

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).

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

Notice of Sanction

SportxxxBabes

SportxxxBabes, 26 February 2007, 21:45; 13 March 2007, 22:25 and 17 March 2007, 23:00.

On 26 August 2008, Ofcom published its decision to impose a statutory sanction on Satellite Entertainment Ltd, in respect of its service *SportxxxBabes*, for seriously and repeatedly failing to ensure compliance with the Code. The service was found in breach of the following Code rules:

- 1.24 ('adult-sex' material);
- 2.1 (generally accepted standards); and
- 2.3 (material that may cause offence must be justified by context).

Ofcom found Satellite Entertainment Ltd in breach of these rules due to the following conduct:

- failure to protect viewers under the age of 18 by broadcasting sexually explicit content, that was unsuitable for broadcast on a free-to air unencrypted channel after the 21:00 watershed (breach of Rule 1.24); and
- broadcasting sexually explicit content contrary to viewer expectations for a free-to-air unencrypted channel (breaches of rules 2.1 and 2.3).

For the reasons set out in the adjudication, Ofcom imposed a financial penalty of £20,000 on Satellite Entertainment Ltd. (payable to HM Paymaster General).

The full adjudication can be found at:

http://www.ofcom.org.uk/tv/obb/ocsc_adjud/sportxxxbabes.pdf?lang=cy

Standards cases

In Breach

Equal opportunities

Duty of licensees to make suitable arrangements to promote equal opportunities in employment and provision of information to Ofcom

Introduction

Section 337 of the Communications Act 2003 (“the Act”) obliges Ofcom to include conditions in radio and television licences that require broadcasters to make arrangements to promote equal opportunities in employment on the basis of gender, race and disability. These conditions require broadcasters to publish their observations on the current operation and effectiveness of the arrangements they have in place. Separately, Ofcom has a duty under section 27 of the Act to promote equal opportunities in employment in broadcasting. It is a condition of every Broadcasting Act licence that the licensee must provide Ofcom with such information as Ofcom may require for the purposes of exercising its statutory functions.

In November 2007, Ofcom requested those broadcasters who are required to have arrangements in place for specific equal opportunities for information and statistics in relation to those arrangements. The Act exempts broadcasters from the requirement to have arrangements in place if they employ fewer than 21 people under a single licence or as part of a larger operating Group, or are licensed to broadcast for less than 32 days per year. Accordingly, licensees who qualified for this exemption during the reporting period are not required to provide the information requested. However, they are required to register their exemption formally online.

Five licensees have failed to provide Ofcom either with a report or register their exemption. Ofcom has formally reminded these licensees on a number of occasions. Since some of these smaller licensees may not currently be operating or may employ fewer than 21 people, Ofcom clearly highlighted the requirement for *all* licensees to respond by lodging their report or explaining why they should be exempt.

Decision

Despite repeated requests and written warnings from Ofcom, a number of broadcasters (see list below) have still not provided the information requested or complied in any other way with the obligation to report on the current operation and effectiveness of their arrangements. Accordingly, Ofcom has now recorded breaches of the following licence conditions:

Condition 12(1):

“The Licensee shall furnish to Ofcom in such manner and at such times as Ofcom may reasonably require such documents, accounts, returns, estimates, reports, notices or other information as Ofcom may require for the purpose of exercising the functions assigned to it...”; and

Condition 25(3):

“...the Licensee shall from time to time (and at least annually) publish, in such manner as he considers appropriate, his observations on the current operation and effectiveness of the arrangements required by virtue of this Condition”.

The following television licensees have been found in breach of Conditions 12(1) and 25(3) of their TLCS¹ broadcasting licence:

Licensee	Service name
Emirates Media Incorporated	Abu Dhabi Channel
UMG Channel Disposition, LLC	IMF: The International Music Feed
RN TV (UK) Limited	RN TV (UK)

Ofcom consider these failures as serious and these breaches of licence conditions have been formally recorded. These licensees will remain in breach of their licence until they provide a report or provide a satisfactory explanation of why they should be exempt. If, within one month of the publication of this decision, these licensees fail to provide Ofcom with the relevant information, Ofcom will consider further regulatory action which includes the possibility of financial penalties.

Breach of Conditions 12(1) and 25(3) of TLCS Licence

¹ Television Licensable Content Service

Spice Extreme trailers

Spice Extreme, 26 July 2007, 21:30 and 5 September 2007, 20:00

Introduction

Spice Extreme is a channel that appears in the 'adult' section of the Sky Electronic Programme Guide ("EPG"). Its core schedule is encrypted sexual programming, starting at 22:00. Each evening the channel also broadcasts 10 minute free-to-air trailers, which promote its later encrypted programmes and encourage viewers to subscribe.

26 July 2007

A viewer complained that a 10-minute trailer broadcast as a repeated promotional loop from 21:30 to 22:30 contained material unsuitable for the time of broadcast and for unencrypted transmission.

Ofcom viewed the broadcasts and asked the broadcaster to comment on how the content complied with the following Code rules:

- Rule 1.2 (protection of under eighteens);
- Rule 2.1 (generally accepted standards); and
- Rule 2.3 (offensive material to be justified by content).

5 September 2007

As part of Ofcom's monitoring of channels found in the 'adult' section of the EPG, we noted a free-to-air, 10-minute trailer broadcast repeatedly from 20:00 to 21:30 that also contained strong imagery and language. Ofcom noted that more explicit versions of the trailer were shown after 21:30. Ofcom asked the broadcaster to comment on how the content complied with the three Code rules above, and Rule 1.3 (protection of children by appropriate scheduling).

Response

26 July 2007

Spice Extreme stated that it "focuses on the more niche areas of sexual activity and may therefore not be to everyone's taste." Nevertheless, it believed the explicitness of the trailer broadcast on 26 July 2007 was generally in line with industry expectations. It added that prolonged shots of genitalia and simulated sex were avoided and, "while some images of sexual activity were shown fleetingly, these were largely obscured by the camera angle or graphics." With regard to the context of the material, the broadcaster said it understood that nudity and certain language may cause offence to some viewers but believed it was generally expected in an adult channel's free-to-air trailers.

On reflection, however, Spice Extreme said that, over time, it was possible for an editor's desire to remain competitive in the 'adult' market to cause elements of free-to-view trailers "to stray marginally beyond what is acceptable." In this instance, the broadcaster considered the trailer to have gone "a little too far." It had therefore taken steps to review compliance with its editors, with a view to toning down its trailers – in particular, with regard to the imagery and language used and the cumulative effect of the separate promotions within them.

5 September 2007

Spice Extreme said that trailers which it broadcasts before 22:00 do not generally feature nudity, profanity or sexual behaviour. With regard to the trailer broadcast from 20:00 in this case, the broadcaster considered that “each individual word and/or image on its own is compliant and aimed at informed adults who are searching the adult EPG for adult content.” However, it acknowledged with hindsight that the trailer “...“felt” stronger in its context than it appeared when broken down to its individual elements” and said that it understood Ofcom’s concerns.

The broadcaster said that nudity and adult language were used to promote its service after 21:30. It noted however that it had stopped including “stronger, more explicit freeviews” since early October 2007, as part of its ongoing compliance review and after Ofcom had first contacted the broadcaster.

More generally, the broadcaster noted that Spice Extreme provides “genuine adult entertainment for the alternative market.” The style of the trailers reflected the expectations of its target audience and aimed to encourage subscriptions.

Decision

Under the 2003 Communications Act, Ofcom has a statutory duty to protect under-eighteens and to ensure that generally accepted standards are applied to programming. Important obligations are placed on broadcasters in Sections One and Two of the Code to fulfil this duty.

Ofcom accepts that a free-to-air promotion for encrypted material within the ‘adult’ section of the EPG will contain a certain amount of sexual activity and that viewers of these channels might expect some depiction of such content. While some viewers may object to such content being aired at all, to curb *all* visual or verbal references to sexual activity would not, in Ofcom’s opinion, be in line with the generally accepted standards for such channels. Additionally, the specific context for such references (including the time of broadcast, location of the channel within the ‘adult’ section and the expectations of the audience) would allow sexual activity to be depicted to some degree. However, it is the extent to, and manner in, which sexual scenes are portrayed that are the most important factors in deciding whether this material complies with Rules 1.2, 1.3, 2.1 and 2.3 of the Code.

26 July 2007 and 5 September 2007

Ofcom considered that, given the sexualised nature of the material (such as images of nudity, simulated sex and the use of inappropriate sexual language), the free-to-air trailers on both dates were clearly unsuitable for broadcast either before, or soon after, the 21:00 watershed. The channel’s positioning within the EPG and its scheduling of materially stronger content only 30 minutes after the 21:00 watershed did not provide adequate protection to prevent under-eighteens accessing the content. The broadcasts were therefore in breach of Rule 1.2 of the Code.

When considering whether the offensive material was justified by context, Ofcom accepts that Spice Extreme broadcasts within the ‘adult section’ of the EPG and that, to some extent, its audience may therefore be self-selecting. We also note the warning given before the free-to-view trailers broadcast in this case, on both 26 July and 5 September 2007, from 21:30. Nevertheless, Ofcom does not consider that

these factors justify the strength of content shown free-to-view. The broadcasts were therefore in breach of Rules 2.1 and 2.3 of the Code.

5 September 2007 only

The trailer broadcast on 5 September 2007 between 20:00 and 21:30 was generally more restrained than the material transmitted after 21:30. However, Ofcom is concerned that it featured sexual imagery and adult themes. As recognised by the broadcaster, the cumulative effect of this material was not acceptable for broadcast before, or close to, the watershed. This content was therefore also in breach of Rule 1.3 of the Code.

Ofcom regarded the above breaches of the Code to be serious and considered whether to recommend this case for consideration of a statutory sanction. Taking into account all the relevant circumstances however (including the broadcaster moderating its output on being made aware of Ofcom's specific concerns and its previous compliance record), Ofcom decided not to pursue a sanction on this occasion. However, any further breaches of this nature by Spice Extreme are likely to result in Ofcom considering the imposition of a statutory sanction.

Breach of Rules 1.2, 1.3 (5 September 2007 only), 2.1 and 2.3

Babecast

Friendly TV, 26 July 2007, from 21:00 to 22:30

Introduction

Babecast is free-to-air unencrypted programming in the adult section of the Sky electronic programme guide (“EPG”). The channel broadcasts programmes based on interactive ‘adult’ chat services: viewers are invited to contact on-screen presenters (“babes”) via premium rate telephony services (“PRS”). The female presenters dress provocatively and encourage viewers to contact them.

Ofcom received a complaint about the sexual nature of the material broadcast from 21:00, which featured the ‘babe’ presenters apparently simulating masturbation and mimicking sexual acts. The complainant also considered that the programme promoted pictures of other presenters and private chat lines (featuring women operators described as being “at home”), available through PRS, which did not contribute to the editorial content of the programme.

Ofcom viewed the material. It noted that between 21.00 and 22.30 the presenters, dressed in very revealing underwear and appeared to simulate various sex acts. The “babes” thrust their buttocks towards the camera, opened their legs wide apart to emphasise their crotches, and the presenters in general were shot in a physically intrusive way,

Ofcom asked Friendly TV for comments on the broadcast of this material under Rules 1.2 (protection of under 18s), 2.1 (generally accepted standards), and 2.3 (material that may cause offence must be justified by context). In relation to the picture and private chat line services, Ofcom sought comments under Section 10 of the Code. Rule 10.9 prohibits the inclusion of PRS in programmes, except where they are programme-related material (“PRM”), as defined under the Code, or where they contribute to the editorial content of the programme (Rule 10.9). Rule 10.4 sets out a general prohibition on undue prominence being given in a programme to any product or service, including PRS, even if the product or service is PRM.

Response

In response to the request for comments in relation to Rule 1.2 (protection of Under 18s), Friendly TV acknowledged that the content was “mildly erotic in nature” and stated that the presenter was simulating sex acts. It pointed out that the channel was within the adult section of the EPG, and noted that a parental lock was available. The broadcaster stressed that the programme makers were “acutely aware” of their responsibilities under the Code in relation to Rule 1.2, particularly where content was broadcast close to the 21:00 watershed.

Further, the broadcaster argued that the content met generally accepted standards and was therefore not in breach of Rules 2.1 and 2.3. This was because the broadcast of the material was justified by the context – such as the time of broadcast, the position of the service within the adult section of the EPG, the availability of a parental lock, and that the language and images were not particularly explicit in nature. All of these factors ensured that any potential offence was minimised and the material would have met audience expectations.

In response to the concerns that the material breached Section 10 of the Code the broadcaster said the picture and chat services were directly derived from the specific programme and were integral to its editorial content enabling viewers to benefit fully from and interact with the programme, i.e. that they were PRM as set out under the Code..

Decision

Although the broadcaster argued the material would have met audience expectations, it is Ofcom's view that despite the fact that this material was placed within the adult section of the Sky EPG, it featured portrayals of sex acts which were inappropriate for broadcast on an unencrypted service available from 21.00.

Ofcom noted the broadcaster's argument that the sex acts were simulated. However, it is our view the combination of images shown and the presenters' actions amounted to highly sexualised content, real or not. In Ofcom's view the broadcaster did not take all reasonable steps to protect the under-18s from this offensive material. Although the stronger content was shown from about 21.30, sexualised material was shown from the start of this programme at 21.00. Ofcom notes that *Babecast* is broadcast within the 'adult' section of the EPG. However, the material was shown free-to-air soon after the watershed when children were likely to be available to view. Therefore the programme was in breach of Rule 1.2.

Further, in view of the points raised above it was also Ofcom's view that the material breached generally accepted standards and there was insufficient context to justify the potential offence to viewers in general. It was therefore also in breach of Rules 2.1 and 2.3.

Ofcom also considered the concerns relating to the promotion of premium rate services during this broadcast which, the complainant claimed, were not directly linked to the material being broadcast.

Section 10 of the Code contains rules that seek to ensure that programmes do not promote products or services. Some limited exceptions are made, for example in the provision of PRM. However, no product or service (including PRM) may ever be featured in an unduly prominent manner in a programme.

PRM is defined in the Code as:

"...products or services that are both directly derived from a specific programme and intended to allow listeners or viewers to benefit fully from, or to interact with, that programme."

Irrespective of whether some or all of the services met the definition of PRM, we considered the manner in which they were referred to within the programme was unduly prominent. There were repeated and prominent references throughout the programme to pictures of presenters and private chat lines, available via PRS, and there was insufficient editorial justification for this level of prominence. The promotion of these services was therefore in breach of Rule 10.4 of the Code.

Further, Ofcom does not consider that the private chat lines, involving off-screen operators described as being "at home" that were directly promoted within the programme as in this case, satisfied the definition of PRM (see above). We considered that these specific (off-screen) services inviting viewers to call women "at home" were independent of the programme with no clear editorial link to the

programme itself. Nor did they contribute in any way to the editorial content of the programme. We therefore considered the promotion of the services was in breach of Rule 10.9.

Ofcom wishes to make clear that these breaches were sufficiently serious that careful consideration was given to whether to recommend this matter to Ofcom's Content Sanctions Committee for a statutory sanction. After careful consideration it was decided on this occasion not to refer this case for sanction in view of all the circumstances – primarily the relative strength of the material. However, Ofcom has informed the broadcaster that any breach of a similar nature in future is likely to result in serious regulatory action.

Breach of Rules 1.2, 2.1, 2.3, 10.4 and 10.9

Sexcetera

Virgin 1, 6 October 2007 and 8 April 2008, 23:00

Introduction

Ofcom received two separate complaints about items featured in the 'adult' magazine style programme *Sexcetera* which explores topics of a sexual nature. The first complainant objected to the explicit sexual scenes in an item entitled "Houston Gang Bang". This featured a pornography actress called Houston being filmed breaking the world record for having sex with the greatest number of men in one day.

The second complaint raised concerns about an item on the sexual practice of water bondage. This showed scenes of consenting female models engaging in sado-masochism, domination and submission with a professional female dominatrix. The report included images of women being restrained underwater, submerged forcefully and whipped. The complainant expressed concern that these scenes depicted torture and were offensive and potentially harmful.

Ofcom asked the broadcaster for comments under Rule 2.3 (broadcasters must ensure that material which may cause offence is justified by the context).

Response

The broadcaster accepted that *Sexcetera* had the potential to generate offence given the sexual content and themes explored in the programme. However, it argued that its late night scheduling, some two hours after the watershed, and its title would have informed the audience of its content.

Further, it stated that the Virgin 1 channel is aimed at men between the ages of 25 and 54 and *Sexcetera* is a well established long running series. Therefore, viewers would expect to find material of this adult nature later in the channel schedule. Additional context was also provided through the warnings broadcast before each episode of *Sexcetera* which would have alerted viewers to the sexual content and language of the programme.

With specific reference to the "Houston Gang Bang", the broadcaster accepted that the content was controversial but argued that the item did not suggest this was suitable behaviour for everyone nor did it glamorise it. The item examined what the broadcaster described as, "the phenomenon of the gang bang genre" in the adult film industry, and did not focus on the "Houston Gang Bang" alone. Specific camera angles and a level of masking were used to avoid overly explicit sexual material from being seen. This meant the scenes shown differed significantly from "adult entertainment".

Concerning the item about water bondage, the broadcaster acknowledged that the report dealt with an unusual sexual practice, but it was characteristic of the series to explore such themes and *Sexcetera*'s audience is both interested in, and accustomed to, viewing such content. Virgin 1 said the examples of water bondage shown were executed in a controlled environment by a trained and professional female dominatrix and featured consenting female models, including an on-screen explanation that these practices were carefully carried out within the participants' own limits at all times. Viewers were informed about the health and safety practices employed and advised not to attempt these activities at home. When submersion or

restraints were applied and participants were unable to speak there was a system in place allowing the dominatrix, and the other participants, to stop the activity.

In summary, the broadcaster argued that neither item breached Rule 2.3 because the content of the reports had been contextually justified.

Decision

Rule 2.3 makes clear that “in applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context.” “Context” in turn includes a variety of different potential factors such as the editorial content of the programme, the service on which it is broadcast, and the effect of the material on viewers who may come across it unawares.

Ofcom acknowledges that, in applying generally accepted standards, programmes with content of an ‘adult’ nature can be broadcast unencrypted provided they comply with all the relevant Rules of the Code. In this case Rule 2.3 applies because the nature of the content broadcast has the potential to cause offence and therefore the material must be justified by the context.

The broadcaster argued that certain factors ensured that the material complained of met generally accepted standards, even though it included fairly explicit scenes of sexual activity on a free-to-air general entertainment channel late in the evening. These included the fact that *Sexcetera* is broadcast late night, its title provides the audience with an expectation of the likely content, it is a long running series so viewers may be familiar with its content, and appropriate information was given to viewers both before and during programmes.

In Ofcom’s opinion however, these factors taken together did not ensure that the material met generally accepted standards for late night programming on a general entertainment channel. The nature and strength of the images of the sexual activities featured in these episodes - prolonged footage of a ‘gang bang’ promoted for public entertainment and scenes of sado-masochism - were removed from the mainstream and type of material most viewers would expect even on a programme like *Sexcetera*.

Therefore, the treatment of these themes by the broadcaster required exceptional justification in the context to provide adequate protection for viewers from offensive material. In Ofcom’s view in summary the contextual justification provided was not sufficient and the broadcaster breached Rule 2.3 as regards both the “Houston Gang Bang” and the “Water Bondage” items.

Houston Gang Bang

According to the broadcaster the focus of the feature was not the scenes of Houston having sex with over 600 men but to report on the ‘gang bang’ pornography genre. In other words the sexual scenes were justified by the editorial context.

Ofcom was concerned however by the number, length and relative explicitness of the scenes of sexual activity shown in the “Houston Gang Bang” item and the context in which they were shown. The whole event was being recorded for a pornographic film and the item focussed on the event as a semi-public “rally” which men could attend and participate in. A series of men, some professional porn stars, were shown queuing up to have sex with the actress in an arena setting, the actress naked and having sex with different men on a podium, while spectators and participants stood

around watching, cheering, clapping and counting down as the last man finished sexual intercourse. No explicit shots of genitalia or penetration were shown, but there were a series of scenes depicting sexual intercourse and other sex acts with close ups of faces and naked bodies.

Further, the style and content of the presenter's commentary overall appeared largely to promote and celebrate gang bangs as a form of adult entertainment, and did not, in Ofcom's opinion, provide adequate editorial context for, or analysis of, what the broadcaster described as the 'gang bang' pornography genre.

Ofcom noted the late night schedule and the fact that a warning was broadcast before the start of the programme. *Sexcetera* however is shown on a general entertainment channel. Ofcom took into account that not only viewers could come across this material unawares but that even viewers who may have been more familiar with the series would have found this item offensive. The "Houston Gang Bang" item therefore overall was not justified by the context and breached Rule 2.3.

Water Bondage

As regards this item, Ofcom was particularly concerned that the scenes, filmed for the purposes of the website of the dominatrix, featured women engaged in various water bondage, domination and sado-masochistic activities. All of these are not mainstream sexual practices. Indeed the dominatrix herself described these sado-masochistic sexual practices as "extreme," and the commentary noted that such activities are usually accessed only on 'adult' websites.

The item showed one model suspended in the air, with her arms tightly tied and restrained behind her body with one of her legs hoisted to the side and raised off the floor. She was depicted being sprayed on her vagina with a jet hose at close range, with her face wincing through gritted teeth and sometimes screaming in pain. In another scene a model was shown tightly restrained whilst her head was forced underwater several times in a water tank, as the dominatrix engaged in a sex act with a dildo.

In Ofcom's view, such material was clearly in breach of generally accepted standards on a free-to-air general entertainment channel late in the evening.

The strength of the sexual imagery shown, coupled with the nature of the sex acts depicted, would in Ofcom's view require exceptional justification in the context. Ofcom noted that the models explained the pleasure experienced through the pain and fright they endured, no harm appeared to have been caused to the participants, the item was shown late at night and warnings were given to viewers. But in Ofcom's view none of these contextual factors advanced by the broadcaster justified the showing of this material unencrypted on a general entertainment channel, even late in the evening in a programme with which many viewers are familiar. Rule 2.3 was therefore contravened.

Breach of Rule 2.3

CSC Media Group Ltd

True Movies & True Movies 2, 15 -17 January 2008, various times
Kix!, 22 June 2008, 07:55

Introduction

True Movies and Kix! are general entertainment channels owned by CSC Media Group Ltd. Ofcom received complaints about the following output:

True Movies & True Movies 2, 15 -17 January 2008

Between 15 and 17 January 2008, True Movies and True Movies 2 transmitted a competition to win a holiday for two people in Miami, USA. Viewers were asked a multiple choice question and invited to submit their entry by telephone or text message (SMS shortcode) using the number displayed on screen. Both methods were premium rate services ("PRS").

A viewer complained to Ofcom that the competition was out of date as a caption at the bottom of the screen gave its closing date as "16th December 2007" (which was also confirmed by a voiceover).

Kix!, 22 June 2008, 07:55

During the programme *Spider Riders*, Kix! promoted a competition to win a Nintendo Wii games console and a game called Emergency Mayhem. The question posed followed the same multiple choice format and entry was via a PRS telephone number. Ofcom received a complaint from a viewer who identified that the closing date given, 30 May 2008, had already passed.

On both occasions, the complainants were concerned that viewers who entered the competition would have been charged despite having no chance of winning. Ofcom asked CSC Media Group to comment with regard to Rule 2.11 of the Code which states that "competitions should be conducted fairly".

Response

True Movies & True Movies 2, 15 -17 January 2008

The broadcaster explained that as soon as it became aware of the out of date competitions they were immediately taken off air. It then instructed its competition service provider to ensure that any viewers who had entered as a result of seeing these promotions, were refunded in full.

After the first incident, it requested its scheduling software provider to identify ways of avoiding rescheduling out of date competitions in the future and confirmed to Ofcom that this software development had since been implemented. It said that it had also instructed its scheduling staff to check schedules more rigorously in future to avoid a recurrence.

Kix!, 22 June 2008, 07:55

Despite improving its procedures in this way, the broadcaster latterly discovered that its improved system in place on 22 June 2008 still allowed expired competitions to be

broadcast if no closing date was inputted. This oversight led to the promotion of the Nintendo Wii competition on Kix! on that date. CSC Media Group stated that it had now addressed this problem to further tighten procedures.

CSC Media acknowledged that adequate protection was not provided to viewers but said that the measures it had undertaken since to rectify the problem and to prevent it happening again mitigated any harm that may have been caused to its viewers. Further, it stated that it would be contacting all entrants to the competition promoted on 22 June 2008 to offer them refunds.

Decision

In these cases, the broadcaster re-transmitted on-screen competitions which had already been concluded. As a consequence, some of its viewers were clearly misled into paying a premium rate charge to enter a competition, believing they had a genuine chance of winning, when in fact their chances were non-existent.

Further, the second occurrence clearly indicated that both the staff re-training undertaken and the system designed to prevent a recurrence of the problem after January 2008 were inadequate. In summary, the competitions complained about were unfair to all those viewers who entered them and therefore were in breach of Rule 2.11 of the Code.

Ofcom noted the swift action taken by the broadcaster to rectify the harm caused to consumers on both occasions, and in particular the refunds given to those viewers whose entries were submitted after the competitions' closing dates. It also acknowledges the improved scheduling procedures put in place following the incidents. In the circumstances, Ofcom decided that further regulatory action was not appropriate in these cases. However, in the event of any similar breaches, Ofcom may consider taking further regulatory action.

Ofcom expects broadcasters to exercise extreme caution in all aspects of the use of PRS in programmes including in competitions and provides detailed guidance on competitions which can be found at:

<http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/guidance2.pdf>

True Movies & True Movies 2, 15 -17 January 2008 - Breach of Rule 2.11

Kix!, 22 June 2008, 07:55 - Breach of Rule 2.11

News Bulletin

2-Ten FM, 22 May 2008, 08:00

Introduction

The news bulletin contained an item about the risk of flooding to homes due to the lack of proper flood defences being installed by developers during the building process.

The news presenter stated: *"2-Ten FM's been told thousands of new homes in Berkshire are at risk of flooding because they're not being built with proper defences. A Reading flood protection company says developers are scared to put them in 'cos they're worried it'll put off potential buyers. Chris Phillips from Flood Defenders in Reading says extreme weather is something we're gonna have to get used to"*.

The news item then briefly featured Mr Phillips before the presenter concluded with: *"Check out photos of some of the high-tech ways you can protect your home [from flooding] online at 2tenfm.co.uk"*.

A listener complained that the report was "sensational news hiding blatant advertising".

Ofcom was concerned about:

- the apparent undue prominence given to products and services in the programme (Rule 10.4); and
- the possibility that product placement had taken place in the programme (Rule 10.5).

We sought 2-Ten FM's comments on the complainant's concern, with regard to these Rules.

Response

GCap, which owned 2-Ten FM at the time of broadcast, said that the news report was intended to highlight the increased flood protection available above the standard legal protection but admitted that Flood Defenders' views should have been challenged. The broadcaster added that "the station's website showed two ... examples of the products available to protect homes" and that, while it did not state that these products were available from Flood Defenders, it provided a link to that company's website. Nevertheless, GCap admitted that "the availability of flood defence products on 2-Ten FM's website should not have been referenced in the news report under any circumstances".

