

# Ofcom broadcast bulletin

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## Introduction

Ofcom's Broadcasting 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>

The Communications Act 2003 allowed for the codes of the legacy regulators to remain in force until such time as Ofcom developed its own Code. While Ofcom has now published its Broadcasting Code, the following legacy Codes apply to content broadcast before 25 July 2005.

- Advertising and Sponsorship Code (Radio Authority)
- News & Current Affairs Code and Programme Code (Radio Authority)
- Code on Standards (Broadcasting Standards Commission)
- Code on Fairness and Privacy (Broadcasting Standards Commission)
- Programme Code (Independent Television Commission)
- Programme Sponsorship Code (Independent Television Commission)
- Rules on the Amount and Distribution of Advertising

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

## Standards cases

### In Breach

#### The Slammer

CBBC, 14 October 2006, 17:00

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#### Introduction

In this show, children in the studio audience judge the performances of professional entertainers who are ‘prisoners in *The Slammer*’, with the winner being ‘let out of jail’.

Ofcom received a complaint about a performance in this episode in which a mime artist put a rubber glove over his head, eyes and nose and blew it up. The viewer felt this activity was potentially dangerous and that children at home would try to copy it.

Ofcom asked the BBC to comment on the performance in respect of Rule 1.13 of the Broadcasting Code (“the Code”). This Rule requires that: “Dangerous behaviour, or the portrayal of dangerous behaviour, that is likely to be easily imitable by children in a manner that is harmful:...must not be featured in programmes made primarily for children unless there is strong editorial justification...”.

#### Response

The BBC stated that it did not believe the inclusion of the entertainer’s “rubber glove trick” had been likely to put children at risk. The emphasis of the show had been the skills of the performers on display which the children in the studio audience – and by extension, young viewers at home – were invited to admire and pass their judgement on, rather than emulate. No suggestion was made that such tricks could be performed by anyone other than a skilled entertainer with considerable experience.

The BBC explained that the production team had carefully considered the possible risk of the act and modified it so that the glove did not cover the performer’s face completely, as would usually be the case. Instead, his mouth remained uncovered and visible at all times. It was decided that even pulling a glove this far was no easy feat for an adult, let alone a child.

The BBC also pointed out that as the performer of this act was not ‘let out of jail’ by the audience, it felt emulation of the act by young viewers was even less likely.

#### Decision

The performer’s use of the rubber glove was presented as slapstick fun, which was met with laughter and appreciation from the children in the studio audience. Despite the fact that the entertainer was not ‘let out of jail’ by the audience, his act could, in Ofcom’s opinion, still have been viewed by children as entertaining to copy.

Ofcom acknowledges that the production team had modified the act. However, we consider that the programme’s attempt to limit the possibility of emulation by not covering the performer’s mouth with the glove would be a rather subtle adaptation for younger viewers to notice. Further, Ofcom noted that no warning against trying to copy the act was given to children watching.

The key issue here was not whether children would in fact be able to pull a rubber glove over their nose and mouth, but whether it was possible that they would be likely to try to. As the trick was presented as entertainment and performed using a common household item, it was likely to be easily imitable by children, possibly with another household item. Given the fact that this part of the act in its entirety was considered potentially harmful behaviour that children watching may try to imitate, Ofcom considers that its inclusion, even in this modified form, in a children's entertainment programme was unsuitable and not editorially justified. The programme was therefore in breach of Rule 1.13 of the Code.

**Breach of Rule 1.13**

## Scotland Today

STV, 07 August 2006, 18:00

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### Introduction

*Scotland Today*, STV's news programme, included an item on "a new SMG website, Peopleschampion.com", which was introduced by the news presenter in the following terms:

*"When it comes to money choices, most of us would welcome the right advice. A new SMG website, Peopleschampion.com, has been set up to do just that. It's offering extensive consumer advice and Vicky Lee's been having a look."*

Close-up shots of the website, including its address and logo, were then displayed with a voiceover from the reporter:

*"Peopleschampion.com is about finding you the best deal and helping you save money within four clicks of the mouse, so when it goes live in the next few weeks, you'll be able to compare more than 8500 mortgages, the best deals in pet and medical insurance and search for bargain flights..."*

The item also featured the founder of the website who described the website as a "one-stop shop" that "saves a lot of time and energy"; and Donald Emslie, of the Scottish Media Group ("SMG"), was interviewed and said:

*"We believe that, with the strength of our brand in Scotland and the cross-promotion we can give this site, we will see Peopleschampion become a very important part of the consumer language out there when they're looking for good value for money."*

In addition, a statement about the site was given by a representative of Energywatch, the independent gas and electricity watchdog.

The reporter then pointed out that all the information on the site would be free. The item was wrapped up by the news presenter, who said: "Peopleschampion.com".

A viewer complained that the item was in effect an advertisement for the website, pointing out that SMG was the parent company of STV.

Rule 10.3 of the Broadcasting Code ("the Code") states: "Products and services must not be promoted in programmes. This rule does not apply to programme-related material."

Rule 10.4 states: "No undue prominence may be given in any programme to a product or service." The Code explains that undue prominence may result from:

- the presence of, or reference to, a product or service (including names, brand names, logos) in a programme where there is no editorial justification; or
- the manner in which a product or service (including company names, brand names, logos) appears or is referred to in a programme.

Ofcom requested STV's comments, with particular reference to Rules 10.3 and 10.4.

### Response

STV said that at the time of broadcast Peopleschampion.com was not an active service, nor had any date been set for its launch. The item was considered to be

editorially justified on the basis of its widely acknowledged business interest in Scotland.

The decision to include the item in *Scotland Today* was taken on the basis of its interest to viewers as a new Scottish business website developed by the founder of Intelligent Finance, Jim Spowart, who was, STV said, considered to be one of Britain's most experienced, and innovative, financial entrepreneurs. STV therefore took the view that his development of a new Scottish online business would be of particular interest to viewer-consumers in Scotland.

STV said that the addition of Peopleschampion.com to SMG's other online businesses also represented a significant development in SMG's overall digital strategy, and that references to such business developments were well established in news programmes where the information was felt to be of regional or national interest. STV felt its decision to include the item on this basis was justified by the degree of media coverage it generated at the time and continued to generate.

As the service itself was not available to the public until several weeks after *Scotland Today* was broadcast, STV did not feel that reference to the website at the time of transmission constituted a 'sell' for the purposes of Rule 10.3. STV went on to say that, given its editorial rationale for including the item in *Scotland Today*, it did not feel the presentation itself constituted undue prominence in breach of Rule 10.4, but rather that it defined the service and explained the background to its development.

STV said the anchor's closing reference to the name of the website was given to contextualise and close the item that had just been shown. It also said that Peopleschampion.com was not referred to in any follow-up programming.

## **Decision**

One of the fundamental principles of European broadcasting regulation is that advertising and programming (that is editorial content) must be kept separate. This is set out in Article 10 of the Television Without Frontiers Directive which is in turn reflected in the rules in Section Ten (Commercial References in Programmes) of the Code, including Rules 10.3 and 10.4.

Ofcom recognises that, depending on the individual circumstances, there may be editorial justification to include information in a programme about the launch of a new product or service. However, the more commercial the product or service and the more prominent the references to it within a programme, the greater the risk that such references may appear to be, in effect, promotional selling messages in breach of Rule 10.3, or unduly prominent in breach of Rule 10.4, or both.

Ofcom accepted, in principle, that there may have been editorial justification to include an item in *Scotland Today* about the launch of a new consumer website providing price comparisons of various services. However, in this particular case we were concerned by the manner in which the website was described. The item was about ninety seconds long and most of this was devoted to detailed and favourable information about the website. There were also close-up shots of the name and logo, which we considered to be unduly prominent in the context of a news item.

In addition, having visited the website once it was launched, it was noted that although the site may have been of particular interest to Scottish viewers, it was not limited to internet users based in Scotland, nor to comparisons of Scottish businesses, and that – whilst it was free for users – it was in fact a commercial

offering. These matters all called into question whether there was sufficient editorial justification for the degree of prominence given to the website in *Scotland Today*.

Ofcom also noted the comments made by Donald Emslie of SMG Television, which controls STV. Mr Emslie's reference to opportunities for "cross-promotion" and "the strength of our brand" may have given the impression to some that the item was primarily a promotional piece for the website. However, if this were the case, the website did not satisfy the definition of programme-related material in the Code, the promotion of which is permitted within programmes under Rules 10.3 and 10.6.

Ofcom welcomed STV's clarification that Peopleschampion.com was not referred to in any follow-up programming and noted that it was not in fact in operation at the time of broadcast. However, taking into account the context in which the references were made (i.e. within a news programme on STV), Ofcom considered that the item promoted the website in an unacceptable manner and also gave it undue prominence.

#### **Breach of Rules 10.3 and 10.4**



## Who Do You Think You Are?

BBC2, 30 October 2006, 19:00

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### Introduction

Two viewers complained that the word “fucking” was used during the programme. One of the complainants, who was watching the programme with her deaf 10 year old son, further complained that the word was included in the programme’s subtitles. Both complainants were concerned that this word was included in a programme transmitted before the watershed.

Rule 1.16 of the Ofcom Broadcasting Code (“the Code”) requires that: “Offensive language must not be broadcast before the watershed, or when children are particularly likely to be listening, unless it is justified by the context.” The BBC was asked to comment on the broadcast in the light of this Rule.

### Response

The BBC stated that it very much regretted the offence viewers were caused by the inclusion of the word “fucking” in this pre-watershed repeat of what was originally a post-watershed programme on BBC1. They said that when it was scheduled for pre-watershed transmission on BBC2, compliance checks identified the need for it to be edited to remove the strong language. However, they said that whilst the programme was edited for pre-watershed transmission, human error within the department responsible for planning and presentation meant that the post-watershed version was played out in the 19:00 slot.

The BBC said it accepted that viewers do not, and should not, expect to hear such language before the watershed and that the gravity of the error has been firmly drawn to the attention of the person responsible. They assured Ofcom and the complainants that the BBC regards a lapse such as this as extremely serious, and that the likelihood of recurrence is extremely remote.

### Decision

Ofcom acknowledged the BBC’s regret over the offence caused and noted their explanation of human error. However, Ofcom also noted that this was the second time that offensive language has been included in the subtitles of a pre-watershed programme on BBC2.

Ofcom broadcast bulletin 56 (published 20 March 2006) recorded that the BBC programme, *Sahara*, transmitted on 26 December 2005 at 09:30 included the word “fucking” in the subtitles. A Broadcasting Standards Commission (BSC) adjudication in March 2003 also found *Sahara* in contravention of its Code because the same word had not been removed from a transmission of the programme at 19:00.

Ofcom views the inappropriate use of the word “fucking” before the watershed as serious. The BBC has admitted that its broadcast on this occasion was not justified. The offence caused was increased further by the inclusion of the offensive word in the subtitles. Whilst acknowledging the BBC’s explanation for how this incident occurred, Ofcom took into account the incidents set out in the previous paragraph and concluded that the transmission of *Who Do You Think You Are?* at 19:00 was in breach of Rule 1.16 of the Code.

### Breach of Rule 1.16

## Resolved

### **The War at Home**

*Channel 4, 8 September 2006, 20:00*

#### **Introduction**

*The War at Home* is an American sitcom about the life and troubles of a 'typical' American family. In this episode, the entire family, including the grandmother, became involved in different ways with the use of marijuana. A viewer complained that the programme normalised drugs and did not show the negative implications associated with the use of marijuana.

Rule 1.10 of the Ofcom Broadcasting Code ("the Code") requires that: "The use of illegal drugs, the abuse of drugs, smoking, solvent abuse and the misuse of alcohol...must generally be avoided and in any case must not be condoned, encouraged or glamorised in other programmes broadcast before the watershed, or when children are particularly likely to be listening, unless there is editorial justification...". Channel 4 was asked to comment in light of this rule.

#### **Response**

Channel 4 submitted two responses to Ofcom regarding this programme.

In its first submission, Channel 4 said that while it regretted the offence caused to the complainant, it strongly believed that this episode did not condone, encourage or glamorise the use of marijuana. It said that drug use is a legitimate theme for broadcast pre-watershed, provided that it is editorially justified - as it was in this case. Channel 4 suggested that in this episode, marijuana was used as a plot device to highlight the difficulties of modern parenting and to reflect the wide and varied uses of the drug in society (i.e. medicinal and recreational purposes). It argued that, despite the episode's comedic value, the dangerous and serious implications of drugs were made clear to the viewer through references to anti-social behaviour and 'gateway drugs'.

