mr Foster told the broadcaster that he was not satisfied with its guarantee that it would not unfairly edit his statement. Rather he indicated that he would not supply a statement unless the broadcaster agreed to accord three of the nine minutes allotted to the report to read out an unedited statement supplied by him.

On the basis of the transcript of this conversation, Ofcom considered that the broadcaster had given Mr Foster an appropriate and timely opportunity to respond to the allegation discussed above but he declined this offer. Ofcom noted that the broadcaster fairly reflected his decision not to take advantage of this offer.

Presenter: *"We asked Mr Foster to be interviewed. He declined. No one from Work Talent was available either".*

As noted above, Ofcom also considered that despite his decision not to take part in the programme, the broadcaster had also fairly reflected Mr Foster's denial that he owned or had control of Work Talent.

Presenter: *"But in a telephone conversation Mr Foster told us it was not his company and it did not act under his instruction".*

Taking these factors together Ofcom did not consider that the way in which the programme handled the issue of who owned or controlled Work Talent and, therefore who had responsibility for the proposals to evict the allotment holders, resulted in unfairness to Mr Foster.

Ofcom did not uphold this head of complaint.

- c) Lastly, Ofcom considered the complaint that the programme had treated Mr Foster unfairly in that it had concentrated too much upon the views of the allotment holders and had inadequately represented the offer made to them by Work Talent.

Ofcom took particular account of Code Practice 7.9 (material facts).

Ofcom noted that the subject matter of the report was the allotment holders' dispute with Work Talent which owns the land on which their gardens and pigeon crees are situated.

Programme makers can quite legitimately select, omit or edit interviews or contributions provided for inclusion in a programme as long as it does not result in unfairness. This is rightly an editorial decision for programme makers to take.

Therefore, in considering this head of complaint Ofcom was not concerned with the nature, number or length of contributions made by the allotment holders in the programme. Rather, it sought to determine whether the programme maker's actions were consistent with its obligation to avoid unfair treatment of those directly affected by the programme.

It noted the finding at head b) in relation to the opportunity given to Mr Foster to participate in the programme.

In assessing the programme maker's actions Ofcom looked at the three occasions when the programme mentioned the recent offer made to the allotment holders by Work Talent.

Presenter: *"Last year it [Work Talent] offered the men fifty grand in compensation –even though in its last accounts it had assets of just fifteen and a half thousand pounds. The men believe there's somebody else with money behind the company".*

Presenter: *"Work Talent offered money and an alternative plot of land to move. But Shepherd's not interested"* [Shepherd had a garden at the allotments and was featured in the programme].

Presenter: *"Mr Foster did say though that Work Talent offered to buy some of his land so they could move the men [i.e. the allotment holders]"*.

Ofcom observed that Mr Foster had complained that the programme had not mentioned certain elements which he believed to have been part of the offer. Specifically that: the costs of removal to a site only 300 metres away would be covered; the new site would be more secure; and, the land would be given to the allotment holders.

It also observed that in its second submission the BBC had provided a copy of the offer letter sent by Mark Gilbert Morse solicitors on behalf of Work Talent to the allotment holders and that this letter did not mention: who would bear the costs of removal, the security of either the current site or the proposed site; or, the terms on which the allotment holders would have use of the new plot of land (i.e. whether they would be leaseholders or freeholders).

In light of this, Ofcom considered that the report had fairly presented the information provided to the BBC by the allotment holders about the official offer made by Work Talent.

Ofcom noted that the information given to the producer by Mr Foster regarding security, costs and ownership of the land. However, notwithstanding the fact that there may or may not have been elements to the offer that were additional to those portrayed in the programme, it is Ofcom's view that the two key elements in the letter sent to the allotment holders (namely, the proposal to move the allotment holders to a new piece of land and to give them £50,000 in recompense for the inconvenience) were made clear to viewers.

It appeared to Ofcom that it was reasonable for the BBC to have relied upon the official and "non-negotiable" terms laid out in the offer letter sent to the allotment holders by Mark Gilbert Morse solicitors on behalf of Work Talent which did not suggest that they would own the site on which it was proposed that they should move.

Therefore, Ofcom found that the way in which the programme reported the offer made to the allotment holders resulted in no unfairness to Mr Foster.

Ofcom did not uphold this head of complaint.

Accordingly, Ofcom has not upheld Mr Foster's complaint of unfair treatment in the programme as broadcast.

Complaint by Ms Christine O'Meara on behalf of Community Housing Cymru

Wales This Week, ITV Wales, 11 September 2006

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

Ms Christine O'Meara, who is chair of Community Housing Cymru ("CHC"), complained to Ofcom that CHC itself and housing associations represented by CHC were treated unfairly in the programme as broadcast.

Ms O'Meara complained that the programme was inaccurate, biased and unfair to the Registered Social Landlords ("RSL") sector in Wales, and in particular to three housing associations featured in the programme; and, that given the overall theme of the programme of privatisation, it was unfair that it did not mention that the housing associations featured were non-profit third sector organisations. She also made separate complaints of unfairness for each of the three housing associations featured in the programme: namely V2C, Wales and West and Newport Housing.

Ofcom found as follows:

The programme had explored a range of views about the social housing sector in Wales and stock transfer; it had not unfairly excluded positive examples; it had fairly presented the difficulties facing the sector and the concerns raised by tenants who had already experienced stock transfer as well as tenants who were voting on whether or not to follow the same path; and, it had offered a timely and appropriate opportunity to the housing associations to respond to the issues raised in the programme.

It had not been incumbent upon the programme maker to reflect the fact that the housing associations featured were operated on a not-for-profit basis or to have included information on the management and salary arrangements in place at these associations since these issues were not pertinent to programme's inquiry.

The programme had fairly reflected its interview with V2C's Chief Executive, Peter Cahill; had explained the circumstances surrounding and views on the changes to the Welsh Audit Office's draft inspection report fairly; and, had fairly reflected the views of a range of people living in the Chelsea Avenue estate.

The programme had fairly reflected the views of a range of people living at the Hillside Court estate; had dealt with the issue of maintenance at Hillside Court fairly; had placed the archive footage of the Cefn Celyn estate in its appropriate context; and, had given Wales and West an appropriate and timely opportunity to respond to the concerns raised about it in the programme.

The programme did not unfairly imply that the Chief Executive of Newport Housing Trust, Phil Toms, was unwilling to be interviewed. It also found that the programme clearly set out the relevance of the issue of service charges to the question of stock transfer; and that it fairly represented Mr Toms' view on these issues.

The complaint of unfairness was not upheld.

Introduction

On 11 September 2006, ITV1 Wales broadcast an edition of *Wales This Week*, which reported on a stock transfer scheme being operated in Wales. Stock transfer is where the ownership and management of local authority housing, both rented and leasehold, is transferred to a housing association. In 2002, the Welsh Assembly Government introduced the Welsh Quality Housing Standard which requires local authorities in Wales to improve their stock of social housing by 2012. One of the options open to the local authorities is to enter into a stock transfer agreement with housing associations.

The programme contained a number of examples where local authority properties had been transferred to housing associations and it explored criticisms made by some residents who were not happy with the way the housing associations were maintaining and managing the properties. In particular, the programme made reference to three housing associations: Valleys to Coast (“V2C”); the Wales and West Housing Association (“Wales and West”); and, the Newport Housing Association (“Newport Housing”). All three had taken over the ownership of a number of former local authority properties under the stock transfer scheme.

The programme included several interviews with residents from two housing estates: Chelsea Avenue in Bridgend (owned by V2C) and Hillside Court in Cardiff (owned by Wales and West). Tenants from both Chelsea Avenue and Hillside Court expressed concern about the general upkeep of and standard of maintenance at the respective estates.

With regard to Hillside Court, the programme noted that one tenant, Mr Paul Ronald, was engaged in legal proceedings against Wales and West because he was concerned about cracks in the basement, damp in his flat and patches of concrete which had fallen down at a number of places on the estate.

The programme noted that *Wales This Week* had employed an independent surveyor to inspect Hillside Court and that his assessment was “scathing”. It then noted that:

“the concrete was down for nine months. But when Wales This Week started filming at Hillside Court workmen appeared. They didn’t want us to film them”.

This edition of *Wales This Week* also included archive footage of the Cefn Celyn housing estate (in Swansea), which is owned by Wales and West.

In addition, the programme featured a tenant at an unnamed estate owned by Newport Housing who, having had “disability adaptations” made to her bungalow, unexpectedly found that she had rent arrears because she had become subject to additional service charges.

Ms Christine O’Meara, chair of Community Housing Cymru (“CHC”), formerly the Welsh Federation of Housing Associations, complained to Ofcom on its behalf that housing associations represented by CHC were treated unfairly in the programme as broadcast. (All three housing associations referred to in the programme are members of CHC).

The Complaint

CHC’s case

In summary, Ms O'Meara complained that CHC was treated unfairly in the programme as broadcast in that:

Unfairness to the sector

- a) The programme was inaccurate, biased and unfair to the Registered Social Landlords ("RSL") sector in Wales, and in particular to three housing associations, namely V2C, Wales and West and Newport Housing. CHC complained that:
- i) the programme's intention was to put forward a pre-determined and prejudicial view so that this sector of social housing was portrayed in negative terms and be discredited;
 - ii) there was no attempt to present a balanced view of the sector and no positive examples were used;
 - iii) the reporter had a biased viewpoint of the sector which was evidenced by the leading and inflammatory questions that were asked of the participating representatives from the housing associations; and
 - iv) the stock transfer scheme was presented with undue prominence to the anti-lobby with little or no reference to the positive benefits of the scheme.

Overall theme

- b) The overall theme of privatisation was integral to the broadcast without any reference to the fact that the associations featured were non-profit third sector organisations with a voluntary and unpaid management board. It was difficult to believe that a balanced programme with any reasonable level of journalistic integrity would not have drawn this to the viewers' attention.