The broadcaster said that the station had used Flood Defenders as a news source but had had "no dealings with [the company] in a commercial context or otherwise." It added that, "a journalist at 2-ten FM arranged an interview with the company's representative for the news feature and erroneously decided to also include the weblink and [online] pictures of the company's products..."

GCap stated that the journalist responsible for the news report had since been re-trained to ensure that "stories are balanced and adequately researched" and that his performance will be monitored. The broadcaster added that it had also scheduled a "larger team training session" for later this year.

Decision

Ofcom notes that the broadcaster states that no payment was made by Flood Defenders to 2-Ten FM for the coverage it received in the news bulletin or for 2-Ten FM's web feature (as promoted on air), which comprised photographs of the company's products and a link to its website.

However, Rule 10.4 of the Code states that no undue prominence may be given to a product or service in any programme. In a radio broadcast undue prominence may result from the reference to a product or service where there is no editorial justification or the manner in which a product or service is referred to.

Flood Defenders' view that housing developers provided insufficient flood protection in new homes to avoid putting off potential purchasers was broadcast as fact. As a commercial organisation, Flood Defenders clearly had the potential to gain financially from the broadcast of this unopposed view. There was no editorial justification for featuring Flood Defenders (including a company representative) in this way, especially in a news bulletin. Such a reference to Flood Defenders was therefore unduly prominent.

A broadcaster may refer listeners to its website for generic information relating to a specific news item, as long as such information is actually featured on website. In this case, however, 2-Ten FM's invitation to "*check out photos of some of the high-tech ways you can protect your home [from flooding] online at 2tenfm.co.uk*" merely referred listeners to two uncredited sample photographs of Flood Defenders' own flood protection products and a link to its website. This particular reference to the station's website therefore lacked editorial justification and compounded the undue prominence given to Flood Defenders in the news broadcast. By directly promoting the products and services of a commercial organisation in a news bulletin, the programme was in breach of Rule 10.4 of the Code.

Breach of Rule 10.4

The Go Home Show

GWR FM (Swindon & West Wiltshire), 23 April 2008, 15:00

Introduction

To celebrate St George's Day, GWR broadcast three programmes live from various locations in the Swindon area, where the station was also hosting events for the local community. On air, the presenter of each of the programmes invited listeners to join them at their particular event location and stated that there would be free traditional English food and beverages available. At the first location there was a free full English breakfast, and at the second location a lunch of roast beef and Yorkshire pudding. During the drive-time programme (The Go Home Show), broadcast from the third location, the station offered free cream teas.

The location chosen for The Go Home Show was The Steam Railway public house in Old Town, Swindon, which is owned by the presenter of the show. On various occasions throughout the programme, the presenter stated that the programme was broadcasting "*live from The Steam Railway in Old Town, Swindon*" and invited listeners to come to the pub to celebrate St George's Day. The listeners were informed that some free cream teas were being given away.

A listener was concerned that the presenter was promoting his pub by "encouraging listeners to go to his pub for a drink".

Rule 10.3 prohibits the promotion of products and services in programmes and Rule 10.4 prohibits undue prominence being given to such products and services. We sought GWR FM's comments with regard to these Rules.

Response

GCap, which owned GWR FM at the time of broadcast, said that The Steam Railway public house was chosen as a location because the broadcaster had difficulty in finding a suitable location in the time available. It added, "...the fact that the public house belonged to one of the presenters [was] more a matter of availability and convenience rather than a shrewd attempt to achieve some sort of commercial gain".

GCap said that "the references to the pub were made within the context of where listeners were required to visit" to take part in the event and that "the only products that were on offer at [the] pub were 'cream teas and other beverages'... [which were] sourced from a third party by the radio station". GCap added that the invitations to listeners to come to the pub "were not deliberately made as free commercial references but merely to celebrate the spirit of the occasion and to encourage general public participation" and that the presenter had not received payment for the use of his pub.

Decision

Ofcom recognises that a radio broadcaster may legitimately seek to widen and/or interact with its audience by holding events at local locations and broadcasting from those locations. However, to ensure the clear separation of programming from advertising, special care should be taken that related programming does not promote or give undue prominence to products or services.

Undue prominence may result from the presence of, or reference to, a product or service where there is no editorial justification or the manner in which a product or service appears or is referred to in a programme.

Repeated references were made to The Steam Railway public house and not always in connection with the St George's day event itself. Further, three separate times during the broadcast, the presenter also referred to the fact that he owned the pub from which the programme was being broadcast. Specifically he stated, *"we're live from The Steam Railway in Old Town, Swindon. . .did I mention it's my pub?"*, *"we're in...my pub in Swindon"* and *"I am sat in an armchair in the window of me [sic] own pub in Old Town in Swindon enjoying a pint"*. The presenter also drew attention to his ownership of the pub when he said *"we're opposite the Co-op, you can't miss us, got scaffolding outside. Although we've got works going on, we're still open"*. On two separate other occasions, the presenter also stated *"join us for drink"* and *"come down here and have a beer"*.

This, taken together with the presenter's invitations to listeners to join him for a drink, rather than simply to join in the event, gave undue prominence to The Steam Railway pub, in breach of Rule 10.4.

Breach of Rule 10.4

Best Beer Garden

Scarlet FM (Llanelli and Carmarthenshire Coast), 26 May – 9 June 2008, various times

Introduction

The broadcaster ran a pre-recorded poll in advertising breaks. Listeners were invited to vote by standard rate text, telephone or on the station's website, for the best beer garden in the Llanelli area. A list of candidates was aired in the advertisement. At various times throughout the voting period (26 May to 8 June 2008), during programming, a number of presenters also read out the list of candidates and encouraged listeners to vote. The winner was announced in Scarlet FM's breakfast show, *Tommo at Breakfast*, on 9 June 2008.

A listener was concerned that the poll was only open to advertisers on the station.

We asked the broadcaster to comment on its *Best Beer Garden* coverage with regard to the following Code Rules:

- Rule 10.3, which prohibits the promotion of products and services in programming;
- Rule 10.4, which prohibits undue prominence being given to products and services in programming; and
- Rule 10.5, which prohibits product placement.

Response

Scarlet FM said that the poll was run in commercial airtime and that local pubs paid to be candidates. The poll winner received a certificate and free advertising on the station.

While the broadcaster admitted that, during programming, presenters also encouraged listeners to vote, it was unable to confirm precisely how many times this had occurred. However, it provided three sample recordings of such output from the final days of the voting period, together with the announcement of the winner in the breakfast show on 9 June 2008 and the advertisement. Scarlet FM also provided a transmission record for the advertisement and details of the agreement it had made with the advertisers (i.e. each pub).

The broadcaster noted that the pubs paid to appear in the advertisements and that further references to the poll, which listed each candidate during programming, did not form part of their agreement to participate. Scarlet FM did not believe it had promoted products or services in programming or that it had given undue prominence to any specific pub. It believed that its sales team had offered all pubs in the area an opportunity to participate. While the broadcaster was unaware of any votes made for candidates not listed on air, it said that listeners were not prevented from doing so.

Decision

Broadcasters are able to run polls paid for by advertisers in advertisements. In this case, the pre-recorded material, in which the advertisers had paid to participate in a poll for Scarlet FM's *Best Beer Garden* award, sounded like an

advertisement and was transmitted in advertising time. Listeners would have been aware that this material was advertising.

However, during programming, any reference to the advertisers and associated promotions must be editorially justified and must not be promotional. We recognise that none of pubs that advertised in the poll item had paid for any reference to its business in editorial. However, references to the poll and its candidates (the pubs) in programming repeated the content of the advertisement. As such, the pubs (the advertisers) were promoted in programming, in breach of Rule 10.3 of the Code.

We accept that no individual pub was given disproportionate coverage in programming. However, there was no editorial justification for presenters to make references to its advertisers in programming time; including the declaration of the poll winner on 9 June 2008. All these references to the advertisers therefore breached Rule 10.4 of the Code.

Breach of Rules 10.3 and 10.4

Matt Bunt

Atlantic FM (Cornwall), 4 July 2008, 21:00

Introduction

During the presenter's regular weekday evening programme, Matt Bunt announced that the station was helping listeners who may be considering what to do after completing their GCSEs or 'A' levels. He then promoted the "Mechanical and Engineering National Diploma" available at Cornwall College and announced its telephone number and web address, for more details.

A listener told Ofcom that the output sounded like editorial (as opposed to an advertisement). She added that the feature referred to "courses that are available in Cornwall" but had run for a number of days and featured different courses only available at Cornwall College sites, while other colleges in the area (e.g. Truro College) also offered courses for school leavers.

We therefore asked the broadcaster for its comments on the matter with regard to the following Code Rules:

- 10.2 – "Broadcasters must ensure that the advertising and programme elements of a service are kept separate";
- 10.3 – "Products and services must not be promoted in programmes..."; and
- 10.4 – "No undue prominence may be given in any programme to a product or service."

Response

Atlantic FM said that the material had been paid for and should have been broadcast as advertising.

Atlantic FM apologised for its "very unfortunate oversight" and said that "the educational rather than overtly commercial nature of the material may have briefly obscured the need for separation." The broadcaster added that it had restructured this content into a live read scheduled at the end of a commercial break, with immediate effect and detailed how its "course of the day" advertisements were now clearly separated from editorial, both in style and sequentially. Atlantic FM said it was "confident that the item would not now be perceived as editorial."

The station acknowledged that its original treatment of the material was not only inappropriate but had breached Rules 10.2, 10.3 and 10.4 of the Code. It added that Atlantic FM's Director had "restated and explained to all concerned with the production of this content the nature of the issues, which require constant vigilance."

Decision

Radio presenters may read advertisements live on air. However, this can present its own challenges when trying to achieve the clear separation of programming (editorial) and advertising – in both sequence (e.g. by use of a station ident) and style (e.g. by a presenter sounding differently). Listeners must always be aware of what they are listening to.

The broadcaster's error in allowing (paid for) advertising content to be aired as programming reflected its failure to ensure the clear separation of advertising from programming (editorial) – one of the basic principles of UK broadcasting. This raises serious concern. In this instance, the nature of the content was unclear to listeners. Atlantic FM failed to separate programming from advertising content, in breach of Rule 10.2 of the Code.

As the broadcaster had failed to ensure such separation, the presenter promoted Cornwall College as a 75 second feature in his programme, in breach of Rule 10.3 of the Code. While broadcast coverage of further and higher education options available to local school leavers may be editorial justified, the content in this and previous features only referred to courses on offer at Cornwall College, giving it undue prominence, in breach of Rule 10.4 of the Code.

Breach of Rules 10.2, 10.3 and 10.4

Katie & Peter: The Next Chapter

ITV2, 3 June 2008, 20:00

Introduction

Katie & Peter: The Next Chapter was a 'fly-on-the-wall' programme chronicling the everyday life of celebrity couple Katie Price and Peter Andre. Ofcom received one complaint from a viewer who said that the word "fuck" and its derivatives was repeatedly used in this episode broadcast before the watershed, together with frequent instances of offensive language including the words "shit" and "wanker".

Ofcom asked ITV for its comments under Rule 1.14 (the most offensive language must not be broadcast before the watershed) and Rule 1.16 (frequent use of offensive language must be avoided before the watershed).

Response

ITV acknowledged that the programme contained strong language, including the word "fuck", which was inappropriate for the time of transmission, and apologised for any offence caused to viewers.

It explained that the wrong version of the programme was transmitted as a result of an unusual series of human errors. An edited pre-watershed version had been prepared on detailed compliance advice, but the wrong version number was entered into the scheduling system. Further, the compliance executive responsible for checking the material for broadcast was provided with a different episode of the series and failed to notice this discrepancy. As a consequence, the unedited version went to air.

The broadcaster accepted that this was a serious error and said that disciplinary action had been taken as a result. It added that it has reviewed its internal procedures to seek to prevent a similar problem arising in the future.

Decision

Ofcom noted ITV's recognition that this material was entirely unsuitable for a pre-watershed programme and that this was a serious error.

Our research indicates that the word "fuck" and its derivatives are considered by respondents to be the most offensive language. Broadcasters must have robust procedures in place to ensure compliance with the Code. The broadcast of such language before the 21:00 watershed is in breach of the Code (Rule 1.14).

Ofcom also judged that the programme contained excessive offensive language in general and as such considered it to be in breach also of Rule 1.16.

Breach of Rules 1.14 and 1.16

Big Al's Mid-Morning Boogie with the Doc

Isle of Wight Radio, 13 February 2008, 09:00 – 12:00

Introduction

Isle of Wight Radio broadcasts a weekday programme called *Big Al's Mid Morning Boogie with the Doc*. During the phone-in segment on 12 February 2008 the presenter, Alex Dyke, referred to a protest rally that had taken place against the proposed closure of 23 local schools by the Isle of Wight Council. A listener who had attended the rally called into the programme to dispute the numbers of protesters taking part that had been quoted and to criticise the way in which the closures were being covered during the programme. A frank discussion followed in which the presenter and participant expressed their strong views on the issues raised.

Ofcom received a complaint from this listener who stated that on 13 February 2008, during *Big Al's Mid-Morning Boogie* programme, the presenters referred live on-air to the previous day's phone-in segment and her involvement in it. She stated that the presenters had subsequently called her at home and left a message on her answer machine. She complained that she had been unfairly treated during the broadcast on 13 February 2008 and that the call made to her home unwarrantably infringed her privacy.

Response

Ofcom requested a copy of *Big Al's Mid-Morning Boogie* as broadcast on 13 February 2008. The broadcaster supplied a CD which was found to be blank. A second CD was then supplied by Isle of Wight Radio on which Ofcom was unable to identify the sequence complained of.

The broadcaster confirmed on 2 June 2008 that this second CD was not in fact a recording of the programme requested by Ofcom and that no copy of the recording in question had been retained past the 42 day period required by its licence. Therefore no recording could be provided to assess the complaint. The broadcaster stated it was aware of its licence obligation to provide recordings to Ofcom but in this instance the failure to supply the material was the result of human error and it apologised.

Decision

It is a condition of all Local Sound Broadcasting Licences that the licensee supplies recordings "forthwith" to Ofcom on request when under investigation. As a result of the broadcaster not supplying a recording of the programme as broadcast in this case, Ofcom was unable to consider the complaint of fairness and privacy put forward by the complainant.

The failure to supply recordings is a serious and significant breach of the broadcaster's licence. This will be held on record. Any similar breaches by Isle of Wight Radio will result in consideration of further regulatory action.

Breach of Licence Condition 8 (Part 2 General Conditions)

Raj TV

Raj TV, 31 May 2008, 18:00

Introduction

Raj TV is a general entertainment channel broadcasting programmes of particular interest to the Asian community.

A viewer complained about sexual scenes which she considered inappropriate for broadcast in the early evening. Ofcom asked Raj TV for a recording to assess the content.

Response

Ofcom made the initial request for a recording in writing on 6 June 2008, chasing this request on 30 June, and 9 and 23 July. In response to these contacts Raj TV gave various assurances to Ofcom that it would act on the request. By 6 August 2008, however, Raj TV had still not supplied the necessary recording. Given this history of non-compliance and Ofcom being unable to contact Raj TV on the contact number supplied to the regulator, Ofcom therefore informed Raj TV of its intention to record a breach of the broadcaster's licence for failure to supply a recording.

In response Raj TV apologised for the delay, and explained that due to staff and logistic issues it had not picked up Ofcom's e-mail or other correspondence. Raj TV also advised Ofcom that the member of staff who usually handled recording requests was away on long term sick leave and appropriate action had not been taken to cover for the absence. Raj TV said the recording would be obtained shortly but it was not provided to Ofcom.

Decision

In the absence of a recording Ofcom was unable to consider the complaint put forward in this case. Condition 11 of Raj TV's licence states that recordings of output must be retained for 60 days after transmission, and that the broadcaster must provide Ofcom with any such material "forthwith" upon request. It is imperative that licensees have a properly serviced postal address and appropriate compliance procedures and staff to deal in a timely way with all such requests from Ofcom. Failure to meet these requirements is a serious and significant breach of Raj TV's licence. This will be held on record. If similar breaches occur in future Ofcom will consider further regulatory action.

Breach of Licence Condition 11

Resolved

Vaan Osai

International Broadcasting Corporation (Spectrum Radio (558AM)), 26 November 2007, 19:00

Introduction

On 26 November 2007, the International Broadcasting Corporation (“IBC”) broadcast a programme that included celebratory material commemorating the birthday of Mr Velupillai Pirabakaran, the leader of the Liberation Tigers of Tamil Eelam (“the LTTE”). The LTTE is presently a proscribed terrorist organisation under the Terrorism Act 2000. This means that under current UK legislation it is unlawful to be a member of the LTTE, to raise funds for it or to invite or encourage support for it.

Ofcom received two complaints about this programme from members of the public. Issues raised by these complaints were that the programme:

- celebrated the birthday of Mr Velupillai Pirabakaran, the leader of the LTTE;
- promoted an event to be held at the Excel centre in London to commemorate the LTTE’s “Heroes’ Day” celebrations;
- broadcast the comments of “ardent LTTE supporters” that appeared to promote terrorism;
- broadcast comments and LTTE songs that praised Mr Pirabakaran; and
- contained material that was “serious and confirmed [the] glorification of terrorism”. (Under the Terrorism Act 2006, the “glorification” of terrorism is a criminal offence).

Citing these issues, Ofcom asked the broadcaster to comment on how the programme complied with Rule 2.4 of the Code (programmes should not include material which condones or glamorises violent, dangerous or seriously antisocial behaviour).

Response

IBC stated that it was genuinely surprised that the content of the programme could be regarded as being in breach of the Code or that it glorified terrorism. This was never intended. With particular reference to the issues raised by the complaints, IBC said that:

- it was not uncommon for the station to celebrate/commemorate the birth events of the Tamil Leaders of “all hues” and that therefore the allocation of air-time to celebrate Mr Pirakaraban’s birthday should not be seen in isolation. As a community based broadcaster, IBC said that it was obliged to reflect the views of its audience and as such these views do not always reflect the views of the broadcaster;

- the telephone number for the programme was given out by the presenter during the programme for listeners to call in and participate;
- the event, held at the Excel Centre on 27 November 2007, to the best of IBC's knowledge, was not linked to the "Heroes' Day" celebrations of the LTTE. IBC said that the event was organised by "the general public to commemorate their loved ones" and that appropriate permission for the event was given by the Metropolitan Police; and
- IBC said that it did not agree that the programme's content was "in glorification of terrorism". IBC said that to take offence at a "benign" programme that allowed the audience to "greet an individual" pointed to intolerance. IBC assured Ofcom that it did not intend to promote or glorify terrorism either expressly or otherwise. It said that "the complaints...were unfortunate and an interference with the freedom of expression of one's thoughts".

IBC did however acknowledge that in a few cases certain inappropriate comments and words in songs were allowed to be broadcast; and confirmed that extra care would be taken in future to ensure compliance in similar live broadcasts.

Decision

Rule 2.4 states that programmes "must not include material (whether in individual programmes or in programmes taken together) which, taking into account the context, condones or glamorises violent, dangerous or seriously antisocial behaviour and is likely to encourage others to copy such behaviour".

Ofcom examined an independently translated transcript of the programme. Included in the material broadcast, Ofcom noted the following illustrative announcement:

"We can't tolerate anymore sufferings/Enough of our not violent struggle/The only way is Armed struggle/He [ie Mr Pirabakaran] decided it and he is the only leader who is taking forward the Tamil race's Freedom Struggle.../Walking ahead for the dawn of the Tamils/In the battlefield..."

Ofcom also took note of contributions from callers to the programme, one of whom said:

"If we want our nation's borders defined. If we want to slain the flying Singalese eagles, it is in the hands of migrant Tamils".

Ofcom also noted the following words to songs included in the programme:

"He took the spear...taking the spear he finished the Tamil enemies...He took the rifle...Taking the rifle he started a new army/Started the Tiger Force";

"Our only talk is Tamil Eelam - he said/Kill all the on coming army - he said/As long as the Tigers live - they are dust - he said";

"When the Hindu and Christian churches were/Destroyed by the bombs/ He protected the people with the air force/He fired missiles and created a new era..."; and

“He takes the bow and burns the enemy/He will take the Eela land by demarcating...”.

In reaching its conclusion, Ofcom bore in mind the fact that that broadcasters should benefit from freedom of expression when making programmes in areas which may raise serious social and political issues. However, broadcasters must always take care to ensure that material broadcast is in accordance with both the law and the Code, especially when it could be regarded as encouraging or inviting support for a terrorist organisation.

Although such song lyrics and expressions of support may appear to some as condoning unacceptable behaviour, they must be considered in context when judging whether there has been a breach of Rule 2.4. Lyrics especially have a long tradition of dealing with the full range of human experiences and emotions and a reference to a violent act may not, in itself, amount to incitement or encouragement to crime. Each case must be examined on its own facts.

Ofcom considers that the lyrics used here were in the main broadcast in the context of generic, patriotic songs designed to engender support for a political cause and not to encourage or incite crime. It notes the broadcaster’s contention that the material broadcast was not intended to promote or glorify terrorism. Having said that, while the programme contained some innocuous poetry, songs and comments by callers in celebration of Mr Pirabakaran’s birthday, it also included material that went further than simply celebrating his birthday as an individual. In Ofcom’s view, parts of the programme included content that could be perceived as either encouraging or inviting support for the LTTE.

However, in coming to its decision, Ofcom took into account the fact that no previous breaches of the Code have been recorded against IBC; that the vast majority of the programme consisted of material such as songs, poetry and comments which did not raise any issues under the Code; and that on this occasion the transmission was live. It also took into account the fact that IBC has acknowledged that some parts of the statements and songs broadcast could be regarded as inappropriate, and the broadcaster has assured Ofcom that extra care will be taken in future in producing similar broadcasts. Ofcom is therefore treating this issue, on this occasion, as resolved but reserves the right to consider any repeat instance of similar material on a case-by-case basis. Ofcom reminds the broadcaster of the care it needs to take when dealing with these sensitive and controversial subjects.

This decision is published following a review requested by the broadcaster.

Resolved

Loose Women

ITV, 17 June 2008, 12:30

Introduction

Loose Women is a lunchtime female panel led discussion programme broadcast live and known for its light hearted topical discussion and celebrity guests. On this occasion one of the show's guests was the American comedian Joan Rivers. During a discussion about her time spent reporting from the Oscars she passed comment on the actor Russell Crowe, saying "*he is a piece of, get ready to bleep this, fucking shit*"

Ofcom received 21 complaints from viewers who were concerned about the broadcast of uncensored strong language at this time of the day. Some mentioned that their children had been present at the time.

Ofcom asked ITV to comment with reference to the following Code Rules:

- 1.3 (appropriate scheduling);
- 1.14 (the most offensive language must not be broadcast before the watershed); and
- 2.3 (generally accepted standards) of the Code.

Response

ITV apologised for any offence caused by Joan Rivers' language and accepted that this was not appropriate for a daytime programme.

It commented that several steps had been taken in advance of filming to ensure that the guest was fully briefed about the nature of the live daytime broadcast and the clear need for avoiding strong language during the interview. Following Joan Rivers' swearing there were several apologies broadcast to viewers. The 'anchor' of the show Jackie Brambles immediately apologised and then shortly afterwards made another apology to camera. Following the 'welcome back' after the next commercial break, another apology was made. By this point Joan Rivers had been asked to leave the set. Finally, during the show's closing credits an apology was broadcast by the continuity presenter.

Decision

The Code is clear that the most offensive language such as the 'f' word must not be broadcast before the watershed and broadcasters should not include such language in daytime productions.

Ofcom noted that this is a live show, where the production team had followed its compliance guidelines and briefed the guest about the programme. *Loose Women* is aimed at an adult audience and this particular edition was screened during term time, and the numbers of children available to view would have been limited. Audience figures for this programme show that under 2% of viewers were children. Ofcom considers that ITV acted responsibly on this occasion and broadcast several apologies. Given that this was an isolated occurrence which the broadcaster acted swiftly to recognise and remedy, Ofcom considers the matter resolved.

Resolved

Future Shorts: The Crusader

Ape TV, 30 April 2008, 12.55 & 13.55

Introduction

Ofcom received one complaint about the repeated use of the word “fuck” and “fucking” during this spoof ‘fly on the wall’ documentary about a man who believes he is the superhero Batman. Ofcom asked the broadcaster for comments with regard to Rule 1.14 (the most offensive language must not be broadcast before the watershed).

Response

The broadcaster stated that the compliance problems with this documentary film were spotted internally before it was contacted by Ofcom and the programme was blocked from pre-watershed broadcast with immediate effect on 12 May 2008.

The broadcaster had understood that all of the content was suitable for broadcast pre-watershed, as a result of acquiring the documentary from a third party. The broadcaster said it had now put in place appropriate measures to make sure that this problem would not happen again. This included production and editing staff being trained for compliance on all content, including that received from a third party.

Decision

Rule 1.14 prohibits the broadcast of the most offensive language before the watershed. Ofcom research on offensive language, conducted in 2005, identified that “fuck” and its derivatives were considered by viewers to be very offensive. The use of such language was also repeated several times in this programme.

It is the responsibility of the broadcaster to ensure all programmes meet the requirements of the Code, even where they are acquired by a third party on the understanding that all necessary compliance checks have been made. In view of the broadcaster’s rapid response to this problem, various measures to improve compliance and its previous good compliance record, however, Ofcom regards this matter as resolved.

Resolved

Not In Breach

Location, Location, Location

Channel 4, 4 June 2008, 20:00

Introduction

Location, Location, Location is a factual entertainment programme about all aspects of home buying. This episode included a section in which the presenters, Kirstie Allsopp and Phil Spencer, outlined their view that Stamp Duty Land Tax (“Stamp Duty”) was a contributing factor to the current slowdown in the property market and that it could be reformed to help the market through its current problems. In particular, the presenters stated how they would be lobbying the Government about the issue and putting forward their own recommended changes to the current system. This section of the programme was ‘followed up’ by the inclusion of two further similar sections in the programmes broadcast on 11 June and 9 July 2008.

15 viewers complained to Ofcom about the programme broadcast on 4 June 2008 saying that the programme was “biased” and that the presenters used the programme as a platform to present their own political opinions. In particular, some of the complaints claimed that Kirstie Allsopp, who has advised the Conservative Party on housing issues, was allowed to give her partial views on the current system of Stamp Duty.

Ofcom asked Channel 4 for its comments in relation to its requirements under Section Five of the Code. In particular Rules:

- 5.5 “due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved...”;
- 5.6 “broadcaster of editorially linked programmes dealing with the same subject matter (as part of a “series” in which the broadcaster aims to achieve due impartiality) should normally be made clear to the audience on air”; and
- 5.8 “personal interest of a reporter or a presenter, which would call into question the due impartiality of the programme, must be made clear to the audience”.