Channel 4 informed Ofcom that the challenging content of this particular episode had led to discussions at senior level within the channel. Following these discussions, it was considered appropriate to broadcast this episode at 20:00 on Channel 4, as this slot was usually reserved for material aimed at older members of the family. However, it had decided that the episode was unsuitable for transmission at the earlier time of 19:30 on E4.

In its second submission, Channel 4 stated that following further discussion, it had reached the decision that this programme was inappropriate for pre-watershed transmission. Channel 4 also provided Ofcom with an assurance that this programme would not be broadcast in a pre-watershed slot in future.

#### **Decision**

Ofcom recognises that this programme is an American sitcom, reflecting cultural values which may differ to those in the United Kingdom. It is not unusual for American sitcoms to take a comedic approach to the theme of drug use and UK viewers are familiar with this. Given the American context of this programme, it is conceivable that younger viewers would distance themselves from these scenes,

interpreting them as fictional and removed from reality. The American context of this programme could, therefore, potentially provide editorial justification for the content of the episode.

However, this programme portrayed the use of marijuana in a way which suggested that it was normal and acceptable behaviour. The 'use of illegal drugs' was not generally avoided in the programme as set out in Rule 1.10 of the Code and there was insufficient editorial justification to support their inclusion. We, therefore, agree with Channel 4 that this programme was unsuitable for broadcast pre-watershed.

In view of Channel 4's acknowledgement of this and its assurances that this programme would not be re-broadcast pre-watershed, we consider the matter resolved.

**Resolved**

## **The Beatles' Biggest Secrets**

*The Biography Channel, 30 November 2006, 16:00*

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### **Introduction**

The Biography Channel is a factual documentary channel broadcast on cable and satellite. A viewer complained that on Saturday 30 November 2006 during the programme *The Beatles' Biggest Secrets* at approximately 16:00, the word "fucking" was used.

Ofcom requested a copy of the programme and noted in addition to "fucking", the words "fuck" and "fucked" were used; and that the programme contained references to sexual activity including "blow jobs" and "threesomes" and to drugs, and some female nudity. The Biography Channel was asked to comment on the appropriateness of this programme for broadcast at 16:00.

### **Response**

The Biography Channel said that on being informed of the complaint the Channel Director immediately instigated an internal inquiry. To its immense regret and concern, the channel found that *The Beatles' Biggest Secrets* was broadcast at 16:00, despite the programme being clearly identified and recorded on its systems as only suitable for broadcast after 22:00. Upon further investigation it transpired that the channel's scheduler had accidentally overridden the various warnings triggered by the channel's existing procedures.

The Biography Channel confirmed that as a result of this incident, it fully revised its schedule review procedures. All post-watershed programmes are now colour-coded and the printed schedule showing the positioning of these programmes must be signed off by the Channel Director before being uploaded for transmission. Further, staff have undergone training on the importance of the Ofcom Broadcasting Code's requirements and of compliance with the channel's revised procedures. The Biography Channel also offered its sincere apologies to the complainant.

### **Decision**

Ofcom was concerned by the broadcast of this unsuitable material before the watershed. However, it acknowledged the steps taken by the broadcaster to ensure that its scheduling procedures were thoroughly revised to prevent a repeat of this incident. Ofcom also took into account the Biography Channel's apology to the complainant and its good compliance record to date. Ofcom therefore considers the matter, on this occasion, resolved.

### **Resolved**

## **Discovery Channel trailer**

*Discovery +1, 10 November 2006, 08:00*

*Discovery +1, 20 November 2006, 07:00*

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### **Introduction**

At one point in this trailer for the Discovery channel, the actress Joanna Lumley, surprised by a breaking champagne bottle, says "oh fuck".

One viewer complained that this language was inappropriate for the time of day the trailer was broadcast.

### **Response**

The broadcaster explained that there had been an error in their scheduling system for promotions. After notification of the complaint by Ofcom, new systems had been put into place to prevent this happening again. They immediately stopped the broadcast of all versions of the trailer and carried out a full audit to ensure that post-watershed versions were only scheduled for transmission at appropriate times. All relevant staff were reminded of the procedures in place to protect against the transmission of inappropriate material before the watershed and their responsibility to follow such procedures.

Discovery asked that its sincere apologies be passed on to the complainant for any offence caused.

### **Decision**

Bearing in mind the actions taken, Ofcom considers that on this occasion there was no need to intervene further.

### **Resolved**

## Not in Breach

### Coronation Street

ITV1, 30 October 2006, 19:30

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#### Introduction

One of the characters in this series, Charlie Stubbs, was having an affair with the hairdresser Maria. The teenager, David Platt, had spent a number of weeks taunting Charlie Stubbs that he knew about the affair. Charlie, known to viewers as a womanising bully, confronts David by luring him to Maria's flat. Although the exact details are not made clear to the viewer, David's hands are tied behind his back and he is made to kneel next to a bath full of water. Charlie then forces David's head under the water several times and holds it there for a few seconds. Charlie stops when Maria returns unexpectedly to the flat.

31 viewers complained that some scenes in this episode of *Coronation Street* were unacceptable, because they featured bullying and torture. They said the scenes were inappropriately scheduled before the watershed; and that the behaviour shown might be imitated.

ITV1 was asked to comment in the light of Rules 1.3, 1.11, 1.12 and 2.3 of the Broadcasting Code ("the Code").

#### Response

ITV1 defended the scene in question, saying that the relationship between Charlie Stubbs and David Platt had developed over a number of episodes so that it was well known and understood by viewers. Charlie had increasingly become known for being a womanising bully and David for being a vindictive teenager, both of whom were vying for Maria's affections. ITV1 considered the background to the scene had been set and that the majority of viewers were prepared for the inevitable confrontation between them.

ITV1 pointed out that it gave information before the programme in the form of the words "*Charlie has a nasty surprise for David*". They said they had sought to minimise the impact of the bathroom scenes by inter-cutting other scenes of ordinary street life at various points throughout the 'dunkings'. On the 'dunkings' themselves, ITV1 said that the scenes featured only brief shots of the submersion, focussing more on the dialogue between David and Charlie, which had a comic element. The 'dunkings' were Charlie's way of frightening David Platt without causing him any serious harm. ITV1 considered that the potential for emulation of this type of behaviour, by those with no previous disposition towards anti-social conduct, was very limited and pointed out that there is nothing novel in the concept of 'dunking' as a punishment.

ITV1 concluded by saying that the provision of exciting, stimulating and realistic drama in a steadily developed story with clear character definition is within the editorial context of the series and fell within the expectations of the majority of *Coronation Street's* viewers.

## Decision

Rule 1.3 of the Code requires that children must be protected by appropriate scheduling, for example, by giving consideration to the nature of the programme's content, the likely number of children in the audience and the likely expectations of the audience at the time. Ofcom has considered appropriate scheduling against these criteria. As regards the nature of the content, although the scenes complained of were violent we concluded that overall viewers would have been sufficiently alerted to the tense relationship developing between the two characters over a number of weeks so that they were not unexpected, and they were edited in such a way that the violence was not dwelt on unduly or was inappropriate. Further, when judging compliance with this Rule, Ofcom took into account that *Coronation Street* is not aimed at children and BARB data for this episode indicates that children aged 4-15 comprised 9% of the viewing audience. Given these factors, Ofcom therefore considered overall that the dunking scenes were scheduled appropriately.

Viewers were also concerned that the level of violence shown in the 'dunking' scenes was inappropriate for the time of transmission. Rule 1.11 of the Code states that: "Violence... must be appropriately limited in programmes broadcast before the watershed, ... and must also be justified by the context". Ofcom noted that whilst 'dunking' is not frequently dramatised on television, it may be appropriate for a broadcaster to incorporate it into a storyline if the context justifies it. On this particular occasion the violent impact of the 'dunking' was tempered by: cross-cutting with scenes of commonplace Street activity; using scripted humour; and showing that David Platt suffered no serious harm as a result. Ofcom judged the scenes, in the context in which they were presented, to be acceptable under Rule 1.11 of the Code.

Rule 1.12 of the Code requires that: "Violence...that is easily imitable by children in a manner that is harmful or dangerous must not be broadcast before the watershed...unless there is editorial justification". The more easily imitable the violence the greater the degree of editorial justification required. Ofcom considers that the violence featured is not easily imitable by children in a manner which is harmful or dangerous. To imitate the 'dunking' shown would require considerable force, and for the victim to be tall enough to kneel beside a bath but simultaneously be capable of submerging his head in water contained in it. Even if there were some risk of imitation, we believe that the scenes were editorially justified by the plot development, the characters involved, and the manner in which it was edited.

Rule 2.3 of the Code requires that material which may cause offence is justified by context. For all the reasons already set out in this finding, Ofcom considers that the scenes were justified by the context. The same rule however also states that: "appropriate information should ... be broadcast where it would assist in avoiding or minimising offence". Ofcom considered that the pre-transmission information ("*Charlie has a nasty surprise for David*") could have been more detailed in order adequately to inform viewers in advance of this episode's violent content. Ofcom has therefore advised ITV1 that the pre-transmission information on this occasion could have been clearer.

## Not in Breach

## Fairness and Privacy Cases

### Upheld in part

#### Complaint by Mr Paul Cordy

*X-ray, BBC Wales, 26 September 2005*

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**Summary:** Ofcom has upheld part of this complaint of unfair treatment by Mr Paul Cordy.

This edition of *X-ray* investigated Mr Paul Cordy, who owned and rented student accommodation close to Glamorgan University. In the programme, past tenants of Mr Cordy's properties alleged: the properties had not been cleaned prior to them moving in; Mr Cordy unfairly held their bond at the end of their lease; and, Mr Cordy had direct dealings with his tenants (which the programme explained breached a court finding in which Mr Cordy had had his Houses of Multiple Occupation licence ("HMO licence") revoked and had been ordered to have no involvement with the day-to-day management of his properties or any direct contact with the tenants).

Ofcom found as follows:

- a & b) Ofcom found that the programme did not fairly present relevant parts of Mr Cordy's response to the programme allegations. Specifically the programme failed to:
  - adequately present Mr Cordy's explanation for why some of his properties may have been dirty when his tenants moved in; or,
  - include Mr Cordy's denial at having any face-to-face contact with his tenants from January 2005 onwards.
- c) The programme misrepresented Mr Cordy's understanding of the revocation of his HMO licence. Ofcom found this was unfair because it denied viewers the opportunity to make a fair assessment of Mr Cordy, based on an accurate presentation of both sides of the story. Accordingly Ofcom upheld this part of Mr Cordy's complaint.
- d) The programme's explanation of why the Council took Mr Cordy to court was not accurate. However Ofcom found that the programme's description of the court case would not have affected viewers' impression of him in an unfairly negative way.
- e) Ofcom found the programme's statement that Mr Cordy "promised in the future, he won't have any dealings with his tenants" was fair. While Ofcom acknowledged that Mr Cordy had not literally made such a promise to the programme makers, Ofcom noted that Mr Cordy had indicated to the programme makers his intention to abide by the revocation of his HMO licence (the terms of which stipulate that he cannot have contact with his tenants). In the circumstances Ofcom found that the statement did not result in unfairness to Mr Cordy.



- f) The programme's use of the word "reconciliation" instead of "compromise" in the statement "in the spirit of reconciliation", did not result in unfairness to Mr Cordy. In Ofcom's opinion, regardless of which word had been used, viewers were likely to understand that Mr Cordy offered to return part of his tenants' bonds in the interest of settling or resolving a dispute. Ofcom found that this likely impression was fair. Ofcom has not upheld this part of Mr Cordy's complaint.

## **Introduction**

This edition of *X-ray* investigated Mr Paul Cordy, who owned and rented student accommodation close to Glamorgan University. The programme interviewed past tenants of Mr Cordy's properties who alleged: the properties had not been cleaned prior to them moving in; Mr Cordy unfairly held their bond at the end of their lease; and, Mr Cordy had direct dealings with them (which the programme explained breached a court finding in which Mr Cordy had had his Houses of Multiple Occupation licence ("HMO licence") revoked and had been ordered to have no involvement with the day-to-day management of his properties or any direct contact with his tenants).