V2C

- c) V2C, a member of CHC, was treated unfairly in that:
- i) all positive references to the benefits from stock transfer in the interview footage with V2C's Chief Executive, Mr Peter Cahill, had been edited and omitted from the programme as broadcast;
 - ii) the programme gave significant prominence to the Chelsea Avenue estate which was specifically referred to by Mr Cahill in interview. However, that part of his interview was not included in the programme;
 - iii) the manner in which the draft inspection report from the Wales Audit Office ("the WAO") on V2C was dealt with was intended to mislead the viewer into believing that Mr Cahill was unsure about the reasons for the changes to the draft inspection report when, in fact, he had been referring to changes to the Welsh Assembly Government ("the WAG") regulatory code [against which housing associations were being measured];
 - iv) no V2C tenants were interviewed to confirm that improvements had taken place. This added weight to the view that the programme was not intended to present a balanced view;

- v) the programme made the inference that political interference had forced changes to the V2C draft inspection report by the WAO despite there being no attempt to support that view with evidence; and
- vi) Mr Daniel Atkins, one of the contributors interviewed about the housing on the Chelsea Avenue estate and shown in the programme as a V2C tenant, was not, in fact, a V2C tenant. CHC indicated that footage of Mr Atkins used in the programme was a “fabrication” because the commentary did not refer to an earlier altercation between VC2 staff and Mr Atkins about which, CHC believed, ITV was aware.

Wales and West

d) Wales and West, a member of CHC, was treated unfairly in that:

- i) the programme makers had spoken to a Wales and West resident who had made positive comments about the association, but none of these comments were included in the programme;
- ii) the programme makers were aware of the problems at Hillside Court and the background to the action (namely, the maintenance work) that had happened and was planned.

However, the programme unfairly implied that the action that was taken had only occurred because of the involvement of the programme makers. Wales and West were, for legal reasons, unable to comment on the matters surrounding the dispute at Hillside Court and were unable to rebut the allegations made in the programme;

- iii) the footage relating to the Cefn Celyn housing estate (in Swansea) was taken in 2000⁴ and did not reflect the current position. Wales and West had provided evidence to the broadcaster, from the period, which indicated that the scheme had been well maintained, but this was not referred to in the programme;
- iv) Wales and West provided the programme makers with a full written statement which was ignored and not referred to in the programme; and
- v) footage taken by a tenant was used in the programme to portray Wales and West negatively. The footage was old and referred to matters that had already been resolved. The tenant contacted the association to convey their unhappiness about the way the footage was used without their consent.

Newport Housing

e) Newport Housing, a member of CHC, was treated unfairly in that:

- i) Permission to use the interview footage of the programme’s interview with Mr Toms, Newport Housing’s Chief Executive Officer (CEO), was withdrawn by Newport Housing, though an offer of a second interview was made by the Trust and was given to the programme makers within the

⁴ In the original complaint the complainant incorrectly indicated that this footage was filmed and broadcast in 2001.

editorial deadline. The programme makers declined the offer and instead used library footage of the CEO, and voiced over a statement which implied an unwillingness of a representative of Newport Housing to be interviewed; and

- ii) the programme makers referred to the implementation of service charges by Newport Housing to support the anti-stock transfer sentiment of the programme.

ITV's case

In summary ITV responded to CHC's fairness complaint as follows:

- a) With regard to the complaint about of unfairness to the housing association sector, ITV denied that the programme had portrayed the sector in an unfair manner. It added that it had explored as many of the issues surrounding stock transfer as it could and had presented the material facts and offered an opportunity to contribute to all relevant stakeholders.
 - i) ITV stated that the programme had not had a pre-determined or prejudicial view of stock transfer and that while it had contained criticisms of the featured housing associations, these were put to the relevant associations and their responses were included. The broadcaster also noted that the programme presented the benefits of stock transfer and the "perils" of social housing remaining under the management of local councils.
 - ii) It claimed that the programme attempted to provide a balanced view and give positive examples of the sector. The rationale for and benefit of stock transfer was explained via the commentary and interviews. ITV listed several examples with references to the transcript and the groups or individuals who had provided them.

For example, Helen Callaghan, the presenter, indicated that:

"The situation is serious because many local authorities can't afford to pay their bills."

and Peter Cahill, CEO of V2V, said:

"Bridgend County Borough Council was stuck between a rock and a hard place, on the one hand housing was clearly falling into disrepair with no investment for decades and [on the] other knowing what was available in terms of using those assets to raise money on the private markets to bring about improvements."

ITV also noted that throughout its research and filming it had only found one tenant who was satisfied with his landlord and he was not prepared to be interviewed on camera.

- iii) ITV said that the reporter was not biased and that his questions were based on issues raised during interviews with tenants and other interested parties. It also argued that, given the controversy surrounding the issue, some of the questions were inevitably going to be hard.

- iv) ITV denied that the programme gave undue prominence to the anti-lobby and argued that it gave a fair representation of the views of the various people involved in the issue of stock transfer. In response to the allegation that the programme had made little or no reference to the positive benefits of the scheme, the broadcaster referred back to the points made in head a) ii) above.

Overall theme

- b) With regard to the complaint that, in light of the overall theme of privatisation, the programme had unfairly portrayed the housing associations, the broadcaster argued that it was not unfair for it to have excluded a discussion of the not for profit nature of the associations and their remuneration schemes. It also implied that it had deliberately ignored the structure and business of housing associations because it was a distinct issue which “could have filled another programme”.

V2C

- c) With respect to the head of complaint on behalf of V2C specifically:
 - i) ITV said that the allegation that all positive references to the benefits from stock transfer in the interview footage with V2C’s Chief Executive, Mr Peter Cahill, had been edited and omitted from the programme was incorrect. It listed various examples, with references to the transcript, including: enabling money to be raised in order to pay for repairs; improvements in carrying out repairs [compared to historical context] and progress in housing the homeless. ITV also asserted that the interview was fairly edited and that Mr Cahill’s contribution was fairly summarised.
 - ii) The broadcaster claimed that the allegation that the programme did not include the part of the interview in which Mr Cahill responded to specific questions about the Chelsea Avenue estate was incorrect. Again, the broadcaster listed examples with reference to the transcript and stated that the interview had been fairly edited.
 - iii) In respect of the complaint about the use of the WAO draft inspections report in the programme, ITV stated that the programme: made it clear that Mr Cahill was referring to the WAO draft inspection report on V2C (not, as the CHC said, the WAG Regulatory Code); explained that the report was subject to amendment; and outlined the reasons why V2C had challenged the draft report. ITV noted that, in contrast to CHC’s claim in the complaint, that Mr Cahill had appeared to be sure about the reasons why the report was changed and had clearly not referred to the changes to the WAG’s regulatory code. ITV then observed that there were different views about why the WAO report was changed: V2C’s view was that it was due to flaws in the methodology and inaccuracies while the WAO attributed the changes to the report to changes to the regulatory code [governing how such reports are drawn up]. The broadcaster added that, because it was unable to secure an interview with a representative of the WAG, both views were presented.
 - iv) ITV confirmed that no V2C tenants were interviewed to confirm that improvements had taken place but explained that this was because they could not find any tenants who held this view and were willing to be interviewed. It added that the interviews shown were a fair summary of

those filmed and that the allegations made by the tenants had been put to V2C and its responses had been included in the programme.

- v) ITV said that the programme explored the view that political interference had resulted in changes being made to the WAO's draft inspection report on V2C, but argued that this was supported by evidence, namely, an interview with the report's author. It also stated that V2C's alternative view was included in the programme, that the views on this issue were fairly presented and that the revised report's conclusion was also presented.
- vi) ITV stated that Mr Daniel Atkins (one of the contributors interviewed about the housing on the Chelsea Avenue estate) had not given it any reason to suspect that he was not a resident at the property. It noted that he lived with his girlfriend, who was a tenant at Chelsea Avenue, and that it was the state of the property not the identity of its tenant that was the relevant point. ITV added that while describing him as a V2C "tenant" might have been technically inaccurate it did not believe that it resulted in unfairness to V2C.

ITV denied the claim, made by the complainant, that the film footage of Mr Atkins used in the programme was a "fabrication" because the commentary did not refer to an earlier altercation between VC2 staff and Mr Atkins. It declared that the *Wales This Week* team had not seen the altercation between Mr Atkins and the V2C staff as alleged by CHC.

Wales and West

d) With respect to the head of complaint on behalf of Wales and West specifically:

- i) ITV explained that of the 40 to 50 tenants and residents from the Cefn Celyn and Hillside Court estates to whom it spoke it found one tenant who made positive comments about Wales and West and he was unwilling to be interviewed. ITV also asserted that the views of the other tenants interviewed were fairly represented in the programme.
- ii) In relation to the complaint about the programme's consideration of Hillside Court ITV argued that the programme simply stated that workmen appeared when *Wales This Week* started filming at Hillside Court and that in doing so it had not implied a causal relationship between the two events.

The broadcaster then turned to Wales and West's claim that it was unfairly unable to comment on the matters surrounding the dispute at Hillside Court. It explained that Wales and West had informed it in June 2006 that because of litigation it was unable to comment on "the Ronald case" (Paul Ronald was a resident at Hillside Court who contributed to the programme) or Hillside Court in general. ITV said that in July it had written to Wales and West to say that it would delay broadcast until after the next scheduled hearing on 2 August 2006; and, that at that hearing Mr Ronald's case was put on hold.. Given this, the broadcaster then asked Wales and West for an interview. Ms Hinchey declined because Wales and West's solicitors had advised against it and this was explained in the programme.

ITV did not believe that this had resulted in unfairness to Wales and West. It noted that it had backed up the claims made by Mr Ronald by commissioning a report from an independent surveyor; that it gave Wales and West an opportunity to respond to the claims made in this report; and, that it had “fairly summarised Wales and West’s refusal to be interviewed on this issue”.

- iii) The broadcaster argued that it was explained in the programme that the reference to the Cefn Celyn related to complaints made in 2000 and did not imply that conditions were still the same at the estate. It noted that the criticisms of the tenants at the time were backed up by their local Assembly Member (AM); that Wales and West’s response at the time was included; and, that the AM’s observation that “*changes were made*” (given at the time of this later broadcast) corresponded with the excerpt of the audit report forwarded by Wales and West in relation to this issue.
- iv) ITV felt that Wales and West’s position in relation to the dispute in 2000 had already been fairly reflected in the programme and that therefore there was no need to refer to the Wales and West’s written statement as it related to this dispute. Furthermore, the broadcaster noted that given that the other matters referred to in the statement (developments since 2000 and allegations made by current tenants) did not specifically address issues which had been raised in the programme it was not unfair not to have included these elements.
- v) ITV explained that the footage referred to in this sub-head of the complaint was archive news footage, not “footage taken by a tenant”, as claimed in the complaint. It was clearly used in the context of the dispute of 2000, and was not meant to reflect negatively on Wales and West’s current operation. ITV supported this position by noting that the summary of the dispute implied that changes had been made.