Response

Channel 4 said that in the programme broadcast on 4 June 2008, Kirstie Allsopp had introduced the issue of Stamp Duty by outlining her concerns about the property market, which was followed by Phil Spencer saying that they believed that there was a way of “re-invigorating things”. Channel 4 said that this section of the programme also included a contribution from an independent financial adviser who gave some background to Stamp Duty and outlined changes the Government had already made to the system. Both presenters stated that Stamp Duty was a particular difficulty for first-time buyers and explained that they wanted to discuss this issue and to find out if anything could be done. Channel 4 said that Kirstie Allsopp was unambiguous in stating that she had worked with the Conservative Party on housing issues and that that the issue of Stamp Duty was “*bigger than party politics*”. Channel 4 said that the presenters had stated that they were trying to get a response from the various Government departments to discuss the issue and that they would continue to address it.

In the programme broadcast on 11 June 2008, Channel 4 said that, again, an independent financial adviser outlined the Government's position on Stamp Duty and the changes that had been made over the past two years. Channel 4 said that, although the presenters explained that despite their repeated efforts they had been unable to get a Government spokesperson to comment, the programme did, however, include comments from Vince Cable MP, the Liberal Democratic Party's Housing spokesman, who outlined his party's position, and a statement from the Conservative Party on the issue.

Channel 4 said that in the third programme broadcast on 9 July 2008, Caroline Flint MP, the Minister for Housing, was interviewed by the presenters. Both presenters put forward the issues that had been raised over the previous two programmes and gave Mrs Flint an opportunity to give the Government's position on them, which she did.

Decision

Ofcom considered that the issue of Stamp Duty and the Government's position on it was a matter of political controversy and current public policy. Therefore the due impartiality requirements of Rules 5.5, 5.6 and 5.8 applied.

Ofcom noted that the presenters made it clear during both of the first two programmes that Stamp Duty was an issue which would be followed throughout the series in editorially linked programmes, and that great efforts were being made to include a contribution from a Government spokesperson. It also noted that the positions of both the Liberal Democratic Party and the Conservative Party were represented in the second programme and that an interview with the Government's Housing Minister, Caroline Flint MP, was included in the third programme. Also the comments of an independent financial adviser were included in the first two programmes to ensure that the changes the Government had made with regard to Stamp Duty were represented.

Ofcom considered that it would have been clear to viewers that the issue of Stamp Duty was an on-going subject which the programme broadcast on 4 June 2008 would be returning to, and viewers who saw all three programmes would have had a clear idea of all three major political parties' points of view on the subject.

Ofcom noted that Kirstie Allsopp had advised the Conservative Party on its 'Home Buying Review' and that this had been well-publicised in the media. It also noted that this was clearly referred to by Kirstie Allsopp in the first programme. Ofcom considered that any personal interest of Kirstie Allsopp that may have called into question the due impartiality of the programme was made clear to the audience through the comments she made in this first programme. The programme also made sufficiently clear, in Ofcom's view, that the views expressed by the presenters were not along party lines or specific to any one political party.

Taking all this into account, Ofcom was satisfied that overall during the series of programmes due impartiality was preserved in accordance with Rules 5.5, 5.6 and 5.8 of the Code.

Not in Breach

Fairness and Privacy Cases

Not Upheld

Complaint by Ms Aisha Alvi

The Retreat, BBC2, 26 February, 5 and 12 March 2007

Summary: Ofcom has not upheld this complaint of unfair treatment by Ms Aisha Alvi.

This three part series documented the experiences of six volunteers during a month long retreat at an Islamic study centre in the south of Spain. They were guided in their retreat by Mr Abdullah Trevathan. Ms Alvi, an English barrister and Muslim, was one of the volunteers. As the series progressed, it became clear that Ms Alvi had certain issues about the direction the retreat was taking and some of the religious instruction being given by Mr Trevathan.

The programme contained footage in which Ms Alvi exhibited her frustrations with aspects of the retreat and other volunteers expressed frustrations about her. The programme also contained footage of frank exchanges between Ms Alvi and Mr Trevathan and Ms Alvi and some of the other volunteers.

Ofcom found as follows:

- a) & b) Ms Alvi was provided with sufficient information about the nature of the programme to give her informed consent to participate. It found that there could have been no lack of understanding on her part about what would be involved in her participation. In this regard it found that she had not been treated unfairly.
- c) After considering the broadcast programme and untransmitted footage Ofcom also found that the series was not edited in a way which portrayed Ms Alvi unfairly or in a way which misrepresented her religious views.

Introduction

On 26 February, 5 and 12 March 2007, BBC2 broadcast *The Retreat*, a series of three programmes (“the series”) which followed the experiences of six volunteers (“the group”) who spent four weeks in the secluded Islamic study centre, Alqueria de Rosales, (“the retreat”), in the Andalusian region of southern Spain. The programme described the purpose of their stay as being to immerse themselves in the traditions of classical Islam with an emphasis on soul-searching and self-examination. During their stay at the retreat, the group was guided by Mr Abdullah Trevathan, described by the programme as a Muslim teacher, who, along with a number of British Muslims, mentored and instructed them in daily prayer and reflection.

Ms Aisha Alvi was one of the members of the group. She was introduced to viewers in the first programme as a “trained barrister with a Masters [degree] in Islamic law” and was described as a “fervent Muslim” who wanted a chance to share her faith with the other members of the group. As the series developed, it appeared that Ms Alvi was experiencing discomfort with the way that some of the activities were being conducted. She was also concerned that Mr Trevathan and others at the retreat

followed a form of Islam known as “Sufism”, rather than the approach she favoured. Throughout the series, Ms Alvi was seen to be in apparent conflict with Mr Trevathan and the manner in which Islam was being experienced by the group at the retreat.

Ms Alvi complained to Ofcom that she was treated unfairly in the series as broadcast.

The Complaint

Ms Alvi’s case

In summary Ms Alvi complained that she was treated unfairly in the series in that:

- a) She was not told the nature and purpose of the series. Ms Alvi said that she expected the series of programmes to be “a fair, measured, matter of fact and [an] honest description of the actual goings on which any observational documentary should set out to do”, rather than “a titillating entertainment about mobile phones and a dubious romance”.
- b) She was given pre-transmission assurances by the programme makers that the project would be based on mutual trust and goodwill, however these assurances were not adhered to. In particular, in the agreement she entered into with the BBC (“the Agreement”) she had agreed to participate only on the basis that she would not be required to take part in any activity at the retreat with which she felt uncomfortable.
- c) The footage of her included in the series was edited in a way which portrayed her unfairly and misrepresented her religious views. In particular, Ms Alvi’s complaint included the following:
 - i) Footage showing Mr Trevathan’s “emotional aggression” towards her was unfairly omitted from the series, despite it being the single factor that had the biggest impact on her during the making of the series.
 - ii) Throughout the series, Mr Trevathan unfairly described her as “prescriptive”, “dry” and “formulaic” and as being part of “that modern contingent” which was “fundamentalist” and caused “conflict” to Muslims and wider society.
 - iii) Most of the scenes in which Ms Alvi appeared unfairly portrayed her in a negative light. She was portrayed overall as a “dogmatic” character who was “non-spiritual”, obsessed with rules and regulations and as someone who “bailed out” of most of the activities and objected constantly to what was going on around her. Ms Alvi complained that this portrayed her falsely, that it was unfair for the programme makers to have edited the material of her in this way and to omit footage in which she explained what spirituality meant to her. In particular, she cited 11 separate incidents shown in the series that demonstrated that she was portrayed negatively. These were as follows:
 - When she was shown refusing help climbing the mountain by a male member of the group, it was not shown that there was a female group member who was able to assist her when descending.

- Although she was shown attending the Mosque, she did not take part because a female cannot physically pray when she is experiencing her menses. The implication given by the series was that she was unwilling to pray with the other members of the group.
- The series implied that she was deliberately staying away from the morning classes held at the retreat when, in fact, she was ill.
- When she was shown not attending the evening Wadifa (an evening prayer session), she was, in fact, privately reading in the afternoon when everyone else was taking a siesta. When she did not attend the Wadifas, she was generally talking to other people at dinner. If this had have been shown in the series it would have been a truthful representation.
- Footage in which Mr Trevathan questioned Ms Alvi on whether or not she should remain at the retreat was used out of context since she was never expected to take part in anything, especially the forms of worship, that she found uncomfortable. Also, footage of her making her way back to the residence, along with the accompanying commentary, was used to portray her as “opting out”.
- When the group was shown going onto the mountain to meditate, the commentary negatively stated that *“Aisha gives up after ten minutes”*. Despite her saying that she was ill, the viewer was left with the impression that she was not at all spiritual.
- In relation to the group’s trip to Morocco, the commentary stated that Ms Alvi had decided to join the group at the last minute. This insinuated that she was undecided because of the “Sufi practices”. Ms Alvi said that the reason for any indecision was due to her having to decide whether or not to leave the retreat altogether because of Mr Trevathan’s behaviour towards her and, if she stayed, whether or not she was well enough to make the journey.
- Footage of one of the members of the group, Mr Simon Yarrow, talking to Ms Alvi was shown out of context. The manner in which the footage was edited suggested that Mr Yarrow was explaining to her how difficult her attitude was making his stay at the retreat. In fact, Ms Alvi said that Mr Yarrow had come to her to apologise for being rude to her earlier in the day;
- The series included only the negative comments made about her by the other group members. This was not balanced by the valuable dimension she said she had added to the group.
- The reason for her forming a friendship with another member of the group, Mr Azim Ziaee, was because of her treatment by Mr Trevathan and the programme makers themselves. However, this was not shown in the series. Instead Mr Zaiee was portrayed as someone who was being influenced by Ms Alvi’s thoughts about “Sufi practices”.
- In relation to the second trip onto the mountain to meditate, Ms Alvi was shown saying that she found the experience boring. This was included to reinforce the impression that she was not spiritual, when, in fact, she and the rest of the group were taking a much more relaxed approach to the whole experience as things had become stagnant. Ms Alvi said that she was being

light-hearted and jovial but that this was not a side of her that the programme makers wanted to portray.

By way of background Ms Alvi said that her experience of participating in the series had left her feeling traumatised, especially as she was grieving for her father at the time, and that she had suffered considerable stress as a result of viewing the series. She said that she was being treated negatively by other “media sources” as a result of the series. Ms Alvi said that her decision to participate in the series would affect her reputation in the future. Ms Alvi also said that Mr Trevathan’s behaviour towards her was nothing less than bullying and the programme makers took no steps to prevent it. None of the other group members were treated in such a way, nor were they asked to leave (for example, one group member broke the rules of the retreat by using his mobile phone throughout).

The BBC’s case

In summary, the BBC said that:

- a) Before Ms Alvi agreed to take part, the programme makers sent her copies of *The Monastery* and *The Convent* (two earlier series made by the same production team). The BBC said that *The Retreat* was planned as a third series in the same vein, made in a similar format and with similar principles. The series planned to portray individual journeys to viewers through filmed interviews, group discussions and video diaries. The BBC said that the programme makers remained confident that the editing created balance in the series and did not make any value judgements, but rather allowed viewers to make up their own minds.

The BBC said that Ms Alvi was given a great deal of information about the planned series before she agreed to take part. She had numerous conversations with members of the production team and the nature and purpose of the series was made abundantly clear to her during these conversations. The BBC said that it was true that full details of the location and name of the retreat were deliberately withheld from the participants, as they were from the participants in *The Monastery* and *The Convent*. This was because the programme makers wanted to avoid participants researching their destination as they wanted them to arrive without preconceptions and to capture their unforced reactions. The BBC said that there was no unfairness in doing so.

The BBC said that although Ms Alvi complained that the series was “a titillating entertainment about mobile phones and a dubious romance”, there was nothing about the portrayal of the incidents involving mobile phone calls and another participant, Mr Muddassar Ahmed, that could be taken as unfair to Ms Alvi. The BBC said that any “romance” aspect was presented solely as coming from Mr Ziaee’s side. The commentary made it clear that:

“Aisha has no idea that Azim is falling for her, and he knows that her strict Islamic code makes sharing his feelings unwise”.

However, the BBC said that it became clear to the programme makers that there was more to it and the series showed that Ms Alvi was keen to engage in friendship with Mr Ziaee, if only to find an ally in her disagreements over aspects of Islam with Mr Trevathan. The BBC said that Ms Alvi had also been concerned that there had been speculation among the participants about the

possibility of romantic attachments. She had herself contributed to such speculation. The BBC said that because she did not want any of that footage broadcast, she asked the Executive Producer, John Blake, to ensure nothing of it was included and subsequently arranged a further meeting with him to discuss it. The BBC said that it should be emphasised that if Ms Alvi had at all times behaved entirely appropriately, there would be no footage showing her behaving inappropriately. The meeting was a transparent attempt to put pressure on Mr Blake, and an attempt by Ms Alvi to manipulate the editing of the series.

- b) The BBC said that Ms Alvi failed to join in all sorts of activities and she even confessed to doing so in her own video diary. The Agreement requested that Ms Alvi “discuss any concerns in good faith with the leader of the Retreat and a representative of the Company”, however, Ms Alvi simply withdrew from parts of the programme. This raised questions over her commitment to the project. There were some discussions with the programme makers, but these involved Ms Alvi’s concerns over filming her without her hijab, and the delivery of additional video diary tapes to the women’s sleeping quarters, not about the programme itself. The BBC said that her absence was therefore portrayed fairly and did not accept that assurances given to her were not adhered to. In any event, the BBC said that it was difficult to see how such alleged breaches manifested themselves in the finished series without specific examples.
- c) In relation to Ms Alvi’s complaint that the series misrepresented her religious views the BBC said that Mr Trevathan and Ms Alvi had fundamentally different approaches to their shared religion, and there was nothing unfair about showing two aspects of Islam.
- i) The BBC said that for the first fortnight of the retreat Ms Alvi was critical in her video diaries of many of the practices she witnessed and took part in on the retreat. She set up a kind of “alternative seminar” on Islam in the women’s quarters at night, from which the male participants, and Mr Trevathan, were excluded. She also accused those running the programme of trying to avoid mentioning that it was a Sufi retreat. Although it was true that they did so, this was both fair and reasonable because they wanted the participants to avoid the distraction of arguments about a descriptive term, and simply focus on the substance of the spiritual approach. The BBC said that the other participants became increasingly irritated with Ms Alvi’s approach. Their video diaries included criticism that she was not opening her mind to the ideas of others and that she was, to an extent, creating an obstacle to the benefit the other contributors were beginning to draw from the experience.

The BBC said that Mr Trevathan held a class session on the key theme of presence. Commitment to each other and to the retreat was discussed and Mr Trevathan sought and obtained from each member of the group an individual confirmation of their commitment. On the next day, the class lecture was on the subject of death. The material in the series showed that Ms Alvi did not attend that, nor, it seemed, did she attend any of the other activities that day. In the evening she told Mr Trevathan that she would not be attending the evening prayers. The BBC said that Ms Alvi’s heavy cold appeared to have started at around this time, but other participants were also affected by colds.

The BBC said that after Mr Trevathan refused to let Ms Alvi attend a lecture

from a visiting Muslim academic (on the grounds that she needed to be following the programme with the others, reinforcing the commitment to presence), Ms Alvi had spoken to Rahma, her mentor, and to Shanaz Trevathan, Mr Trevathan's wife, behind his back, and unwittingly they agreed with her that the lecture might be helpful for her. When Mr Trevathan discovered she was in the lecture he called her out and questioned her commitment to the programme and the point of her being on the retreat. There then followed a class discussion to clear the air about the situation, however, Ms Alvi said that she was too ill to attend. The BBC said that, following some criticism of his handling of the situation, Mr Trevathan arranged a face to face session with the lecturer so that the participants (especially Ms Alvi) could put questions to him. The BBC said that Ms Alvi refused, despite prompting, to raise a particular question which Mr Trevathan felt it was likely that she would ask. At this point other participants became very critical of Ms Alvi's behaviour. The BBC said that it was against this background that the two conversations, between Mr Trevathan and Ms Alvi were recorded.

- ii) & iii) The BBC said that the Mr Trevathan did not describe Ms Alvi as "prescriptive" or "dry" or "formulaic". It was her interpretation of Islam that was so described. It said that Mr Trevathan was as entitled to an opinion of Ms Alvi's approach to Islam as she was to his, and that there was no inherent unfairness to broadcasting it. By immediately following it with Ms Alvi's own words explaining her point of view, Mr Trevathan's remarks were properly balanced. The BBC also said that the terms "fundamentalist", "conflict" and "modern contingent" did not appear in any part of the series, so no unfairness could arise from them.

The BBC said that the programme makers worked on the assumption that many viewers would know little of Islam, and should be given the chance to hear contrasting opinions of what it involves. Inevitably, that had to be presented as discussion among those participants with a firm Islamic background. To some extent, the BBC said that Ms Alvi was shown representing a particular Muslim standpoint, but the series simply conveyed her genuine and firmly-held views. The BBC said that Ms Alvi did not complain that she did not hold the views that she was seen to advance, and so this material could not have been unfair to her. The BBC said that the programme makers had adequate evidence (through the video diaries and the footage taken at the retreat) to demonstrate that Mr Trevathan's description of her approach to Islam was fair comment, justified not only by his informed judgement but also by the facts.

The BBC then dealt with each of the 11 instances which Ms Alvi said been broadcast in a way that was unfair to her:

- In relation to the first instance complained of, the BBC said that the commentary explained that even when Ms Alvi was struggling to climb the mountain:
"she's sticking to the letter of Islamic law by not having physical contact with a man she could technically marry".
The BBC said that in a culture familiar to many viewers, where women frequently shake hands with, even kiss, men who are no more than casual acquaintances, this was a useful lesson in Muslim sensibilities, and no unfairness arose from it. Examination of the relevant footage showed that another female participant, Ms Pom Jenkins, was in the group. She wasn't

in the shot where Ms Alvi explained why she did not want the help of a male participant, but the programme makers saw no unfairness in choosing it, as the principle of the series was to let the participants explain things in their own words. The BBC said that as Ms Alvi did not seek help from Ms Jenkins, it did not see how she could have been shown doing so.

- In relation to Ms Alvi's complaint that the programme implied that she was unwilling to pray with the other members of the group, the BBC said that it assumed this to be a reference to a sequence half way through Episode One. The BBC said that Ms Alvi was shown getting up and walking away. It was shown without comment, and Muslims would know, from Ms Alvi's white robes, that she was menstruating and why, therefore, she moved away. Ms Alvi corrected the BBC on this point saying that the white robes had no significance whatsoever. In its second statement the BBC apologised for the misunderstanding. The programme makers did not feel it was appropriate to explain this intimate matter in commentary, and did not accept that non-Muslim viewers would have drawn an adverse implication from it. They might equally have assumed she had finished praying and was therefore leaving. The BBC said that Ms Alvi was shown in three later sequences in Episode Three present in the mosque and praying with other members of the group. This material demonstrated there could have been no intention to imply she was generally unwilling to join in group prayers. The BBC said that Ms Alvi was reluctant, by her own admission, to attend the Dhikr (another type of religious activity) and the Wadifa, so the other participants were often in the Mosque without her.
- Turning to the third instance, the BBC said that it was evident from other participants' video diaries that she stayed away from a number of morning classes and many other events too. Her illness, to which other participants also succumbed without much effect on their attendance, lasted no more than a few days.
- In relation to Ms Alvi's fourth specified instance that she was shown not taking part of the Wadifa, the BBC said that this was a complete misrepresentation of the series. Viewers saw three Wadifas at the retreat. The first came in Episode One, and showed Ms Alvi being present. It became clear to Mr Trevathan that she had reservations, so he gave her the opportunity, as requested in the Agreement, to discuss her reservations with him. The second Wadifa came a little earlier in the same episode. Again, Ms Alvi was present, but was shown to be clearly disapproving of proceedings. When she didn't turn up on one subsequent evening, the commentary noted her absence, and went on to include her explanation for it.

The BBC said that it was quite clear that Ms Alvi disapproved of this type of worship. As was her contractual right, she decided she would not attend, thereby breaking her personal commitment to do so. In the circumstances, viewers were entitled to an explanation for her absence, so the producers gave them one, in Ms Alvi's own words.

The BBC said that Ms Alvi's complaint was unclear, and it may be that she objected to the use of a "non-simultaneous cutaway", that is a shot taken earlier, before the Wadifa. The BBC said that cutaways were a long

established convention in many types of film making, and there was no unfairness in using one unless it implied something untruthful. In this sequence, Ms Alvi was shown reading, something she says she did during the afternoons, and it did no more than indicate her absence from the Wadifa. As she genuinely was not at the Wadifa, it did not give a misleading impression.

- This fifth instance has been dealt with under c) i) above.
- In relation to the trip to the mountain to meditate and the commentary “Aisha gives up after ten minutes”, the BBC said that this was one of several sequences which sought to convey to viewers what the participants gained from proceedings at the retreat. It showed that other participants gained a lot, one got nothing but sunburn and that Ms Alvi opted out. Again, viewers were entitled to an explanation, and were, again, given it in her own words: “I feel too ill and too hot ... and I need some shade”. The BBC said that it did not accept viewers could have drawn the conclusion that she was anything other than ill and uncomfortable.
- The BBC said that Ms Alvi complained that the commentary at the beginning of the sequence relating to the trip to Morocco insinuated that her motivation for considering whether to join the group was her reservations about “Sufi practices”. This was not accepted by the BBC. Viewers had only a hint of what the participants would find in Morocco, from the sequence in Episode One which showed them visiting a grave with some Moroccan visitors. The BBC said that it did not accept this was sufficient for viewers to form a conclusion about what else they might see in Morocco, or make a link between that and Ms Alvi’s reluctance to go. The BBC believed that Ms Alvi’s distaste for “Sufi practices” coloured her entire attitude to the retreat, but there was nothing in this section of commentary to suggest that was at work here.
- When writing the commentary, the BBC said that the programme makers had good evidence about the truth of the situation, which was that Ms Alvi did not decide whether to go to Morocco until the very last moment. Most people, facing the necessity of being up and ready to go so early would begin preparations the night before. That was not what Ms Alvi did, as was evidenced by her video diary. In the circumstances, the BBC said that the narration complained of was no more than fair comment on the known facts of the situation.
- In relation to Mr Simon Yarrow’s apology to Ms Alvi, the BBC said that this had no bearing on the discussion between them that was included in Episode Three. No narrative purpose would have been served by including it. The programme makers were confident they had fairly represented what passed between Ms Alvi and Mr Yarrow and the BBC said that it felt it would be helpful to include Mr Yarrow’s own view. After the editing of the series was completed the six participants were invited to see it in individual private screenings. The BBC said that the programme makers knew, from previous experience, that seeing this kind of documentary for the first time could be an emotional experience for the participants, which was why they were given individual screenings and told they could bring a friend or family member for support. There was

some difficulty scheduling Ms Alvi's viewing, so it was the last to take place. After all six of the participants had seen it, they met up to discuss their reactions. The programme makers felt the conversation between Mr Yarrow and Ms Alvi was fairly presented.

- The BBC next turned to Ms Alvi's complaint about the inclusion of negative comments about her by other participants. It said that the series contained footage of Ms Alvi's contributions to group discussions, and it was appropriate and fair to let viewers decide for themselves the value of the individual participants' contributions. It did not include many of the unflattering references to her by the other participants, but it did include the warm exchange between her and Mr Trevathan as she left the retreat.
- In relation to the reasons that Ms Alvi gave for forming a friendship with Mr Zaiee, the BBC said that the series contained adequate material from Mr Zaiee's video diaries that demonstrated his thoughts on the matter. There was nothing in the recorded material that demonstrated Ms Alvi's later stated reasons for forming the friendship.
- In relation to the footage of the second trip to the mountain for meditation, the BBC said that it would only have been unfair to Ms Alvi to include this material if she had not, in fact, been bored by spending time meditating. However, because any implication viewers took from the sequence was derived solely from her own words, the BBC said that there was no question of unfairness here. It should also be noted that Mr Trevathan sought to put a positive interpretation on her disaffection. Furthermore it was untrue to state that the programme makers did not want to portray Ms Alvi's light-hearted or jovial side. There were three separate sequences in Episode Two showing her laughing and smiling. These were when she was involved with water throwing, when she was shown laughing with other members of the group, and when she joked with Mr Zaiee in the stables. There was also a reprise of the stables sequence in Episode Three.

Ms Alvi's comments in response

Ms Alvi's responded in some detail to the BBC's statement although she did not follow the entertained heads of complaint. Her response added a considerable amount of background to her complaint and also to the points and issues raised by the BBC. She countered much of the content of the BBC's statement. For example, she argued that whilst she was aware that Sufi practices would be promoted at the retreat she said that she was assured at all stages that there would be nothing too uncomfortable and that she would have a choice whether or not to participate in activities at the retreat. Her response was considered in full by the Executive Fairness Group.

The BBC's final statement in response

The BBC submitted a final detailed statement in response to Ms Alvi's comments which rebutted what she had said. For example, in relation to the agreement between the programme makers and Ms Alvi, the BBC emphasised that observational documentaries such as *The Retreat* rely on putting a group of volunteers in a particular setting and filming what happens. It said that some of that may involve a degree of discomfort but that this is not unexpected. The BBC argued that it is not

unfair to depict such discomfort on screen and said that participants, as volunteers could withdraw at any time.

The BBC response was considered in full by the Executive Fairness Group.

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 and consistent and targeted only at cases in which action is needed.

This complaint was considered by Ofcom's Executive Fairness Group. In reaching a decision it considered a recording and transcript of the three programmes in the series together with untransmitted footage. It also considered the submissions from both parties.

Ofcom found the following:

- a) & b) Ofcom first considered the grounds of complaint summarised under a) and b) under Ms Alvi's case above. This was because both grounds related to the information given to Ms Alvi before the programme was made. These grounds were that firstly Ms Alvi was not told the nature and purpose of the series and secondly that she was given pre-production assurances by the programme makers that the project would be based on mutual trust and goodwill. Ofcom considered Ms Alvi's assertion that these assurances were not adhered to. In particular it considered her statement that she had agreed to participate only on the basis that she would not be required to take part in any activity at the retreat with which she felt uncomfortable.

In deciding these issues Ofcom considered 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 Ofcom Broadcasting Code ("the Code"), whether the programme makers were fair in their dealings with Ms Alvi in accordance with Practice 7.2 of the Code and whether the recommendations of Rule 7.3 were followed in a way which resulted in Ms Alvi's informed consent being given.

In summary Ofcom was required to decide whether the broadcaster took appropriate steps to ensure that the consent Ms Alvi gave to participate in the programme was, in fact informed consent. Also whether, having decided on this issue of consent, the programme as broadcast resulted in unfairness to her.

Ofcom noted that in her statement Ms Alvi said she was "persuaded and reassured to take part" following pre transmission discussions with the broadcaster. Ofcom also noted that Ms Alvi had had previous

media experience in programmes dealing with religion and was familiar with the programme consultant on *The Retreat*. When deciding whether or not to take part in the programme, Ms Alvi had been sent copies of the previous programmes in the series (*The Convent* and *The Monastery*). She subsequently ensured that her contract was adjusted so that it included the following clause:

“..in the event you are unhappy about any proposed activity you are requested to undertake you shall discuss the same in good faith with the leader of the Retreat and a representative of the Company...”

The BBC stated that this clause “was not a blanket right not to turn up” and that Ms Alvi was bound by other clauses in her contract.

Finally Ofcom noted that Ms Alvi signed her Agreement only after a few days at the retreat and that she was aware from the outset that the retreat was likely to promote Sufi practices (and therefore its teachings were likely to differ from her own practices). Nevertheless she stayed and continued to participate.