The programme included an interview with Mr Cordy's ex-tenant Mr Simon Vincent. It was explained that Mr Vincent successfully took Mr Cordy to court to reclaim his bond. The programme stated that as a result of Mr Vincent's case, Rhondda Cynon Taff County Borough Council ("the Council") - who was responsible for registering student landlords in the area - had taken Mr Cordy to court under the Housing Act 1985.

At the end of the programme, presenters stated that "in the spirit of reconciliation" Mr Cordy would return in part some of the tenants' bonds, and that Mr Cordy had "promised he won't have any dealings with his tenants".

Mr Cordy complained to Ofcom that he had been treated unfairly in the programme as broadcast.

## **The Complaint**

### **Mr Cordy's case**

In summary, Mr Cordy complained of unfair treatment in the programme as broadcast in that:

- a) The programme was a one-sided presentation.
- b) The programme deformed his character by dramatising and portraying him as a scoundrel landlord, with biased reporting containing lies and exaggeration.
- c) The programme misrepresented Mr Cordy's understanding of what the revocation of his licence entailed.
- d) The programme misrepresented the Council's court case and the court finding that revoked his HMO licence.

- e) The programme falsely claimed that Mr Cordy promised not to have any dealings with his tenants in the future - Mr Cordy said he never made such a promise.
- f) The programme falsely stated that Mr Cordy had returned part of the tenants' bonds "in the spirit of reconciliation" rather than "in the spirit of compromise" (the phrase which Mr Cordy had used in his statement to the BBC). Mr Cordy said the use of the word "reconciliation", rather than "compromise", was unfair as it suggested that he accepted that he had been at fault, which was not the case.

### **The BBC's statement of response**

In summary, the BBC responded as follows:

#### a) One-sided presentation:

The BBC said the programme was not one-sided. The programme makers wrote to Mr Cordy prior to broadcast, on 13 September 2005, and clearly set out the proposed content of the programme. In addition to this the programme producer spoke twice to Mr Cordy on the phone. During both phone conversations Mr Cordy was offered an opportunity to give an interview. The BBC provided Ofcom with recordings and transcripts of these phone conversations, as part of their response.

The BBC said the programme makers checked the information given by Mr Cordy with officials at the Council and the students making the complaints. The programme makers became aware of discrepancies between the information gathered, and decided not to include all the claims made by Mr Cordy. However the programme did include elements that could be confirmed, such as Mr Cordy's decision to refund a proportion of the students' bonds.

#### b) "Scoundrel Landlord"

The BBC said that the portrayal of Mr Cordy in the programme was based on information provided by sixteen of his past tenants (four of whom took part in the programme). Their complaints against him as a landlord consisted of:

- having dealings with Mr Cordy when he had been prohibited from any such contact;
- moving into properties that were dirty;
- Mr Cordy's refusal to refund all or most of their bond.

Of the four tenants who took part in the programme, all stated that their houses were dirty when they moved in and that Mr Cordy did not return the amount of their bonds.

In relation to Mr Cordy's dealings with tenants, after his HMO licence had been revoked, the BBC said a representative from the Council had confirmed to the programme makers that there are strict conditions which prohibit landlords, who are deregistered from their scheme, from any further involvement with their properties or tenants. The programme makers discovered and reported that Mr Cordy had continued to manage his properties through direct phone contact with his tenants, unannounced visits to the properties and letters to his tenants. The BBC said that Mr Cordy did not deny that he had contact with the tenants and explained it as a misunderstanding between himself and the Council.

c) Presentation of Mr Cordy's understanding of revocation of licence

In response to Mr Cordy's complaint that the programme had misrepresented his understanding of what the revocation of his HMO licence entailed, the BBC said that during Mr Cordy's first phone conversation with the programme makers, he claimed that:

*"...my understanding was that any tenancy agreement that was in place prior to the prosecution if you like, the suspension of the licence, would see its course."*

The BBC said the programme makers raised this "misunderstanding" with the relevant Council representative prior to broadcast, who told the programme makers that the terms of the revocation of the HMO licence had been made very clear to Mr Cordy, in a phone conversation and in writing. The programme makers felt this was irrefutable evidence that the Council had made the terms of Mr Cordy's deregistration perfectly clear.

Following Mr Cordy's complaint to Ofcom the programme makers sought further confirmation from the relevant Council representative about whether or not he made a concession to Mr Cordy to allow him to manage his existing tenancy agreements. The Council representative responded that he did not have recollection of such a detailed conversation and that he was confident any advice to Mr Cordy at the time would have reaffirmed the advice contained in a letter to Mr Cordy dated 26 January 2006 that the "full management of [his] properties to be the responsibility of the appointed Agent".

d) Presentation of Council's court case and Deregistration

The BBC denied that they misrepresented either the court case brought against Mr Cordy by the Council (the Council's case), or the revocation of his HMO licence by the Council (deregistration). The BBC clearly reported in the programme that during Simon Vincent's County Court case (the Vincent case) the Council began to take action against Mr Cordy under the Housing Act 1985 (the Council's case), and that as a result of convictions for overcrowding, he was deregistered by the Council (deregistration).

The BBC said that one element of the Vincent case was an accusation of overcrowding at 4 Heathfield Villas (where Mr Simon Vincent used to live). Following the commencement of the Vincent case, the Vincent family informed the Council of their case against Mr Cordy (and also their belief that Mr Cordy continued to let 4 Heathfield Villas to more tenants than was allowed). A Council Environmental Officer was sent to 4 Heathfield Villas and found that six rooms were being occupied despite the fact that the property was only registered for the letting of five rooms. As a result, the Council's case against Mr Cordy began. In the Council's case Mr Cordy pleaded guilty to the charge, was ordered to pay court costs and was given a conditional discharge for six months. Because of his conviction in the Council's case, Mr Cordy was deemed not to be a fit and proper person to manage any of his houses registered under the Council's scheme and was subsequently deregistered. The Council confirmed that Mr Cordy started but did not complete the process of appealing the deregistration decision.

e) False claim: promise not to have any dealings with tenants in the future

The BBC rejected Mr Cordy's complaint that the programme falsely claimed he had promised not to have any dealings with his tenants in the future. The BBC provided

Ofcom with recordings of Mr Cordy's phone conversations with the programme makers, during which Mr Cordy stated:

- *"I will have nothing to do with the tenancy agreements now";*
- *"Cos I am not having any involvement at all, there won't be a transition period which we have tried to overcome";* and
- *"it was decided that next year, when there is a transition of management that was happening now and trying to honour the contract there shouldn't be any involvement at all in the future"*

In addition the BBC said that Mr Cordy's letting agent, Larner Lets had confirmed that all of Mr Cordy's tenancies would be managed solely by the agency.

f) Compromise or Reconciliation

The BBC did not believe that the programme's use of the word "reconciliation" had misrepresented the position or was in any way unfair to Mr Cordy. The BBC did not see that "reconciliation" implied there had been fault at all, or less fault on the part of a particular party.

**Mr Cordy's response**

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

a) One-sided presentation

Mr Cordy said that the programme had been a one-sided presentation because the programme makers failed to reflect the issues raised by him in his statement, which was unfair as the statement was his only defence to the allegations. Specifically the programme had failed to reflect his response against the allegations that: he continued to manage his properties after being deregistered; and, he had unjustifiably retained a large part of the students' bonds (in particular that he deducted bond money for cleaning of the houses which the students claimed had been dirty when they moved in).

*Contact with tenants*

Mr Cordy said that he had explained to the programme makers that he appealed against his deregistration and therefore could continue to manage during the period of appeal. Further Mr Cordy said that when he sought clarification about what the revocation of his licence entailed, the Council representative saw no problem with his proposal, to continue to manage those tenancy agreements which started prior to his licence being revoked. Mr Cordy said subsequent contact with his tenants had been based on this approval from the Council representative. Mr Cordy said it was unfair for the programme to misrepresent his understanding of what the revocation of his licence meant, and the programme makers should have verified the information Mr Cordy gave in his statement, about the deregistration appeal.

*Return of bonds*

Mr Cordy said he explained to the programme makers why the bond deductions had been justified and offered to provide them with photographic evidence of the damage caused to his properties by the tenants. These full reasons were not

included in the programme and the photographic evidence was never sought by the programme makers.

As regards the cleanliness of his properties, Mr Cordy said he did not deny that the properties may have been dirty when the tenants moved in. However, Mr Cordy said that he had explained to the programme makers that the months of July and August are commonly known as “retainer periods”, during which the student tenants normally return home for the holidays and the properties are cleaned, repaired and improved. In the case where a student wished to live in the property during the “retainer period” Mr Cordy said they are made aware that the property has not been cleaned but that the cleaning will be taken care of as soon as possible. Mr Cordy said that he advised the programme makers of a situation where a new tenant had received a two week reduction in rent in return for cleaning the property during the “retainer period”. Mr Cordy said the programme failed to mention either the “retainer period” or the example.

b) “Scoundrel Landlord”

Mr Cordy said that he had been portrayed as a scoundrel landlord because the programme makers failed to: verify that he had appealed the deregistration decision, or understand the meaning of “retainer period”.

c) Presentation of Mr Cordy’s understanding of revocation of licence

Mr Cordy provided a letter from the Council which stated that the Council had been incorrect to advise the programme makers that Mr Cordy had not appealed the deregistration decision.

The letter also acknowledged that Mr Cordy had already started appeal proceedings against the deregistration decision.

d) Presentation of Council’s court case and Deregistration

Mr Cordy maintained that it was false for the programme to state that the Council were “so alarmed at Simon’s case, they too took Paul Cordy to court”. Mr Cordy said that no one from the Council claimed to be “so alarmed” and the Vincent case was not related to the Council’s case.

e) False claim: promise not to have any dealings with his tenants in the future

Mr Cordy said the statement in the programme that he had promised not to have dealings with his tenants in the future was false and gave the unfair impression that he had accepted that he had committed a deliberate wrongdoing.

f) Compromise or Reconciliation

Mr Cordy said he used the word “compromise” in his statement to the programme makers and the programme’s use of the word “reconciliation” was an attempt to twist and exaggerate his statement.

**The BBC’s second statement**

In summary the BBC responded as follows:

a) One-sided presentation

The BBC said the programme had not been a one-sided presentation:

*Contact with tenants*

Mr Cordy continued to have contact with his tenants. He wrote a letter to one student dated 22 July 2005, some six months after he had been instructed otherwise in writing by RCT and eight months after he had discontinued his appeal. The BBC said Mr Cordy did not mention to the programme makers any appeal process relating to the revocation of his HMO licence. As regards Mr Cordy's accusation that the programme makers should have confirmed the appeal situation with the court, the BBC said the programme makers did so, and found that there were no other hearings pending which involved Mr Cordy at the time of broadcast. The BBC said that the appeal in question had been 'dropped' by November 2005, and was therefore pending for only three months of the three year period covered by the programme.

*Return of bonds*

In relation to the return of bonds, the BBC maintained that Mr Cordy had retained a large part of the students' bonds unjustifiably and that the complainant's agreement to refund all, or the major part, of the bonds constituted an acknowledgement of their belief.

As regards the cleanliness of the properties, the BBC said that property repairs would not have precluded the cleaning of a property as suggested by Mr Cordy. The BBC said that according to tenants at one of the properties, Mr Cordy had retained bonds for cleaning and repair costs yet had not cleaned the property before the next set of tenants moved in.