Newport Housing

- e) With respect to the head of complaint on behalf of Newport Housing specifically:
 - i) ITV observed that after his interview with the reporter Mr Toms, Newport Housing’s CEO, had alleged that he had been “mised” regarding the areas of questioning. The broadcaster refuted this allegation. It said that it then sent Mr Toms a list of questions and started to arrange for a second interview. This second interview did not occur and the programme maker decided to represent Mr Toms’ response to the issue of service charges by way of a voice over based on his correspondence. ITV believed that the voiceover did not imply that Mr Toms was unwilling to be interviewed and the use of library footage did not result in unfairness to him.
 - ii) ITV noted that it was clear from Mr Toms’ correspondence that he did not see a link between the issues of service charges and stock transfer. However, it considered that its research had shown that service charges were an issue of concern and confusion to tenants who would be voting on whether or not to approve stock transfer and that it was therefore a legitimate subject for the programme to explore. ITV noted that the programme had described the measures taken by V2C to explain service changes to its tenants; and argued that it had fairly and accurately summarised the service charge issues in relation to the question of stock

transfer from the perspective of both the tenants and the housing associations. The broadcaster's position was that the programme did not support any anti-stock-transfer sentiment.

Decision

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

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

The case was considered by Ofcom's Executive Fairness Group. In reaching its decision, the Group had regard to a copy of the programme, the programme transcript, both parties' written submissions (which included an extract from a report on the Cefn Celyn housing estate written in 2001, correspondence between the programme maker and each of the housing associations included in the programme, an e-mail from the Welsh Housing Federation (now the CHC) to the programme's reporter, a letter from Wales and West to the Welsh Assembly minister responsible for stock transfer), and a recording and transcript of an unedited interview with Mr Cahill, the CEO of V2C.

Unfairness to the sector

- a) Ofcom first considered Ms O'Meara's complaint that the programme unfairly portrayed the housing association sector in Wales; and, in particular, her view that it was inaccurate, biased and unfair in its treatment of the three housing associations featured (V2C, Wales and West and Newport Housing).

Ms O'Meara's complaint of bias appears to relate to the requirement for broadcasters to maintain "due impartiality" on matters of political or industrial controversy and matters relating to current public policy. This is a "standards objective" under Section 319 of the Communications Act 2003 and as such cannot be considered by the Fairness Committee. However, in considering whether CHC and the three housing associations were treated unfairly in the programme, the Committee is able to consider whether overall the portrayal of the associations was unfair in its cumulative effect.

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

Taking this Practice into account, Ofcom first addressed separately each of Ms O'Meara's individual points of complaint under this head concerning the programme's treatment of the Welsh housing association sector.

- i)&ii) With regard to the complaint that the programme's intention was to confirm a pre-determined and prejudicial view of the sector, Ofcom observed that the programme had shown a balance of viewpoints (see Decision under heads c) and d) of this complaint below) and that it had not been presented with any evidence that the programme had discredited the social housing sector.

In relation to the specific allegation that the programme made no attempt to present a balanced view and had unfairly used no positive examples of the sector, Ofcom noted the programme had included the concerns of tenants of the housing associations featured and given their respective chief executives an opportunity to respond to these concerns. The programme had invited the chief executives to explain the difficulties their respective housing associations had and continued to face; and to indicate the progress that they had made. Ofcom also recognised that the programme had clearly explained that many Welsh Councils could not afford to improve their housing stock (as they were required to do). It observed that this point was further illustrated in the programme by the comments of the Leader of Swansea Council who indicated that (because the Government does not allow local authorities to borrow large sums of money) without stock transfer it would take a lot longer for social housing in Wales to be brought up to the Welsh Quality Housing Standard. Ofcom also noted that the Leader of the Council then added that in the interim other services would have to be cut.

In Ofcom's view the programme had presented a range of views of the housing sector (and the issue of stock transfer) and had not unfairly excluded positive examples of the sector (or the potential benefits of stock transfer). Therefore, it found no unfairness in relation to these sub heads of this complaint.

- iii) Ofcom next considered the complainant's allegation that the reporter had indicated a bias through leading and inflammatory questions. It noted that the complaint of bias appeared to relate to the requirement for broadcasters to maintain "due impartiality" on matters of political or industrial controversy and matters relating to current public policy. This is a "standards objective" under Section 319 of the Communications Act 2003 and as such cannot be considered by the Executive Fairness Group. However, in considering whether CHC was treated unfairly in the programme, the Group is able to consider whether overall the portrayal of the housing association sector in Wales was unfair in its cumulative effect.

With regard to this complaint as it relates to potential unfairness to the housing association sector in Wales and the three associations specifically, Ofcom observed the importance of the issue to the tenants interviewed by the programme maker and the searching nature of the questions. Nonetheless, in Ofcom's view these questions were pertinent to the issues in hand, were put to the appropriate representatives of the housing associations, i.e. their respective chief executives, and found that they did not therefore result in unfairness.

- iv) Ofcom then considered the complaint that the stock transfer scheme was presented with undue prominence to the anti-lobby and little or no reference

to the positive benefits of the scheme. It noted that the complaint of undue prominence appeared to relate to the requirement for broadcasters to maintain “due impartiality” on matters of political or industrial controversy and matters relating to current public policy. As noted above this is a “standards objective” and cannot be considered by the Executive Fairness Group. However, as is also noted above, the Group is able to consider whether overall the portrayal of the housing association sector in Wales was unfair in its cumulative effect.

With regard to this complaint as it relates to potential unfairness, Ofcom observed that programme makers can quite legitimately select, omit or edit interviews provided for inclusion in a programme as long as it does not result in unfairness to those people or organisations directly affected by the programme. This is rightly an editorial decision for programme makers to take. Therefore, Ofcom was not concerned with the nature, number or length of contributions made (and subsequently included in the programme) by parties on either side of the debate. Rather Ofcom sought to determine whether the programme maker’s actions were consistent with its obligation to avoid unfair treatment.

It is Ofcom’s view that the programme: explored the issue of stock transfer of social housing in Wales by showing the difficulties facing the sector and the concerns raised by tenants who had already experienced stock transfer and tenants who were voting on whether or not to follow the same path; gave the interested parties an appropriate opportunity to respond by putting those concerns to the chief executives of the housing associations; and sought (albeit unsuccessfully) the views of the political representative most concerned with this issue. In light of the above considerations, Ofcom considered that the programme had exercised its editorial independence in deciding how to represent the different views of the matter of stock transfer and that because the programme had accurately represented these different views it had not been unfair to CHC or the housing associations it represented.

Taking into account the above findings, Ofcom found no unfairness to CHC in this respect.

Overall theme

- b) Ofcom then considered the complaint that, given the overall theme of the programme of privatisation, it was unfair that it did not mention that the housing associations featured were “non-profit third sector organisations” with a voluntary and unpaid management board.

In making its decision Ofcom had regard to Practice 7.9 of the Code as set out above.

Ofcom noted ITV’s comment, given in response to this head of complaint, that it deliberately chose to avoid the issue of the structure and business of housing associations. It considered that the programme as broadcast had focused on the transfer of the management of social housing in Wales from local authorities to housing associations; the factors influencing that process; and, the impact that such transfers had had to date and would potentially have in the future upon the tenants living in the properties affected. In light of the focus of the programme, Ofcom concluded that it had not been incumbent upon the programme maker to

reflect the fact that the housing associations featured were operated on a not-for-profit basis or to have included information on the management and salary arrangements in place at these associations since these issues were not pertinent to programme's inquiry.

Accordingly, Ofcom found no unfairness to CHC in this respect.

V2C

- c) Ofcom then turned Ms O'Meara's complaint on behalf of CHC as the representative body of V2C, considering each point entertained under this head of complaint.

In relation to this head of complaint Ofcom took particular account of Practice 7.6 of the Code which requires that "when a programme is edited contributions should be represented fairly" and Practice 7.9 (editing), as set out at head a) above.

- i) Ofcom looked at the complaint that all positive references to the benefits from stock transfer in the interview footage with V2C's Chief Executive, Mr Peter Cahill, had been edited and omitted from the programme as broadcast. With regard to this issue, it observed that Mr Cahill was shown in the programme outlining the improvements that V2C had made since it took over control of the social housing stock formerly managed by Bridgend County Borough Council. In particular, Ofcom noted that Mr Cahill was shown saying making the following statements about V2C:

"our performance in every day repairs is exemplary in the context of the historical position when we inherited the stock from Bridgend County Borough Council. That's not to say that there aren't issues we need to address";

"nine hundred plus households [which] have been deemed priority homeless have been housed since transfer, that shows the massive contribution that Valleys to Coast is making in the context of homelessness."

It also took account of the following comment made by Mr Cahill in the programme after Helen Callaghan (the reporter) had indicated that, like several other counties, Bridgend had not had the money to improve its social housing to the required standard:

"Bridgend County Borough Council was stuck between a rock and hard place [because] on the one hand housing was clearly falling into disrepair with no investment for decades and [on] the other knowing what was available in terms of using those assets to raise money on the private markets to bring about improvements".

In Ofcom's view this comment clearly implied that Mr Cahill believed that one of the benefits of stock transfer was that, in contrast to the situation under local authority management of social housing, it enabled money to be borrowed against the value of the social housing stock which could then be spent on improvement. Taking account of the comments included in the programme, Ofcom found that the programme maker was not unfair in its editing of the references to stock transfer made by Mr Cahill during his interview.

- ii) Ofcom next considered the complaint that while the programme gave significant prominence to the Chelsea Avenue estate it had not included that part of the interview with Mr Cahill in which he referred to this estate.