In Ofcom’s view, the agreement entered into by Ms Alvi with the programme makers fell short of a guarantee that she would not be required to take part in activities with which she was uncomfortable. In the absence of such a guarantee Ofcom considered whether overall Ms Alvi had been provided with sufficient information about the nature of the programme to give her informed consent. It concluded, having taken the above factors into account that it was unlikely that there would have been any lack of clarity about what would be involved in her participation. It therefore found that she had not been treated unfairly.

Ofcom did not uphold these two heads of complaint.

- c) Ofcom then considered Ms Alvi’s third head of complaint that the footage of her included in the series was edited in a way which portrayed her unfairly and misrepresented her religious views. In seeking to make a decision on this head of complaint Ofcom referred individually to each of the instances specified by Ms Alvi in her complaint which she said demonstrated unfair treatment of her by the programme makers. In relation to each of these sub-heads and looking at the programme overall, Ofcom took particular account of whether the programme maker’s actions were consistent with the obligation to avoid unjust or unfair treatment of individuals in programmes (as set out in Rule 7.1). It also considered whether the way in which the BBC edited any of Ms Alvi’s contributions resulted in those contributions having been represented unfairly (as outlined in Practice 7.6) or whether the presentation was consistent with the broadcasters obligation to ensure that material facts had not been presented in a way which was unfair (as outlined in Practice 7.9). The consideration of each of these sub-heads informed Ofcom’s overall decision on this third head of complaint. Ofcom considered the following sub-heads:

i) Footage showing Mr Trevathan's "emotional aggression" towards her was unfairly omitted from the series, despite it being the single factor that had the biggest impact on her during the making of the series.

Ofcom examined untransmitted footage of approximately 90 minutes duration, which Ms Alvi said demonstrated Mr Trevathan's "emotional aggression" towards her. This footage consisted of lengthy discussions between Ms Alvi and Mr Trevathan about her stay at the retreat. Ofcom considered whether the exclusion of substantial segments of footage of exchanges between Ms Alvi and Mr Trevathan that were more heated and involved than those that appeared in the broadcast programme meant that an unfair impression of Ms Alvi was presented to viewers. Ofcom then considered whether some of the antagonism displayed by Ms Alvi in the programme went unexplained to the viewer as a result of excluding this material and whether she was consequently portrayed unfairly.

Ofcom considered that in documentaries such as this, where a great deal of material is filmed over a number of weeks or months, practical constraints are placed on programme makers in relation to what can be included in the final broadcast programme: it is not possible for every occurrence to be documented.

Ofcom considered that what was shown in the programme reflected the untransmitted footage, namely that an uncomfortable relationship between Ms Alvi and Mr Trevathan developed. While Ofcom could not take a view on what Ms Alvi described as Mr Trevathan's "emotional aggression" towards her, it noted that the untransmitted footage demonstrated that their relationship was an uncomfortable one and that Ms Alvi was articulate and stated her opinion in a forthright manner. This was fairly reflected in the broadcast programme.

ii) Throughout the series, Mr Trevathan unfairly described Ms Alvi as "prescriptive", "dry" and "formulaic" and as being part of "that modern contingent" which was "fundamentalist" and caused "conflict" to Muslims and wider society.

Ofcom considered the broadcast sequence to which this head of complaint applied. It occurred in Episode One when Mr Trevathan, addressing the camera, said:

"Aisha is indicative of a particular type of Islam, which is prevalent in the world today, which is at some odds with the classical traditional position. In my view it's a superficial, prescriptive, dry, formulaic interpretation of Islam"

Ofcom found that in stating the above, Mr Trevathan was not referring to Ms Alvi personally but to her interpretation of Islam. In the context of the on-screen group discussion which immediately preceded this comment, Ofcom found Mr Trevathan's statement to be editorially justified. It provided an insight into the thoughts of the retreat leader. In addition, throughout the three programmes, Ofcom considered that the programme did not present only Mr Trevathan's views on Ms Alvi's faith. Viewers were given a choice about the issue, for example through the inclusion of Ms Alvi's own views on her spirituality. One example was in Episode Three when the group undertook the task of pressing grapes. Ms Alvi stated:

“It’s a constant battle to strive to be a good Muslim, definitely. But it’s my personal struggle, and it’s the standards I set myself”.

In addition there were a number of scenes where Ms Alvi was shown behaving in a light-hearted and humorous manner. These instances are discussed in more detail under iii) below. Ofcom also noted that the terms “fundamentalist”, “modern contingent” and “conflict” did not appear in the series as Ms Alvi appeared to suggest in her complaint.

iii) Most of the scenes in which Ms Alvi appeared unfairly portrayed her in a negative light as being a dogmatic character who was non-spiritual and who “bailed out” of most of the activities and objected constantly to what was going on around her. It was unfair for the programme makers to have edited the material of her in this way and to omit footage in which she explained what spirituality meant to her.

Ofcom noted that this was a three part observational documentary series which sought to recount the experiences of five participants in addition to Ms Alvi. These participants were all filmed for more than a month. It would not have been possible or practical for the programme makers to include all of the material they had filmed. Ofcom considered that, so long as it did not result in unfairness to any of the contributors or result in any other breach of the Code, it was entirely a matter for the programme makers themselves to decide what material would ultimately be included in the broadcast programmes.

In relation to Ms Alvi’s complaint that footage in which she explained what her spirituality meant to her was edited out, Ofcom noted the comments made by Ms Alvi during the grape-pressing task referred to under ii) above and to a sequence which occurred midway through Episode Three in which Ms Alvi was seen in silent prayer. Furthermore incidents were included such as a sequence in Episode Three in which she was seen laughing and smiling with Mr Ziaee (another member of the Group) in the horse stables.

Taking these elements of the programme into consideration in Ofcom’s view the portrayal of Ms Alvi was edited fairly and placed within a balanced context.

Ofcom next considered the 11 instances which Ms Alvi said had resulted in unfairness to her:

- Ofcom first considered Ms Alvi’s complaint that when she was shown refusing help climbing the mountain by a male member of the group, it was not shown that there was a female group member who was able to assist her when descending.
- Ofcom considered that the broadcast sequence was a straightforward portrayal of what had occurred as the volunteers climbed and descended the mountain in Episode One. While Ms Alvi considered that this sequence showed her in a negative light, Ofcom noted that the footage was preceded by the programme’s commentary as follows:
“Even in these testing circumstances, Aisha’s keen to show she’s sticking to the letter of Islamic law by not having physical contact with a man she could technically marry”

In Ofcom's view, Ms Alvi's behaviour was explained to viewers and properly contextualised.

No unfairness resulted to Ms Alvi from this footage.

- Ofcom then turned to Ms Alvi's second complaint that, although she was shown attending the Mosque, she did not take part because a female cannot physically pray when she is experiencing her menses. The implication given by the series was that she was unwilling to pray with the other members of the group.

In Ofcom's view this sequence could have been interpreted as implying that Ms Alvi was unwilling to pray with other group members. However in the series overall Ofcom noted that there were three other sequences in which Ms Alvi was shown praying with other participants. This resulted in a balanced portrayal of her participation in praying with the other members of the group.

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

- Ms Alvi complained that the series implied that she was deliberately staying away from the morning classes held at the retreat when, in fact, she was ill.

Ofcom noted that Ms Alvi stated in her complaint that her illness lasted for three to four days of the month long retreat. In untransmitted footage other members of the group mentioned the fact that she sometimes did not turn up for class. The fact that she was ill and that this prevented her participation in activities to some extent was made clear both through footage and the commentary.

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

- Ofcom next considered Ms Alvi's complaint about her unfair portrayal in not attending the evening Wadifa. As set out above, the choice of material to include in a documentary series of this nature is entirely one for the programme makers so long as it does not result in unfairness. Ofcom noted that Ms Alvi was shown attending two different Wadifas during Episode One. In addition her reasons for being uncomfortable with the Wadifa were presented to viewers in Episode Two, when she said:

"In some ways each time I go to it, it's sort of different. And the last couple of nights I'm coming away kind of feeling that it's...it's just in terms of atmosphere it's sort of generally...feeling a bit, a little bit like a singsong. Maybe some people would say well I've not given it enough of a chance. But it's just really not me that whole kind of group thing and I don't really agree with it."

Ofcom did not consider that it was incumbent on the programme makers to show where Ms Alvi was when she was not at a Wadifa.

Ofcom found that there was no unfairness to Ms Alvi in relation to her non attendance at the Wadifa.

- Ofcom then turned to Ms Alvi's complaint that the footage in which Mr Trevathan questioned her on whether or not she should remain at the retreat

was used out of context, since she was never expected to take part in anything that she found uncomfortable. Footage of her making her way back to the residence was used to portray her as “opting out”.

This incident has been examined in detail under b) above, in which Ofcom considered the limitations on the assurances given to Ms Alvi . Ofcom found that there was no unfairness to Ms Alvi as a result of this footage.

- Next Ofcom considered Ms Alvi’s complaint that when the group was shown going onto the mountain to meditate, the commentary negatively stated that “Aisha gives up after ten minutes”, giving the impression that she was not at all spiritual.

Ms Alvi considered that there was a connection between the commentary that she has “*given up*” and viewers thinking that she was not spiritual. However in Ofcom’s view from the broadcast footage it was clear that the reason Ms Alvi left the mountainside was because she was suffering from a heavy cold and was uncomfortable in the strong sunshine.

Ofcom found no unfairness to Ms Alvi in this respect.

- In relation to the group’s trip to Morocco, Ofcom considered Ms Alvi’s complaint that the commentary stated that she had decided to join the group at the last minute and gave the impression that she was undecided because of the “Sufi practices”.

Ms Alvi accepted that she made a last minute decision to go to Morocco. The commentary in the programme was as follows:

“With only minutes to spare, Aisha decides to join them.”

Ofcom did not consider that viewers would have interpreted this as resulting from an unwillingness to attend a Sufi retreat, since at that point in the programme it was not clear to viewers that the group would be attending a Sufi style retreat when they arrived in Morocco. For this reason Ofcom found that the commentary fairly reflected the circumstances surrounding Ms Alvi’s decision to go to Morocco.

Ofcom found no unfairness to Ms Alvi in this respect.

- Ofcom then turned to Ms Alvi’s complaint that the footage of Mr Yarrow talking to Ms Alvi was shown out of context and unfairly edited.

Ofcom considered the broadcast footage together with untransmitted footage supplied by the programme makers in which Simon Yarrow was seen apologising to Ms Alvi. The context of the sequence objected to by Ms Alvi was set by the programme narration which stated:

“That afternoon, Simon seeks out Aisha, who reacted so negatively to the whole wilderness exercise. He doesn’t want her scepticism tainting his experience.”

Mr Yarrow then said:

“...why I wanted to talk to, to you particularly, Aisha, is because...you can make it very hard for someone like me, who has got no experience of these things, you almost negate what I am saying...”

Ofcom noted that the programme at this juncture was concentrating on Mr Yarrow's spiritual journey and in Ofcom's view the exchange was appropriately contextualised by the narrator. While untransmitted footage demonstrated there had been tension between Mr Yarrow and Ms Alvi and indeed showed Mr Yarrow apologising to Ms Alvi, Ofcom noted that the apology to Ms Alvi related to incidents unconnected to the conversation between the two depicted by the footage complained of under this sub-head. The broadcast programme had up until that point made no suggestion of any antagonism between the two which the programme makers were required to address. The apology by Mr Yarrow was therefore not relevant at this point of the programme.

As a result Ofcom found no unfairness to Ms Alvi as a result of this footage.

- Ofcom then examined Ms Alvi's complaint that the series included only negative comments made about her by the other group members and was not balanced by the valuable dimension she said she had added to the group.

Ofcom noted that at the beginning of Episode One Ms Alvi was given the opportunity to set out what she hoped to achieve during the retreat:

“This would be an opportunity for me to share my faith with five other individuals and tell them how Islam encompasses our daily life which I think is very much the beauty of Islam”.

On her departure from the retreat Mr Trevathan told Ms Alvi:

“thanks for coming, really and thanks for being here throughout the month and sticking it out, you know and just being Aisha”.

Ofcom considered that this last remark was a favourable comment by Mr Trevathan recognising that, that despite their differences, Ms Alvi had contributed to the overall experience of the group.

In addition throughout the series Ms Alvi was shown engaging in discussions with others at the retreat. Viewers were therefore in a position to assess the dimension she added to the experience of the group. Ofcom also noted that many comments by other participants which were critical of her, apparent from untransmitted footage, were not broadcast. Comments by Mr Ziaee, in which he described his admiration for her commitment to her faith, were included in Episode Three, for example when he said:

“So, I just think that she – Islam comes before absolutely any kind of emotion or anything like that”.

In light of the above Ofcom found that both positive and negative comments were made about Ms Alvi and that these fairly reflected how others in the group felt about her.

The portrayal of Ms Alvi in this respect did not result in unfairness.

- Ofcom next considered Ms Alvi's concern that the reason for her forming a friendship with Mr Ziaee was because of her treatment by Mr Trevathan and the programme makers themselves, but that this was not shown in the series.

Ofcom was neither able nor required to decide on the motivation for the friendship between Ms Alvi and Mr Ziaee. The reasons given by Ms Alvi in her complaint to Ofcom were not apparent from either the transmitted or untransmitted footage. However having examined the programme and the untransmitted footage, including untransmitted footage of Mr Ziaee's video diaries, Ofcom considered that it was unlikely that viewers were left with an unfair impression of the friendship. Ofcom noted, for example, that Ms Ziaee said of Ms Alvi in Episode Two:

"Maybe my parents would also really think. 'God you've hit gold here.' You know, 'You've met somebody who has got their head screwed on, who's....basically just exactly you know epitomises Islam and that is exactly what you need in your life."

Ofcom therefore took the view that the programmes' representation of Ms Alvi's friendship with Mr Ziaee was not unfairly represented.

For these reasons Ofcom found no unfairness to Ms Alvi in this respect.

- Finally Ofcom turned to Ms Alvi's complaint that, in relation to the second trip onto the mountain to meditate, Ms Alvi was shown saying that she found the experience boring. This was included to suggest that she was not spiritual, as the programme makers did not want to portray her light-hearted and jovial side.

As discussed above, Ofcom took the view that the choice of material to include in the broadcast programme was for the programme makers, provided no unfairness resulted. The sequence complained of occurred in Episode Three, when viewers who had followed the series would have already gained considerable insight into Ms Alvi's religious beliefs and her views on the retreat.

As indicated elsewhere in this Adjudication, the spiritual dimension to Ms Alvi's character was portrayed and she was shown being jovial on a number of occasions during the series (for example some of her remarks during the grape pressing sequence in Episode Three were jocular in tone and she was seen joking with Mr Ziaee in the stables in the same episode).

Ofcom therefore found that the broadcast footage of this particular incident was a fair portrayal of events and was balanced by other footage in the series. .

In conclusion, Ofcom found that none of these instances were capable of resulting in unfairness to Ms Alvi because of the way they were presented. Ofcom also considered whether cumulatively these instances could have been capable of causing unfairness to her, but again found that they could not. Taking all the above factors into account, Ofcom found that the programme did not result in unfairness to Ms Alvi. For these reasons Ofcom has not upheld this complaint.

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

Executive Fairness Group
19 August 2008

Complaint by Hizb ut-Tahrir Britain *Panorama*, BBC1, 1 October 2007

Summary: Ofcom has not upheld this complaint of unfair treatment by Hizb ut-Tahrir Britain.

This edition of the investigative current affairs programme *Panorama* looked at the Islamic organisation Hizb ut-Tahrir and its influence on young British Muslims. The programme was presented by Mr Shiraz Maher, a former member of Hizb ut-Tahrir Britain. The programme said that young Muslims who joined Hizb ut-Tahrir Britain were encouraged to hate non-Muslims. It included a discussion about how the encouragement of this hatred created the potential for Hizb ut-Tahrir Britain members to take violent action against non-Muslims both in Britain and abroad.

Ofcom found that Hizb ut-Tahrir Britain was not portrayed unfairly. It considered that the claims that Mr Khyam (who dressed up as a suicide bomber) was an Hizb ut-Tahrir supporter and that Mr Sharif (who was one of the Tel Aviv bombers) had been influenced by Hizb ut-Tahrir ideology did not result in unfairness to Hizb ut-Tahrir Britain because of the context in which these comments were made and because they were based on the testimony of credible witnesses. Ofcom found that the programme did not suggest that Hizb ut-Tahrir Britain was associated with either the demonstrations against the Danish cartoons of The Prophet Mohammed in 2006 or the events at the Regent's Park Mosque in 2004 and that therefore the inclusion of footage of these events was not unfair to the complainant. Ofcom also found that the claim that Hizb ut-Tahrir Indonesia was set up from London did not result in unfairness to the complainant because it was again based on the testimony of credible witnesses.

Ofcom found that Hizb ut-Tahrir Britain was given an appropriate and timely opportunity to respond to the allegations made about it in the programme and that the BBC was not required to include its complete response in the programme.

Given that the programme had made clear that Hizb ut-Tahrir Britain's position was that it did not support violence of any kind and in particular terrorist activity, Ofcom considered that the representation of Hizb ut-Tahrir Britain's response included in the programme did not result in unfairness to the complainant in relation to the allegation that Mr Sharif was influenced by Hizb ut-Tahrir Britain's ideology.

Introduction

On 1 October 2007, the BBC broadcast an edition of the weekly investigative current affairs programme *Panorama*. This edition of *Panorama* looked at the Islamic organisation Hizb ut-Tahrir and its influence on young British Muslims. The programme was presented by Mr Shiraz Maher, who described how he had joined Hizb ut-Tahrir Britain become radicalised, and subsequently rejected what he felt was the group's extremist interpretation of Islam.

In the programme Mr Maher expressed his concern that Hizb ut-Tahrir Britain was drawing young male members of the British Muslim population, who had fairly moderate views, into isolated groups where they were exposed to extremist views on the actions necessary for observance of the Muslim faith. The programme indicated that members of these Hizb ut-Tahrir Britain groups were encouraged to hate non-Muslims and included a discussion on how the encouragement of this hatred created

the potential for these Hizb ut-Tahrir Britain members to take violent action against non-Muslims both in Britain and abroad.

Dr Imran Waheed, who is the media representative for Hizb ut-Tahrir Britain, complained to Ofcom that Hizb ut-Tahrir Britain was treated unfairly in the programme as broadcast.

The Complaint

Hizb ut-Tahrir Britain's case

In summary, Dr Waheed complained that Hizb ut-Tahrir Britain was treated unfairly in the programme as broadcast in that:

- a) The programme portrayed Hizb ut-Tahrir Britain unfairly. Specifically he complained that:
 - i) It unfairly alleged that Mr Omar Khyam, who dressed as a suicide bomber at a demonstration against the Danish cartoons of The Prophet Mohammed in February 2006, was a supporter of Hizb ut-Tahrir Britain.
 - ii) It unfairly alleged that Mr Omar Sharif, who made an attempted suicide bomb attack in Tel Aviv in April 2003, had been influenced by Hizb ut-Tahrir Britain's ideology.
 - iii) It placed Hizb ut-Tahrir Britain in an unfair context by including footage of a demonstration against the Danish cartoons of The Prophet Mohammed in February 2006 and of unrest at the Regent's Park Mosque in November 2004. Hizb ut-Tahrir Britain said that it was not connected to either of these events.
 - iv) It incorrectly and unfairly stated that Hizb ut-Tahrir Indonesia had been set up from London.
- b) The broadcaster did not provide Hizb ut-Tahrir Britain with a timely and appropriate opportunity to respond to allegations made about it in the programme.
 - i) It did not include Hizb ut-Tahrir Britain's complete response to the allegations made about it in the programme.
 - ii) It failed to include Hizb ut-Tahrir Britain's denial of the allegations relating to Mr Khyam and Mr Sharif (see complaint at head a) i and ii above).
 - iii) It failed to give Hizb ut-Tahrir Britain an opportunity to explain that it was not connected to either the demonstrations against the Danish cartoons of The Prophet Mohammed in February 2006 or the unrest at the Regent's Park Mosque in November 2004.
 - iv) It failed to give Hizb ut-Tahrir Britain an opportunity to respond to the allegation that Hizb ut-Tahrir Indonesia was set up from London.

The BBC's case

In summary the BBC responded to the complaint as follows:

- a) The BBC did not consider that the programme portrayed Hizb ut-Tahrir Britain² unfairly.
 - i) The BBC first responded to the complaint that the programme unfairly alleged that Mr Omar Khyam, who dressed as a suicide bomber at a demonstration against the Danish cartoons of The Prophet Mohammed in February 2006, was a supporter of Hizb ut-Tahrir Britain.

The BBC said that the information that Mr Khyam supported Hizb ut-Tahrir Britain was well sourced in that it came from a person who had been a senior member of Hizb ut-Tahrir Britain who had since left the group. It argued that because the statement was true it could not have been unfair to Hizb ut-Tahrir Britain. However, the broadcaster also argued that the programme did not suggest that Hizb ut-Tahrir Britain had encouraged Mr Khyam's actions during the demonstration and that therefore, even if he was not a supporter of Hizb ut-Tahrir Britain, the programme was not unfair to the organisation because this comment about Mr Khyam did not reflect adversely upon it.

- ii) In relation to the complaint that the programme unfairly alleged that Mr Omar Sharif, who made an attempted suicide bomb attack in Tel Aviv in April 2003, had been influenced by Hizb ut-Tahrir Britain's ideology, the broadcaster stated that it was Mr Zahir Khan (a friend of Mr Sharif's) who made this allegation.

The broadcaster stated that Mr Khan had formerly discussed Mr Sharif's involvement with Hizb ut-Tahrir Britain while both men were students in a BBC documentary called *Britain's First Suicide Bomber* as well as in an article published in the *New Statesmen* (a copy of which it attached to its response).

It argued that as a close friend of Mr Sharif's Mr Khan was a credible witness and added that his information was corroborated by the same confidential source who had provided the information about Mr Khyam's support for Hizb ut-Tahrir Britain (referred to at head a) i) above). Given the testimony of these witnesses the BBC said that it was not unfair for the programme to have suggested that Mr Sharif was ideologically influenced by Hizb ut-Tahrir Britain.

The broadcaster also argued that the programme did not suggest that Hizb ut-Tahrir Britain had encouraged the actions which Mr Sharif took in Israel but rather made clear that it was likely that these actions were influenced by a different "social circle".

² Throughout its statement (with the exception of its response to the complaint about the role played by Hizb ut-Tahrir Britain in setting up Hizb ut-Tahrir Indonesia), and in some sections of the programme, the BBC referred to "HT" rather than Hizb ut-Tahrir Britain. However, Ofcom has taken the BBC's references to "HT" to be synonymous with Hizb ut-Tahrir Britain (i.e. the complainant).

- iii) The BBC denied that the context of the programme had been unfair in that it had included footage of a demonstration against the Danish cartoons of The Prophet Mohammed in February 2006 and of unrest at the Regent's Park Mosque in November 2004.

It said that the footage of the demonstration against the Danish cartoons was brief and was relevant for inclusion because it illustrated the actions taken by Mr Khyam, who was influenced by Hizb ut-Tahrir Britain's ideology even if the organisation had not encouraged this particular act. The BBC also said that the programme did not suggest that Hizb ut-Tahrir Britain had organised the demonstration.

The broadcaster argued that there was no suggestion that the incident in the mosque (which it did not consider merited the description "unrest") was connected to Hizb ut-Tahrir Britain. It said that the footage was used to illustrate the connection between Mr Maher (the former Hizb ut-Tahrir member who presented the programme) and two other individuals Mr Bilal Abdullah and Mr Kafil Ahmed.

The BBC said that its view that the programme did not imply that there was a link between the incident in the mosque and Hizb ut-Tahrir Britain was made clear by the following comment made by Mr Maher:

"I never did recruit Kafil into HT but I did notice he was becoming more and more devout, and it was through Kafil that I also got to know Bilal Abdullah, the other man allegedly involved in the Glasgow [airport car-bomb] plot".

The BBC said that Mr Maher, then an Hizb ut-Tahrir member, met Mr Abdullah through a non-member Mr Kafil Ahmed. Therefore, it argued, it was clear that Mr Abdullah himself would not have been a member of Hizb ut-Tahrir Britain.

- iv) The BBC said that it was not incorrect to say that Hizb ut-Tahrir Indonesia had been set up from London.

It said that the information about the role played by Hizb ut-Tahrir Britain in helping to establish a branch of Hizb ut-Tahrir in Indonesia was again provided by the former senior member of Hizb ut-Tahrir referred to above as a confidential source. Given this the BBC believed the information to be reliable. However, it argued that even if the information was inaccurate, it would not be unfair to say that an organisation assisted with the endeavours of a fraternal organisation which shared its name and beliefs.

- b) The BBC provided a single response to all of the four sections of the complaint that it had not given Hizb ut-Tahrir Britain an appropriate and timely opportunity to respond to the allegations made about it in the programme.

The BBC said that it had had detailed correspondence with Hizb ut-Tahrir Britain which made clear the allegations which would be made and set out the BBC's understanding of the facts. It added that Hizb ut-Tahrir Britain provided a response which covered most but not all of the points it had raised and that it had used this statement in the

programme to incorporate Hizb ut-Tahrir Britain's reply to particular allegations.

The BBC argued that it was not required to include Hizb ut-Tahrir Britain's complete response, but to properly represent its response to specific allegations. It added that some of the points which Hizb ut-Tahrir Britain regarded as allegations were responded to by means of hyperlinks to Hizb ut-Tahrir Britain's website which made the entire response too long to incorporate into the programme. The broadcaster believed that it had represented Hizb ut-Tahrir Britain's response fairly. It added that it did not believe that the statements in the programme about Mr Khyam, Mr Sharif, the demonstration about the Danish cartoons, the incident in the Regent's Park Mosque and the relationship between Hizb ut-Tahrir Britain and Hizb ut-Tahrir Indonesia were allegations because they did not involve claims or inferences of wrongdoing by Hizb ut-Tahrir Britain and therefore did not require a right of reply.

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 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 considered a copy of the programme, the programme transcript and each party's written submissions.

Prior to considering the specific heads of complaint Ofcom assessed the nature of the programme.

Ofcom noted that unusually for the *Panorama* series, this programme was an authored piece presented by an individual, Mr Shiraz Maher, who had experience of belonging to and subsequently resigning from Hizb ut-Tahrir Britain. Ofcom also observed that the programme included the views of a range of contributors.

In the circumstances of this case Ofcom found the following:

- a) Ofcom first considered Hizb ut-Tahrir Britain's complaint that the programme portrayed it unfairly. Ofcom considered this complaint in light of the requirement on broadcasters in Rule 7.1 of Ofcom's Broadcasting Code ("the Code") to avoid unjust or unfair treatment of individuals or organisations in programmes. Ofcom also took particular account of Practice 7.9 of the Code which states that before broadcasting a factual programme broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

Ofcom looked at each of the individual complaints made under this head:

- i) Ofcom first addressed the complaint that the programme unfairly alleged that Mr Omar Khyam, who dressed as a suicide bomber at a demonstration against the Danish cartoons of The Prophet Mohammed in February 2006, was a supporter of Hizb ut-Tahrir Britain.