The BBC did not believe that the fact some tenants chose to move into Mr Cordy's properties during the retainer period, paying half-rent, was relevant. The moving in dates of tenants was known to Mr Cordy and cleaning could have been arranged accordingly.

b) "Scoundrel Landlord"

The BBC made no additional comments.

c) Presentation of Mr Cordy's understanding of revocation of licence

The BBC said that according to the Council, Mr Cordy was informed that he was to have no direct involvement with the management of his properties from 12 August 2004. The BBC stated the Council was unable to clarify whether the complainant's landlord status would have been re-instated or not during the period when Mr Cordy's appeal was pending. However the BBC said that the Council representative did not recall giving Mr Cordy any assurance that he could continue to administer his properties when his appeal was pending. On 26 January 2005 the Council had accepted Mr Cordy's application to re-register his properties using a letting agent on the basis that he could not have any involvement with his tenants. The BBC said that Mr Cordy's claim that he had been acting in good faith, when he continued to have dealings after 26 January 2005 (with tenants who had existing tenancy agreements), was no excuse. The fact remained that this personal interpretation of the law had been wrong.

d) Presentation of Council's court case and Deregistration

The BBC noted that the Council confirmed to Mr Cordy in a letter of 10 May 2006 that it believed the programme's presentation of Mr Vincent's case and the Council's case had been accurate. In relation to the programme statement that the Council "were so alarmed at Simon's case they too took Paul Cordy to court under the Housing Act and he was found guilty of overcrowding the property", the Council had stated:

*"Information was supplied to the Council on 14 October 2003 by email from a relative of Simon Vincent to the effect that he had been a tenant for the academic year 2002/ 03 and alleging that six tenants currently occupied the property. This prompted the investigation that led to the Council prosecution of overcrowding. It is therefore true that information received from Simon Vincent led to the investigation into overcrowding."*

The BBC said that regardless of Mr Cordy's interpretation of the Vincent case, he had been ordered to pay Mr Vincent in full by the Court. In addition it was on the basis of the extra room being let at Heathfield Villas that Mr Cordy had been convicted under the Housing Act.

e) False claim: promise not to have any dealings with his tenants in the future

The BBC made no additional comments.

f) Compromise or Reconciliation

The BBC said the programme makers were obliged to reflect Mr Cordy's response accurately, but not obliged to use his words exactly. The BBC did not accept that the use of the word "reconciliation" amounted to a misrepresentation of the position or was unfair to Mr Cordy.

## **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 and unwarrantable infringement of privacy in and in the making of programmes included in such services. Where there appears to have been unfairness in the making of the programme, this will only result in a finding of unfairness if Ofcom finds that it has resulted in unfairness to the complainant in the programme as broadcast.

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

In relation to the specific heads of Mr Cordy's complaint, Ofcom found as follows:

a) & b) One-sided presentation/ Scoundrel Landlord

Mr Cordy complained that the programme was a one-sided presentation, and that the programme makers lied and exaggerated the case against him. In Ofcom's opinion, heads a) and b) of Mr Cordy's complaint would best be dealt with together. Both complaints relate to whether the programme was fair in its portrayal of Mr Cordy and

his case and to the presentation of Mr Cordy's response to the allegations made in the 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. Further, where it is appropriate to represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner.

In its consideration of this complaint, Ofcom was required to identify what allegations were made against Mr Cordy in the programme as broadcast; whether Mr Cordy had offered the programme makers a response to the allegations; and, if a response had been given, to establish whether it had been fairly presented in the programme as broadcast.

Ofcom identified three allegations against Mr Cordy in the programme as broadcast:

- 1) Mr Cordy's properties were dirty when the tenants moved in;
- 2) Mr Cordy continued to have dealings (including face-to-face contact) with his tenants, which breached the terms of the revocation of his licence; and
- 3) Mr Cordy retained an unfair amount of his tenants' bonds.

*1) Dirty properties*

In the programme four tenants from three of Mr Cordy's properties claimed that the properties were dirty when they moved in. This allegation was put to Mr Cordy in the programme maker's letter of 13 September 2005 as follows:

*"They say that when they moved into the property it was dirty, and they had to clean it thoroughly upon moving in."*

and

*"[A tenant] too claims that the property was dirty when she and her friends moved in, and that they had to spend several days cleaning and clearing the garden."*

and

*"[A tenant] also told us the property was dirty when he and his housemates moved in."*

Mr Cordy responded in writing on 14 September 2005 and stated:

*"You will note however as is normal with student accommodation the first two months of the contract namely July and August are retained at half rent as a retainer. In relation to both 63 Meadow Street and 4 Heathfield Villas all students were keen to continue to reside at the property, occupancy being required immediately despite cleaning and repairs being necessary upon the said properties."*

Mr Cordy referred to the "retainer period" again during his phone conversation with the programme producer on 14 September 2005:



Producer: *“Most of them say the place was dirty when they moved in, they had to spend several days cleaning it and they left it in a better state than when they moved in”*

Cordy: *“...they are allowed to keep their belongings there if they want to do in the summer period because they pay half rent, what I called a retainer, and it's during those periods that you are able to make sure the property is up to standard ready for the September intake”.*

In this conversation Mr Cordy also described an incident when a tenant who wished to move into one of his properties during the “retainer period”, accepted a reduced rent in return for cleaning the property.

As noted above, where it is appropriate to represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner.

Having considered both parties' statements and records of the communications between Mr Cordy and the programme makers prior to broadcast, Ofcom was required to determine whether the programme's allegation that Mr Cordy failed to properly clean his properties before allowing tenants to move in, was fair.

In Ofcom's opinion, Mr Cordy was entitled to an opportunity to respond to the allegation that he did not adequately clean his properties before allowing tenants to move in. The programme makers appropriately gave Mr Cordy an opportunity to respond to the allegation, and Mr Cordy offered a response in both his statement to the programme makers and during his phone conversation with the programme producer. Ofcom found that while the allegation was included in the programme as broadcast, Mr Cordy's response to it was not. Specifically the programme did not include Mr Cordy's explanation that tenants from two out of the three properties named in the programme, had chosen to occupy the properties during the “retainer period”. By failing to include Mr Cordy's response, the programme makers made an allegation against Mr Cordy without affording him a right to reply. Ofcom found that the programme makers did not present Mr Cordy's response to the programme allegation in a fair manner, and accordingly has upheld this part of Mr Cordy's complaint.

*2) Mr Cordy continued to have dealings (including face-to-face contact) with his tenants*

The programme included testimony from three of Mr Cordy's tenants that he visited their properties in-person and managed their properties directly. The programme makers put these allegations to Mr Cordy in their letter of 13 September 2005 and Mr Cordy responded as follows:

*“...I would wish to stress that all site visits were carried out by either myself, maintenance or the letting agency following the students vacating the premises. Incidentally the dispute between Rhondda Taff Council and myself was ultimately resolved at the end of January 2005 thereafter in accordance with the Council's instructions all my properties were administered by Larner Lets Property Agents....I deny categorically that I continued dealing personally with the day to day management of the tenancies following notification from Rhondda Cynon Taff since the end of January 2005.”*

Mr Cordy then clarified this statement during his phone conversation with the programme producer on 19 September 2006 that by “personally” he meant he did not have face-to-face dealings with his tenants:

Mr Cordy: *(after describing a visit to one property) “...I didn’t have any contact with anybody at that time.”*

Producer: *“Do you say then categorically from January you didn’t visit any of the properties?”*

Mr Cordy: *“From the end of January? Not that I can recollect, I’ve been trying to think, if I have I think I would have reported to (Larner Lets).”*

Ofcom noted that: Mr Cordy’s licence was revoked in 2004; Mr Cordy dropped his appeal against revocation in November 2004; and on 26 January 2005 the Council accepted Mr Cordy’s application to re-register his properties using a letting agent and on the basis he could not have any involvement with his tenants. Ofcom noted that it is unclear whether Mr Cordy was, or was not, able to continue acting as landlord and deal with his tenants whilst his appeal was pending. Ofcom also noted that Mr Cordy had had a phone conversation with a Council Officer (witnessed at Mr Cordy’s end) on 31 January 2005 to clarify whether or not he could continue to deal with his existing tenants and that the parties dispute what advice he was given. Mr Cordy claimed he was advised that he could deal with his existing tenants. The Council deny that he would have been given that advice.

It is clear to Ofcom that (mistaken or otherwise) Mr Cordy did not comply with the terms set out by the Council when it revoked his HMO licence as he wrote to his tenants later in 2005 regarding their bonds. However it was Ofcom’s view, that Mr Cordy clearly informed the programme makers that from January 2005, when his properties were re-registered through his letting agent, that he believed he did not have any face-to-face contact with his tenants.

In the programme as broadcast the allegation, and Mr Cordy’s response to it, appeared as follows:

Presenter *“[Mr Cordy] was ordered to have no involvement with the day-to-day management of the properties or any direct contact with the tenants. He was allowed to carry on letting but ONLY through this agency. But according to the students his habits haven’t changed.”*

Tenant 1: *“He’d come around without any notice, his notice was knocking the door and if you didn’t answer straight away, he was through the door anyway.”*

Tenant 2: *“He’d deal with us directly, he’d come over.”*

Tenant 3: *“We dealt with him all the time, never even heard of the agency, and we never got new contracts or anything like this.”*

Presenter: *“Mr Cordy told us he thought his deregistration only applied to new tenants moving in this summer.”*

The presenter’s commentary says that Mr Cordy’s was allowed to carry on letting through an agency but that his habits hadn’t changed. The programme therefore appears to set the time at which Mr Cordy’s ‘*habits had not changed*’ from January to

the summer of 2005. In relation to this complaint, Ofcom was not required to determine whether or not, Mr Cordy did in fact contact his tenants in person after January 2005. Ofcom was required to determine if the programme makers presented Mr Cordy's views in a fair manner, in the programme as broadcast.

In Ofcom's opinion, the programme did not fairly present Mr Cordy's response to the allegation that he contacted his tenants in person because they failed to include his denial at ever having had contact with his tenants in person after January 2005. It was Ofcom's view that the above programme dialogue, was likely to have left viewers with the false impression that Mr Cordy believed he had acted appropriately when contacting his tenants in person from January 2005, because he mistakenly understood that his deregistration only applied to new tenants from the summer of 2005. Ofcom found that this resulted in unfairness to Mr Cordy and has upheld this part of Mr Cordy's complaint.

### *3) Bonds/ photographic evidence*

The programme as broadcast included statements from past tenants of Mr Cordy, that he withheld an unreasonable amount of their bonds. The programme makers informed Mr Cordy of this allegation in their letter of 13 September 2005, and in response Mr Cordy stated:

*"I continue to withhold those sums which I deem to be reasonable to cover the damage that has been caused to both properties (photographic evidence being available if so requested) and that the matter has been referred to my instructed letting agency"*

and

*"It is averred that all charges incurred in relation to cleaning and renovating the properties have been reasonable and justifiable subject to the above [list of repairs required]."*

Ofcom sought to determine whether the programme reflected this response fairly in the programme.

In relation to the allegation that Mr Cordy unfairly withheld his tenants' bonds, the programme stated:

*"Mr Cordy refused to return the student's bonds because he said they'd left his houses dirty and damaged – leaving him with a bill for cleaning and repairs"*

In Ofcom's view, the above summary of Mr Cordy's statement was fair and accurately reflected Mr Cordy's response. As regards the photographic evidence referred to by Mr Cordy, Ofcom did not believe it was incumbent on the programme makers to request to see or necessarily include the photographic evidence as the statement included in the programme sufficiently informed the viewers of his case, and explained why he believed he was justified in retaining part of his tenants' bonds. In the circumstances, Ofcom has not upheld this part of Mr Cordy's complaint.

### c) Presentation of Mr Cordy's understanding of revocation of licence

Mr Cordy complained that the programme misrepresented his understanding of what the revocation of his licence entailed. Mr Cordy explained that his understanding of

the revocation of his licence had been explained to the programme makers in his statement of response.

In reaching a decision about this complaint, Ofcom firstly sought to understand what information Mr Cordy provided to the programme makers about his understanding of the revocation of his HMO licence, prior to broadcast.

Ofcom considered both Mr Cordy's statement of response to the programme makers and transcripts of phone conversations between Mr Cordy and the programme producer.