Ofcom looked at the transcript of Mr Cahill's interview with the broadcasters and of the broadcast in which extracts from this interview were included. It observed that the interviewer raised questions put forward by the tenants of Chelsea Avenue with Mr Cahill during the interview and that two of the comments made by Mr Cahill in response to these concerns were included in the programme.

Specifically:

"We have inherited something of a quagmire of issues that we need to unravel, and I think the positive engagement agenda with tenants, we've got some way to go on that, I would be the first to admit it, we're not going to be defensive about that in any way";

and, the quote at head c) i) regarding V2C's performance on every day repairs.

In addition, in response to a question about homelessness in Bridgend and the fact that there were a number of boarded up houses on Chelsea Avenue, Mr Cahill was shown giving statistics about the number of houses at the estate which V2C had brought back into use.

"We've slashed the number of empty houses since transfer, we inherited a position where in excess of 450 homes were empty at the time of transfer. That's down below 200 now, not to say there isn't work to be done and in some cases it's about radical redesign not simply about spending money on property that may have a limited life".

Ofcom recognised that some of these comments had been edited. However, it noted that this was an entirely legitimate exercise on the part of the programme maker and had not resulted in unfairness to the complainant since his broadcast comments fairly reflected those made in his full interview.

Given the nature of the comments included in the programme Ofcom found that the programme maker had not unfairly edited the references Mr Cahill had made to Chelsea Avenue during his interview.

- iii) Ofcom then considered the complaint that the manner in which the draft inspection report from the Wales Audit Office ("the WAO") on V2C was dealt with was intended to mislead the viewer into believing that Mr Cahill was unsure about the reasons for the changes to the draft inspection report when, in fact, he had been referring to changes to the Welsh Assembly Government ("the WAG") regulatory code [against which housing associations were being measured].

Having viewed the programme and looked at the transcript of Mr Cahill's interview, Ofcom concluded that it was clear from the programme that he had stated that:

“on a number of grounds, methodology, not recognising the inheritance or the challenges, as you have seen, of the stock and the basic infrastructure for service delivery that we took over in 2003. And, inaccuracies and the lack of balance in the report was such that the Welsh Audit Office accepted that it needed significant revision and we’re currently and hopefully working towards a publication date in September”.

The transcript of Mr Cahill’s interview indicated that he also commented on the fact that the WAO had to change a number of reports because a new regulatory code was being introduced. However, as noted above, a programme maker may edit interviews provided for inclusion in a programme as long as it does not result in unfairness.

Ofcom noted that in the full untransmitted interview Mr Cahill stated that:

“the Welsh Audit Office, as you know, has a number of reports from RSLs [registered social landlords] because they [the WAO] had been in discussion with the Welsh Assembly Government about the new regulatory code and the need to reflect that [code] in their reports”.

While this was not included in the programme, Ofcom was satisfied that the programme did not imply to the viewer that Mr Cahill was unsure about the reasons for the changes to the draft inspection report and it was therefore not unfair to him. Indeed, as noted above, Mr Cahill’s edited comments as broadcast were not unfair as the programme fairly reflected the full interview and Mr Cahill was shown very clearly setting out a number of the reasons which he felt had led to the re-drafting of the report. Therefore, Ofcom found no unfairness in this regard.

- iv) In relation to the complaint that no V2C tenants were interviewed to confirm that improvements had taken place, Ofcom noted that in its response to the complaint ITV had explained that it “could not find any tenants who held this view and were willing to be interviewed”. It appeared to Ofcom, from the information before it, that ITV had taken reasonable steps to gather opinions from a range of local residents and had appropriately reflected those opinions in the programme as broadcast. In light of this, Ofcom’s found that V2C was not treated unfairly in the programme as broadcast in relation to the interviews with V2C tenants.
- v) Ofcom then considered the complaint that the programme implied that political interference had forced changes to the WAO draft inspection report on V2C despite there being no attempt to support that view with evidence.

Ofcom observed that a spokesman from the WAO was shown in the programme clearly stating that the draft reports it had written about a number of housing associations (not just V2C) had to be changed because the measures in the regulatory code against which the associations had been judged were being changed. He commented that:

“We [the WAO] were notified that the regulatory code against which we were assessing the associations was likely to be amended by the Assembly. The original code referred to organisations having

fundamental obligations to meet the requirements of the Assembly, that changed significantly to key expectations. What that meant in terms of inspection was, it potentially affected the judgements that we may make”.

In Ofcom’s view, given the WAO’s comments it was reasonable for the programme’s commentary to have stated that:

“in effect that means the criteria on which housing associations are judged has been toned down”.

Ofcom also recognised that the WAO spokesman had then indicated that he was “*not entirely certain why the revisions [to the regulatory code] had to take place*” and suggested that as “*the Assembly Government is the regulatory body [for social housing]...perhaps it would be better to discuss with the regulators themselves the reasons behind the change*”.

While Ofcom recognised that these comments might be construed in different ways, it did not consider that they necessarily implied that political influence had resulted in a change to the regulatory code as complained of. Rather, it concluded that the comments simply reflected the fact that the change had taken place and indicated the body responsible for that change. It also recognised that the comments were made by an appropriate person, namely a representative of the WAO.

Ofcom observed that following the interview with the WAO spokesman, the programme indicated that Plaid Cymru had suggested to the programme maker that “the Assembly [i.e. the WAG] changed the code because it was worried by the severity of the criticisms of Valleys 2 Coast [i.e. the criticisms in the WAO’s draft inspection report on V2C]”.

Ofcom recognised that the V2C housing association might regard itself as having had an interest in this matter. However, given that the allegation of political interference was made about the WAG, which has not brought a complaint, and not V2C, the panel considered that it was rightly the province of a representative of the WAG to address this allegation (and indeed the broadcaster approached the WAG for such a response). It also considered that it had not been incumbent upon the programme maker specifically to address this allegation to V2C. Taking all of these factors into account, Ofcom considered that the programme had not treated V2C unfairly in reporting that Plaid Cymru had suggested that political influence might have led to a change in the regulatory code against which the housing association was measured.

- vi) Finally, Ofcom considered the complaint that Mr Daniel Atkins, one of the contributors interviewed about the housing on the Chelsea Avenue estate and shown in the programme as a V2C tenant, was not, in fact, a V2C tenant. Ofcom noted that in its response to the complaint ITV acknowledged that Mr Atkins had not been a tenant of V2C’s but stated that he had lived with his girlfriend who was a tenant of the Chelsea Avenue estate. In light of this, it is Ofcom’s view that Mr Atkins was qualified to comment on life at Chelsea Avenue. It therefore found that the programme had not resulted in unfairness to V2C by including Mr Atkins’s contribution.

In light of the above findings Ofcom found no unfairness to V2C as a member of CHC in this respect.

Wales and West

d) Ofcom considered Ms O'Meara's complaint on behalf of CHC as the representative body of Wales and West. As it had when considering head c) of this complaint, Ofcom took particular account of Practices 7.6 and 7.9 (editing and treatment of material facts) in relation to this head of complaint.

- i) Ofcom looked at the complaint that the programme makers had spoken to a Wales and West resident who had made positive comments about the association, but none of these comments were included in the programme.

The panel noted from ITV's submission that while ITV had found one tenant who had made positive comments about Wales and West, this tenant had not wished to be interviewed for the programme. It considered that in light of the fact that the broadcaster stated that it had spoken to some forty or fifty residents from the Cefn Celyn and Hillside Court estates (estates operated by Wales and West) and only this one tenant had made positive comments about the housing association, it had not been incumbent on the broadcaster to report the fact that they had been made. Given the large imbalance between the level of negative and positive comments raised by the Wales and West tenants to whom the programme maker had spoken, Ofcom recognised that the extracts from interviews with tenants at Hillside Court which were included in the programme reflected the broad swathe of opinion amongst the wider group of tenants at these two Wales and West estates. Therefore, it found that the editorial decision not to include or otherwise summarise the one set of positive comments did not result in unfairness to Wales and West.

- ii) The next sub-head of this complaint was that despite being aware of the problems at Hillside Court and the background to the action that had happened and was planned, the programme unfairly implied that the action that was taken (namely, the maintenance work) had only occurred because of the involvement of the programme makers. Ms O'Meara added that for legal reasons Wales and West were unable to comment on the matters surrounding the dispute at Hillside Court and were unable to rebut the allegations made in the programme.

With regard to this sub-head of complaint Ofcom took particular account of the obligation on broadcasters to give "an appropriate and timely opportunity to respond" to any allegations of wrongdoing or incompetence (as set out in Practice 7.11 of the Code); and, where applicable, to make clear the fact that the party concerned had declined to contribute to the programme and, if necessary, the reasons why it had chosen not to do so (as required under Practice 7.12 of the Code).

Ofcom observed that Helen Callaghan (the presenter) said:

"the concrete was down for nine months. But when Wales This Week started filming at Hillside Court workmen appeared. They didn't want us to film them".

It recognised that, from the comments made by the reporter in the programme, viewers might have inferred that the maintenance work carried out at Hillside Court at the same time that the programme maker was filming at this location had occurred either solely or partly as a result of the presence of this film crew.

However, in the absence of any persuasive evidence to the contrary, it is Ofcom's view that in light of the circumstances (namely, the fact that the workmen came to repair the fallen concrete on the day that ITV was filming at Hillside Court) it was reasonable for the programme to have made such an inference.

Ofcom considered that this was a significant allegation and therefore that it was incumbent upon the broadcaster to give Wales and West an opportunity to respond to it.

The panel then considered whether or not Wales and West was given an appropriate and timely opportunity to respond to allegations put to it by the broadcaster and whether the programme made clear that the housing association had chosen not to appear in the programme and any reasons that it gave for not doing so.

In relation to these issues, Ofcom looked at both the original complaint form and the statement made by ITV as well as the correspondence between the programme maker and Wales and West. From these documents it recognised that having been made aware of the housing association's inability to comment on issues pertaining to a legal case which had been brought against it by one of the residents of Hillside Court who appeared in the programme (Mr Paul Ronald), ITV took the following actions:

It delayed the broadcast date of this programme until after the next scheduled hearing for this case (at which point the legal case was put on hold).