Ofcom noted that the programme showed archive footage of the demonstrations against the Danish cartoons of The Prophet Mohammed and a still image of a man (introduced as Omar Khyam) dressed as a suicide bomber and that this material was accompanied by the following commentary by Mr Maher:

“During the demonstrations against the Danish cartoons of The Prophet Mohammed, Omar Khyam showed the potential for action when he dressed as a suicide bomber. A well placed source has told Panorama that Khyam was an HT supporter from Bedford. But anger doesn’t always stop at imitation.”

In light of this statement Ofcom considered that the programme had clearly stated that Mr Khyam was a supporter of Hizb ut-Tahrir Britain.

In considering whether it was unfair for the programme to state that Mr Khyam was an Hizb ut-Tahrir supporter Ofcom looked at the source of this information, noting the BBC’s submission that the source was anonymous, and the context in which the claim was made.

Ofcom noted that the courts have recognised that the use of anonymous sources in media reports can make it difficult for the subject of those allegations to respond. However, they have also recognised that a reliance on such sources can be an important and necessary part of the dissemination of material which is in the public interest. Ofcom observed that this programme had set out to portray the concerns of Mr Maher, a former member of Hizb ut-Tahrir Britain, about the radicalisation of young British Muslims and the role of Hizb ut-Tahrir Britain in that process of radicalisation.

Ofcom observed that the programme explained the nature of the source of the information that Mr Khyam was an Hizb ut-Tahrir supporter and that the BBC’s submission stated that the person who said this was a former senior member of Hizb ut-Tahrir Britain. It also recognised that in light of the experiences of Mr Maher and Mr Ed Hussein, another former Hizb ut-Tahrir Britain member, when they left Hizb ut-Tahrir Britain (as described in the programme) namely, being subject to smear campaigns and in the latter’s case receiving threats, there was a legitimate reason for the BBC’s witness to retain his or her anonymity. With regard to the context in which this claim was made, Ofcom noted that this information was included in the programme to illustrate Mr Maher’s narrative about his own radicalisation and that of other young Muslims. It also considered that the programme did not allege that Hizb ut-Tahrir Britain had supported or was in any way involved in Mr Khyam’s decision to dress up as a suicide bomber.

Ofcom considered that in light of the BBC’s statement that its source had formerly held a senior position in Hizb ut-Tahrir Britain and given the public interest in the issues raised in this programme it was reasonable for the BBC

to rely on this anonymous source. Given these factors and the context in which the information was presented Ofcom found that the inclusion of the statement that Mr Khyam was an Hizb ut-Tahrir supporter in the programme did not result in unfairness to Hizb ut-Tahrir Britain.

- ii) Ofcom then addressed the complaint that the programme unfairly alleged that Mr Omar Sharif, who made an attempted suicide bomb attack in Tel Aviv in April 2003, had been influenced by Hizb ut-Tahrir Britain's ideology.

Ofcom noted that in relation to Mr Sharif (who the programme explained was one of two British Muslims who killed three people during the attempted suicide bomb attack in Tel Aviv in 2003)) the programme included the following comments by Mr Maher, the programme's presenter, and Mr Zaheer Khan who was a friend of Mr Sharif's at university:

- Mr Maher: *"Omar's path to radicalisation began just like mine. Zaheer Khan was a friend of Omar's at King's College University."*
- Mr Kahn: *"Omar's very first connection with any sort of Islamic activity was through Hizb ut-Tahrir and in a manner in which they sort of put forward Islamic teaching."*
- Mr Maher: *"But while Omar Sharif was praying and talking ideology with HT, he was developing a different side to himself."*
- Mr Kahn: *"He had another social circle as well, and that really manifested itself with a lot of heavy physical training where he would often go and do kick boxing and other physical activities."*
- Mr Maher: *"It's not known exactly what this other social circle was, but 6 months later Omar was in Kosovo training for Jihad. Ideologically Omar didn't have a big transition to make."*

Ofcom noted that the programme had stated that Mr Sharif was *"talking ideology with HT"* and thus implied that he was influenced by it. In considering whether it was unfair for the programme to imply that Mr Sharif was influenced by Hizb ut-Tahrir ideology Ofcom looked at the source of this claim and the context in which it was made.

Ofcom observed that the claim that Mr Sharif was influenced by Hizb ut-Tahrir ideology was based on the testimony of a former friend of Mr Sharif's (Mr Khan) who had known him well during the period when he became interested in Islamic ideology. Ofcom considered that in light of this Mr Khan was a credible witness. Ofcom also observed that according to the BBC's submission Mr Khan's testimony was corroborated by the same anonymous source who had told the programme that Mr Khyam was an Hizb ut-Tahrir supporter (Ofcom's position on the credibility of this source and the legitimate reason for the BBC's reliance on him or her is set out above at Decision head a) i).

In Ofcom's view the programme made it clear that in addition to *"praying and*

talking ideology with HT” Mr Sharif was “developing a different side of himself” with “another social circle” which the programme linked to his subsequent training for Jihad in Kosovo. Ofcom also considered that the programme made it clear that in Mr Maher’s opinion “ideologically, Omar didn’t have a big transition to make”.

Weighing these factors Ofcom concluded that the claim that Mr Sharif was influenced by Hizb ut-Tahrir ideology was based on the testimony of credible witnesses (one who was a former senior member of Hizb ut-Tahrir Britain and another who had first hand knowledge of Mr Sharif) and it was made clear that he was also subject to influences other than Hizb ut-Tahrir Britain. In light of this and the context in which the claim was presented Ofcom found that it did not result in unfairness to Hizb ut-Tahrir Britain.

- iii) Ofcom looked at the complaint that the programme placed Hizb ut-Tahrir Britain in an unfair context by including footage of a demonstration against the Danish cartoons of The Prophet Mohammed in February 2006 and of unrest at the Regent’s Park Mosque in November 2004. Hizb ut-Tahrir Britain said that it was not connected to either of these events.

Ofcom first observed that the footage of the demonstration about the Danish cartoons was shown in relation to Mr Omar Khyam. However, Ofcom considered that, as noted in the Decision at head a) i) above, the programme did not allege that Hizb ut-Tahrir Britain had supported or was in any way involved in Mr Khyam’s decision to dress up as a suicide bomber at this demonstration.

Ofcom acknowledged that a connection was made between Mr Khyam, who attended the demonstration, and Hizb ut-Tahrir, since he was said by the programme to be an Hizb ut-Tahrir supporter from Bradford. However for the reasons discussed at head a) i) above Ofcom noted that no allegations were made about Hizb ut-Tahrir itself in this regard and found that this did not result in unfairness to Hizb ut-Tahrir.

Ofcom next considered the use of footage of Regents Park Mosque. Ofcom noted that prior to this footage the programme showed Mr Maher talking about how he had met and shared a house with Mr Kafil Ahmed (who later drove the jeep that exploded in the June 2007 attack on Glasgow Airport) while he was studying for a PhD at Cambridge. It also noted that Mr Maher said:

“I never did recruit Kafil into HT but I did notice he was becoming more and more devout, and it was through Kafil that I also got to know Bilal Abdullah, the other man allegedly involved in the Glasgow plot. We two became friends and in November 2004 I travelled to London with Bilal on what Muslims consider to be the most holy night of the year. Bilal stayed inside the mosque praying while I joined the noisy crowd outside.”

Ofcom recognised that Mr Maher then introduced footage of the events at the Mosque by saying:

“It was the 27th night of Ramadan which Muslims believe is the night the Koran was revealed. It’s known within Islam as the night of power and it’s a very, very spiritual and emotionally charged night.”

It also observed that the images and words of the street preachers at the Mosque were accompanied by Mr Maher's explanation that the night had particular significance because of the military action which was occurring in Iraq:

Preacher "Brothers, we need to rise this sword and we need to have their heads rolling."

Mr Maher: *"It was also given added significance because in 2004 it was also the night that American troops went into Fallujah to tackle the Iraqi insurgency there."*

Preacher *"Tell me, who will give you more severe punishment, British Kufa, his police, Tony Blair or the Allah Subhanah Watallah in the hereafter?"*

As with the footage of the demonstrations against the Danish cartoons, Ofcom considered that the material relating to the events at the Regent's Park Mosque was included in the programme to illustrate Mr Maher's own narrative.

In addition Ofcom noted that the programme did not suggest that Hizb ut-Tahrir Britain was involved in or responsible for organising the events at the Regent's Park Mosque and that no association was made with Hizb ut-Tahrir Britain beyond the fact that Mr Maher was a member.

In light of the factors noted above Ofcom found that the inclusion in the programme of footage of the demonstration against the Danish cartoons of The Prophet Mohammed in February 2006 and of unrest at the Regent's Park Mosque in November 2004 did not result in unfairness to Hizb ut-Tahrir Britain.

- iv) Ofcom looked at the complaint that the programme incorrectly and unfairly stated that Hizb ut-Tahrir Indonesia had been set up from London.

In relation to this complaint Ofcom noted that Mr Maher set out his belief that *"HT is a group that has different faces for different countries and different times"* and that although *"it adopts a softer face"* in Britain, this was not the case in other countries. He said that *"in reality there's only one HT and only one message"*. The programme then showed footage of Mr Maher attending an Hizb ut-Tahrir rally in Indonesia. During part of this footage Mr Maher made the following comment:

"HT was formed in Palestine over fifty years ago, but recently Britain has become the engine room for HT worldwide, spreading its message into Pakistan, India, Bangladesh and Denmark. I can also reveal that HT Indonesia was set up from London."

In light of this comment Ofcom noted that the programme had clearly stated that Hizb ut-Tahrir Indonesia had been set up from London.

In considering whether it was unfair for the programme to make this statement Ofcom looked at the source of this claim and the context in which it was made.

Ofcom observed that the BBC stated that the claim that Hizb ut-Tahrir Indonesia had been set up from London was based on the testimony of the same senior anonymous source who had told the programme that Mr Khyam (who dressed up as a suicide bomber) was an Hizb ut-Tahrir supporter and corroborated Mr Zaheer Khan's testimony that the first connection with Islamic activity that his friend Mr Omar Sharif (who later became one of the Tel Aviv bombers) made came through Hizb ut-Tahrir. Ofcom's position on the credibility of this source and the legitimate reason for the BBC's reliance on him or her is set out at Decision head a) i) above.

Ofcom noted that the programme did not explain that the claim that Hizb ut-Tahrir in Indonesia was set up from London was from the anonymous source previously quoted in the programme. However Ofcom considered that given that the BBC relied on a credible and senior source for this claim, (anonymised for the reasons given at head a) i) above) its inclusion in the programme did not result in unfairness to Hizb ut-Tahrir Britain.

In light of the findings at heads i) to iv) above Ofcom found that the programme did not result in unfair treatment of Hizb ut-Tahrir Britain as complained of at head a) above.

- b) Ofcom next turned to the complaint that the broadcaster did not provide Hizb ut-Tahrir Britain with a timely and appropriate opportunity to respond to allegations made about it in the programme.

Ofcom looked at each of the individual complaints made under this head:

- i) Ofcom first addressed the complaint that the programme did not include Hizb ut-Tahrir Britain's complete response to the allegations made about it in the programme. This section of the complaint appears to relate to Practices 7.6 of the Code which states that when a programme is edited, contributions should be represented fairly; and Practice 7.7, which states that guarantees given to contributors, for example relating to the content of a programme, confidentiality or anonymity, should normally be honoured.

Ofcom first considered the correspondence between the programme makers and Hizb ut-Tahrir Britain. Ofcom observed from the submissions that in an email to Hizb ut-Tahrir Britain dated 11 September 2007 the producer outlined the nature of the programme and invited Hizb ut-Tahrir Britain to respond to Mr Maher's views on Hizbut Tahrir's structure, aims and objectives either on-screen or via a written statement. On 19 September 2007 the producer sent a letter to Hizb ut-Tahrir Britain which set out Mr Maher's thesis that "Hizb ut-Tahrir's ideology is similar to that of other global terrorist groups", noted that the programme would make a number of allegations about Hizb ut-Tahrir Britain (including that it incited racial hatred against other communities in the UK and abroad and that it intimidated former members by means of direct and indirect threats, and, in Mr Maher's own case, a smear campaign and the publication on the internet of his personal contact details) and explained that the deadline for Hizb ut-Tahrir's response would be 26 September 2007.

On 20 September 2007 Hizb ut-Tahrir Britain sent an email to the BBC producer acknowledging the opportunity to comment and asking for

details about the allegations and the evidence which would be included in the programme. On 22 September 2007 the producer sent a second letter to Hizb ut-Tahrir Britain (copy sent via email on 24 September 2007). This letter enlarged upon the allegations which would be made in the programme and again stressed that the deadline for Hizb ut-Tahrir Britain's response was 26 September 2007. Ofcom noted that this letter explained that the programme would indicate that Hizb ut-Tahrir Britain "was not an autonomous franchise but part of a worldwide movement with a shared ideology and goals" and that "[its] message elsewhere in the world promotes violence". The letter also stated that on the basis of the testimony of people who studied Hizb ut-Tahrir and of a promotional video for the Hizb ut-Tahrir Britain conference in 2003 the programme would allege that Hizb ut-Tahrir Britain "inspires hatred towards Britain and British society".

Ofcom observed that on 26 September 2007 Hizb ut-Tahrir Britain sent an email to the producer in which it provided a response to the allegations made by the BBC. Two of the responses included links to specific articles on the Hizb ut-Tahrir Britain website and one included a link to an article in *The Times*. Ofcom also observed that in this letter Hizb ut-Tahrir Britain acknowledged that Hizb ut-Tahrir was a "global movement" and rejected the allegations that it advocated violence, inspired hatred of British Society or smeared former members. In particular, Ofcom noted that Hizb ut-Tahrir Britain explained that "the commitment of Hizb ut-Tahrir not to be involved in any violent or military activity at any stage is based on its faith and understanding of the revelation of God, which makes its involvement in any violent or terrorist activity impossible, either in theory or practice".

Ofcom also recognised that the editing of material is a matter of editorial judgement for the broadcaster and that it was not incumbent on the BBC to include a specific statement. Rather it was required to ensure that Hizb ut-Tahrir Britain's "contributions should be represented fairly" (as set out in Practice 7.6 of the Code).

Ofcom noted that the programme twice referred to Hizb ut-Tahrir Britain's response to allegations made about it. First it showed both Mr Ed Hussein and Mr Maher alleging that Hizb ut-Tahrir Britain had run smear campaigns against them. The programme included Mr Hussein describing his experiences after leaving the organisation and then Mr Maher saying:

"It will come as no surprise that I've been subject to a smear campaign too. This has included posting my parents address, home telephone number and my mobile phone number on the internet. It's been confirmed to me that this smear campaign was organised by HT members, but HT disputes this. In a statement to Panorama they say:

"We reject the allegations that our organisation or its members have engaged in smearing former members, publishing their home addresses or phone numbers or making death threats."

Ofcom also noted that the programme went on to say that:

“On the issue that HT promotes violence they say: “The commitment of Hizb ut-Tahrir not to be involved in any violent or militant activity at any stage is based on its faith and understanding of the revelation of God which makes its involvement in any terrorist or violent activity impossible, either in theory or practice.”

Ofcom noted that the first response was to a particular allegation regarding smear campaigns and that the second was a broad response regarding violent or military activity. After these comments the programme showed an on-screen legend inviting viewers to read Hizb ut-Tahrir Britain’s full statement on the Panaroma website and giving the address for that site.

Ofcom also noted from the full correspondence discussed above that no guarantee had been given to Hizb ut-Tahrir Britain that its response would be included in full. In Ofcom’s view therefore there was no obligation (for example by prior guarantee) to broadcast the complainants statement in full and Ofcom found no unfairness in this regard.

Ofcom then went on to consider whether specific omissions from Hizb ut Tahrir Britain’s statement resulted in unfairness to it. These are addressed at heads b) ii), iii) and iv) below.

In relation to heads b) ii) to iv) of the complaint Ofcom took particular account of Practice 7.11 of the Code as well as Practice 7.6 (as set out above). Practice 7.11 states that (before broadcasting a factual programme) 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.

- ii) Ofcom addressed the complaint that the programme omitted to include Hizb ut-Tahrir Britain’s denial of the allegations relating to Mr Khyam and Mr Sharif (see complaint at head a) i and ii above).

Ofcom first set out to consider whether the programme included any allegations relating to either Mr Khyam (who dressed as a suicide bomber) or Mr Sharif (one of the Tel Aviv bombers) to which it was incumbent on the broadcaster to offer Hizb ut-Tahrir Britain an opportunity to respond.

Mr Khyam

As noted in the Decision at head a) i) above, Ofcom considered that the programme clearly stated that Mr Khyam was a supporter of Hizb ut-Tahrir Britain, that the source of this claim was credible and that the programme did not allege that Hizb ut-Tahrir Britain had supported or was in any way involved in either Mr Khyam’s decision to dress up as a suicide bomber at the demonstration against the Danish cartoons of The Prophet Mohammed. Ofcom did not therefore consider that it was incumbent upon the BBC to offer Hizb ut-Tahrir Britain an opportunity to respond to the comments in the programme. In light of this Ofcom considered that programme maker made a legitimate editorial decision not to specifically represent the complainant’s position in relation to Mr Khyam.

Mr Sharif

As in the Decision at head a) ii) above, Ofcom noted that having explained that Mr Sharif was one of the Tel Aviv bombers, the programme included the following comments (made by Mr Maher, the programme's presenter, and Mr Zaheer Khan, who was a friend of Mr Sharif's at university) about Mr Sharif:

Mr Maher: *"Omar's path to radicalisation began just like mine. Zaheer Khan was a friend of Omar's at King's College University."*

Mr Kahn: *"Omar's very first connection with any sort of Islamic activity was through Hizb ut-Tahrir and in a manner in which they sort of put forward Islamic teaching."*

Mr Maher: *"But while Omar Sharif was praying and talking ideology with HT, he was developing a different side to himself."*

Mr Kahn: *"He had another social circle as well, and that really manifested itself with a lot of heavy physical training where he would often go and do kick boxing and other physical activities."*

Mr Maher: *"It's not known exactly what this other social circle was, but 6 months later Omar was in Kosovo training for Jihad. Ideologically Omar didn't have a big transition to make."*

In light of the inclusion of these comments Ofcom considered that the programme alleged that Hizb ut-Tahrir Britain was the starting point on the path taken by Mr Sharif which ended with his killing three people in the 2003 bombing in Tel Aviv. It also considered that, while the programme made it clear that Mr Sharif's violent actions were influenced by *"another social group"*, it also alleged that there was not a wide ideological gap between Mr Sharif's involvement with Hizb ut-Tahrir Britain and his involvement six months later with a circle that encouraged and trained its members to take violent action against non-Muslims.

Ofcom considered that this was a serious allegation and that therefore it was incumbent on the broadcaster to offer Hizb ut-Tahrir Britain an opportunity to respond to it.

Ofcom recognised that the BBC gave the complainant an opportunity to respond to this allegation when it said in its letter to Hizb ut-Tahrir Britain of 22 September 2007 that the programme would allege that *"a close friend of Omar Sharif – who along with Asif Hanif bombed 'Mike's Place' in Tel Aviv in 2003 killing three people – told us about how Omar got his ideology from HT"*. It also observed that Hizb ut-Tahrir Britain's response to the BBC (given in its email of 26 September 2007) included the following comment: *"As we stated in a press release on 19 July 2005 – 'Asif Hanif and Omar Sharif, who were responsible for a Tel Aviv suicide bombing in April 2003 were not members of Hizb ut-Tahrir and had no affiliation whatsoever with Hizb ut-Tahrir.' In addition, in undertaking these actions they were not influenced by Hizb ut-Tahrir or its members"*.

As noted above, Ofcom recognised that the allegation that Mr Sharif was influenced by Hizb ut-Tahrir Britain's ideology was serious and that therefore it was incumbent on the broadcaster to offer an appropriate and timely opportunity to respond to it. Ofcom also recognised that the complainant was given such an opportunity to respond to this allegation. While Ofcom acknowledged that the programme did not represent Hizb ut-Tahrir Britain's specific response to this allegation, it noted that the programme included a section of the complainant's statement which made clear Hizb ut-Tahrir Britain's position that it does not support violence of any kind because to do so would be counter to the tenets of the Islamic faith (this section is quoted in full in the Decision at head b) i) above). In particular, Ofcom observed that this section of the complainant's statement specified that Hizb ut-Tahrir Britain's "*understanding of the revelation of God ... makes its involvement in any terrorist or violent activity impossible in either theory or practice*". Ofcom considered that this was a fair reflection of the full response provided by Hizb ut-Tahrir Britain and applied to any sort of terrorist activity which would include the allegation made about Mr Sharif.

In light of the factors noted above, Ofcom found that it was not incumbent on the broadcaster to provide an opportunity to respond to the allegation that Mr Khyam was an Hizb ut-Tahrir Britain supporter and that the programme's reflection of Hizb ut-Tahrir Britain's response to the allegation that Mr Sharif was influenced by Hizb ut Tahrir Britain's ideology did not result in unfairness to the complainant.

Therefore, head b) ii) of this complaint has not been upheld.

- iii) Ofcom turned to the complaint that the programme failed to give Hizb ut-Tahrir Britain an opportunity to explain that it was not connected to either the demonstrations against the Danish cartoons of The Prophet Mohammed in February 2006 or the unrest at the Regent's Park Mosque in November 2004.

In light of its view (noted in the Decision at head a) iii) above) that the programme did not suggest that Hizb ut-Tahrir Britain was involved in or responsible for organising either the demonstrations against the Danish cartoons of The Prophet Mohammed or the unrest at the Regent's Park Mosque, Ofcom did not consider that it was incumbent on the broadcaster to offer the complainant an opportunity to comment on these two events. Ofcom therefore found that Hizb ut-Tahrir Britain had not been treated unfairly in this respect.

- iv) Ofcom considered the complaint that the programme failed to give Hizb ut-Tahrir Britain an opportunity to respond to the allegation that Hizb ut-Tahrir Indonesia was set up from London.

Ofcom first considered whether the programme included an allegation that Hizb ut-Tahrir Indonesia was set up from London. As noted in the Decision at head a) iv) above it considered that the programme had included this allegation. Given the activities of Hizb ut-Tahrir Indonesia shown in the programme (notably the aggressively anti-Jewish and more broadly anti-Western sentiment shown in the footage of the rally in Indonesia), Ofcom considered that it was incumbent upon the broadcaster to offer Hizb ut-Tahrir Britain an opportunity to respond to this allegation.

Ofcom observed that the BBC put this allegation to Hizb ut-Tahrir Britain in its letter 22 September 2007 in which it said that it understood that “Hizb ut-Tahrir Britain was crucial in helping Hizb ut-Tahrir develop in many other places in the world such as Pakistan, India, Denmark and Indonesia”.

Ofcom noted that in its response Hizb ut-Tahrir Britain said that Hizb ut-Tahrir was a global organisation, and that it understood that the conference organised by Hizb Indonesia featured speakers from around the world. It did not specifically address the claim in the BBC’s letter that Hizb ut-Tahrir Britain had helped Hizb ut-Tahrir set up in other places including Indonesia.

Therefore, Ofcom considered that the broadcaster had given Hizb ut-Tahrir Britain an appropriate and timely opportunity to respond to the claim that Hizb ut-Tahrir Indonesia was set up from London and that the complainant had not provided a specific response to this allegation. It therefore found no unfairness to Hizb ut-Tahrir Britain in this respect.

In light of the findings at heads i) to iv) above Ofcom found that the programme did not result in unfair treatment of Hizb ut-Tahrir Britain as complained of at head b) above.

Accordingly, Ofcom has not upheld Hizb ut-Tahrir Britain’s complaint of unfair treatment.

Executive Fairness Group

11 August 2008

Complaint by Dr Anthony Cumming

ITV News, ITV1, 30 October 2007

Summary: Ofcom has not upheld this complaint of unfair treatment made by Dr Anthony Cumming.

A news item broadcast on ITV1 referred to the Battle of Britain. The item reported on an article that had been published in BBC History magazine by a historian who, according to ITV, had said that the Battle of Britain pilots were “not even able to shoot straight”. The historian, Dr Anthony Cumming, was interviewed and appeared in the item.

In summary Ofcom found the following:

- It was clear from the item that Dr Cumming was arguing that the pilots were not given sufficient training and that, as a result, they were not as efficient as they could have been. Nothing in the item suggested that Dr Cumming was questioning the valour of the pilots. It was not incumbent on the programme makers to include every issue raised in Dr Cumming’s article in this short news item.
- Dr Cumming was not unfairly portrayed as being mean-spirited or insensitive as he believed he was.

Introduction

On 30 October 2007, ITV1 broadcast editions of its *ITV News* at 6.30pm and 10.30pm, which included an item about the Battle of Britain. The item reported on article published in *BBC History* magazine by a historian who, according to ITV, had said that the RAF pilots who fought in the Battle of Britain could “barely shoot straight”. The historian, Dr Anthony Cumming, was interviewed and appeared in the item.

Dr Cumming complained that he was treated unfairly in the item.

The Complaint

Dr Cumming’s case

In summary, Dr Cumming complained that he was treated unfairly in that:

- a) The item was unfairly edited. Dr Cumming said he had been asked a series of questions in interview that focused heavily on the issue of training. He considered that this was a loaded line of questioning and had stated clearly in the interview that he intended no insult to “the few”, i.e. the Battle of Britain pilots. Rather, he was arguing that greater acknowledgement should be given to a broader base of participants in the battle, especially the sailors of the Royal Navy and the Merchant Navy. This material could have been included in the item, but instead the programme makers chose to use a short clip from his interview in which he had stated, correctly, that new pilots had been unable to shoot properly because they had not received the appropriate training. This comment had been used in the items to justify the simplistic and

incorrect line that Dr Cumming was attacking “the few”, i.e. the Battle of Britain pilots.

- b) Dr Cumming was portrayed unfairly in that he was portrayed as being mean-spirited and insensitive, when he had made it clear that he intended no criticism of the pilots involved. He was also portrayed as having made an attack on Mr Scrase and his colleagues. The use of an elderly veteran, who was told that Dr Cumming had made an attack on him and his comrades was repugnant.

ITV’s case

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

- a) In response to the complaint that the items were unfairly edited, ITV said that as they did not have the rushes, they could not confirm the totality of what Dr Cumming said in interview. ITV accepted that he did not dispute the heroism of “the few”, i.e. the RAF pilots. ITV said that the item closely reflected what Dr Cumming had said in his article in BBC History about the training of RAF pilots. Dr Cumming’s article referred to the role of the Royal Navy and the Merchant Navy as playing a significant role in the defence of Britain in 1940. However, ITV argued that the thrust of the article was why the public perception of a highly trained and effective air force was mistaken and how the lack of training meant that there were not enough pilots who could “shoot straight”. ITV said Dr Cumming had used that particular phrase twice in his article. The extract of the interview included in the item fairly reflected what Dr Cumming said about the training of RAF pilots in the Battle of Britain.

Although ITV accepted that it was Dr Cumming’s view that greater tribute should be given to the Royal Navy and the Merchant Navy, it did not accept that there was an obligation to include this in the report in order to be fair to him. The item was short and the key newsworthy matter in ITV News’ opinion was Dr Cummings’ view on RAF pilot training and that pilots could not shoot straight.