In his written statement to the programme makers Mr Cordy wrote:

*"Incidentally the dispute between [the Council] and myself was ultimately resolved at the end of January 2005 thereafter in accordance with the Council's instructions all my properties were administered by Larner Lets Property Agents. Concurrently I sought guidance from the Council in relation to the bonds that I currently held. I deny categorically that I continued dealing personally with the day to day management of the tenancies following notification from the Council since the end of January 2005."*

Mr Cordy further clarified his understanding of his deregistration during his phone conversation with the programme producer:

Programme producer: *"But [what] is in dispute here is that you shouldn't have been having personal involvement with the tenants"*

Cordy: *"These were not personal involvements with the tenants"*

Programme producer: *"A letter in your handwriting isn't personal involvement?"*

Cordy: *"That is correct, because I felt it my duty... to return the bonds. And that I did, minus deductions"*

Programme producer: *"Yes but should that not have been carried out through Larner Lets?"*

Cordy: *"My interpretation no, but if it's in your interpretation and the Council's interpretation then you know then so be it. But as soon as I had that letter on the 28<sup>th</sup> January I tried to determine that point; explain what my interpretation was, I wasn't told to direct (the bonds) anywhere else".*

In Ofcom's opinion, Mr Cordy made it clear to the programme makers that he understood that the revocation of his licence was effective from January 2005 as evidenced by his hiring of Larner Lets in January 2005. In Ofcom's view it is also clear from the above communications that Mr Cordy believed that he did not breach the terms of his deregistration when he returned the bonds, via letter, to his tenants after January 2005. This was because, according to Mr Cordy, he had been given the impression (during a conversation with a representative from the Council) that doing so would not breach the terms of his deregistration. Finally Ofcom also understood from Mr Cordy's communications, that he had explained to the programme makers that he did not understand that written contact constituted "personal involvement".

In its consideration of this complaint, Ofcom was presented with various pieces of information relating to an alleged conversation between Mr Cordy and a Council representative, about Mr Cordy's understanding of the revocation of his HMO licence. Ofcom was however not presented with any information that could unequivocally confirm the actual contents of the phone conversation (e.g. a recording or notes of the call). Ofcom was neither able, nor required, to act as a fact finding tribunal in this case. The question before Ofcom was whether the programme makers had fairly presented Mr Cordy's response to the programme's allegation that Mr Cordy had breached the terms of his deregistration – i.e. whether the statement "*Mr Cordy told us he thought his deregistration only applied to new tenants moving in this summer. He'd check with the Council in case he's misunderstood*" resulted in unfairness to Mr Cordy.

Ofcom noted that the relevant programme statement was made in the following context:

Presenter: *"(Mr Cordy) was ordered to have no involvement with the day-to-day management of the properties or any direct contact with the tenants. He was allowed to carry on letting but only through his agency. But according to the students Mr Cordy's habits haven't changed"*

*(various quotes from Mr Cordy's tenants claiming that Mr Cordy had face-to-face dealings with them)*

Presenter: *"Mr Cordy told us he thought his deregistration only applied to new tenants moving in this summer. He'd check with the Council in case he's misunderstood"*

Presenter *"Impossible to misunderstand according to the Council, when we took our evidence to them"*

Council Rep.: *"It would have been abundantly clear to him that he as an individual was to have no hands on involvement in the running of his properties"*

Where it is appropriate to represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner.

Ofcom considered that by summarising the information given by Mr Cordy as "*he thought his deregistration only applied to new tenants moving in this summer. He'd check with the Council in case he misunderstood*", the programme makers did not fully explain that Mr Cordy believed that he had sought clarification from the Council about the terms of his revocation, and did not include his denial at having had any personal contact with the tenants after January 2005. In Ofcom's opinion, by oversimplifying Mr Cordy's response, the programme makers did not fairly reflect what Mr Cordy had told them regarding the extent of his misunderstanding. Ofcom noted that the programme as broadcast made the following statements:

Presenter *"Impossible to misunderstand according to the Council, when we took our evidence to them"*

Council Rep.: *"It would have been abundantly clear to him that he as an individual was to have no hands on involvement in the running of his properties"*

By presenting the comments this way, Ofcom believed viewers were likely to be left with the impression that Mr Cordy's explanation that "*he thought his deregistration only applied to new tenants moving in this summer*" was implausible.

Ofcom concluded that regardless of whether the programme makers obtained information from the Council about the clarity of the terms of Mr Cordy's deregistration (which they were justified in including in the programme), it was incumbent on the programme makers to fairly represent Mr Cordy's statement of response. Ofcom found that by failing to fully explain Mr Cordy's understanding of the revocation of his HMO licence (as Mr Cordy had explained it to them), the programme misrepresented his response. This resulted in unfairness because it denied viewers the opportunity to make a fair assessment of Mr Cordy, based on an accurate presentation of both sides of the story. Accordingly Ofcom has upheld this part of Mr Cordy's complaint.

d) Presentation of Council's court case and Deregistration

Mr Cordy complained the programme's statement that "*[The Council] register student landlords in the area and monitor their behaviour. **They were so alarmed at Simon's case they too took Paul Cordy to court under the Housing Act and he was found guilty of overcrowding the property. As a result he was deregistered by the Council as a landlord.***" [emphasis added], was untrue.

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.

In its consideration of this complaint Ofcom compared the programme's summary of the legal proceedings against Mr Cordy with the circumstances of the Vincents' Case, the Council's case and the eventual revocation of Mr Cordy's HMO licence by the Council (deregistration).

Ofcom found that the majority of the programme's summary was factually correct - Mr Cordy was taken to court by the Council, was found guilty of overcrowding properties and as a result was deregistered by the Council as a landlord. However, Ofcom did acknowledge that the phrase "*They were so alarmed at Simon's case they too took Paul Cordy to court...*" was potentially misleading.

In Ofcom's view this statement was likely to have left some viewers with the impression that the Council's case against Mr Cordy was initiated as a direct result of the Vincent case and that it related to the same offences. This however, was not the case.

The Vincent family believed that during the time that Simon Vincent and his four friends resided at Heathfield Villas, Mr Cordy unfairly charged them a surcharge for using a sixth room as a storage room. When Simon Vincent moved out of the property the family began a claim against Mr Cordy, for the return of both Simon Vincent's bond, and the surcharge paid for use of the sixth room as storage. The Vincent case spanned the time from 20 October 2003 to 20 June 2005, at the end of which Mr Cordy was ordered to return both the bond and surcharge.

According to the Council, on 14 October 2003 (before the Vincent case began on the 20 October 2003, and after Simon Vincent had vacated Heathfield Villas), it received an email from a relative of Simon Vincent explaining that Simon Vincent had been a

tenant of Mr Cordy's from 2002 to 2003. The relative alleged to the Council that six tenants currently occupied Heathfield Villas. It was as a result of this email, that the Council investigated the property on 22 October 2003 and found that six people were living at Heathfield Villas – a property that at the time, was only suitable for five people. It was as a result of *this* investigation by the Council that it decided to take Mr Cordy to court.

Therefore, the statement that *"They were so alarmed at Simon's case they too took Paul Cordy to court under the Housing Act"*, was potentially misleading because the Council's case was not initiated as a result of the Vincents' case, but rather as a result of information provided by the Vincent family which prompted an investigation that led to the Council taking Mr Cordy to court, for reasons different to the Vincents' case.

Having established the reasons for why the statement was potentially misleading, Ofcom was required to determine whether this resulted in unfairness to Mr Cordy in the programme as broadcast.

After reviewing the information presented by the parties and a recording of the programme Ofcom found the statement that *"the Council were so alarmed"* did not result in unfairness to Mr Cordy. Ofcom considered that the possible impression that Mr Cordy may have been taken to court by the Council on the grounds that he had overcharged his tenants for use of a sixth room as storage, was not unfair, when compared to the reality that he had been taken to court by the Council for overcrowding, after it was discovered that six people were residing in a property, that was only suitable for five. In Ofcom's opinion the impression given in the programme was rather more favourable than the impression that would have been created had viewers understood the full circumstances of the situation. Accordingly Ofcom found no unfairness to Mr Cordy and has not upheld this element of the complaint.

e) False claim: promise not to have dealings with tenants in the future

Mr Cordy complained the programme falsely stated that he promised to have no dealing with the students (i.e. his tenants) in the future. Mr Cordy categorically denied that he made this promise to anyone.

In reaching a decision about this head of the complaint Ofcom had regard for the programme transcript, the parties' written submissions, relevant communications between the parties and the responsibility of the programme makers, when appropriate, to represent in a fair manner, the views of a person or organisation that is not participating in the programme.

In their first written submission to Ofcom, the BBC rejected Mr Cordy's complaint and referred to the phone conversation between Mr Cordy and the programme producer of 19 September 2005. The BBC provided the following quotes by Mr Cordy as evidence that he had made a promise not to have dealings with his tenants in the future:

*"I will have nothing to do with the tenancy agreements now."*

*"Cos, I am not having any involvement at all, there won't be a transition period which we tried to overcome."*

*"It was decided that next year, when there is a transition of management that was happening now and trying to honour the contract there shouldn't be any involvement at all in the future."*

Ofcom acknowledged that while these quotes by Mr Cordy did indicate his intention to let Lerner Lets manage his rental properties in the future, Mr Cordy did not specifically state that *"he won't have any dealings with his tenants"* as reported in the programme.

Ofcom was required to determine whether the paraphrasing of Mr Cordy's sentiments in this way, resulted in unfairness in the programme as broadcast.

In Ofcom's opinion the use of the statement *"And he's also promised in future, he won't have any dealings with his tenants – and his letting agent will handle everything"* was likely to have left the impression with viewers that Mr Cordy planned to abide by the terms of his deregistration, that stipulates Mr Cordy cannot have any involvement with the tenants in respect of contracts or complaints concerning accommodation. In Ofcom's opinion, this statement did not result in unfairness to Mr Cordy, as the impression left by the programme statement was sufficiently close to those expressed by Mr Cordy, in agreeing to abide by the terms of the revocation of his HMO licence. In the circumstances Ofcom found no unfairness to Mr Cordy in this respect.

#### f) Compromise or Reconciliation

Mr Cordy complained that the programme's use of the word "reconciliation" instead of "compromise" was unfair because it suggested that Mr Cordy accepted that he had been at fault, which was not the case.

Where it is appropriate to represent the views of a person or organisation that is not participating in a programme, this must be done in a fair manner.

From the information presented by the parties, Ofcom noted that Mr Cordy used the phrase "in the spirit of compromise" in both his statement to the programme makers, and during his phone conversations with the programme producer. Ofcom found no occasion when Mr Cordy used the word "reconciliation" when dealing with the programme makers.

Given this, Ofcom was required to establish whether inclusion of the statement by the presenter that *"...it seems [Mr Cordy] has recalculated those bonds. He told us that 'in the spirit of reconciliation' he will now refund a hundred pounds each to Donna and Laura and a hundred and twenty to Sam"* resulted in unfairness to Mr Cordy.

In reaching a decision, Ofcom consulted the Oxford English Dictionary, which provided the following definitions for the words "reconciliation" and "compromise".

#### *Reconciliation:*

- The action or an act of reconciling a person to oneself or another or estranged parties to one another; the fact or condition of being reconciled; harmony, concord.
- The action or an act of settling or causing agreement in a controversy, quarrel etc.

#### *Compromise*

- Refer (something) to another for decision.



- Be agreed by mutual concession.
- Come to terms by mutual concession, make a compromise.
- Settle (a matter in dispute between others).

Ofcom noted that both words describe an act of “agreement” or “settlement”. Ofcom was also aware that the definition of “reconciliation” does not specify that an admission of fault is required, or that at least one party to a disagreement needs to be ‘at fault’ - this was in contrast to Mr Cordy’s interpretation of the word, which he believed indicated to viewers that he had returned part of the tenants’ bonds because he had accepted fault.

Ofcom found that the words “reconciliation” and “compromise” are sufficiently similar in meaning in this context, that the programme’s substitution of “compromise” for “reconciliation” would not have materially altered viewers’ understanding of Mr Cordy’s decision to return part of his tenants’ bonds. In Ofcom’s opinion, regardless of which word had been used, viewers were likely to understand that Mr Cordy offered to return part of his tenants’ bonds in the interest of settling or resolving a dispute. In the circumstances, Ofcom concluded that the phrase “*in the spirit of reconciliation*” did not result in unfairness to Mr Cordy, and has not upheld this part of Mr Cordy’s complaint.

**Accordingly, Ofcom has upheld in part Mr Cordy’s complaint of unfair treatment.**

## **Complaint by Mr Graham Lloyd on behalf of the Governing Body of The Holly Hall School**

*The Schools Lottery, BBC2, 3 April 2006*

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**Summary:** Ofcom has partly upheld this complaint of unfair treatment.

Mr Lloyd complained that the Governing Body of The Holly Hall School was treated unfairly in the documentary *The Schools Lottery*. The programme examined problems encountered by parents and children attempting to get a place at the secondary school of their choice and compared the educational experiences of celebrities with those of today's children. The programme featured the Ray family whose oldest child, Hannah, is a pupil at The Holly Hall School. The programme included exterior shots of the school building and sign featuring the School's name.