Having again asked for and been refused an interview with Wales and West (after the legal case was put on hold), ITV made it clear in the programme that Wales and West had declined to take part in the programme and had stated that this was on legal advice.

In addition, Ofcom noted that rather than relying solely on the testimony of tenants at Hillside Court, including Mr Paul, ITV commissioned an independent surveyor to survey Hillside Court and reflected his findings in the programme.

In light of these actions, Ofcom considered that ITV had given Wales and West an appropriate opportunity to respond to the claims made by tenants at Hillside Court, and had fairly reflected its reasons for not availing itself of this opportunity. ITV had additionally made arrangements to ensure that viewers were given an independent view of the state of maintenance at Hillside Court at the time of filming because it employed a surveyor to assess the estate. Therefore, Ofcom found no unfairness to Wales and West in relation to this complaint.

- iii) The next complaint considered was that the programme was unfair because it had not made reference to evidence, provided to ITV by Wales and West, that, in contrast to the position shown in the re-used footage relating to Cefn Celyn housing estate in 2000, the estate had been well maintained.

With regard to this sub-head of complaint Ofcom took particular account of Practice 7.8 of the Code which requires that “broadcasters should ensure that the re-use of material ... does not create unfairness” and Practice 7.11 (opportunity to respond).

With regard to this sub-section of the complaint, Ofcom noted that the archive nature and the context of this footage as well as the year in which it was originally broadcast was made clear in the programme. It also recognised that Andrew Davies AM, the local representative in the Welsh Assembly for residents of the estate in question, was shown explaining that he had remonstrated with Wales and West regarding its management of the estate at the time and then asked for a report to be commissioned into the matter. Ofcom also noted that he indicated that once the report had been commissioned he understood that “changes were made”.

Andrew Davies (AM):

“Well, basically I read the riot act to Wales and West. I felt their management was basically out of touch, it was not fit for purpose for dealing with an estate and tenants like Cefn Celyn and I said as much to Edwina Hart, the housing minister and asked for a report to be done into the operation because I was not happy, as a local assembly member. That report was commissioned and I understand changes were made”.

It is Ofcom’s view that in light of these factors the broadcaster’s re-use of the footage did not result in unfairness to Wales and West. Ofcom also considered that given that ITV had reflected the historic situation at Cefn Celyn; had included the comment from the local AM, who was involved at the time, indicating that changes had since taken place; and had not made any allegations of subsequent wrongdoing or incompetence to Wales and West with regard to its management of Cefn Celyn, it was not incumbent upon the broadcaster to offer the housing association an opportunity to comment on this particular topic.

Ofcom acknowledged that programme makers can quite legitimately select, omit or edit interviews and written responses provided for inclusion in a programme as long as this does not result in unfairness to those people or organisations directly affected by the programme. This is rightly an editorial decision for programme makers to take.

As noted above, it was not incumbent on the broadcaster to provide Wales and West with an opportunity to comment on the situation at Cefn Celyn in 2000/2001. In light of this, Ofcom considered that although the programme maker requested information from Wales and West, its decision not to include any reference in the programme to Wales and West’s responses to a series of written questions on this matter was a legitimate outcome of the editorial process and was therefore not unfair to the complainant.

- iv) In relation to the complaint that it was unfair that the programme did not make any reference to Wales and West's full written statement, the panel again noted its position that the inclusion or exclusion of sections or the entirety of such material is an editorial decision for the programme maker as long as the action taken does not result in unfairness. Ofcom looked at Wales and West's response to the list of questions e-mailed to it by *Wales This Week* on 14 August 2006. It noted that three of the written questions or responses related to the situation at Cefn Celyn (see head d) ii) above for Ofcom's finding on this subject) and the other three did not specifically relate to matters included in the programme. It is also relevant that, as noted in head d) ii) above, the broadcaster did give the housing association an opportunity to respond to the specific allegations about its current activities which were raised in the programme. Having looked at each of the written responses with reference to comments made in relation to Wales and West in the programme, Ofcom did not consider that the exclusion of this material resulted in unfairness to Wales and West.
- v) With regard to the complaint that the aforementioned re-use of archive footage at head d) iii) was unfair because it related to matters which had already been resolved Ofcom again took particular account of Practice 7.8 of the Code which states that "broadcasters should ensure that the re-use of material ... does not create unfairness".

Ofcom noted that ITV had indicated that the footage came from an archive news report and was not taken by a tenant at the estate. The panel also noted that this complaint had been brought by the CHC on behalf of the housing associations it represented, and that therefore Wales and West's comment that the tenant in question had told it that he/she was unhappy about the re-use of this footage was not relevant to this complaint since the tenant had brought no complaint regarding the footage.

As discussed at d) iii), the panel found that the re-use of this archive footage of Cefn Celyn was not unfair to the housing association because the programme clearly set out the context and the date pertaining to the footage in question.

In light of the above findings Ofcom found no unfairness to Wales and West as a member of CHC in this respect.

Newport Housing

- e) Ofcom considered Ms O'Meara's complaint on behalf of CHC as the representative body of Newport Housing. In respect of this head of the complaint the panel had particular regard to Practice 7.8 of the Code (re-use of material) and Practice 7.9 as it relates to the presentation of material facts.
- i) Ofcom first considered the complaint that permission to use the interview footage with Mr Phil Toms, the Chief Executive of Newport Housing, was withdrawn and that having declined the Trust's offer of a second interview the programme makers used library footage of Mr Toms with a voice-over which unfairly implied that he was unwilling to be interviewed.

With regard to this complaint Ofcom noted that the programme had made clear that Mr Toms had given an interview but that once filming had been completed he felt that he had been misled and had therefore withdrawn consent for the interview to be used.

Over footage of Mr Toms, Helen Callaghan, the presenter, said:

“The Chief Executive of the Trust, Phil Toms, did agree to an interview but after filming he alleged that he’d been misled. We then sent him a list of questions about service charges, he said that service charges on disability aids applied to many tenants not just housing association tenants and that they were usually covered by benefits, he added that they had nothing to do with stock transfer”.

In relation to providing an appropriate and timely opportunity to respond, Ofcom noted that the Code does not specify whether such a contribution to a programme should follow a particular format. Rather, the obligation on the broadcaster is to avoid unfairness.

Ofcom noted: that Mr Toms had been interviewed by ITV; that he subsequently indicated to the broadcaster that he wished to withdraw his interview; and, that following receipt of this withdrawal ITV sent Mr Toms a list of questions with view to arranging a further interview.

It also noted that while ITV did not arrange for a subsequent interview, Mr Toms twice contacted the broadcaster with regard to the questions.

Ofcom observed that in an e-mail to ITV (dated 6 September 2006), Mr Toms said:

“I explained that the specific service charges you seek to ask questions on relate just to maintaining and the annual safety servicing of additional individual physical aids and adaptations to assist particular disabled people to live as independently as possible in their own home. Each person qualifying for such adaptations will usually qualify for additional government benefits to assist with paying for such attendance or mobility assistance. They do not relate to the issue of stock transfer in any way as they are individually tenant specific and outside the issues of rents, general service charges or Housing Benefit as they affect tenants in a general way. This is an issue faced by all tenures and not just tenants of housing associations”.

Ofcom considered that while the broadcaster did not arrange for a subsequent on camera interview Mr Tom’s comments from his e-mail of 6 September 2006 were fairly represented in the programme as broadcast (as quoted above).

The panel also considered that Mr Toms’ position in relation to the first interview (and its subsequent withdrawal) had been fairly set out by the reporter in the programme as required under Practice 7.12 of the Code (see Decision at head d) ii above).

It therefore considered that the programme maker’s written questions to Newport Housing had constituted an appropriate and timely opportunity for the association to respond to the criticisms raised in the programme

about Newport Housing's application of service charges to its tenants as required under Practice 7.11 of the Code (again, see Decision at head d) ii above).

- ii) Finally, Ofcom considered the complaint that the programme makers unfairly referred to the issue of service charges to support an anti-stock transfer sentiment of the programme.

Ofcom noted that as set out in the decision on head a) of this complaint, the programme had included a range of views concerning stock transfer and the housing sector and had not unfairly excluded positive examples of the sector or the potential benefits of stock transfer (see Decision at head a) i) and ii) above).

Ofcom recognised that Mr Toms felt that the issues of service charges and stock transfer were unrelated. However, Ofcom noted that the programme had clearly set out the relevance of the issue of service charges. It had done this through its relation of the experience of one Newport Housing tenant who was facing rent arrears as a result of the introduction of service charges three years after she had been part of a transfer of tenants from prefabricated housing owned and managed by the local council to bungalows managed by Newport Housing. Ofcom also noted that the issue of service charges had been raised by some of the tenants in social housing soon to vote on whether or not to approve the stock transfer of the properties in which they live. Taking these factors together it was Ofcom's view that it was not unfair for ITV to have raised the issue of service charges in a programme considering stock transfer.

Taking into account these findings Ofcom found no unfairness to Newport Housing as a member of CHC in this respect. The complaints of unfair treatment were not upheld.

Complaint by Mr Taranjit Singh

News and other programmes, BBC Asian Network, 5 June 2006

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

On 5 June 2006, BBC Asian Network radio (“the network”) broadcast a series of news bulletins and other programmes reporting that a video game was being created that was set in 18th century India and depicted “Sikhs killing Muslims”. The game, called *Sarbloh Warriors*, was referred to during a number of programmes broadcast on the network during the day. Footage of an interview with Mr Taranjit Singh, who was involved in the creation of the game, was included in some of the programmes and he took part in a live discussion about the game.

Mr Singh complained that: the *Sarbloh Warriors* game was misrepresented and that the programmes lacked balance; he was only given three minutes to defend the game on one of the programmes; he was only involved in the phone-in programme when he called as a listener; and an interview he gave was unfairly edited.

Ofcom found as follows:

- that the use of the shorthand term “Sikhs killing Muslims” in the programme was not unfair, since the coverage of the story during the day set the game in its wider context;
- that Mr Singh had a number of opportunities during the course of the day to explain the game in detail;
- that the programme makers were not under any obligation to invite Mr Singh to participate in the phone-in programme, but noted that when he did participate, he was able to explain the game at length; and
- that although footage of a pre-recorded interview with Mr Singh was not available, the comments he stated had been omitted from the broadcast of the interview were included in one of his live contributions.