- b) In response to the complaint that Dr Cumming was unfairly portrayed as mean-spirited and insensitive, ITV said that the item did not say or suggest that Dr Cumming was insulting or criticising “the few” and he was not portrayed as mean-spirited or insensitive towards them. The language used in the item was measured and responsible. Dr Cumming was portrayed as a historian with an interesting and newsworthy point to make that challenged conventional views of a famous battle and was therefore controversial. ITV said the item was careful not to say or suggest that Dr Cumming had made an attack on the Battle of Britain pilots themselves. It was clear in the item that his call was for broad perceptions of the battle and the pilots’ preparedness for it to be reassessed. The item did not seek to suggest any confrontation between Dr Cumming and Battle of Britain veterans. However, it was entirely legitimate and appropriate to seek the views of an RAF veteran and Mr Scrase’s contrasting perspective from the position of direct personal involvement in the Battle of Britain was a valid one to include in the item.

Decision

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

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

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

a) The Committee first considered Dr Cumming's complaint that the item was unfairly edited, so as to justify the simplistic and incorrect line that Dr Cumming was attacking "the few", i.e. the Battle of Britain pilots, when he had stated clearly in the interview that he intended no such insult.

In considering this head of complaint, Ofcom took into account Practice 7.6 of the Ofcom Broadcasting Code ("the Code"). Practice 7.6 states that when a programme is edited, contributions should be represented fairly. Ofcom also took into account Practice 7.9, which states that before broadcasting a factual programme, including programmes examining past events, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

Ofcom noted the content of the report and the introduction to each. In introducing the 6.30pm item, the presenter said:

"The Battle of Britain is one of the most celebrated events of the war. A watchword for heroism and bravery. But now a historian says it should be reassessed, claiming that many pilots couldn't even shoot straight... That's not how the veterans remember it."

At 10.30pm, the report was preceded by a different introduction by the presenter, who said:

"The war time Prime Minister celebrated their heroic achievements with the words 'Never have so many owed so much to so few'. And it now seems they had so little training. A historian claims that they were so badly prepared that they didn't know how to fire their guns. Controversial stuff and not how it appeared to those who were there"

The item then included footage of the battle and the reporter said:

"It was Churchill who first voiced the debt the British people owed to the few. The pilots who fought in the Battle of Britain surely rank among the greatest heroes in these islands' history. What would Churchill say of the modern day

historian who says that his research shows that they could barely shoot straight?”

Ofcom noted that the untransmitted footage of Dr Cumming's interview had not been retained and therefore was not available. However in considering his portrayal in the item and whether his contribution was edited unfairly, Ofcom was able to refer to the full article he wrote in BBC History magazine, entitled "Ready or Not? The RAF in the Battle of Britain", which set out his views. Ofcom also noted that both parties agreed that certain points from this article were made in his full untransmitted interview.

It is important to note that the editing of a programme is an editorial matter for a broadcaster, provided that the programme as broadcast does not result in unfairness to an individual or organisation. Ofcom noted that one of the key points in Dr Cumming's article was that the pilots were not properly trained and, as a result, were not as efficient as they could have been with proper training. In Ofcom's view, this point was summarised when Dr Cumming said in the item:

"Many of these new pilots were people who had to fill the gaps in the line, just hadn't had the chance to practice with their guns, so of course they weren't going to be effective".

Ofcom noted that the reporter then said:

"Anthony Cumming says that films like 'Reach for the Sky' paint a picture that's patriotic but unrealistic. In fact many of the Spitfire pilots were poorly trained and largely ineffective in combat".

Taking together what Dr Cumming said about the lack of practice with guns the pilots had and the reporter's reference to poor training, Ofcom considered that it was clear that Dr Cumming was referring to a lack of training. Nothing in what Dr Cumming or the presenter said in the item suggested that Dr Cumming was questioning the valour of the pilots but rather that he was criticising their poor training and preparation.

Ofcom noted that Dr Cumming, in his article, also suggested that greater weight should be given to the role played in the Battle of Britain by the others, such as the Royal Navy and the Merchant Navy. Ofcom also noted that both parties appeared to agree that this point was made in his full untransmitted interview. However in Ofcom's view it was not incumbent on the programme makers to include this point in the broadcast item, the focus of which was to look at the role of the RAF pilots and Dr Cumming's views on their training.

Taking these factors into account Ofcom does not consider that the item was edited in a way that resulted in unfairness to Dr Cumming.

b) The Committee next considered Dr Cumming's complaint that he was unfairly portrayed as being mean-spirited and insensitive and as having made an attack on Mr Scrase and his colleagues.

In considering this head of complaint, Ofcom took into account Practice 7.9, as set out under decision head a) above.

Ofcom noted that the reporter said, with reference to Dr Cumming's view that the pilots were poorly trained:

"It's a view that is not shared by a man who was there."

This was followed by an interview with a Battle of Britain Spitfire pilot, Mr Scrase. Mr Scrase said that a “*very great debt*” was owed to the pilots and that he was not upset by Dr Cummings findings but was:

“...rather inclined to laugh – anyone who was aware of or participated in these activities would know only too well what the truth was”.

Ofcom noted that it was not clear from the item what Mr Scrase was told about Dr Cumming’s article or what he had said in interview. However, as set out at decision head a) above, Ofcom did not consider that the item suggested that Dr Cumming was suggesting a lack of bravery on the part of the pilots. In Ofcom’s view the item did not suggest that Dr Cumming had made an attack on the RAF pilots, but rather that he felt they were not properly trained. In view of this, Ofcom did not consider that he was portrayed as being mean-spirited or insensitive and the item was not unfair to him in this respect.

Accordingly Ofcom has not upheld Dr Cumming’s complaint of unfair treatment in the programme.

The Executive Fairness Group

18 August 2008

Complaint by Ms M on behalf of her child (a minor)

Whistleblower: Childcare, BBC1, 5 March 2008

Summary: Ofcom has not upheld this complaint by Ms M on behalf of her child (a minor) of unwarranted infringement of privacy in the making and broadcast of the programme.

On 5 March 2008, BBC1 broadcast an edition of its investigative programme, *Whistleblower*, entitled *Childcare*. During the programme, the BBC reporter went undercover and obtained a job as a Nursery Assistant at a nursery in West London called Buttons Day Nursery ("the Nursery"). The reporter surreptitiously recorded her experience of working at this nursery.

Ms M complained that the surreptitious filming of her child at the Nursery, without her consent, and the broadcast of footage in which the child's name was audible, unwarrantably infringed the child's privacy.

The complaint was considered by Ofcom's Fairness Committee, its most senior decision making body in matters of Fairness and Privacy.

In summary the Committee found the following:

- The surreptitious filming of Ms M's child while at the Nursery, without Ms M's knowledge or consent, was an infringement of the child's privacy. The Committee carefully weighed up the infant's right to privacy against the public interest served by the filming of the child at the Nursery. It concluded that the decision to film surreptitiously inside the Nursery was warranted by the strong public interest served by the investigation into the care of very young children. Therefore the Committee did not uphold the complaint of unwarranted infringement of privacy in the making of the programme.
- In relation to the programme as broadcast, the Committee considered that only those who knew the child very well and were already aware that the child attended the Nursery, would have been able to identify the child. This was because the child's face had been heavily blurred. The Committee considered that for the small group of those who were capable of identifying the child, the footage would not have revealed information that was of a private or sensitive nature. Therefore, the Committee found that the broadcast of the programme did not infringe the privacy of Ms M's child.

Introduction

On 5 March 2008, BBC1 broadcast an edition of its investigative programme, *Whistleblower*, entitled *Childcare*. It featured an undercover investigation into the child care industry. During the programme, a BBC reporter went undercover and obtained a job as a Nursery Assistant at a nursery in West London called Buttons Day Nursery ("the Nursery"). The reporter surreptitiously recorded her experience of working at the Nursery and some of the footage was included in the programme as broadcast. The faces of the children at the Nursery had been obscured at all times.

The programme alleged that the Nursery had failed to conduct appropriate checks of the undercover reporter's qualifications before allowing her to work with the children; that the Nursery was understaffed; that some of the Nursery staff had acted in an

unprofessional manner; and questioned whether the Nursery had taken appropriate steps to ensure the safety of the children at all times.

The programme broadcast surreptitiously filmed footage of the children playing outside in the Nursery's garden. In these scenes the reporter raised concerns about a child's discovery of a piece of glass in the garden, and children being allowed to play with metal garden tools and long sticks.

Ofcom received a complaint from Ms M, whose child attends the Nursery. Ms M complained that her child's privacy was unwarrantably infringed in both the making and broadcast of the programme.

The Complaint

a) In summary, Ms M complained that the privacy of her child was unwarrantably infringed in the making of the programme in that the programme makers surreptitiously filmed the child without her knowledge or consent. Ms M said that the programme makers should have obtained consent prior to filming.

b) In summary, Ms M complained that the privacy of her child was unwarrantably infringed in the programme as broadcast in that the programme makers broadcast surreptitiously recorded footage of her child, without her consent. Ms M said that despite the blurring of her child's face the child was still easily recognisable.

Ms M said that in the programme the reporter was shown taking a gardening tool away from her child and that the child's name was audible. Ms M said she believed that there were no other children at the Nursery with the same first name as her child.

The BBC's case

The BBC provided a written statement in response to the complaint. It also provided Ofcom with copies of relevant correspondence between it and the complainant; a recording and transcript of the programme as broadcast; and the unedited recording and transcript of the relevant scenes, filmed in the Nursery's garden.

The BBC said that the thrust of the programme was to examine the effectiveness of Ofsted, the regulatory authority for education. It was in particular to examine Ofsted's responsibility to monitor the quality of care offered by registered childcare providers, which included its critical role in protecting children from harm or neglect and helping to keep them safe. The BBC replied to Ms M's specific complaints as follows:

a) In response to the complaint that Ms M's child's privacy had been unwarrantably infringed in the making of the programme, the BBC acknowledged that an inevitable consequence of the decision to conduct an undercover report was that children at the Nursery had been filmed without permission. However, it said the decision to film undercover at the Nursery had been taken only after serious consideration of pre-existing evidence of poor practices.

The BBC said this evidence came from a senior member of staff who had worked at the Nursery for approximately one year. The former staff member had told the programme makers that some staff at the Nursery were paid below the minimum wage; that there had been a time when a shortage of staff at the nursery had

impacted on the care of the babies; and that the toddlers' area of the Nursery was dirty.

The BBC said that based on this evidence it was decided that the reporter would start work at the Nursery, but that she would not initially secretly film. The programme producer said that the permission to film secretly was granted only after further consideration of the reporter's own discoveries; on her first day in the Nursery, despite not having had a Criminal Records Bureau ("CRB") check, she was left unsupervised in sole charge of five children. This, the BBC said, completely contravened the Ofsted regulations which have the force of the law. The BBC also said that no one had checked the reporter's references.

b) In relation to the broadcast of the programme, the BBC said that substantial effort had been made to disguise the identities of all the children featured in it. Steps taken by the programme makers included heavy blurring of the children's faces; alteration of identifiable pieces of the children's clothing; and the removal from the programme of recognisable children's names. The BBC said that the programme makers felt that they had done everything within their power to conceal the identities of the children. It said that while it fully appreciated the concerns of parents about the security of their children it believed that due care had been taken to disguise their identities. The BBC did not believe that any of the children in the film were rendered identifiable by the programme or that their privacy had been significantly infringed.

In relation to Ms M's child, the BBC said that in the scene in which the children were shown playing outside in the garden the children's faces were so heavily blurred as to render visual identification impossible by anyone not already familiar with them and aware that they attended the Nursery.

The BBC said even if there had been a significant infringement, it would have been offset by strong public interest considerations. The BBC said the filming showed that:

- The reporter (whom the management of the Nursery did not know had been CRB-checked) had been left alone with children on several occasions, ranging from 30 minutes to an hour. The BBC said it was a legal requirement that staff who have not been CRB-checked are never left alone with children, and that this is regarded as a highly important aspect of child protection.
- At the point of employment, and for her entire first week of working as a nursery assistant, no check was made on the reporter's identity. In addition, her referee was not spoken to before she was offered the job, or throughout the whole time she was working at the Nursery. The BBC said that such checks are crucial before someone is employed to look after young children.
- The implements being used in the garden - many of them metal - were not appropriate to the age of all the children who had access to them. The BBC said that the reporter had witnessed children under the age of three playing with them.
- Broken glass was found in the garden on more than one occasion. In one instance a piece of glass was picked up by a child.

- Indoors, radiator covers had been fitted by workmen while children were in the nursery. The BBC said that power tools had been left lying on the floor where the children were playing.
- Some staff were paid below the National Minimum Wage.
- On several occasions the required adult: child ratios were not adhered to.
- The manner in which the children were spoken to and physically handled had been at times harsh and inappropriate.

The BBC said that the above lapses from acceptable standards (the seriousness of which had been confirmed to the programme makers by an experienced Ofsted inspector) provided ample justification for the secret filming, and that the programme had served the public interest in exposing them.

Decision

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

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

Ms M's complaint on behalf of her child was considered by Ofcom's Fairness Committee ("the Committee") its most senior decision making body in matters of Fairness and Privacy. In reaching its decision, the Committee carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast; unedited recordings and transcripts of the garden scenes; both parties' written submissions (which included copies of relevant correspondence); and email correspondence between the Case Leader and Ms M.

As referred to above, Ms M has complained that both the making and broadcast of the programme unwarrantably infringed the privacy of her very young child. In Ofcom's view, the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about unwarranted infringement of privacy both in relation to the making and the broadcast of the programme, Ofcom must consider two distinct questions: First, has there been an infringement of privacy? Secondly, if so, was it warranted? This is in accordance with Rule 8.1 of Ofcom's Broadcasting Code ("the Code") which states:

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

In taking account of the Code, the Committee had particular regard throughout their deliberations to Practice 8.20 under which broadcasters are reminded that particular attention should be paid to the privacy of people under sixteen. It also considered

Practice 8.21 which states that where a programme features a person under the age of sixteen, consent must be obtained from a parent or guardian unless the subject matter is trivial or uncontroversial and the participation minor, or it is warranted to proceed without consent.

a) The Committee first considered Ms M's complaint that her child's privacy was unwarrantably infringed in the making of the programme by the programme makers' surreptitious filming of the child without her knowledge or consent. The Committee noted that Ms M believed that her consent should have been obtained prior to filming.

In considering whether the making of the programme infringed Ms M's child's privacy, the Committee considered whether the child had a legitimate expectation of privacy in the circumstances in which the filming took place.

The Committee noted from the information provided by both parties that Ms M's child had been filmed while attending day nursery, and that the child was two years and eight months old at the time. The Committee also noted that footage of Ms M's child had been obtained surreptitiously by the use of a hidden camera. The Committee also took account of the fact that Ms M's child had been apparently filmed in circumstances where a gardening tool had been taken from the child by the undercover reporter.

In the Committee's view, the location of the filming (a nursery entrusted with the care of very young children which is not freely accessible to the public), the age and vulnerability of the child and the surreptitious nature of the filming were all factors that would have significantly heightened Ms M's child's expectation of privacy. In the circumstances, the Committee considered that the Ms M's child had a legitimate expectation of privacy in the circumstances in which the filming took place.

In light of the above considerations, the Committee took the view that the actions of the programme makers in obtaining footage of Ms M's child, whilst inside the Nursery and without the knowledge or consent of the child's parents or guardians, through surreptitious means, infringed the child's privacy.

Having found an infringement of Ms M's child's privacy in the making of the programme, the Committee went on to consider whether the infringement was warranted.

As referred to above, the filming had been obtained surreptitiously. The Committee therefore took account of Practice 8.9 of the Code which states that:

"The means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme."

The Committee also took account of Practice 8.13 which states that:

"Surreptitious filming or recording should only be used where it is warranted. Normally, it will only be warranted if:

- there is prima facie evidence of a story in the public interest; and
- there are reasonable grounds to suspect that further material evidence could be obtained; and

- it is necessary to the credibility and authenticity of the programme.”

The Committee noted that prior to filming the programme makers had received information that raised significant concerns about the Nursery from one of its former employees. The Committee noted that in response to this information an undercover reporter applied for and successfully secured, employment with the Nursery using false qualifications and references and had been able to work at the Nursery without any checks being made on her qualifications or past working experience (e.g. reference checks). The Committee also noted that the reporter had gathered information about the Nursery on her first day. Surreptitious filming of the Nursery had begun on the undercover reporter’s second day of work by which time a number of the allegations made by the former member of staff had been confirmed.

Taking into account the information obtained by the programme makers about the Nursery prior to filming, the Committee was satisfied that there was prima facie evidence of a story in the public interest. The Committee considered that a story about the quality of care provided by the child care industry, especially by those entrusted with the care of very young and vulnerable children, was clearly in the public interest. The Committee also considered that the programme makers had reasonable grounds to believe that further evidence could be obtained, on the basis of the material gathered on the reporter’s first day of employment.

The Committee was satisfied that the surreptitious nature of the investigation (including surreptitious filming by two reporters) was essential for its authenticity and credibility. In the Committee’s view, by alerting the Nursery, its staff, or the parents of the children to the investigation in advance, the programme makers would have been unable to gain an accurate picture of the standard of care on offer. The Committee noted that the undercover filming had recorded evidence of the reporter caring for very young children despite being unqualified; of builders operating with power tools near to small children and leaving them unattended where children could access them; inappropriate behaviour by some Nursery staff (e.g. swearing); the difference between the ‘public face’ of the Nursery and the actual care provided; and the discovery of glass in the play area. In all the circumstances, the Committee therefore found that the surreptitious nature of the filming was warranted and proportionate in this case.

Finally the Committee assessed whether the infringement of Ms M’s child’s privacy was warranted in the making of the programme, by considering the factors discussed above. The Committee carefully weighed up a very young child’s right to privacy against the public interest served by the filming the child at the Nursery. As stated above, the Committee considered that a story about the quality of care provided by those responsible for very young children was one that was in the public interest. It also considered that the investigation could not have succeeded in showing the actual practices of the Nursery (where very young children were inevitably present) without surreptitious filming by the reporters. While the Committee acknowledged that the filming infringed the privacy of Ms M’s child, it found that it was warranted by the strong public interest served by the investigation.

Therefore in relation to Head (a) the Committee found that Ms M’s child’s privacy had been infringed in the making of the programme, but that the infringement was warranted by a public interest. Accordingly, the Committee has not upheld the

complaint of unwarranted infringement of privacy in the making of the programme.

b) The Committee next considered Ms M's complaint that the broadcast of the programme unwarrantably infringed the privacy of her child in that easily recognisable footage of the child had been broadcast without her consent.

In considering this complaint Ofcom had regard to Rule 8.1 (set out above).

In deciding whether Ms M's child's privacy had been infringed in the programme, the Committee first considered whether the child had a legitimate expectation of privacy in respect of the footage that was broadcast.

The Committee considered (for the reasons discussed at Head (a) of the Decision) that recordings of a very young child obtained inside the Nursery, by surreptitious means, would be footage that the child could normally legitimately expect to remain private.

However, in this case, the Committee noted that before broadcasting footage of Ms M's child, the programme makers had taken steps to disguise the child's identity. The Committee noted that the faces of all of the children at the Nursery had been completely blurred, including those children shown during the garden scenes.

In relation to the complaint that Ms M's child's first name could be heard in the programme, the Committee carefully reviewed and listened for any sound that could be understood to be the name of the child. The Committee knew the child's name but was unable to detect it in any of the garden scenes or other scenes filmed at the Nursery, despite each Member having viewed this section of the programme, individually, on a number of occasions. The Committee was satisfied that the broadcast would not have revealed the first name of Ms M's child to the normal viewer. In the Committee's view Ms M's child would only have been identifiable by those who knew the child very well and were already aware that the child attended the Nursery; this would be a very small group of people.

Furthermore, the Committee considered that the focus of the scene in which a gardening tool had been taken away from a child was clearly the potential safety hazard caused by the tool. In the Committee's view, information about the child's activities e.g. that a tool had been taken away from the child out of concern for the child's safety, was not sensitive or likely to have infringed the child's privacy if revealed to those capable of identifying them (which as discussed above, would be a very small circle comprised of those closest to the child).

Therefore in relation to Head (b) the Committee found the broadcast of the programme did not infringe Ms M's child's privacy. Having found no infringement of privacy in relation to this part of the complaint, the Committee was not required to decide whether any infringement had been warranted.

Accordingly Ofcom has not upheld Ms M's complaint on behalf of her child of unwarranted infringement of privacy in either the making or broadcast of the programme.

The Fairness Committee

22 August 2008

Complaint by Ms A on behalf of her son (a minor)

Whistleblower: Childcare, BBC1, 5 March 2008

Summary: Ofcom has not upheld this complaint by Ms A on behalf of her son (a minor) of unwarranted infringement of privacy in the making and broadcast of the programme.

On 5 March 2008, BBC1 broadcast an edition of its investigative programme, *Whistleblower*, entitled *Childcare*. During the programme, the BBC reporter went undercover and obtained a job as a Nursery Assistant at a nursery in West London called Buttons Day Nursery (“the Nursery”). The reporter surreptitiously recorded her experience of working at this nursery.

The programme contained footage of Ms A’s son, who attended the Nursery. Ms A complained that the filming of her son, without her knowledge or consent and the subsequent broadcast of footage of him, unwarrantably infringed his privacy.

The complaint was considered by Ofcom’s Fairness Committee, its most senior decision making body in matters of Fairness and Privacy.

In summary the Committee found the following:

- The surreptitious filming of Ms A’s two and a half year of son, while at his day nursery, without his parent’s knowledge or consent, was an infringement of the child’s privacy. The Committee carefully weighed up the infant’s right to privacy against the public interest served by the filming of him at his nursery. It concluded that the decision to film surreptitiously inside the Nursery was warranted by the strong public interest served by the investigation into the care of very young children. Therefore the Committee did not uphold the complaint of unwarranted infringement of privacy in the making of the programme.
- In relation to the programme as broadcast, the Committee considered that only those who knew the child very well and were already aware that he attended the Nursery, would have been able to identify him. This was because his face had been heavily blurred. The Committee considered that for the small group of those who were capable of identifying the child, the footage of him would not have revealed information that was of a private or sensitive nature. Therefore, the Committee found that the broadcast of the programme did not infringe the privacy of Ms A’s son.

Introduction

On 5 March 2008, BBC1 broadcast an edition of its investigative programme, *Whistleblower*, entitled *Childcare*. It featured an undercover investigation into the child care industry. During the programme, a BBC reporter went undercover and obtained a job as a Nursery Assistant at a nursery in West London called Buttons Day Nursery (“the Nursery”). The reporter surreptitiously recorded her experience of working at this nursery and some of the footage was included in the programme as broadcast.

The programme alleged that the Nursery had failed to conduct appropriate checks of the undercover reporter's qualifications before allowing her to work with the children; that the Nursery was understaffed; that some of the Nursery staff had acted in an unprofessional manner; and questioned whether the Nursery had taken appropriate steps to ensure the safety of the children at all times.

During the programme the reporter stated that:

"[The owner of the Nursery] charges parents a lot of money for a place at [the] nursery...which makes it all the more shocking that I witnessed treatment of children at this nursery that I would never have expected".

Shortly after this commentary, the programme broadcast footage of a young child turning away from one of the nursery staff. Directly after this, a Nursery staff member could be heard making a remark which was partially 'bleeped out' that was subtitled as *"what a little s***bag"*.

The programme also broadcast footage of a child being lifted by his arms by two Nursery staff members.

Both of the above pieces of footage were shown in the programme's introduction as well as in the body of the report. The face of the child had been obscured at all times.

Ofcom received a complaint from Ms A, who is the mother of the boy shown in the two clips described above. Ms A complained that her son's privacy had been unwarrantably infringed in both the making of the programme and in the programme as broadcast.

The Complaint

- a) In summary, Ms A complained that the privacy of her son was unwarrantably infringed in the making of the programme, in that the programme makers filmed Ms A's son (who was two and a half at the time) without her knowledge or consent.
- b) In summary, Ms A complained that the privacy of her son was unwarrantably infringed in the programme as broadcast in that identifiable footage of her young son was broadcast without her knowledge or consent. Ms A said that in one of the pieces of footage a derogatory comment was seemingly made about her son. Ms A said that although her son's face had been blurred in the programme, he was still recognisable to people who knew him.

The BBC's case

The BBC provided a written statement in response to the complaint. It also provided Ofcom with copies of relevant correspondence between it and the complainant; a recording and transcript of the programme as broadcast; and the unedited recordings and transcripts of Ms A's son's contribution. This included footage of Ms A's son being lifted by a staff member by his arms, and where a staff member was shown referring to him as *"what a little s***bag"*.

As a general response to the complaint, the BBC said that the thrust of the programme was to examine the effectiveness of Ofsted, the regulatory authority for education. In particular it was to examine Ofsted's responsibility to monitor the quality

of care offered by registered childcare providers, which included their critical role in protecting children from harm or neglect, and helping to keep them safe.

In reply to Ms A's specific complaints the BBC responded as follows:

a) In response to the complaint that Ms A's son's privacy had been unwarrantably infringed in the making of the programme, the BBC acknowledged that an inevitable consequence of the decision to conduct an undercover report was that children at the Nursery had been filmed without permission. However, it said the decision to film undercover at the Nursery had been taken only after serious consideration of pre-existing evidence of poor practices.

The BBC said this evidence came from a senior member of staff who had worked at the Nursery for approximately one year. The former staff member had told the programme makers that some staff at the Nursery were paid below the minimum wage; there had been a time when a shortage of staff at the Nursery had impacted on the care of the babies; and that the toddlers' area of the Nursery was dirty.

The BBC said that based on this evidence it was decided that the reporter would start work at the Nursery, but that she would not initially secretly film. The programme producer said that the permission to film secretly was granted only after further consideration of the reporter's own discoveries; on her first day in the Nursery, despite not having had a Criminal Records Bureau ("CRB") check by her employer, she was left unsupervised in sole charge of five children. This, the BBC said completely contravened the Ofsted regulations, which have the force of the law. The BBC also said that no one had checked the reporter's references.

b) In relation to the broadcast of the programme, the BBC said that substantial effort had been made to disguise the identities of all the children featured in the programme. Steps taken by the programme makers included heavy blurring of the children's faces to render visual identification impossible; alteration of identifiable pieces of the children's clothing; and the removal from the programme of recognisable children's names. The BBC said that the programme makers felt that they had done everything within their power to conceal the identities of the children. The broadcaster said it did not believe that any of the children in the film were rendered identifiable by the programme or that their privacy had been significantly infringed.

In relation to Ms A's son, the BBC said that the two clips referred to by the complainant had been shown twice, but lasted no more than two seconds. It said that the two clips (i.e. him being lifted by his arms, and the referred to by a member of staff as "*a little shitbag*") had been filmed on different days and the child had been wearing different clothes. The BBC said that given the degree of blurring and the time lapse between the recording and the transmission of the programme, it did not believe that it would have appeared to viewers to be the same child in both clips. The BBC said that though it was not clear in the programme why the child in question was referred to in the way he was, the commentary had made it clear that the purpose of broadcasting this sequence was to reflect the inappropriate behaviour of the Nursery staff. Not as a reflection on the child.