Mr Lloyd complained that the programme featured footage identifying the exterior of the School without the consent of the Governing Body. He further complained that claims and omissions in the programme were linked to this footage resulted in unfairness to the School; that an interview with a primary school head resulted in unfairness to the School; and, that the School was not offered a right of reply to criticisms made in the programme.

The BBC responded that the programme makers did not need consent for the recording or broadcast of the footage of the school; that the programme made no criticisms of the School and therefore the issue of a right of reply did not arise; and, the primary school head made no reference to The Holly Hall School.

Ofcom found that it was appropriate for the programme to include footage of the exterior of the School, recorded from a public area, without seeking consent. Ofcom also found that the interview with the primary school head did not result in unfairness to The Holly Hall School. However Ofcom found that in the context of the whole section of the programme concerning Hannah Ray's education, the programme's commentary resulted in unfairness to the School. It was also unfair to the School that it was not given an appropriate and timely opportunity to respond.

### **Introduction**

This programme examined problems encountered by parents and children attempting to get a place at the secondary school of their choice. The programme featured several families and schools. It also compared the past educational experiences of celebrities, such as Nick Ross and Sue Lawley, with those of children today.

One section of the programme featured the Ray family, whose oldest child Hannah was in her first year at a local comprehensive school, The Holly Hall School ("the School") in Dudley. The School was in the neighbourhood where presenter Sue Lawley grew up. The programme compared the opportunities open to Hannah with those available to Sue Lawley, who attended a local grammar school. Footage of the exterior of the School featured in the programme and the School was referred to.

Mr Graham Lloyd, head teacher of The Holly Hall School, complained on behalf of the Governing Body of the School, that the School was treated unfairly in the programme as broadcast.

## The Complaint

### Mr Lloyd's case

In summary, Mr Lloyd, complained that the Governing Body of The Holly Hall School was treated unfairly in that:

- a) Footage of the exterior of the School featured in the programme, and clearly identified the School's name, without the knowledge or consent of the Governing Body. This footage was linked to the following claims or omissions, resulting in unfairness to the School in the programme as broadcast:
  - The School was described as average, which was true, but every child, both more and less able, was encouraged to fulfil their potential. More able children were encouraged to take national examinations early, to take additional qualifications and to go on to Sixth Form College and University. Many were also members of the Gifted and Talented academy at Warwick.
  - The introduction commented that the School did not have a sixth form, suggesting that this would limit the opportunities for the Ray children, but failed to mention that the majority of schools in Dudley do not have a sixth form as the majority of post 16 students went to local FE colleges.
  - The programme included comments from the head teacher of Highgate School, Hannah's former primary school, regarding Hannah Ray's ability in mathematics. The head teacher did not mention that Highgate was a partner school with The Holly Hall School under the School's mathematics and computing college status, nor that Hannah attended The Holly Hall School's mathematics master class in Year 6 which contributed to her success in mathematics.
  - The programme did not mention that the School had identified Hannah as gifted in a range of subjects and had completed an application for her to join the Gifted and Talented Agency at Warwick University.
  - The programme did not mention that the Key Stage 3 mathematics test results placed The Holly Hall School in the top 9% of schools nationally.
  - The programme included a final derogatory statement about the School's ability to support Hannah so that she could use her education to build a successful career, as Sue Lawley had done. In fact the School's track record in supporting gifted and more able pupils in particular, and all pupils in general, was well established.
- b) The School was not informed about the programme in advance of broadcast and therefore was not offered a right of reply. It was therefore unable to provide a balanced view and challenge factual inaccuracies.

## The BBC's case

In summary the BBC responded to the complaint made by Mr Lloyd on behalf of the Governing Body of The Holly Hall School as follows:

- a) This was the second of two programmes comparing the experience of well-known people and their parents in the 'eleven plus' era with that of parents and children in the contemporary state education system. The section of the programme complained of made a direct comparison between the secondary school educational opportunities that had been available to Sue Lawley, after she passed the 'eleven plus' examination, with those available to Hannah Ray in present-day Dudley. The programme did not detail what was on offer from The Holly Hall School, rather it made the point that entry to, and success at, a grammar school was not an available option. It also showed that Hannah's parents made choices based on criteria other than academic selection, for example transport options.

The exterior shots of the school were taken from a public area and showed a view which anyone would obtain passing in the street. No permission was required for the filming or showing of such material. The pictures were general views shown in an entirely neutral context.

- The Holly Hall School was described briefly and accurately as a *"very average nearby comprehensive, a maths and computing college without a sixth form"*. Mr Lloyd did not dispute any part of this description and no further direct comment was made on the education given to Hannah at the School.
  - The fact that The Holly Hall School did not have a sixth form was mentioned, not in the context of the contemporary educational environment in Dudley, but in direct contrast to the provision made for Sue Lawley during her time at a grammar school.
  - Hannah Ray's former primary school (Highgate School) head teacher made no reference, in her interview, to The Holly Hall School or the education provided there. She spoke about Hannah's ability in maths; about Hannah's younger siblings; and, her own personal opinion about selection which was an observation on the system rather than the education Hannah was currently receiving.
  - For response regarding the School's support of Hannah as gifted see response at a) above.
  - For response regarding mathematics test results see response at a) above.
  - The statement which Mr Lloyd regarded as derogatory was once again a statement of fact: *"We don't know that Hannah Ray is a potential Sue Lawley, but it must be doubtful that her local comprehensive offers the same opportunities Sue's grammar gave her"*. This was true in that the School did not have a sixth form and in broader terms comprehensive schools were very different establishments to grammar schools such as the one Sue Lawley attended.
- b) Had the programme, or any contributor to it, made any criticism of The Holly Hall School and the education it was providing for Hannah Ray, the school might quite reasonably have expected to be offered a right of reply. Since there was no such

criticism, no such response was sought. Hannah, not the School, was the primary focus of this section of the programme, the only consent needed was that of her parents. The programme makers regretted any offence taken by Mr Lloyd and the Governing Body but since the programme said nothing derogatory about the School their concerns were unfounded.

## Decision

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

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

Mr Lloyd's complaint was considered by Ofcom's Executive Fairness Group. Ofcom considered the complaint and the broadcaster's response, together with a recording and transcript of the programme as broadcast.

In the circumstances of this case Ofcom found the following:

- a) Ofcom first considered Mr Lloyd's complaint that footage identifying the School featured in the programme without the knowledge or consent of the Governing Body.

Ofcom viewed the footage of the School shown in the programme and noted that the exterior of the building and name of School were shown. In Ofcom's view it was entirely acceptable for the programme makers to film and broadcast such footage recorded from a public place. Such material was firmly in the public domain and did not require consent from the School's Governing Body or any other party.

Ofcom next considered Mr Lloyd's complaint that this footage was linked to claims or omissions, resulting in unfairness to the School in the programme as broadcast. In its consideration Ofcom took into account Practice 7.9 of the Ofcom Broadcasting Code ("the Code"). This 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 considered together Mr Lloyd's complaints concerning the commentary lines which described the School as "average", as "without a sixth form" and which stated that "it must be doubtful that her local comprehensive offers [Hannah] the same opportunities Sue's grammar gave her".

Ofcom noted the full commentary lines which stated that:

*"They [the Ray children] have to depend on the very average nearby comprehensive. A maths and computing college without a sixth form."*

And,

*“We don’t know if Hannah Ray is a potential Sue Lawley – but it must be doubtful that her local comprehensive offers the same opportunities Sue’s grammar gave her”.*

Ofcom noted that Mr Lloyd did not dispute that the school was “average” and “without a sixth form” but that he did dispute the programme’s portrayal of educational opportunities open to Hannah Ray at The Holly Hall School. Ofcom also considered the BBC’s response and the programme makers’ stated intention of making a contrast between the grammar and comprehensive school systems.

Ofcom considered Mr Lloyd’s complaint in the wider context of the programme which, in its opening, stated:

*“At this critical moment in a child’s life [choosing a secondary school] it can all become a game of winners and losers”.*

The programme used a motif of lottery balls over this commentary, and throughout the programme, which served to remind viewers of the theme of “winners and losers”. The first school shown in the programme, Nick Ross’s former grammar school in Surrey was clearly set out as an example of a highly successful school. This was then contrasted with the section of the programme featuring The Holly Hall School. The linking commentary, featuring the motif of lottery balls, stated:

*“One thing hasn’t changed, the cleverest kids are still skimmed off by the best schools which almost guarantee their pupils academic success and a bright future. Then as now children who end up at grammar schools are undoubted winners in the state school lottery. But what if you have really clever children and don’t live near a top state school?”*

This commentary was immediately followed by the section of the programme featuring the Ray children who were clearly illustrative of “losers” in the schools lottery. This theme which was returned to part way through the section on the Ray family in commentary which stated that:

*“Because of the way good schools are distributed, and with no local grammar, Hannah and her family are losing out in the geographical lottery”.*

The clear implication of this section of commentary was not just that the education system was lottery, but that The Holly Hall School was not a “good school” and that by attending it Hannah was “losing out”.

In this context Ofcom considered the particular commentary lines complained of. In Ofcom’s view the description of The Holly Hall School as “the very average” nearby comprehensive “without a sixth form” was loaded and implied criticism of the school and its ability to provide educational opportunities for Hannah Ray. The commentary said that the children “have to depend” on it, which implied they would not do so if circumstances were different.

Furthermore, Ofcom considered that the second commentary line amounted to a critique of The Holly Hall school in particular, and not just the system in general, when it stated that it “must be doubtful” that it could offer Hannah Ray

the same opportunities that Sue Lawley's grammar school gave her. In its response the BBC stated that this comment referred to the School not having a sixth form, and to the fact that comprehensive schools were very different establishments to grammar schools. However this was not articulated in the commentary line itself which, in Ofcom's view, summed up this section of the programme and implied that Hannah Ray was being failed by The Holly Hall School.

Taken together, and in the context discussed above, Ofcom therefore found that the commentary lines complained of resulted in unfair treatment of The Holly Hall School in the programme as broadcast.

- Ofcom next considered Mr Lloyd's complaint about comments, included in the programme, from the head teacher of Hannah's former primary school. In Ofcom's view it was entirely appropriate for the primary school head to comment on Hannah's ability in mathematics without reference to Hannah's attendance at a mathematics master class since her primary school education was not the focus of the item. Furthermore, it was also appropriate for the head to comment more widely on her views on selection in secondary school education. Her views were fully contextualised in the first commentary reference to her which stated:

*"Hannah's head teacher at her primary is dismayed at the lack of educational choice for the Ray children".*

The programme made very clear that she disliked the current state education system and favoured some sort of selection. In this context no unfairness arose to the Governing Body of The Holly Hall School from her comments on Hannah Ray's ability in mathematics, nor from her wider observations on the education system.

- Ofcom considered Mr Lloyd's complaint that the programme did not mention that the School had identified Hannah as gifted in a range of subjects and had completed an application for her to join the Gifted and Talented Agency at Warwick University. Ofcom considered that as a result of the findings of unfair treatment discussed above under head a), the issue arose of whether the School should have been provided with an appropriate opportunity to respond to criticisms made in the programme. This head of complaint, which related to issues which could have been raised by the School had such an opportunity been given, will therefore be dealt with below at head b).
- Ofcom next considered Mr Lloyd's complaint that the programme did not mention that the Key Stage 3 mathematics test results placed The Holly Hall School in the top 9% of schools nationally. Again, and as discussed immediately above, Ofcom considered that in the context of the findings of unfair treatment discussed above under head a), the issue arose of whether the School should have been provided with an appropriate opportunity to respond to criticisms made in the programme. This head of complaint, which related to issues which could have been raised by the School had such an opportunity been given, will therefore be dealt with below at head b).

In light of the above considerations Ofcom found that the programme resulted, in part, in the unfair treatment of the Governing Body of The Holly Hall School.

Accordingly, Ofcom found the broadcaster in breach of Rule 7.1 of the Broadcasting Code.

- b) Finally, Ofcom considered Mr Lloyd's complaint that the School was not informed about the programme in advance of broadcast, was not therefore offered a right of reply and as such unable to provide a balanced view and challenge factual inaccuracies.