Introduction

On 5 June 2006, BBC Asian Network radio (“the network”) broadcast a series of news bulletins and other items reporting that a video game was being created that was set in 18th century India and depicted “Sikhs killing Muslims”. The game, called *Sarbloh Warriors* was referred to during a number of programmes broadcast on the network during the day. The game was mentioned in news bulletins and listeners to the *Sonia Deol* programme were asked for their views on the game. Mr Taranjit Singh, who was involved in the creation of the game, was interviewed on the programme. Between 09:00 and 10:00, the game was the subject of a discussion during a phone-in on the *Anita Rani* programme. Mr Singh, who was listening, called in to contribute to the phone-in discussion and explained the nature of the game. Later the same morning, extracts of a pre-recorded interview with Mr Singh were included in news programme *The Wrap*. The game was referred to in this programme as involving “Sikhs killing Muslims”.

Mr Singh complained that he was treated unfairly in the programme.

The Complaint

Mr Singh's case

In summary, Mr Singh complained that he was treated unfairly in that:

- a) The programmes misrepresented his video game project by falsely claiming that Mr Singh was involved in creating a game about "Sikhs killing Muslims", a statement that he considered to be untrue and offensive. He said there was no graphic, conceptual or textual proof that that was what the game was about, as the game had not been made at that stage and was still in the early research stages. The programme makers had no information from the Sarbloh Warriors website or screenshots that gave any indication that the game was going to promote violence between different ethnicities. Mr Singh added that even after he was able to present to the programme makers his view of what the educational game was about, the BBC continued to broadcast the message that the game was about Sikhs killing Muslims. The programmes did not represent a balanced viewpoint and withheld relevant information provided by Mr Singh which would have resolved any misunderstanding about the game.

Mr Singh further argued that the programme makers set out to get public feedback by saying "*They are making a game about Sikhs killing Muslims. What do you think about that?*" and got unfair negative feedback to support their headline. The programme makers also ignored information provided by Mr Singh that proved that the game was not about Sikhs killing Muslims, in the form of an article researched and written by him detailing that Muslims were always part of the Sikh armed forces and that Afghans and Persians were also at war with the Mughals. Instead of producing a balanced view and treating the matter sensitively, the programmes were based on common stereotypes about ethnic tensions between Sikhs and Muslims.

- b) On the *Sonia Deol* programme, Mr Singh was unfairly given only three minutes to defend the project and explain what the makers were doing and, in any event, the damage had been done by that time.
- c) The BBC did not involve Mr Singh in the phone-in on the *Anita Rani* programme about the video game until he called in as a listener and asked to be involved, which was unfair to him. Mr Singh also stated that if he had not done so, the discussion would have continued without him having a chance to explain what the game was about.
- d) In a recorded interview, Mr Singh had explained that the makers of the game did not want to offend anyone and were willing to work with any Muslim groups that would be willing to work with them to make sure the project did not offend anyone and stayed historically correct. This was unfairly cut from the interview.

The BBC's case

In response to the complaint of unfair treatment, the BBC said in summary:

- a) In response to the complaint that the game was misrepresented, the BBC said that the origins of the story lay in exchanges of messages on web discussion sites. It was clear from these that there was a perception that the game was recalling a violent period in Indian history when Sikhs were fighting Muslim forces during the rise and fall of the Mughal Empire. The postings reflected differing

views over whether a renewal of such conflict through a computer game was acceptable in the 21st century and concern about whether it was appropriate to use a violent computer game in education.

The BBC said that the Asian network's remit includes broadcasting to Sikh and Muslim communities. Its programme team made a news judgement that the debate about Sarbloh Warriors was a topic relevant to its audience. The network reported that Sarbloh Warriors was a game in which Sikhs killed Muslims because what the programme makers had found out about the game and the period of history being recreated supported that statement. The reports also set the description in historical context by also describing the game as being about "Sikhs fighting Mughal soldiers". Based on information on the Sarbloh Warriors website, the name of the game was open to interpretation as a celebration of religious warriors pledged to defend their beliefs and their fellow Sikhs by using their skills with weapons of war.

The BBC argued that, although the game was not yet publicly available, it seemed clear from the pre-launch publicity that the plan was for a game in which the participants would be playing Sikh characters. It also seemed clear that if, as the Sarbloh Warriors website stated, the characters would be using "swords, axes and maces" in a game of "intense action", then they would be killing others, in the game. The context of the game was set by the wording on the website, which also included a warning that the game was not for "children, pacifists and those of weak heart". At no point did Mr Singh dispute that the game was about Sikhs and that, in a computer game context, there would be killing.

The BBC's said that the reports made it clear that there was more to the game than simply Sikhs killing Muslims, but that there was a clear argument that if you made a computer game about Sikhs fighting the Mughal Empire at that point in history it could be seen as a struggle between religions, namely Sikhism and Islam. The fact that some Muslims fought alongside the Sikhs did not change the overall picture of a conflict between religiously inspired and motivated forces in which Sikhs and Muslims died. Describing the game as one in which Sikhs killed Muslims was a fair statement about the way the game had been developed and a valid description for use in news reports seeking to summarise the game and the reasons it had provoked criticism.

In response to the complaint that the coverage of the story about the game lacked balance, the BBC said that Sarbloh Warriors was given extensive and fair coverage which was reflected in a range of viewpoints, both positive and negative about the game. In following the story, the reporting team found a range of opinions and tried to reflect those in the coverage, while placing the game in its historical context, reporting its educational intent and making it clear that it was still in development.

Mr Singh was given his say, making listeners fully aware that he was defending the game as educational. Different strands of his arguments were reflected at different times. He appeared in brief clips in some news bulletins, in longer clips in two reporter-led items and he was interviewed live on the *Sonia Deol* programme and on the evening languages programme. He also took part in the phone in on the *Anita Rani* programme and was put on air for a lengthy period. Although Mr Singh felt very strongly that no-one could or should view the game as aggressive or likely to stir inter-faith tensions, others to whom the programme team spoke believed that there were risks with such a game. The BBC noted that Mr Singh said that he provided them with information that showed that such an

interpretation was wrong, but argued that, even though the game was still in development, it was clear from his own website at the time of broadcast that the game was intended as a one where Sikh characters were to fight in a graphic way with the computer-generated Mughals who would be overwhelmingly Muslim. Whatever the educational intention, the programme makers were aware that some people would find the concept of such a game deeply offensive. After talking to the programme makers, Mr Singh did seem to recognise at least one source of potential offence and removed references to "evil Pathans" from the game's description on the website.

The programme makers were satisfied that Mr Singh was made fully aware of their intentions before the coverage was broadcast: the day before transmission he had drawn attention to the controversy over the game on his own Sarbloh Warriors website and had emailed contacts, including the reporter from the Asian Network. In his email he said:

"...a few people have made a big thing about the fact that the Sarbloh Warriors game is racist and is about Sikhs killing Muslims. Well we are going to be on BBC Asian Network Radio at 8.15 tomorrow morning so we can have a chance to get our viewpoint across..."

Much of the discussion throughout the day concentrated on the violent aspect of the game and Mr Singh recognised this in an email to the reporter towards the end of the morning's coverage. His emails and other messages confirmed that Mr Singh was aware that the network would be reporting the controversy and discussing whether the game, whatever its aim, might damage community relations. He was prepared to enter into the debate and, through the network, respond to the criticisms that had already been posted on various websites.

- b) In response to the complaint that Mr Singh was only given three minutes to defend the game on the *Sonia Deol* programme, the BBC said that he appeared by pre-arrangement just after 08:15 in a live, unedited interview. He also appeared live and therefore unedited on two other occasions during the day and was able to discuss the aims of the game and make the points he accused the network of withholding. The programmes all sought to reflect the discussion in a way which gave all sides an opportunity to comment.
- c) In response to the complaint that Mr Singh was only involved in the phone in show when he called as a listener, the BBC did not consider that the matter of whether Mr Singh should have been invited to take part in the phone-in discussion fell within Ofcom's remit. However, the BBC stated that the programme makers' usual practice was to vary guests and try to take a story on and find fresh voices, other than those that appeared on the breakfast programme, i.e. the *Sonia Deol* programme in this case. The BBC argued that there was therefore no unfairness to Mr Singh in the planning of the programme in this case. However, once he rang, the editor on duty made a decision to put him on the programme as a caller. As a result, Mr Singh was provided with a further opportunity to appear on air to discuss and defend his game.
- d) In response to Mr Singh's complaint that his recorded interview was unfairly edited, the BBC said that the original news clip interview with Mr Singh no longer existed. However, the BBC said that Mr Singh's reference to the makers of the game not wanting to offend anyone and being willing to work with any Muslim groups that would be willing to work with them to make sure the project did not offend anyone and stayed historically correct was included in his live, and

therefore unedited, contribution to the phone in. He was able, in the phone in as well as on the other occasions when he was broadcast live and unedited, to make the points he accused the network of withholding.

Decision

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

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

Mr Singh's complaint was considered by Ofcom's Executive Fairness Group. Ofcom considered the complaint and the broadcaster's response, together with recordings and transcript of the programmes as broadcast.

As a preliminary point, when considering Mr Singh's complaint, Ofcom considered, where relevant, the footage broadcast during the course of the day on 5 June 2006, rather than considering the different programmes individually.

Ofcom found as follows:

- a) Ofcom first considered Mr Singh's complaint that the game was misrepresented and that the programmes lacked balance.

In considering this head of complaint, Ofcom took into account Practice 7.9 of the Code. Practice 7.9 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.

Ofcom considered that, although the game was referred to as being about "Sikhs killing Muslims" at times during the coverage, the discussions of it during the course of the day were lengthy and included a number of explanations of the game and its aim and meaning, for example in the *Sonia Deol* programme the reporter said:

"...the idea is that you get to step into the shoes of a Sikh warrior during the time of the Mughal Empire. Now for those of you who don't know much about history, Mughal soldiers were mainly Muslims, some Persians and Afghans too, and along the way on this journey apparently there'll be animated pop ups with facts, figures, puzzles and riddles, so that's the history and learning bit, but essentially you get to re-enact what happened hundreds of years ago..."