The BBC said even if there had been a significant infringement, it would have been offset by strong public interest considerations. The BBC said the filming showed that:

- The reporter (whom the management of Buttons did not know had been CRB-checked) had been left alone with children on several occasions, ranging from 30 minutes to an hour. The BBC said it was a legal requirement that staff who have not been CRB-checked are never left alone with children, and that this is regarded as a highly important aspect of child protection.
- At the point of employment, and for her entire first week of working as a nursery assistant, no check was made on the reporter's identity. In addition her referee was not spoken to before she was offered the job, nor throughout the whole time she was working at Buttons. The BBC said that such checks are crucial before someone is employed to look after young children.
- The implements being used in the garden - many of them metal - were not appropriate to the age of all the children who had access to them. The BBC said the reporter had witnessed children under the age of three playing with them.
- Broken glass was found in the garden on more than one occasion. In one instance a piece of glass was picked up by a child.
- Indoors, radiator covers had been fitted by workmen while children were in the nursery. The BBC said that power tools had been left lying on the floor where the children were playing.
- Some staff were paid below the National Minimum Wage.
- On several occasions the required adult:child ratios were not adhered to.
- The manner in which the children were spoken to and physically handled had been at times harsh and inappropriate.

The BBC said that the above lapses from acceptable standards (whose seriousness had been confirmed to the programme makers by an experienced Ofsted inspector) provided ample justification for the secret filming, and that the programme had served the public interest in exposing them.

Decision

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

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

Ms A's complaint on behalf of her son was considered by Ofcom's Fairness Committee ("the Committee") its most senior decision making body in matters of Fairness and Privacy. In reaching its decision, the Committee carefully considered all the relevant material provided by both parties. This included a recording and

transcript of the programme as broadcast; two unedited recordings and transcripts of Ms A's son's contribution to the programme; both parties' written submissions (which included copies of relevant correspondence); and a note of a telephone conversation between the Case Leader and Ms A.

As referred to above, Ms A has complained that both the making and broadcast of the programme unwarrantably infringed the privacy of her very young son. In Ofcom's view, the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about unwarranted infringement of privacy both in relation to the making and the broadcast of the programme, Ofcom must consider two distinct questions: First, has there been an infringement of privacy? Secondly, if so, was it warranted? This is in accordance with Rule 8.1 of Ofcom's Broadcasting Code ("the Code") which states:

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

In taking account of the Code, the Committee had particular regard throughout their deliberations to Practice 8.20 under which broadcasters are reminded that particular attention should be paid to the privacy of people under sixteen. It also considered Practice 8.21 which states that where a programme features a person under the age of sixteen, consent must be obtained from a parent or guardian unless the subject matter is trivial or uncontroversial and the participation minor, or it is warranted to proceed without consent.

- a) The Committee first considered Ms A's complaint that her son's privacy was unwarrantably infringed in the making of the programme, by the fact that he was filmed without her knowledge or consent.

In considering whether the making of the programme infringed Ms A's son's privacy, the Committee considered whether the child had a legitimate expectation of privacy in the circumstances in which he was filmed.

The Committee noted from the information provided by both parties that Ms A's son had been filmed while he attended his day nursery, and that he was two and a half years old at the time. The Committee also noted that footage of Ms A's son had been obtained surreptitiously by the use of a hidden camera. The Committee also took account of the fact that Ms A's son had been filmed in situations which included him being lifted off the ground by his arms by two members of staff and also being referred to by a member of staff as "a little shitbag".

In the Committee's view, the location of the filming (a nursery entrusted with the care of very young children which is not freely accessible to the public); the age and vulnerability of the child; and, the surreptitious nature of the filming were all factors that would have significantly heightened Ms A's son's expectation of privacy. In the circumstances, the Committee considered that Ms A's son had a legitimate expectation of privacy in the circumstances in which he was filmed.

In light of the above considerations, the Committee took the view that the actions of the programme makers in obtaining footage of Ms A's son whilst inside his nursery without the knowledge or consent of his parents or guardians, through surreptitious means, infringed the child's privacy.

Having found an infringement of Ms A's son's privacy in the making of the programme, the Committee went on to consider whether the infringement was warranted.

As referred to above, the filming had been obtained surreptitiously. The Committee therefore took account of Practice 8.9 of the Code which states that:

“The means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme.”

The Committee also took account of Practice 8.13 which states that:

“Surreptitious filming or recording should only be used where it is warranted. Normally, it will only be warranted if:

- there is prima facie evidence of a story in the public interest; and
- there are reasonable grounds to suspect that further material evidence could be obtained; and
- it is necessary to the credibility and authenticity of the programme.”

The Committee noted that prior to filming the programme makers had received information that raised significant concerns about the Nursery from one of its former employees. The Committee noted that in response to this information an undercover reporter applied for and successfully secured, employment with the Nursery using false qualifications and references and had been able to work at the Nursery without any checks being made on her qualifications or past working experience (e.g. reference checks). The Committee also noted that the reporter had gathered information about the Nursery on her first day. Surreptitious filming of the Nursery had begun on the undercover reporter's second day of work by which time a number of the allegations made by the former member of staff had been confirmed.

Taking into account the information obtained by the programme makers about the Nursery prior to filming, the Committee was satisfied that there was prima facie evidence of a story in the public interest. The Committee considered that a story about the quality of care provided by the child care industry, especially by those entrusted with the care of very young and vulnerable children, was clearly in the public interest. The Committee also considered that the programme makers had reasonable grounds to believe that further evidence could be obtained, on the basis of the material gathered on the reporter's first day of employment.

The Committee was satisfied that the surreptitious nature of the investigation (including surreptitious filming by two reporters) was essential to its authenticity and credibility. In the Committee's view, by alerting the Nursery, its staff or the parents of the children to the investigation in advance, the programme makers would have been unable gain an accurate picture of the standard of care on offer. The Committee noted that the undercover filming had recorded evidence of the reporter caring for very young children despite being unqualified; of builders operating with power tools near to small children and leaving the tools unattended where children could access them; inappropriate behaviour by some Nursery staff (e.g. swearing); the difference between the 'public-face' of the Nursery and the actual care provided; and the discovery of glass in the play area. In all the circumstances, the Committee therefore found that the surreptitious nature of the filming was warranted and proportionate in this case.

Finally the Committee assessed whether the infringement of Ms A's son's privacy was warranted in the making of the programme, by considering the factors discussed above. The Committee carefully weighed a very young child's right to privacy against the public interest served by the filming of his nursery in these circumstances. As stated above, the Committee considered that an investigation into the quality of care provided by those responsible for very young children was one that was in the public interest. It also considered that the investigation could not have succeeded in showing the actual practices of the Nursery (where very young children were inevitably present) without surreptitious filming by the reporters. While the Committee acknowledged that the filming infringed the privacy of Ms A's son, it found that the infringement was warranted by the strong public interest served by the investigation.

Therefore in relation to Head (a) the Committee found that Ms A's son's privacy had been infringed in the making of the programme, but that the infringement was warranted by a public interest. Accordingly, the Committee has not upheld the complaint of unwarranted infringement of privacy in the making of the programme.

b) The Committee next considered Ms A's complaint that the broadcast of the programme unwarrantably infringed the privacy of her son in that identifiable footage of him was broadcast without her knowledge or consent. The Committee noted that Ms A had said that in one of the pieces of footage a derogatory comment was seemingly made about her son and that although her son's face had been blurred in the programme, he was still recognisable to people who knew him.

In considering this complaint Ofcom had regard to Rule 8.1 (as set out above).

In deciding whether Ms A's son's privacy had been infringed in the programme as broadcast, the Committee first considered whether the child had a legitimate expectation of privacy in respect of the footage that was broadcast of him.

The Committee considered (for the reasons discussed at Head (a) of the Decision) that recordings of a very young child obtained inside his Nursery, by surreptitious means, would be footage that the child could normally legitimately expect to remain private.

However, in this case, the Committee noted that before broadcasting footage of Ms A's son, the programme makers had taken steps to disguise his identity. The Committee noted that the face of the child had been completely obscured and the shots of him (that had been complained of) had been edited into very short clips.

Having viewed the programme carefully, the Committee considered that only those who knew Ms A's son very well and were already aware that he attended the Nursery, might have been able to identify him; this would have been a very small circle of people. The Committee also considered that for those who were capable of identifying the child in the programme, the footage of him would not have revealed information that was of a private or sensitive nature.

The Committee considered the footage identified by Ms A in her complaint. In relation to the scene in which a staff member had stated "*what a little s***bag*", the Committee noted that there had been a number of children and staff

members in the shot and all had had their faces obscured. Therefore although it was clear in the original untransmitted footage, it would not have been clear to viewers of the programme as broadcast which staff member had made the comment, nor to which child it had referred. The programme gave no information about why a staff member had referred to a child in this way, therefore no information, private or otherwise, had been provided about a particular child's behaviour. In relation to the shot of Ms A's son being lifted by his arms, the Committee noted that a staff member had stated "*Stop. Everyday man, it is the same story with this child*". The Committee considered that the focus of this shot had been the actions of the two staff members in lifting the child off the ground by his arms and not the behaviour of the child (about whom no further details had been provided in the programme).

In the Committee's view, the information provided in the programme about the treatment specifically received by the child (i.e. being lifted by his arms or possibly being referred to in an inappropriate way) was not sensitive or likely to have infringed his privacy if revealed to those capable of identifying him. As discussed above, this would be a very small circle comprised of those closest to him.

Therefore in relation to Head (b) the Committee found the broadcast of the programme did not infringe Ms A's son's privacy. Having found no infringement of privacy in relation to this part of the complaint, the Committee was not required to decide whether any infringement had been warranted.

Accordingly Ofcom has not upheld Ms A's complaint on behalf of her son of unwarranted infringement of privacy in either the making or broadcast of the programme.

The Fairness Committee

22 August 2008

Complaint by Ms B on behalf of her son (a minor)

Whistleblower: Childcare, BBC1, 5 March 2008

Summary: Ofcom has not upheld this complaint by Ms B on behalf of her two sons (both minors) of unwarranted infringement of privacy in the making and broadcast of the programme.

On 5 March 2008, BBC1 broadcast an edition of its investigative programme, *Whistleblower*, entitled *Childcare*. During the programme, the BBC reporter went undercover and obtained a job as a Nursery Assistant at a nursery in West London called Buttons Day Nursery ("the Nursery"). The reporter surreptitiously recorded her experience of working at this nursery.

Ms B complained that the filming of her sons at their nursery, without her permission, and the broadcast of footage of them in which she claimed their names were audible, unwarrantably infringed their privacy.

The complaint was considered by Ofcom's Fairness Committee, its most senior decision making body in matters of Fairness and Privacy. In summary the Committee found the following:

- The surreptitious filming of Ms B's sons (who were 2 ½ and 4 years old) while at their nursery, without permission, was an infringement of the children's privacy. The Committee carefully weighed up these infants' right to privacy against the public interest served by the filming. It concluded that the decision to film surreptitiously inside the Nursery was warranted by the strong public interest served by this investigation into the care of very young children. Therefore the Committee did not uphold the complaint of unwarranted infringement of privacy in the making of the programme.
- In relation to the programme as broadcast, the Committee considered that only those who knew the children very well and were already aware that they attended the Nursery, would have been able to identify them. This was because their faces had been obscured and their names were not audible to the Committee, even after careful review. The Committee considered that for the small group of those able to identify the children, the footage of them would not have revealed information that was of a private or sensitive nature. Therefore, the Committee found that the broadcast of the programme did not infringe the privacy of Ms B's children.

Introduction

On 5 March 2008, BBC1 broadcast an edition of its investigative programme, *Whistleblower*, entitled *Childcare*. It featured an undercover investigation into the child care industry. During the programme, a BBC reporter went undercover and obtained a job as a Nursery Assistant at a nursery in West London called Buttons Day Nursery ("the Nursery"). The reporter surreptitiously recorded her experience of working at this nursery, and some of the footage filmed was included in the programme as broadcast. The faces of the children at the Nursery had been obscured at all times.

The programme alleged that the Nursery had failed to conduct appropriate checks of the undercover reporter's qualifications before allowing her to work with the children;

that the Nursery was understaffed; that some of the Nursery staff had acted in an unprofessional manner; and questioned whether the Nursery had taken appropriate steps to ensure the safety of the children at all times.

The programme broadcast surreptitiously filmed footage of the children playing outside in the Nursery's garden. In these scenes the reporter raised concerns about a child's discovery of a piece of glass in the garden, and about children being allowed to play with metal garden tools and long sticks.

Ofcom received a complaint from Ms B, the mother of two children who attend the nursery. Ms B complained that the privacy of her children was unwarrantably infringed in both the making and broadcast of the programme.

The Complaint

a) In summary, Ms B complained that the privacy of her children was unwarrantably infringed in the making of the programme in that the programme makers filmed her sons while at their nursery, without permission. Ms B's children were 2 ½ and 4 years old when the filming took place.

b) In summary Ms B complained that the privacy of her children was unwarrantably infringed in the broadcast of the programme in that the programme makers broadcast footage of her sons without permission. Ms B said that although the faces of her sons had been blurred, their names could be heard in the programme as broadcast. Ms B identified to Ofcom three parts of the programme where she believed her sons' names could be heard. These were during the scenes filmed in the Nursery's garden.

The BBC's case

The BBC provided a written statement in response to the complaint. It also provided Ofcom with copies of relevant correspondence between it and the complainant; a recording and transcript of the programme as broadcast; and the unedited recording and transcript of the relevant scenes of the children playing in the garden.

The BBC said that the thrust of the programme was to examine the effectiveness of Ofsted, the regulatory authority for education. It was in particular to examine Ofsted's responsibility to monitor the quality of care offered by registered childcare providers, which included their critical role in protecting children from harm or neglect and helping to keep them safe. In reply to Ms B's specific complaints the BBC responded as follows:

a) In response to the complaint that Ms B's sons' privacy had been unwarrantably infringed in the making of the programme, the BBC acknowledged that an inevitable consequence of the decision to conduct an undercover report was that children at the Nursery had been filmed without permission. However, it said the decision to film undercover at the Nursery had been made only after serious consideration of pre-existing evidence of poor practices.

The BBC said this evidence came from a senior member of staff who had worked at the Nursery for approximately one year. The former staff member had told the programme makers that some staff at the Nursery were paid below the minimum wage; there had been a time when a shortage of staff at the Nursery had impacted on the care of the babies; and, the toddlers' area of the Nursery was dirty.

The BBC said that based on this evidence it was decided that the reporter would start work at the Nursery, but that she would not initially secretly film. The programme producer said that the permission to film secretly was granted only after further consideration of the reporter's own discoveries: on her first day in the Nursery, despite not having had a Criminal Records Bureau ("CRB") check by her employer, she was left unsupervised in sole charge of five children. This, the BBC said completely contravened the Ofsted regulations which have the force of the law. The BBC also said that no one had checked the reporter's references.

b) In relation to the broadcast of the programme, the BBC said that substantial effort had been made to disguise the identities of all the children featured. Steps taken included heavy blurring of the children's faces so as to render visual identification impossible; alteration of identifiable pieces of the children's clothing; and, the removal from the programme of recognisable children's names. The BBC said that the programme makers felt that they had done everything within their power to conceal the identities of the children.

The BBC said that during the scene in which the children were shown playing outside in the garden the sound of the children playing created a generally confused noise. The BBC believed that it would have only been those familiar with the names of the children who would have been able to make out the sound of a child speaking another child's name.

The BBC said the generally chaotic nature of the situation, the indistinct enunciation that one would expect from young children, and the fact that the viewer's attention was being strongly drawn in other directions would have all meant that under normal viewing conditions the names of the children would have been entirely unrecognisable to the audience at large. The BBC said that even if the names had been audible, there had been no verbal or visual information given in the programme which would have allowed viewers to connect names with any of the children shown.

The BBC said that while it fully appreciated the concerns of parents about the security of their children, it believed that due care had been taken to disguise their identities. The BBC did not believe that any of the children in the film were rendered identifiable by the programme or that their privacy had been significantly infringed.

The BBC said even if there had been a significant infringement, it would have been offset by strong public interest considerations. The BBC said the filming showed that:

- The reporter (whom the management of Buttons did not know had been CRB-checked) had been left alone with children on several occasions, ranging from 30 minutes to an hour. The BBC said it was a legal requirement that staff who have not been CRB-checked are never left alone with children, and that this is regarded as a highly important aspect of child protection.
- At the point of employment, and for her entire first week of working as a nursery assistant, no check was made on the reporter's identity. In addition her referee was not spoken to before she was offered the job, or throughout the whole time she was working at Buttons. The BBC

said that such checks are crucial before someone is employed to look after young children.

- The implements being used in the garden - many of them metal - were not appropriate to the age of all the children who had access to them. The BBC said the reporter had witnessed children under the age of three playing with them.
- Broken glass was found in the garden on more than one occasion. In one instance a piece of glass was picked up by a child.
- Indoors, radiator covers had been fitted by workmen while children were in the nursery. The BBC said that power tools had been left lying on the floor where the children were playing.
- Some staff were paid below the National Minimum Wage.
- On several occasions the required adult:child ratios were not adhered to.
- The manner in which the children were spoken to and physically handled had been at times harsh and inappropriate.

The BBC said that the above lapses from acceptable standards (whose seriousness had been confirmed to the programme makers by an experienced Ofsted inspector) provided ample justification for the secret filming, and that the programme had served the public interest in exposing them.

Decision

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

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

Ms B's complaint on behalf of her sons was considered by Ofcom's Fairness Committee ("the Committee") its most senior decision making body in matters of Fairness and Privacy. In reaching its decision, the Committee carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast; unedited recordings and transcripts of the garden scenes; both parties' written submissions (which included copies of relevant correspondence); and a note of a telephone conversation between the Case Leader and Ms B.

As referred to above, Ms B has complained that both the making and broadcast of the programme unwarrantably infringed the privacy of her very young sons. In Ofcom's view, the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints

about unwarranted infringement of privacy both in relation to the making and the broadcast of the programme, Ofcom must consider two distinct questions: First, has there been an infringement of privacy? Secondly, if so, was it warranted? This is in accordance with Rule 8.1 of Ofcom's Broadcasting Code ("the Code") which states:

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

In taking account of the Code, the Committee had particular regard throughout their deliberations to Practice 8.20 under which broadcasters are reminded that particular attention should be paid to the privacy of people under sixteen. It also considered Practice 8.21 which states that where a programme features a person under the age of sixteen, consent must be obtained from a parent or guardian unless the subject matter is trivial or uncontroversial and the participation minor, or it is warranted to proceed without consent.

a) The Committee first considered Ms B complaint that the privacy of her children was unwarrantably infringed in the making of the programme by the fact that the programme makers had filmed her sons while at their nursery, without permission.

In considering whether the making of the programme infringed Ms B's sons' privacy, the Committee considered whether the children had a legitimate expectation of privacy in the circumstances in which they were filmed.

The Committee noted from the information provided by both parties that Ms B's children had been filmed while they attended their day nursery. They were 2 ½ and 4 years old at the time. The Committee also noted that footage of the children had been obtained surreptitiously by the use of a hidden camera. The Committee also took account of the fact that Ms B's children had been filmed playing in the Nursery's garden and finding a piece of glass in the garden.

In the Committee's view, the location of the filming (a nursery entrusted with the care of very young children which is not freely accessible to the public); the age and vulnerability of the children; and the surreptitious nature of the filming were all factors that would have significantly heightened Ms B's children's expectation of privacy. In the circumstances, the Committee considered that the Ms B's sons had a legitimate expectation of privacy in the circumstances in which they were filmed.

In light of the above considerations, the Committee took the view that the actions of the programme makers in obtaining footage of Ms B's sons whilst inside of their nursery without the knowledge or consent of their parents or guardians, through surreptitious means, infringed the children's privacy.

Having found an infringement of Ms B's children's privacy in the making of the programme, the Committee went on to consider whether the infringement was warranted.

As referred to above, the filming had been obtained surreptitiously. The Committee therefore took account of Practice 8.9 of the Code which states that:

"The means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme."

The Committee also took account of Practice 8.13 which states that:

“Surreptitious filming or recording should only be used where it is warranted. Normally, it will only be warranted if:

- there is prima facie evidence of a story in the public interest; and
- there are reasonable grounds to suspect that further material evidence could be obtained; and
- it is necessary to the credibility and authenticity of the programme.”

The Committee noted that prior to filming the programme makers had received information that raised significant concerns about the Nursery from one of its former employees. The Committee noted that in response to this information an undercover reporter applied for and successfully secured, employment with the Nursery using false qualifications and references and had been able to work at the Nursery without any checks being made on her qualifications or past working experience (e.g. reference checks). The Committee also noted that the reporter had gathered information about the Nursery on her first day. Surreptitious filming of the Nursery had begun on the undercover reporter’s second day of work by which time a number of the allegations made by the former member of staff had been confirmed.

Taking into account the information obtained by the programme makers about the Nursery prior to filming, the Committee was satisfied that there was prima facie evidence of a story in the public interest. The Committee considered that a story about the quality of care provided by the child care industry, especially by those entrusted with the care of very young and vulnerable children, was clearly in the public interest. The Committee also considered that the programme makers had reasonable grounds to believe that further evidence could be obtained, on the basis of the material gathered on the reporter’s first day of employment.

The Committee was satisfied that the surreptitious nature of the investigation (including surreptitious filming by two reporters) was essential to its authenticity and credibility. In the Committee’s view, by alerting the Nursery, its staff or the parents of the children to the investigation in advance, the programme makers would have been unable gain an accurate picture of the standard of care on offer. The Committee noted that the undercover filming had recorded evidence of the reporter caring for very young children despite being unqualified; of builders operating with power tools near to small children and leaving the tools unattended where children could access them; inappropriate behaviour by some Nursery staff (e.g. swearing); the difference between the ‘public-face’ of the Nursery and the actual care provided; and the discovery of glass in the play area. In all the circumstances, the Committee therefore found that the surreptitious nature of the filming was warranted and proportionate in this case.

Finally the Committee assessed whether the infringement of Ms B’s children’s privacy was warranted in the making of the programme, by considering the factors discussed above. The Committee carefully weighed up the young children’s right to privacy against the public interest served by the filming of them at their nursery. As stated above, the Committee considered that a story about the quality of care provided by those responsible for very young children was one that was in the public interest. It also considered that the investigation could not have succeeded in showing the actual practices of the Nursery (where very young children were inevitably present) without surreptitious filming by the

reporters. While the Committee acknowledged that the filming infringed the privacy of Ms B's children, it found this was warranted by the strong public interest served by the investigation.

Therefore in relation to Head (a) the Committee found that Ms B's children's privacy had been infringed in the making of the programme, but that the infringement was warranted by a public interest. Accordingly, the Committee has not upheld the complaint of unwarranted infringement of privacy in the making of the programme.

b) The Committee next considered Ms B's complaint that the privacy of her children was unwarrantably infringed in the broadcast of the programme as the programme makers broadcast footage of her sons without permission. The Committee noted that Ms B said that the names of her sons could be heard in the programme as broadcast. Ms B identified to Ofcom three parts of the programme where she believed her sons' names could be heard. These were during the scene in the Nursery's garden. The Committee also noted by way of background Ms B's statement that although the faces of her children had been blurred, the children's names had been included in a broadcast which had given information about their nursery.

In considering this complaint Ofcom had regard to Rule 8.1 (set out above).

In deciding whether Ms B's children's privacy had been infringed in the programme, the Committee first considered whether the children had a legitimate expectation of privacy in respect of the footage that was broadcast of them.

The Committee considered (for the reasons discussed at Head (a) of the Decision) that recordings of very young children obtained inside their Nursery, by surreptitious means would be footage that the children could normally legitimately expect to remain private.

However, in this case, the Committee noted that before broadcasting footage of Ms B's children, the programme makers had taken steps to disguise their identities. The Committee noted that the faces of all of the children at the Nursery had been completely blurred, including those children shown during the garden scenes.

Having viewed the programme carefully, the Committee considered that only those who knew Ms B's children very well and were already aware that they attended the Nursery would have been able to identify them; this would have been a very small circle of people. In relation to the scenes in the garden the Committee carefully reviewed and listened for any sound that could be understood to be the names of Ms B's children. After reviewing the scenes numerous times the Committee was unable to detect either child's name even after being made aware what they were. It was satisfied that the broadcast would not have revealed the first names of Ms B's children to the normal viewer.

Furthermore, the Committee considered for the following reasons that for those who were capable of identifying the children from the programme, the footage of them would not have revealed information that was of a private or sensitive nature.

The Committee considered that the focus of the garden scenes was clearly the potential safety hazards caused by items found in the Nursery's garden. These included a piece of glass, long sticks and a garden rake.

In the Committee's view, the information about the children's activities (e.g. that one of the children may have found a piece of glass or been playing with sticks) was not sensitive or likely to have infringed their privacy if revealed to those capable of identifying them. As discussed above these would be a very small circle comprised of those closest to them.

Therefore in relation to Head (b) the Committee found the broadcast of the programme did not infringe Ms B's children's privacy. Having found no infringement of privacy in relation to this part of the complaint, the Committee was not required to decide whether any infringement had been warranted.

Accordingly Ofcom has not upheld Ms B's complaint on behalf of her sons of unwarranted infringement of privacy in either the making or broadcast of the programme.

The Fairness Committee

22 August 2008

Complaint by Ms C on behalf of her son (a minor)

Whistleblower: Childcare, BBC1, 5 March 2008

Summary: Ofcom has not upheld this complaint by Ms C on behalf of her son (a minor) of unwarranted infringement of privacy in the making and broadcast of the programme.

On 5 March 2008, BBC1 broadcast an edition of its investigative programme, *Whistleblower*, entitled *Childcare*. During the programme, the BBC reporter went undercover and obtained a job as a Nursery Assistant at a nursery in West London called Buttons Day Nursery ("the Nursery"). The reporter surreptitiously recorded her experience of working at this nursery.

Ms C complained that the surreptitious filming of her son at his nursery, without her consent, and the broadcast of footage of him in which his name was audible, unwarrantably infringed his privacy.

The complaint was considered by Ofcom's Fairness Committee, its most senior decision making body in matters of Fairness and Privacy.

In summary the Committee found the following:

- The surreptitious filming of Ms C's two year and eight month old son, while at his day nursery, without his parent's knowledge or consent, was an infringement of the child's privacy. The Committee carefully weighed up the infant's right to privacy against the public interest served by the filming of him at his nursery. It concluded that the decision to film surreptitiously inside the Nursery was warranted by the strong public interest served by the investigation into the care of very young children. Therefore the Committee did not uphold the complaint of unwarranted infringement of privacy in the making of the programme.
- In relation to the programme as broadcast, the Committee considered that only those who knew the child very well and were already aware that he attended the Nursery, would have been able to identify him. This was because his face had been heavily blurred. The Committee considered that for the small group of those who were capable of identifying the child, the footage of him would not have revealed information that was of a private or sensitive nature. Therefore, the Committee found that the broadcast of the programme did not infringe the privacy of Ms C's son.