Ofcom took into account Practice 7.11 of the Code. This states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

In Ofcom's view, and as discussed under head a) above, the programme contained material which was critical of The Holly Hall School and left the viewer with the clear impression that the School was not competent in providing educational opportunities for Hannah Ray. In these circumstances and in the interests of fairness, the School should have been given an appropriate and timely opportunity to respond.

As further discussed under head a), Mr Lloyd complained that aspects of the School's support for Hannah Ray, and its mathematics results, were omitted from the programme's references to The Holly Hall School. Ofcom considered that had the School been given an appropriate and timely opportunity to respond to the material contained in the programme, it would have had an opportunity to have put these issues to the programme makers.

In light of the above deliberations Ofcom found that the Governing Body of The Holly Hall School was treated unfairly in that the programme contained material which was critical of The Holly Hall School but the School was not given any opportunity to respond to the criticisms made about it in the programme as broadcast.

Accordingly, Ofcom found the broadcaster in breach of Rule 7.1 of the Broadcasting Code.

**The complaints of unfair treatment were, with certain limited exceptions, upheld. Ofcom directed the BBC to broadcast a summary of its findings.**



## **Complaint on behalf of Morecambe Bay Hospitals NHS Trust** *Sky Report, Sky News, 21 March 2006*

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**Summary:** Ofcom's Fairness Committee has upheld part of the Trust's complaint of unfair treatment and upheld in full the Trust's complaint of unwarranted infringement of privacy.

This edition of the Sky Report examined the Furness General Hospital ("the hospital"). The item reported that the Trust that was responsible for the hospital, Morecambe Bay Hospitals NHS Trust ("the Trust") was considering radical measures to reduce a £6.5 million overspend.

The report included surreptitiously filmed footage of the hospital and of the hospital's Ward 9, which had been closed at the time.

The Trust complained to Ofcom that it had been treated unfairly in the programme as broadcast and that its privacy had been unwarrantably infringed in both the making of the programme and the programme as broadcast.

Ofcom's Fairness Committee found as follows:

- a) The Committee found the Trust had been given an appropriate and timely opportunity to respond to the programme allegations. The Committee also found the programme makers' decision, not to inform the Trust of the undercover filming of Ward 9 when seeking the Trust's participation, did not result in unfairness to the Trust. The Committee has not upheld this part of the Trust's complaint.
- b) The Trust complained that the programme makers failed to give proper consideration to facts provided by the Trust prior to broadcast. The Committee found that the programme makers adequately reflected information provided to them by the Trust within the programme as broadcast. The Committee has not upheld this part of the Trust's complaint.
- c) The Trust complained that it was unfair for the programme makers surreptitiously to obtain general hospital footage and footage of the hospital's Ward 9, without consent.

Looking at the nature of the footage and the context within which it was used, and taking consideration of the reasons provided for the surreptitious filming, the Committee found the filming and broadcast of the footage were not in the circumstances, warranted by a genuine public interest, and were therefore unfair.

- d) The Committee found that the hospital's privacy was infringed both in the making of the programme and in the programme as broadcast because appropriate consent to film inside the hospital and to broadcast those images, had not been gained.

As regards whether or not the infringement of privacy was warranted, the Committee was not persuaded that the programme makers had prima facie evidence of a story that was in the public interest which would have justified the surreptitious filming. Further, the Committee found that the surreptitiously filmed footage was merely illustrative of the issues being reported and did not expose

any wrongdoing by the Trust, nor seek to reveal any information that was not already in the public domain and could not otherwise have been obtained with the consent of the Trust. In the circumstances the Committee found that the infringement of the Trust's privacy during the making of the programme, and in the programme as broadcast was not warranted. Accordingly the Fairness Committee has upheld this part of the Trust's complaint.

## **Introduction**

This report examined the Furness General Hospital ("the hospital") which, it was claimed, had a cash crisis that was affecting its staff morale and patient care. The item reported that the Trust that was responsible for the hospital - Morecambe Bay Hospitals NHS Trust - ("the Trust"), was considering radical measures to reduce a £6.5 million overspend. These measures included: the rationing of pain killing drugs; limiting the use of specialist equipment for X-ray and radiation therapy; and, the temporary closure of the hospital's Ward 9. The report included footage from interviews with former patients, and former and current employees of the hospital who described the effect of the hospital's attempts to reduce its spending.

The report also included secretly filmed footage of the hospital and of the hospital's Ward 9, which had been closed at the time.

At the end of the report a live interview was conducted with the Trust's Chief Executive, Mr Ian Cumming.

Mr Ian Cumming and Ms Claire Campbell (Morecambe Bay Hospitals NHS Trust's Head of Corporation Management & Communications), complained on behalf of the Trust that it had been treated unfairly and that its privacy had been unwarrantably infringed in both the making of the programme and the programme as broadcast.

## **The Complaint**

### **The Trust's case**

In summary, the Trust complained it had been treated unfairly in that:

- a) The programme makers did not provide the Trust with adequate information regarding the nature of all contributions. Specifically that the Trust was not advised of the undercover filming of the hospital's Ward 9.
- b) The programme makers failed to give proper consideration to facts provided by the Trust prior to broadcast:
  - i) The Trust advised the programme makers that the maternity unit at the hospital was not on the list of proposed closures. Nevertheless the programme included quotes from two people that alluded to a full service review including the possible closure of the hospital's maternity services;and,
  - ii) The Trust told the programme makers that the use of X-ray and radiotherapy equipment had not been scaled back to save money. The Trust said that it does not and never has provided radiation treatment.

Despite this information, the programme stated that the use of specialist equipment for X-rays and radiation therapy had been scaled back.

- c) The programme makers obtained general hospital footage and footage of the hospital's Ward 9 surreptitiously without consent. The Trust complained that there was no public interest in the story to warrant the obtaining of the footage without consent from the Trust.

In summary the Trust complained that their privacy had been unwarrantably infringed in both the making of the programme and the programme as broadcast because:

- d) The programme makers did not follow the practices set out in Paragraph 8.8 of the Broadcasting Code, which outlines the practices to be followed by programme makers when filming or recording in institutions, organisations or other agencies.

### **Sky's case**

In summary, Sky responded to the complaint as follows:

- a) Sky said that detailed allegations were put to the Trust both before and during the broadcast of the programme. In support of its statement, Sky provided Ofcom with a copy of an email from the programme makers to the Trust's press office dated 17 March 2006. The email listed the programme's allegations and invited the Trust's response.

In relation to the undercover filming of Ward 9, Sky relied on Ofcom's Broadcasting Code Guidance that allows for "*occasions, for instance in the interest of a legitimate investigation where the broadcaster may withhold certain information*". Sky said it was entitled to withhold from the Trust its intention to film inside the hospital as the report was a legitimate investigation into the allegations made by the hospital's staff and patients.

- b) Sky maintained that the programme makers gave proper consideration to facts provided by the Trust prior to broadcast:

- i) Maternity unit

Sky said that the possible closure of the hospital's maternity ward was of great concern to the local community and had received extensive coverage in the local press. In support of its submission, Sky provided Ofcom with local press clippings relating to the issue of the hospital's maternity service.

Sky said the programme makers appropriately put the issue of the hospital's maternity ward to the Trust, prior to broadcast. Sky noted the programme maker's email of 17 March 2006 asked the Trust to confirm whether the hospital maternity unit was "*no longer on a long list of proposed closures*". Sky said the Trust, in response, provided information that indicated there had been a review of the maternity services but that it no longer had plans for a "*significant change*" to the service. This information was given proper consideration in the programme as broadcast that reported "*the maternity ward has now been reprieved*".

- ii) X-ray and radiation therapy equipment

Sky said the Trust was asked to confirm whether “*other services at the hospital have been scaled back to save money including the use of X-ray and radiotherapy equipment*”. Sky said the Trust failed to respond to the specific allegation and the information provided by the Trust in response did not deal with the issue. Sky further noted that Mr Cumming did not refute the allegation during his live interview.

Sky therefore contended that it could not have disregarded or omitted material facts relating to the hospital’s X-ray and radiotherapy equipment, because the Trust failed to make any such facts known.

- c) Sky said that although consent had not been sought from the Trust before filming the hospital, the filming did not result in unfairness to the Trust. Sky maintained that permission was not required to film the exterior of the hospital from a public place, and that the filming of Ward 9 was warranted.

Sky said the programme makers were led to believe the Trust would not give consent for filming to take place from a number of sources, including two nurses and the husband of a nurse employed at the hospital. Moreover, Sky said the programme makers did not wish to alert the Trust to the filming by seeking its permission, as by doing so, they believed Ward 9 would not have been presented in its true condition.

Sky believed it was in the public interest to use the footage to expose, for the first time, the condition in which Ward 9 had been left following its closure. Sky said the footage showed the Ward left with unused equipment (such as chairs, beds and pillows) stockpiled, other equipment (for example a drinks machine, cages and bins) abandoned, towels (or sheets) strewn across the floor and lights left on. Sky said the apparent wastage or lack of use of such equipment was highly relevant to the report’s main theme of resource constraints in the NHS/ the hospital.

Sky said it was not unfair for the programme to broadcast footage of Ward 9 without the Trust’s consent as the footage merely illustrated the allegations surrounding the Ward’s closure, which had already been put to the Trust, prior to broadcast.

- d) Sky said the filming of the hospital without permission was warranted as there was prima facie evidence of a story in the public interest. Sky said it had reasonable grounds to suspect that further evidence of a waste of resources could be obtained by surreptitious filming.

Sky said the filming exposed for the first time the condition in which Ward 9 had been left when closed. Sky believed this evidence was highly pertinent to the report’s main theme of resource constraints within the hospital and the NHS, and was necessary to the credibility and authenticity of the report.

### **Further comments from complainant**

On 11 August 2006, Mr Cumming emailed Ofcom to advise that a relevant email appeared to be missing from the set of correspondence supplied by Sky. Mr Cumming said the missing correspondence confirmed, contrary to Sky’s submission, that the Trust did provide information in response to the allegation that “*other*

*services at the hospital have been scaled back to save money including the use of X-ray and radiotherapy equipment”.*

Mr Cumming explained that he was unable immediately to locate the email that was sent to Sky but was able to forward Ofcom an internal draft in the meantime:

*“There is one email however that seems to be missing from their sequence of correspondence. Due to holidays of key staff, I can’t forward the actual email sent until next week, but attached below is the internal draft of what was sent through to Sky in advance of the programme in response to their allegations.”*

The internal draft email was sent from Mr Cumming to Claire Campbell, Morecambe Bay Hospitals NHS Trust’s Head of Corporation Management & Communications, and other Trust colleagues on 19 March 2006. In the email Mr Cumming set out in draft form how he intended to respond to each of the allegations:

*“Please find below my comments on the Sky news item for Tuesday – it will need editing before sending on Monday but happy for you to attribute these comments to me...”*

In response to the allegation that the Trust had scaled back on Radiotherapy and X-ray equipment, Mr Cumming explained in the email:

*“...We don’t have any radiotherapy equipment in Barrow – the nearest centre is Preston. There have been no cutbacks in X-ray and we have in fact recently recruited an additional Radiologist...”*

On 14 August 2006, Ofcom received a response from Claire Campbell which clarified that the correspondence Mr Cumming referred to had *not* been sent to the programme makers. Ms Campbell explained that the information in question had been communicated during a phone conversation between her and a programme maker on 20 March 2006.

### **Sky’s comments in response**

Ofcom asked Sky to comment on the additional information provided by the Trust. In summary Sky said that the Trust did not communicate to it any response to the allegation that the hospital’s X-ray and radiotherapy equipment would be scaled back. Further, according to the relevant programme maker, Ms Campbell did not discuss by phone any of the Trust’s specific responses to the programme’s allegations.

### **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 and unwarrantable infringement of privacy in and in the making of programmes included in such services. Where there appears to have been unfairness in the making of the programme, this will only result in a finding of unfairness, if Ofcom finds that it has resulted in unfairness to the complainant in the programme as broadcast.

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of

freedom of expression. Ofcom is also obliged to have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate and consistent and targeted only at cases in which action is needed.

In reaching a decision about this complaint the Fairness Committee considered: the written submissions of both parties; a recording and transcript of the programme; and email correspondence between the programme makers and the Trust both before and after broadcast of the programme.

The Fairness Committee's findings in relation to the Trust's specific heads of complaint are outlined below:

- a) The Trust said the programme makers did not provide them with adequate information about the nature of all contributions. The Trust specifically complained that it was not advised of the undercover filming of the hospital's Ward 9.