Ofcom noted that Mr Singh's contributions were aired extensively during the course of the day and he was able to get his points across very clearly, for example, also in the *Sonia Deol* programme, he said:

"...we're going to have a very strong kind of Sikh-Muslim inter-faith message in the game and the game isn't just about killing, I mean you've

got to understand yeah, we're going to be depicting what actually happened. That history was brutal at the end of the day".

The coverage of the story on the programmes broadcast during the day also included lengthy discussions of the history behind the game, from presenters, from Mr Singh and from guests or callers on the programmes. In Ofcom's view, overall, during the course of the day the game was set in its wider context, explained and discussed at length. In these circumstances the use of the shorthand references to "Sikhs killing Muslims" on occasion was not unfair to Mr Singh.

Ofcom found that the programme was not unfair to Mr Singh in this respect.

- b) Ofcom next considered the complaint that Mr Singh was only given three minutes to explain the game during the *Sonia Deol* programme.

In considering this head of complaint, Ofcom took into account Practice 7.11 of the Code. Practice 7.11 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.

Ofcom considered that the coverage throughout the day amounted to a full debate about the merits of the game, with people in support and people opposed to the game taking part. Ofcom did not consider that the coverage amounted to a significant allegation to which Mr Singh was entitled to an appropriate and timely opportunity to respond.

Ofcom noted, however, that in any event Mr Singh was able to explain the game on a number of occasions: as set out above, in considering Mr Singh's complaint Ofcom looked at the programming as a whole during the course of the day. It noted that the *Sonia Deol* programme, broadcast from 06:00 to 09:00, included a live interview with Mr Singh, in which he explained at some length the background to the game and his views as to why it was likely to play a positive role in relations between Sikhs and Muslims. During the day he also participated in other programmes, either through the use of footage of his pre-recorded interview or his contribution to the phone-in programme.

Overall, although there was not a significant allegation made about Mr Singh, he did have a number of opportunities during the day to take part in the debate and explain the Sarbloh Warriors game.

Ofcom found no unfairness to Mr Singh in this respect.

- c) Ofcom considered Mr Singh's complaint that the complaint that Mr Singh was only involved in the phone in show when he called as a listener.

In considering this head of complaint, Ofcom took into account Practice 7.6 of the Code, which states that when a programme is edited, contributions should be represented fairly. Ofcom also took into account Practice 7.11 of the Code, as set out under decision head b) above.

Ofcom took the view that it was for the BBC to decide who to invite to participate in the phone in programme and that the programme makers were not under any obligation to invite Mr Singh to take part. Ofcom's role is to consider whether any unfairness arose to Mr Singh in the programmes as broadcast.

In this context, Ofcom noted that even before Mr Singh called into the programme, other callers and guests were covering the issues fully, with arguments in support of and against the game being aired. One caller who was opposed to the game said:

“Birmingham and Leicester are two prime examples of cities where there's hostility between young Muslim and young Sikh guys, so if this hostility already exists why use examples of what's happened in history to reinforce them, why not use examples not to create barriers between those two hostilities anyway”.

Other callers supported the game, for example:

“...it's part of history and it's happened and I think it's a good way of just educating the youth of the struggles that our ancestors had to go through and just to be proud of what we are”.

During the course of the phone-in, Mr Singh called and was invited to participate in the discussion, which he did. This enabled him again to explain the game and the history behind it at some length. Mr Singh said, for example:

“...it's not just about killing...it's actually a lot of exploration, you're gonna see a lot of like Mughal palaces...there's lots of interaction with other characters...it's actually a really interesting story as well which follows the characters whose had a lot of loss yeah. And what happens when he starts going down the dark route of revenge and what we're trying to show...is that revenge doesn't get you anywhere and the only path to peace is through compassion”.

A little later, Mr Singh said:

“In the period yeah the Persians yeah subdued the Afghans and then they invaded India and they were fighting against the Mughals and the Sikhs were caught up in the middle of it...”

He then went on to explain the history behind the game in some detail before more callers made their observations. Throughout the phone-in Mr Singh had a number of opportunities to explain the game and the history.

As set out under decision head b) above, there was no significant allegation to which the BBC was obliged to give Mr Singh an opportunity to respond. However, during the phone-in and throughout the day, Mr Singh had a number of opportunities to be involved in the debate and to explain the game and the history behind it at some length.

Ofcom therefore found that there was no unfairness to Mr Singh in this respect.

- d) Ofcom next considered the complaint that Mr Singh's recorded interview was unfairly edited.

In considering this head of complaint, Ofcom took into account Practice 7.6 of the Code, which states that, when a programme is edited, contributions should be represented fairly.

Ofcom noted that not all of the interview material recorded with Mr Singh was available and therefore it was not able to determine whether Mr Singh's indication that he did not wish to offend anyone and was willing to work with Muslim groups was edited out of the footage of the pre-recorded interview that was broadcast.

Ofcom noted, however, that in any event Mr Singh did make this point during his live, unedited contribution to the phone-in programme, when he said:

"...we're willing to work with you know any Muslim groups who are offended or want an input into the game because the last thing we wanna do is you know offend anyone's religion".

In these circumstances, and given that Mr Singh was able to put his point of view on this occasions and a number of times throughout the day, Ofcom found no unfairness to him as a result of editing of footage.

Ofcom therefore found that there was no unfairness to Mr Singh in this respect.

Accordingly the Executive Fairness Group has not upheld the complaint of unfair treatment in the broadcast of the programmes.

Other Programmes Not in Breach/Out of Remit

16 to 30 October 2007

Programme	Trans Date	Channel	Category	No of Complaints
"Black Boys" music video	15/10/2007	Channel U	Generally Accepted Standards	1
"Wild Dogs of Kentucky"	25/09/2007	Angel Radio	Generally Accepted Standards	1
10 Grand Fans Competition	16/07/2007	Century 105.4 FM	Competitions	1
10 Years Younger	04/10/2007	Channel 4	Other	1
16 For a Day	01/10/2007	Channel 4	Offensive Language	1
A Cook on the Wild Side	16/09/2007	Discovery	Animal Welfare	1
Alistair Campbell Diaries	12/07/2007	BBC2	Offensive Language	4
Ant & Dec's Saturday Night Takeaway	-	ITV1	Competitions	2
Ant & Dec's Saturday Night Takeaway	-	ITV1	Inaccuracy/Misleading	1
Asylum & Immigration Show	24/04/2007	Legal TV	Inaccuracy/Misleading	1
BBC London News	17/10/2007	BBC1	Generally Accepted Standards	1
BBC News	16/10/2007	BBC1	Inaccuracy/Misleading	1
BBC News	28/10/2007	BBC1	Due Impartiality/Bias	3
BBC News	28/09/2007	BBC1	Violence	1
BBC Radio Somali	-	BBC Radio Somali	Due Impartiality/Bias	1
Benidorm Unpacked	03/10/2007	ITV1	Sex/Nudity	1
Blue Peter	03/10/2007	BBC1	Generally Accepted Standards	1
Brainiac: Science Abuse	03/09/2007	Sky 3	Dangerous Behaviour	1
Breakfast Show	03/10/2007	Clyde1	Generally Accepted Standards	1
Breakfast Show	01/10/2007	Galaxy FM	Offensive Language	1
Breakfast Show	11/10/2007	Heart FM	Generally Accepted Standards	1
Bremner, Bird and Fortune	07/10/2007	Channel 4	Due Impartiality/Bias	1
Bremner, Bird and Fortune	30/09/2007	Channel 4	Generally Accepted Standards	1
Bremner, Bird and Fortune	14/10/2007	Channel 4	Generally Accepted Standards	1
Bringing Up Baby	02/10/2007	Channel 4	Commercial References	1
Bringing Up Baby	25/09/2007	Channel 4	Generally Accepted Standards	1
Captain Scarlet	25/09/2007	CITV	Violence	1
Captain Scarlet	16/10/2007	CITV	Violence	1
Captain Scarlet	02/10/2007	CITV	Violence	1
Casualty	20/10/2007	BBC1	Inaccuracy/Misleading	1
Celebrity Wifeswap	30/09/2007	Channel 4	Offensive Language	3
Champions League Live	24/10/2007	Sky One	Scheduling	2
Chart Busters	15/10/2007	The Hits	Sex/Nudity	1
Chelsea-v-Liverpool	19/08/2007	Sky Sports 1	Religious Offence	1
Climax 3	26/07/2007	Playboy	Sex/Nudity	1
Commando: On the Front Line	04/10/2007	ITV1	Animal Welfare	4