Introduction

On 5 March 2008, BBC1 broadcast an edition of its investigative programme, *Whistleblower*, entitled *Childcare*. It featured an undercover investigation into the child care industry. During the programme, a BBC reporter went undercover and obtained a job as a Nursery Assistant at a nursery in West London called Buttons Day Nursery ("the Nursery"). The reporter surreptitiously recorded her experience of working at this nursery and some of the footage was included in the programme as broadcast. The faces of the children at the Nursery had been obscured at all times.

The programme alleged that the Nursery had failed to conduct appropriate checks of the undercover reporter's qualifications before allowing her to work with the children; that the Nursery was understaffed; that some of the Nursery staff had acted in an unprofessional manner; and questioned whether the Nursery had taken appropriate steps to ensure the safety of the children at all times.

The programme broadcast surreptitiously filmed footage of the children playing outside in the Nursery's garden. In these scenes the reporter raised concerns about a child's discovery of a piece of glass in the garden, and children being allowed to play with metal garden tools and long sticks.

Ofcom received a complaint from Ms C, whose son attends the Nursery. Ms C complained that her son's privacy was unwarrantably infringed in both the making and broadcast of the programme.

The Complaint

a) In summary, Ms C complained that the privacy of her son was unwarrantably infringed in the making of the programme in that the programme makers surreptitiously filmed him without her knowledge or consent. Ms C said that the programme makers should have obtained consent prior to filming.

b) In summary, Ms C complained that the privacy of her son was unwarrantably infringed in the programme as broadcast in that the programme makers broadcast surreptitiously recorded footage of her son, without her consent. Ms C said that despite the blurring of her son's face he was still easily recognisable.

Ms C said that in the programme the reporter was shown taking a gardening tool away from her son and that his name was audible. Ms C said she believed that there were no other children at the Nursery with the same first name as her son.

The BBC's case

The BBC provided a written statement in response to the complaint. It also provided Ofcom with copies of relevant correspondence between it and the complainant; a recording and transcript of the programme as broadcast; and the unedited recording and transcript of the relevant scenes, filmed in the Nursery's garden.

The BBC said that the thrust of the programme was to examine the effectiveness of Ofsted, the regulatory authority for education. It was in particular to examine Ofsted's responsibility to monitor the quality of care offered by registered childcare providers, which included their critical role in protecting children from harm or neglect and helping to keep them safe. The BBC's replied to Ms C's specific complaints as follows:

c) In response to the complaint that Ms C's son's privacy had been unwarrantably infringed in the making of the programme, the BBC acknowledged that an inevitable consequence of the decision to conduct an undercover report was that children at the Nursery had been filmed without permission. However, it said the decision to film undercover at the Nursery had been taken only after serious consideration of pre-existing evidence of poor practices.

The BBC said this evidence came from a senior member of staff who had worked at the Nursery for approximately one year. The former staff member had told the programme makers that some staff at the Nursery were paid below the minimum

wage; there had been a time when a shortage of staff at the nursery had impacted on the care of the babies; and, the toddlers' area of the Nursery was dirty.

The BBC said that based on this evidence it was decided that the reporter would start work at the Nursery, but that she would not initially secretly film. The programme producer said that the permission to film secretly was granted only after further consideration of the reporter's own discoveries; on her first day in the Nursery, despite not having had a Criminal Records Bureau ("CRB") check, she was left unsupervised in sole charge of five children. This, the BBC said completely contravened the Ofsted regulations which have the force of the law. The BBC also said that no one had checked the reporter's references.

d) In relation to the broadcast of the programme, the BBC said that substantial effort had been made to disguise the identities of all the children featured in it. Steps taken by the programme makers included heavy blurring of the children's faces; alteration of identifiable pieces of the children's clothing; and the removal from the programme of recognisable children's names. The BBC said that the programme makers felt that they had done everything within their power to conceal the identities of the children. It said that while it fully appreciated the concerns of parents about the security of their children it believed that due care had been taken to disguise their identities. The BBC did not believe that any of the children in the film were rendered identifiable by the programme or that their privacy had been significantly infringed.

In relation to Ms C's son, the BBC said that in the scene in which the children were shown playing outside in the garden the children's faces were so heavily blurred as to render visual identification impossible by anyone not already familiar with them and aware that they attended Button's Nursery.

The BBC said even if there had been a significant infringement, it would have been offset by strong public interest considerations. The BBC said the filming showed that:

- The reporter (whom the management of Buttons did not know had been CRB-checked) had been left alone with children on several occasions, ranging from 30 minutes to an hour. The BBC said it was a legal requirement that staff who have not been CRB-checked are never left alone with children, and that this is regarded as a highly important aspect of child protection.
- At the point of employment, and for her entire first week of working as a nursery assistant, no check was made on the reporter's identity. In addition her referee was not spoken to before she was offered the job, or throughout the whole time she was working at Buttons. The BBC said that such checks are crucial before someone is employed to look after young children.
- The implements being used in the garden - many of them metal - were not appropriate to the age of all the children who had access to them. The BBC said the reporter had witnessed children under the age of three playing with them.

- Broken glass was found in the garden on more than one occasion. In one instance a piece of glass was picked up by a child.
- Indoors, radiator covers had been fitted by workmen while children were in the nursery. The BBC said that power tools had been left lying on the floor where the children were playing.
- Some staff were paid below the National Minimum Wage.
- On several occasions the required adult:child ratios were not adhered to.
- The manner in which the children were spoken to and physically handled had been at times harsh and inappropriate.

The BBC said that the above lapses from acceptable standards (whose seriousness had been confirmed to the programme makers by an experienced Ofsted inspector) provided ample justification for the secret filming, and that the programme had served the public interest in exposing them.

Decision

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

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

Ms C's complaint on behalf of her son was considered by Ofcom's Fairness Committee ("the Committee") its most senior decision making body in matters of Fairness and Privacy. In reaching its decision, the Committee carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast; unedited recordings and transcripts of the garden scenes; both parties' written submissions (which included copies of relevant correspondence); and email correspondence between the Case Leader and Ms C.

As referred to above, Ms C has complained that both the making and broadcast of the programme unwarrantably infringed the privacy of her very young son. In Ofcom's view, the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about unwarranted infringement of privacy both in relation to the making and the broadcast of the programme, Ofcom must consider two distinct questions: First, has there been an infringement of privacy? Secondly, if so, was it warranted? This is in accordance with Rule 8.1 of Ofcom's Broadcasting Code ("the Code") which states:

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

In taking account of the Code, the Committee had particular regard throughout their deliberations to Practice 8.20 under which broadcasters are reminded that particular attention should be paid to the privacy of people under sixteen. It also considered Practice 8.21 which states that where a programme features a person under the age of sixteen, consent must be obtained from a parent or guardian unless the subject matter is trivial or uncontroversial and the participation minor, or it is warranted to proceed without consent.

a) The Committee first considered Ms C's complaint that her son's privacy was unwarrantably infringed in the making of the programme by the programme makers surreptitious filming of him without her knowledge or consent. The Committee noted that Ms C believed that her consent should have been obtained prior to filming.

In considering whether the making of the programme infringed Ms C's son's privacy, the Committee considered whether the child had a legitimate expectation of privacy in the circumstances in which he was filmed.

The Committee noted from the information provided by both parties that Ms C's son had been filmed while he attended his day nursery, and that he was two years and eight months old at the time. The Committee also noted that footage of Ms C's son had been obtained surreptitiously by the use of a hidden camera. The Committee also took account of the fact that Ms C's son had been apparently filmed in circumstances where a gardening tool had been taken from him by the undercover reporter.

In the Committee's view, the location of the filming (a nursery entrusted with the care of very young children which is not freely accessible to the public), the age and vulnerability of the child and the surreptitious nature of the filming were all factors that would have significantly heightened Ms C's son's expectation of privacy. In the circumstances, the Committee considered that the Ms C's son had a legitimate expectation of privacy in the circumstances in which he was filmed.

In light of the above considerations, the Committee took the view that the actions of the programme makers in obtaining footage of Ms C's son, whilst inside his nursery and without the knowledge or consent of his parents or guardians, through surreptitious means, infringed the child's privacy.

Having found an infringement of Ms C's son's privacy in the making of the programme, the Committee went on to consider whether the infringement was warranted.

As referred to above, the filming had been obtained surreptitiously. The Committee therefore took account of Practice 8.9 of the Code which states that:

"The means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme."

The Committee also took account of Practice 8.13 which states that:

"Surreptitious filming or recording should only be used where it is warranted. Normally, it will only be warranted if:

- there is prima facie evidence of a story in the public interest; and

- there are reasonable grounds to suspect that further material evidence could be obtained; and
- it is necessary to the credibility and authenticity of the programme.”

The Committee noted that prior to filming the programme makers had received information that raised significant concerns about the Nursery from one of its former employees. The Committee noted that in response to this information an undercover reporter applied for and successfully secured, employment with the Nursery using false qualifications and references and had been able to work at the Nursery without any checks being made on her qualifications or past working experience (e.g. reference checks). The Committee also noted that the reporter had gathered information about the Nursery on her first day. Surreptitious filming of the Nursery had begun on the undercover reporter’s second day of work by which time a number of the allegations made by the former member of staff had been confirmed.

Taking into account the information obtained by the programme makers about the Nursery prior to filming, the Committee was satisfied that there was prima facie evidence of a story in the public interest. The Committee considered that a story about the quality of care provided by the child care industry, especially by those entrusted with the care of very young and vulnerable children, was clearly in the public interest. The Committee also considered that the programme makers had reasonable grounds to believe that further evidence could be obtained, on the basis of the material gathered on the reporter’s first day of employment.

The Committee was satisfied that the surreptitious nature of the investigation (including surreptitious filming by two reporters) was essential for its authenticity and credibility. In the Committee’s view, by alerting the Nursery, its staff, or the parents of the children to the investigation in advance, the programme makers would have been unable to gain an accurate picture of the standard of care on offer. The Committee noted that the undercover filming had recorded evidence of the reporter caring for very young children despite being unqualified; of builders operating with power tools near to small children and leaving them unattended where children could access them; inappropriate behaviour by some Nursery staff (e.g. swearing); the difference between the ‘public-face’ of the Nursery and the actual care provided; and the discovery of glass in the play area. In all the circumstances, the Committee therefore found that the surreptitious nature of the filming was warranted and proportionate in this case.

Finally the Committee assessed whether the infringement of Ms C’s son’s privacy was warranted in the making of the programme, by considering the factors discussed above. The Committee carefully weighed up a very young child’s right to privacy against the public interest served by the filming of him at his nursery. As stated above, the Committee considered that a story about the quality of care provided by those responsible for very young children was one that was in the public interest. It also considered that the investigation could not have succeeded to show the actual practices of the Nursery (where very young children were inevitably present) without surreptitious filming by the reporters. While the Committee acknowledged that the filming infringed the privacy of Ms C’s son, it found that it was warranted by the strong public interest served by the investigation.

Therefore in relation to Head (a) the Committee found that Ms C’s son’s privacy had been infringed in the making of the programme, but that the infringement was

warranted by a public interest. Accordingly, the Committee has not upheld the complaint of unwarranted infringement of privacy in the making of the programme.

b) The Committee next considered Ms C's complaint that the broadcast of the programme unwarrantably infringed the privacy of her son in that easily recognisable footage of him had been broadcast without her consent.

In considering this complaint Ofcom had regard to Rule 8.1 (set out above).

In deciding whether Ms C's son's privacy had been infringed in the programme, the Committee first considered whether the child had a legitimate expectation of privacy in respect of the footage that was broadcast of him.

The Committee considered (for the reasons discussed at Head (a) of the Decision) that recordings of a very young child obtained inside his Nursery, by surreptitious means, would be footage that the child could normally legitimately expect to remain private.

However, in this case, the Committee noted that before broadcasting footage of Ms C's son, the programme makers had taken steps to disguise his identity. The Committee noted that the faces of all of the children at the Nursery had been completely blurred, including those children shown during the garden scenes.

In relation to the complaint that Ms C's son's first name could be heard in the programme, the Committee carefully reviewed and listened for any sound that could be understood to be the name of the child. The Committee knew the child's name but was unable to detect it in any of the garden scenes or other scenes filmed at the Nursery, despite each Member having viewed this section of the programme, individually, on a number of occasions. The Committee was satisfied that the broadcast would not have revealed the first name of Ms C's son to the normal viewer. In the Committee's view Ms C's son would only have been identifiable by those who knew him very well and were already aware that he attended the Nursery; this would be a very small group of people.

Furthermore, the Committee considered that the focus of the scene in which a gardening tool had been taken away from a child was clearly the potential safety hazard caused by the tool. In the Committee's view, information about the child's activities e.g. that a tool had been taken away from him out of concern for his safety, was not sensitive or likely to have infringed the child's privacy if revealed to those capable of identifying them (which as discussed above, would be a very small circle comprised of those closest to him).

Therefore in relation to Head (b) the Committee found the broadcast of the programme did not infringe Ms C's son's privacy. Having found no infringement of privacy in relation to this part of the complaint, the Committee was not required to decide whether any infringement had been warranted.

Accordingly Ofcom has not upheld Ms C's complaint on behalf of her son of unwarranted infringement of privacy in either the making or broadcast of the programme.

The Fairness Committee

22 August 2008

Programme	Trans Date	Channel	Category	No of Complaints
.... and Proud (trailer)	26/07/2008	Virgin1	Sex/Nudity	1
1xtra	n/a	BBC Radio 1xtra	Generally Accepted Standards	1
3 Minute Wonder	07/08/2008	Channel 4	Sex/Nudity	1
8 Out of 10 Cats	04/07/2008	Channel 4	Generally Accepted Standards	1
A Girl's Guide to 21st Century Sex	10/08/2008	Fiver	Sex/Nudity	1
A Girl's Guide to 21st Century Sex	26/07/2008	Fiver	Sex/Nudity	1
After You've Gone	28/07/2008	BBC1	Generally Accepted Standards	1
Afternoon Live with Kay Burley	12/08/2008	Sky News	Due Impartiality/Bias	1
Air Wick sponsorship of Emmerdale	n/a	ITV1	Generally Accepted Standards	1
Alistair Wright & Nicky Patrick at Breakfast	14/08/2008	Radio Jackie 107.8	Generally Accepted Standards	1
Athletes Do the Funniest Things	02/08/2008	ITV1	Generally Accepted Standards	1
BBC Breakfast	15/07/2008	BBC1	Flashing images	1
BBC Breakfast / GMTV	06/08/2008	BBC1 / ITV1	Generally Accepted Standards	1
BUPA sponsorship of Doc Martin	n/a	ITV1	Inaccuracy/Misleading	1
Backyard Screenings (trailer)	n/a	Channel 4	Crime (incite/encourage)	1
Baggage	04/08/2008	BBC Radio 4	Sex/Nudity	1
Best of Friends	19/07/2008	CBBC	Substance Abuse	1
Big Breakfast Show	07/08/2008	Southern FM	Generally Accepted Standards	1
Big Brother 9	23/06/2008	Channel 4	Sex/Nudity	8
Big Brother 9	02/07/2008	Channel 4	Unconscious influence/hypnosis/subliminal	6
Big Brother's Big Mouth	29/07/2008	E4	Generally Accepted Standards	1
Big Brother's Little Brother	14/08/2008	E4	Due Impartiality/Bias	1
Big Brother's Little Brother	09/07/2008	E4	Generally Accepted Standards	1
Black Diamond FM	07/08/2008	107.8FM	Generally Accepted Standards	1
Bonekickers	05/08/2008	BBC1	Generally Accepted Standards	1
Book of the Week	01/08/2008	BBC Radio 4	Offensive Language	1
Car Bomb	03/08/2008	Channel 4	Due Impartiality/Bias	5
Car Bomb	03/08/2008	Channel 4	Crime (incite/encourage)	1
Car Bomb	03/08/2008	Channel 4	Generally Accepted Standards	1
Celebrity Wife Swap	10/08/2008	Channel 4	Offensive Language	1
Channel 4 News	30/07/2008	Channel 4	Due Impartiality/Bias	1
Channel 4 News	05/08/2008	Channel 4	Violence	5
Channel 4 News	21/07/2008	Channel 4	Due Impartiality/Bias	1
Continuity link	19/07/2008	CBeebies	Dangerous Behaviour	1
Continuity preceding Barefoot Contessa	10/07/2008	UKTV Food	Offensive Language	1
Corduroy	04/08/2008	Tiny Pop	Dangerous Behaviour	1
Coronation Street	18/08/2008	ITV1	Animal Welfare	5
Coronation Street	11/08/2008	ITV1	Substance Abuse	1
Coronation Street	06/08/2008	ITV1	Generally Accepted Standards	3
Coronation Street	25/06/2008	ITV1	Offensive Language	3
Crash Scene Investigators	08/07/2008	ITV1	Generally Accepted Standards	2
Crimewatch	06/08/2008	BBC1	Crime (incite/encourage)	1

DM Digital Viewer Competition	n/a	DM Digital		1
Dangerous Jobs for Girls	30/07/2008	Channel 4	Animal Welfare	6
Dangerous Jobs for Girls	13/08/2008	Channel 4	Animal Welfare	3
Dickinson's Real Deal	06/08/2008	ITV1	Competitions	1
Eastenders	14/07/2008	BBC1	Sex/Nudity	2
Eastenders	18/07/2008	BBC1	Generally Accepted Standards	2
Eastenders	11/08/2008	BBC1	Harm/Food	1
Eastenders	01/08/2008	BBC1	Generally Accepted Standards	1
Embarrassing Illnesses	20/08/2008	Channel 4	Sex/Nudity	1
Embarrassing Illnesses	13/08/2008	Channel 4	Generally Accepted Standards	4
Embarrassing Illnesses	20/08/2008	Channel 4	Generally Accepted Standards	1
Emmerdale	31/07/2008	ITV1	Violence	1
Epitaph	06/08/2008	Paranormal Channel	Violence	1
F1: Canadian Grand Prix Live	08/06/2008	ITV1	Generally Accepted Standards	1
F1: Hungarian Grand Prix Live	03/08/2008	ITV1	Due Impartiality/Bias	1
Five News	14/08/2008	Five	Inaccuracy/Misleading	1
Five News	01/08/2008	Five	Generally Accepted Standards	1
Friday Night With Jonathan Ross	06/07/2008	BBC1	Generally Accepted Standards	1
Full Pott	13/05/2008	Kanal 5	Generally Accepted Standards	1
GMTV	15/08/2008	ITV1	Sex/Nudity	1
GMTV	15/08/2008	ITV1	Competitions	1
GMTV	14/08/2008	ITV1	Competitions	1
GMTV	31/07/2008	ITV1	Inaccuracy/Misleading	1
GMTV	15/08/2008	ITV1	Generally Accepted Standards	1
Generation Next (trailer)	27/07/2008	More4	Generally Accepted Standards	1
Gok's Fashion Fix	31/07/2008	Channel 4	Animal Welfare	1
Gordon Ramsay's F Word	29/07/2008	Channel 4	Animal Welfare	5
Gordon Ramsay's F Word	20/05/2008	Channel 4	Animal Welfare	2
Gossip Girl	27/07/2008	ITV2	Sex/Nudity	1
Graham Mack in the Morning	18/07/2008	TFM 96.6 FM	Generally Accepted Standards	1
Granada Reports	25/07/2008	ITV Granada	Due Impartiality/Bias	1
HD promotion	11/07/2008	Sky Two	Inaccuracy/Misleading	1
Heartbeat	03/08/2008	ITV1	Animal Welfare	3
Holby City (trailer)	26/07/2008	BBC1	Violence	1
ITV News	18/08/2008	ITV1	Generally Accepted Standards	1
ITV4 Film trailer	02/08/2008	ITV1	Generally Accepted Standards	1
Ibiza	31/07/2008	Living	Animal Welfare	1
Johnny Vaughan	08/08/2008	Capital 95.8FM	Generally Accepted Standards	1
Jon Gaunt	29/07/2008	Talksport	Generally Accepted Standards	2
Jon Gaunt	29/07/2008	Talksport	Sex/Nudity	1
Jon Gaunt	28/07/2008	Talksport	Sex/Nudity	3
Jon Gaunt	31/07/2008	Talksport	Generally Accepted Standards	1
Jonathan Ross	19/07/2008	BBC Radio 2	Generally Accepted Standards	1
Jonathan Ross Salutes Dad's Army	03/08/2008	BBC1	Generally Accepted Standards	1
Katy Brand's Big Ass Show	06/08/2008	ITV1	Generally Accepted Standards	1
Kill It, Skin It, Wear It	10/08/2008	Channel 4	Animal Welfare	10
Kill It, Skin It, Wear It	10/08/2008	Channel 4	Generally Accepted Standards	1
Kill It, Skin It, Wear It (trailer)	n/a	Channel 4	Animal Welfare	5
Lilt sponsors ITV2 Daytime	08/08/2008	ITV2	Generally Accepted Standards	2
Loose Women	14/07/2008	ITV1	Sex/Nudity	2
Make My Body Younger	06/08/2008	BBC Three	Dangerous Behaviour	1

Make My Body Younger	30/07/2008	BBC Three	Offensive Language	1
Midsomer Murders	07/04/2008	ITV1	Generally Accepted Standards	3
Midsomer Murders	25/03/2008	ITV1	Offensive Language	1
Mike Mendoza	26/07/2008	Talksport	Due Impartiality/Bias	1
Mock the Week	02/08/2008	BBC2	Generally Accepted Standards	1
Mock the Week	31/07/2008	BBC2	Sex/Nudity	1
Neighbours	24/07/2008	Five	Generally Accepted Standards	1
New Tricks	11/08/2008	BBC1	Offensive Language	1
News	22/07/2008	Classic FM	Due Impartiality/Bias	1
News	29/07/2008	BBC Radio 5 Live	Crime (incite/encourage)	1
News	22/05/2008	2-Ten FM	Commercial References	1
News	03/08/2008	ITV1	Inaccuracy/Misleading	1
News	31/07/2008	BBC Radio 4	Generally Accepted Standards	1
News	05/08/2008	ITV1	Due Impartiality/Bias	1
News	11/08/2008	Russia Today	Due Impartiality/Bias	1
News at Ten	22/07/2008	ITV1	Inaccuracy/Misleading	1
News at Ten	22/07/2008	ITV1	Due Impartiality/Bias	1
Passat sponsorship of The Genius of Charles Darwin	04/08/2008	Channel 4	Inaccuracy/Misleading	1
Penis Envy (trailer)	n/a	Virgin1	Sex/Nudity	1
Petits Filous sponsorship of Mikshake	n/a	Five	Inaccuracy/Misleading	1
Richard & Judy	31/07/2008	Channel 4	Religious Offence	1
Radio 1 in Majorca	18/07/2008	BBC Radio 1	Generally Accepted Standards	1
Radio Forth One	14/06/2008	Radio Forth One	Competitions	1
Real Breakfast Show	08/08/2008	Real Radio Scotland	Generally Accepted Standards	1
Real Football Phone-In	28/07/2008	Real Radio Scotland	Offensive Language	1
Red Bull Air Race 2008	03/08/2008	Channel 4	Generally Accepted Standards	1
Richard & Judy	14/08/2008	Channel 4	Sex/Nudity	1
Richard & Judy	07/08/2008	Channel 4	Generally Accepted Standards	1
Richard & Judy	04/08/2008	Channel 4	Sex/Nudity	1
Richard & Judy	29/07/2008	Channel 4	Generally Accepted Standards	1
Road Wars	02/06/2008	Sky One	Generally Accepted Standards	1
Rugby Union	31/05/2008	Sky Sports 1	Flashing images	1
Sally Hudson	29/07/2008	Galaxy 102	Religious Offence	1
Secrets of World War Two	23/07/2008	UKTV History	Violence	1
Sky Box Office Superheroes Month promotion	15/07/2008	Sky Three	Inaccuracy/Misleading	1
South East Today	18/07/2008	BBC1	Violence	1
South Park	29/07/2008	Paramount	Generally Accepted Standards	1
Sports Academy Competition	25/06/2008	Mercury 96.6FM	Competitions	1
Super Botox Me (Trailer)	18/08/2008	Channel 4	Generally Accepted Standards	1
The Charlotte Church Show	07/08/2008	Channel 4	Generally Accepted Standards	24
The Charlotte Church Show	14/08/2008	Channel 4	Sex/Nudity	1
The Charlotte Church Show	14/08/2008	Channel 4	Generally Accepted Standards	4
The Christian O'Connell Breakfast Show	07/08/2008	Virgin Radio	Sex/Nudity	1
The Christian O'Connell Breakfast Show	06/08/2008	Virgin Radio	Generally Accepted Standards	1
The Genius of Charles Darwin	04/08/2008	Channel 4	Inaccuracy/Misleading	2
The Genius of Charles Darwin	04/08/2008	Channel 4	Due Impartiality/Bias	2
The Kevin Bishop Show	08/08/2008	Channel 4	Religious Offence	13

The Kevin Bishop Show	08/08/2008	Channel 4	Generally Accepted Standards	2
The Kevin Bishop Show	25/07/2008	Channel 4	Generally Accepted Standards	1
The Mummy	09/08/2008	ITV1	Scheduling	8
The Perfect Vagina (trailer)	11/08/2008	Channel 4	Sex/Nudity	2
The Qur'an	14/07/2008	Channel 4	Due Impartiality/Bias	1
The Scorpion King	02/08/2008	ITV1	Scheduling	1
The Secret Millionaire	12/08/2008	Channel 4	Generally Accepted Standards	1
The Secret Millionaire	12/08/2008	Channel 4	Inaccuracy/Misleading	1
The Sunday Night Project	22/06/2008	Channel 4	Offensive Language	6
The Wright Stuff	13/08/2008	Five	Due Impartiality/Bias	1
The Wright Stuff	15/08/2008	Five	Due Impartiality/Bias	1
The X Factor	16/08/2008	ITV1	Generally Accepted Standards	1
The X Files	15/07/2008	Virgin1	Violence	1
Tonightly	08/08/2008	Channel 4	Offensive Language	2
Tonightly	01/08/2008	Channel 4	Generally Accepted Standards	2
Tonightly	08/08/2008	Channel 4	Generally Accepted Standards	1
Top Gear	27/07/2008	BBC2	Generally Accepted Standards	1
Toys R US Competitioon	29/07/2008	Cartoon Network	Competitions	1
Two Pints of Lager and a Packet of Crisps	08/08/2008	BBC2	Dangerous Behaviour	1
Uncle Max	01/08/2008	BBC1	Generally Accepted Standards	1
Victoria Derbyshire	10/07/2008	BBC Radio 5 Live	Generally Accepted Standards	1
Weekender with Adam Longworth	01/08/2008	XFM London	Sex/Nudity	1
Whines and Spirits	04/07/2008	Paranormal Channel	Exorcism/Occult/Paranormal	1
Whistleblower	05/03/2008	BBC1	U18's in Programmes	2
Wife Swap	17/08/2008	Channel 4	Crime (incite/encourage)	1
Wife Swap	17/08/2008	Channel 4	Generally Accepted Standards	5
Wife Swap	17/08/2008	Channel 4	U18's in Programmes	5
World's Most Death Defying Stunts	03/08/2008	ITV4	Generally Accepted Standards	1
Would I Lie to You?	18/07/2008	BBC1	Offensive Language	1
Zodiac	09/08/2008	Sky Movies Drama	Violence	1