Competition	-	Radio Trent FM	Competitions	1
Coronation Street	26/09/2007	ITV1	Generally Accepted Standards	1
Creep	29/09/2007	Channel 4	Generally Accepted Standards	2
Crimewatch	26/09/2007	BBC1	Violence	1
Criminal Minds (trailer)	04/10/2007	Virgin 1	Violence	1
Deal or No Deal	27/09/2007	Channel 4	Competitions	1
Diana: The Witnesses in the Tunnel	06/06/2007	Channel 4	Generally Accepted Standards	1
Dickinson's Real Deal	13/09/2007	ITV1	Competitions	1
Dirt (trailer)	29/09/2007	FiveUS	Generally Accepted Standards	1
Dirty Cows (trailer)	03/10/2007	Living TV	Offensive Language	1
Doc Martin	15/10/2007	ITV1	Sex/Nudity	1
Doc Martin	08/10/2007	ITV1	Generally Accepted Standards	1
Dragon's Den	22/10/2007	BBC2	Exorcism/Occult/Paranormal	1
Drivetime with Myma Seldon	18/09/2007	KMFM West Kent	Offensive Language	1
Emmerdale	03/10/2007	ITV1	Sex/Nudity	6
Emmerdale	03/10/2007	ITV1	Generally Accepted Standards	1
Emmerdale	19/09/2007	ITV2	Generally Accepted Standards	99
Emmerdale	10/9/2007	ITV1	Sex/Nudity	1
Every Heartbeat Ft. Snoop Dogg	31/08/2007	Kiss 100	Offensive Language	1
F1: Brazilian Grand Prix Live	21/10/2007	ITV1	Due Impartiality/Bias	5
F1: Brazilian Grand Prix Qualifying	20/10/2007	ITV4	Other	1
F1: Italian Grand Prix	09/09/2007	ITV1	Advertising	1
Fanny Hill (trailer)	14/10/2007	BBC1	Sex/Nudity	1
Fifth Gear	24/09/2007	Five	Dangerous Behaviour	1
Fifth Gear	02/07/2007	Five	Dangerous Behaviour	1
Five News	25/09/2007	Five	Inaccuracy/Misleading	1
Fizz	09/09/2007	Fizz	Sex/Nudity	1
Frankenstein (trailer)	22/10/2007	ITV1	Generally Accepted Standards	1
Fresh & Jo in the Morning	03/10/2007	Beacon Radio	Offensive Language	1
Friday Night With Jonathan Ross	22/06/2007	BBC1	Offensive Language	1
Front Row	11/10/2007	BBC Radio 4	Generally Accepted Standards	1
GMTV	03/10/2007	ITV1	Due Impartiality/Bias	2
GMTV	12/09/2007	ITV1	Inaccuracy/Misleading	1
GMTV	25/09/2007	ITV1	Due Impartiality/Bias	1
Gardener's Question Time	07/10/2007	BBC Radio 4	Generally Accepted Standards	2
Girls of the Playboy Mansion	06/10/2007	Living	Sex/Nudity	1
Grand Designs	07/10/2007	Channel 4	Offensive Language	2
Halfords sponsorship - Top Gear	18/10/2007	Dave	Inaccuracy/Misleading	1
Halfords sponsorship - Top Gear	10/10/2007	Dave	Inaccuracy/Misleading	1

Harveys Sponsorship - Coronation Street	01/10/2007	ITV1	Religious Offence	5
Have I Got News For You	12/10/2007	BBC1	Generally Accepted Standards	1
Heart FM	23/10/2007	Heart FM	Generally Accepted Standards	1
Hell's Kitchen	09/09/2007	ITV1	Generally Accepted Standards	1
Holby City	02/10/2007	BBC1	Offensive Language	1
Holby City	07/08/2007	BBC1	Violence	1
Hollyoaks	26/09/2007	Channel 4	Generally Accepted Standards	1
Hollyoaks	25/09/2007	Channel 4	Inaccuracy/Misleading	1
How to have Sex after Marriage	03/10/2007	Five	Sex/Nudity	1
ITV London News	26/09/2007	ITV1	Inaccuracy/Misleading	1
ITV News	05/10/2007	ITV1	Due Impartiality/Bias	1
ITV News	30/09/2007	ITV1	Inaccuracy/Misleading	1
ITV News	01/10/2007	ITV1	Due Impartiality/Bias	2
ITV News	20/09/2007	ITV1	Inaccuracy/Misleading	1
ITV News	05/10/2007	ITV1	Generally Accepted Standards	1
ITV West News	08/10/2007	ITV1	Other	1
ITV West News	08/10/2007	ITV1	Generally Accepted Standards	2
Iftari	04/10/2007	Awaz FM	Religious Offence	1
Inside Out	17/10/2007	BBC1 (South)	Due Impartiality/Bias	7
Inside a Shari'ah Court: This World	01/10/2007	BBC2	Religious Issues	1
Jack Osbourne: Adrenaline Junkie	23/09/2007	ITV2	Animal Welfare	1
Jon Gaunt	08/10/2007	Talksport	Generally Accepted Standards	1
Jon Gaunt	18/10/2007	Talksport	Other	1
Jon Gaunt	12/09/2007	Talksport	Generally Accepted Standards	1
Jonathan Ross	13/10/2007	BBC Radio 2	Crime (incite/encourage)	2
Lennon - the Wenner Tapes	06/07/2007	BBC Radio 4	Offensive Language	8
Lenny's Britain	26/06/2007	BBC1	Generally Accepted Standards	1
Live at Five	05/10/2007	Sky News	Due Impartiality/Bias	1
MacIntyre's Underworld	01/10/2007	Five	Crime (incite/encourage)	1
MacIntyre's Underworld	01/10/2007	Five	Dangerous Behaviour	1
Make Your Play		ITV1	Competitions	1
Make Your Play	20/04/2007	ITV1	Competitions	1
Match of the Day	22/08/2007	BBC1	Generally Accepted Standards	1
Match of the Day 2	07/10/2007	BBC2	Generally Accepted Standards	1
Millionaires' Mission	26/09/2007	Channel 4	Generally Accepted Standards	1
Mitsubishi sponsorship - The Contender	23/09/2007	ITV4	Generally Accepted Standards	1
Monty Python's Flying Circus	09/09/2007	Paramount 2	Generally Accepted Standards	1
More4 News	11/10/2007	More4	Due Impartiality/Bias	1

Morning Show	18/10/2007	BBC Radio 4	Inaccuracy/Misleading	1
My Body Hell	03/10/2007	Five	Generally Accepted Standards	1
My Spy Family	10/10/2007	Boomerang	Generally Accepted Standards	1
Never Mind the Buzzcocks	19/09/2007	BBC2	Religious Offence	1
News	14/07/2007	The Quay 107.4	Due Impartiality/Bias	1
Nick Ferrari	17/10/2007	LBC 97.3FM	Generally Accepted Standards	1
Not Going Out	28/09/2007	BBC1	U18's in Programmes	1
Old Harry's Game	04/10/2007	BBC Radio 4	Offensive Language	1
Parkinson	19/05/2007	ITV1	Generally Accepted Standards	1
Paul O'Grady	05/10/2007	Channel 4	Generally Accepted Standards	1
Peugeot Sponsorship - Rugby World Cup	-	ITV	Generally Accepted Standards	1
Playboy Group	-	Playboy	Sex/Nudity	1
Playboy TV	18/08/2007	Playboy TV	Sex/Nudity	1
Playboy TV	14/08/2007	Playboy TV	Sex/Nudity	1
Playboy TV	19/08/2007	Playboy TV	Sex/Nudity	1
Programme trailer	29/09/2007	FX Channel	Violence	1
Question Time	11/10/2007	BBC1	Generally Accepted Standards	1
Ready Steady Cook	28/09/2007	BBC2	Generally Accepted Standards	1
Real Radio Breakfast Show	22/07/2007	Real Radio Yorkshire	Generally Accepted Standards	1
Rebus	05/10/2007	ITV1	Offensive Language	1
Rebus	05/10/2007	ITV1	Generally Accepted Standards	1
RSPCA: On the Front Line	26/9/2007	Five	Generally Accepted Standards	1
Rugby World Cup 2007	30/09/2007	ITV1	Religious Offence	2
Safety Catch	26/9/2007	BBC Radio 4	Generally Accepted Standards	1
Secret Diary of a Call Girl	11/10/2007	ITV2	Sex/Nudity	1
Secret Diary of a Call Girl (trailer)	29/09/2007	ITV1	Sex/Nudity	4
Skins Secret Party Special	09/10/2007	E4	Generally Accepted Standards	1
Sky News	01/10/2007	Sky News	Inaccuracy/Misleading	1
Sky News	10/10/2007	Sky News	Generally Accepted Standards	1
Smallville	28/10/2007	E4	Advertising	1
Star Stories	03/08/2007	Channel 4	Generally Accepted Standards	5
Stoned in Suburbia	24/08/2007	Sky Three	Offensive Language	1
Take Away My Takeaway	25/9/2007	Channel 4	Animal Welfare	1
TV is Dead	16/10/2007	Channel 4	Offensive Language	1
The Alan Titchmarsh Show	02/10/2007	ITV1	Sex/Nudity	2
The Alan Titchmarsh Show	04/10/2007	ITV1	Due Impartiality/Bias	1
The Jeremy Kyle Show	25/10/2007	ITV1	Generally Accepted Standards	1
The Life and Times of Vivienne Vyle	11/10/2007	BBC2	Offensive Language	1

The Mummy Returns	14/10/2007	ITV2	Violence	1
The National Movie Awards	29/09/2007	ITV1	Generally Accepted Standards	1
The Nature of Britain	10/10/2007	BBC1	Animal Welfare	1
The One Show	16/10/2007	BBC1	Due Impartiality/Bias	1
The One Show	27/09/2007	BBC1	Generally Accepted Standards	1
The Surgery	14/10/2007	BBC Radio 1	Generally Accepted Standards	1
The Wild Gourmets	18/09/2007	Channel 4	Crime (incite/encourage)	1
The Wright Stuff	02/10/2007	Five	Generally Accepted Standards	1
The X Factor	20/10/2007	ITV1	Use of Premium Rate Numbers	3
The X Factor	07/10/2007	ITV1	Inaccuracy/Misleading	1
The X Factor	07/10/2007	ITV1	Use of Premium Rate Numbers	2
The Xtra Factor	20/10/2007	ITV2	Generally Accepted Standards	1
The Jeremy Kyle Show	12/10/2007	ITV1	Generally Accepted Standards	1
The Tudors	12/10/2007	BBC2	Sex/Nudity	1
This Morning	10/10/2007	ITV1	Offensive Language	1
This Week	4/10/2007	BBC	Inaccuracy/Misleading	1
Today	16/10/2007	BBC Radio 4	Due Impartiality/Bias	2
Tomb Raider sponsorship - Prison Break	01/10/2007	Sky One	Inaccuracy/Misleading	1
Top Gear	15/10/2007	BBC2	Offensive Language	1
UEFA Cup Live	20/09/2007	ITV4	Other	1
Underdogs	24/09/2007	Channel 4	Offensive Language	1
Up All Night	13/07/2007	Radio 5 Live	Generally Accepted Standards	1
Virgin Mobile sponsorship	07/09/2007	Living TV	Generally Accepted Standards	1
Who Wants To Be A Millionaire? (trailer)	21/09/2007	Challenge TV	Generally Accepted Standards	1
Who Wants to be a Millionaire?	25/09/2007	ITV1	Generally Accepted Standards	1
Zoe and Gillies Breakfast Show	09/10/2007	Power FM	U18's in Programmes	1