Where a person is invited to make a contribution to a programme they should normally be told at an appropriate stage the nature and purpose of the programme, what the programme is about and be given a clear explanation of why they were asked to contribute. Further, 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.

In reaching a decision about this complaint the Committee needed to assess whether the programme makers provided adequate information to the Trust for it to be able to understand both the nature of the programme and the allegations to be made against it. In addition, the Committee had to consider whether it was incumbent on the programme makers to inform the Trust of the undercover filming of Ward 9.

It was evident from the submissions that the allegations were put to the Trust ahead of the story. In an email to the Trust of 17 March 2006, the broadcaster set out a list of allegations that would be made against the Trust during the Sky Report and invited the Trust to respond to the programme either in person or with a written statement. The Committee noted that the programme makers' email of 17 March 2006 explained the critical nature of the programme and listed in detail each of the allegations to be made during the programme. The Committee also noted from internal email correspondence provided by the Trust, that the Trust had been ready to respond. The fact that a draft email responding to the allegations had been prepared (even though it was never actually sent) demonstrated that the Trust had had sufficient time to respond to the allegations.

Taking these factors into consideration, the Committee was satisfied that the programme maker's email of 17 March 2006 afforded the Trust an appropriate and timely opportunity to respond to the allegations and fairly informed the Trust about the programme's nature and likely content.

The Committee next considered the filming of the Ward 9 in the context of whether the Trust had sufficient information prior to transmission in order to be able to respond to the allegations in the programme. The Committee noted that the footage and commentary of Ward 9, showed evidence that the Ward was closed, a fact which was already in the public domain and had been publicly acknowledged by the Trust prior to broadcast. The Trust had been informed that the report would be about Ward 9 and whilst the images themselves had not

been in the public domain prior to broadcast, the Committee accepted Sky's submission that use of the footage without warning was not unfair on the basis that the footage was merely illustrative of the allegations surrounding the ward's closure. On this basis, the Committee considered that knowledge of the footage would not have materially altered the Trust's understanding of the programme (and the allegations contained in it) and would not have affected the Trust's ability to respond to those allegations.

The Committee concluded the Trust had been afforded an appropriate and timely opportunity to respond to the programme allegations. In addition the Committee found the programme makers' decision not to inform the Trust of the undercover filming of Ward 9 when seeking the Trust's participation did not result in unfairness to the Trust.

- b) The Trust complained that the programme makers failed to give proper consideration to facts provided by the Trust prior to broadcast.

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. Broadcasters and programme makers should also ensure they fairly represent the views of a person or organisation that is not participating in a programme.

The Committee considered separately the Trust's complaints under head b) relating to the hospital's maternity ward and the hospital's use of X-ray and radiotherapy equipment. In the case of both complaints, the Committee first considered the information provided by the Trust in response to the programme allegations and then considered whether the programme makers fairly represented this information in the programme as broadcast.

i) Maternity unit

The Trust said it had informed the programme makers prior to broadcast that the hospital's maternity unit was not on a list of proposed closures. However despite this information, the report alleged there would be a full review of the hospital's services, including its maternity service.

The Committee noted from viewing the report that the hospital's maternity service was raised in the context of interviews with local residents which showed local concern about the future of the service as a result of various cost cutting measures that had been taken by the Trust. The Committee also noted from newspaper clippings provided by Sky that at least one local newspaper regularly reported of the public's ongoing concern about the future of the hospital's maternity service.

Given the high level of publicity and the general public's awareness of the subject matter, the Committee believed it was fair for the programme to acknowledge the issue as it did in the programme as broadcast.

The Committee noted from the programme maker's email of 17 March 2006 that the Trust had been asked to confirm the status of the hospital's maternity service:

*"Also can the Trust confirm the Furness General Hospital maternity unit is no longer on a long list of proposed closures?"*

In response to the programme maker's email, the Trust provided a general newsletter that included information relating to the Trust's review of its maternity services. The newsletter stated:

*"The Trust has commissioned a review of these areas [including maternity services] to see if costs can be reduced, the service can be provided differently or if we simply need to "cross-subsidise" a service from another area that we provide at less than the income we receive under PbR..."*

*"At its meeting on March 1<sup>st</sup>, the Trust Board agreed the following having received feedback from the reviews. On the grounds of safety the **Trust does not believe any significant change can or should be made to the [maternity service] provision.**" [Emphasis added].*

The Committee noted that the programme makers summarised the above information in the programme as follows:

*"Although the maternity ward has now been reprieved, the Trust's financial woes remain."*

The newsletter confirmed that the maternity ward had been subject to review. Whilst the newsletter did not specifically state that the review had considered the possible closure of the unit the Committee considered that it was not unreasonable in the circumstances to assume that this was likely to have been looked at. In the Committee's opinion, viewers were likely to understand from the programme as a whole that there had been local concern about the effect that cost cutting measures would have on the hospital's maternity service, that the Trust had decided that the hospital's maternity ward would not be closing and that the Trust remained under pressure to reduce a £6.5million deficit. From the information presented by both parties, the Committee considered that this was a fair reflection of the situation.

In the circumstances the Committee found that the programme makers gave proper consideration to facts provided to them about the Trust's review of the hospital's maternity services, by indicating that the maternity ward would not be closing as locals had feared.

ii) X-ray and radiation therapy equipment

The Trust complained it was unfair for the programme to include the following allegation that the hospital's use of specialist equipment for X-rays and radiation therapy had been scaled back:

*"The University Hospitals of Morecambe Bay Trust is looking at a series of radical measures to reduce a £6.5 million overspend. Nurses say the use of some specialist equipment for X-rays and radiation therapy has been scaled back."*

The Trust said that it had informed the programme makers prior to broadcast that there had been no cut backs to X-ray services, and that the hospital did not have radiotherapy equipment.



The Committee noted that the Trust was offered an opportunity to respond to the above allegation on 17 March 2006 when the programme makers emailed the Trust. The Trust was asked as follows to confirm whether it was true that the hospital had scaled back the use of X-ray and radiotherapy equipment:

*“Also can the Trust confirm: other services at the hospital have been scaled back to save money including the use of X-ray and radiotherapy equipment.”*

Morecambe Bay Hospitals NHS Trust’s Head of Corporation Management & Communications, Ms Campbell, emailed the programme makers the Trust’s written response to the allegations on 20 March 2006. The Committee noted that the Trust’s written response consisted of an attached Trust newsletter and the following short cover email:

*“...as discussed, please find Ian’s general comment as discussed:*

*General Comment: I am surprised that Sky are running with a “story” that is based on allegations from two former members of staff and one current member of staff (we strongly suspect that this is an individual currently facing disciplinary action) and assuming that the allegations made are accurate. As always in these circumstances, there is some basis of factual accuracy behind SOME of the allegations made, but these have been blown up out of all proportion. This story really does look to me like coming from someone with a score to settle.*

*Please find attached the staff newsletter I referred to also, this was circulated very widely across all Trust sites/ wards and departments on Thursday 2 March 2006.”*

It was noted by the Committee that neither the above cover email nor the Trust newsletter referred to the hospital’s X-ray or radiotherapy equipment.

As part of its written submission to Ofcom, the Trust later confirmed that it had not responded to this allegation in writing (as the Chief Executive Mr Cummings had believed) but had communicated its response during a telephone conversation with the programme makers on 20 March 2006. In response Sky maintained that the programme makers did not receive *any* form of response from the Trust about the allegation that there had been cutbacks in the use of X-ray and radiotherapy equipment.

In the absence of any firm evidence to confirm or dispute such a conversation between Mr Cummings and the programme makers, the Fairness Committee was unable to resolve the conflicting submissions. However, from the information provided to the Committee, there was no persuasive evidence that the programme makers disregarded material information provided by the Trust. The Committee noted that the Trust’s written statement did not appear to offer any response to the allegation that there had been cutbacks to the use of X-ray and radiotherapy equipment. Whilst a fuller email had been prepared which included a response to this particular allegation, it was also clear that this was never sent to Sky.

Based on the information available and in the absence of evidence to the contrary, the Committee found that the programme makers did not fail to give proper consideration to facts provided by the Trust prior to broadcast.

- c) The Trust complained that the programme makers obtained general hospital footage and footage of Ward 9 surreptitiously. The Trust said this was unfair as there was no public interest in the story that would warrant obtaining the footage without consent from the Trust.

Broadcasters or programme makers should not normally obtain or seek information, audio, pictures or an agreement to contribute through misrepresentation or deception. However, it may be warranted to use material obtained through misrepresentation or deception without consent if it is in the public interest and cannot reasonably be obtained by other means. The Committee noted that the programme included surreptitiously filmed footage of the outside of the hospital, of what appeared to be the foyer of the hospital, of a hospital stairway and of Ward 9, which was closed and locked at the time.

In reaching a decision about this element of the complaint, the Committee considered whether the surreptitious filming of the hospital was warranted by a public interest (i.e. related to information which the public has a *right* to know rather than a basic *curiosity* in knowing) and whether the footage gained could not reasonably have been obtained by other means.

The Committee separately considered the general hospital footage and the footage of Ward 9.

As regards the general footage of the hospital, the Committee noted Sky's statement that:

*"Sky accepts that it did not seek the Trust's consent for filming. However, Sky did not need the Trust's consent to film the exterior of the hospital from public property".*

The Committee noted that the general shots of the hospital were not limited to external footage of the hospital building but also included footage of the hospital's foyer area and stairwell. The Committee considered that whilst this part of the hospital may have been accessible to some members of the public (such as patients and visitors of patients) this did not automatically provide a right to film there without prior permission, especially since a hospital is a potentially sensitive place (see d) below in relation to Practice 8.8 of the Broadcasting Code) and would attract a legitimate expectation of privacy to those inside (patients and visitors alike).

In considering whether the general footage was warranted by a public interest, the Committee noted that the shots were general views which did not provide viewers with any material evidence of the matters being reported. The Committee also considered that these shots could reasonably have been obtained with the Trust's permission. The Trust was therefore unfairly deprived of the opportunity to grant or deny permission to film these shots. Taking these factors into consideration, the Committee found the programme makers' decision to surreptitiously film inside the hospital was not warranted.

The Committee next considered the surreptitious filming of Ward 9. The Committee noted that the closure of Ward 9 was an established fact. The Trust

had not attempted to deny the Ward closure and it had been publicised in the local press that the decision to close the Ward was for financial reasons.

In its written submission Sky contended that the filming was warranted by a public interest as it exposed for the first time, to both the local community and the wider public, the condition in which Ward 9 had been left following its closure. Sky explained in its written submission to Ofcom that it believed the manner in which the ward had been left was illustrative of wastage and inefficient allocation of resources by the Trust:

*“The footage showed that Ward 9 was left with unused equipment (such as chairs, beds and pillow) stockpiled, other equipment (for example drinks machines, cages and bins) abandoned towels (or sheets) strewn across the floor and lights left on. The apparent wastage or lack of use of such equipment was **highly relevant to the Report’s main theme (of resource constraints in the NHS/ the hospital)**...for example the Trust blamed overspend, in part, on the “doubling of our energy costs” yet lights in Ward 9 were left on.” [Emphasis added]*

The Committee considered Sky’s argument that footage of items such as pillows, chairs, beds, towels, drinks machines, cages and bins being unused was “*highly relevant to the report’s main theme (of resource constraints in the NHS/ the hospital)*”. The Committee accepted that this might have been the case if the footage had shown evidence of wrongdoing and the report had sought to highlight the state the ward had been left in. However, although the report referred to shortages in drugs, operational beds (i.e. a bed that has the necessary financial resources to make it available for use), nursing staff and bed sheets (not towels), it did not draw any link between these shortages and the state the ward had been left in. In fact, the report made nothing substantial of the state of the ward (which in any event appeared to have been left for the most part in a tidy state with the small exception of one bathroom which had a set of towels on the floor) and the footage was used in the report merely to illustrate the fact of its closure. In the Committee’s view the footage of Ward 9 was not necessary to the credibility and authenticity of the report since the report’s central issue, the closure of Ward 9, was not in dispute.

The Committee further noted that the programme attributed the hospital’s cash crisis to “*increasing costs of drugs and energy, its drive to bring down waiting times, and the demands of providing medical care to a rural area*”. However, Sky’s suggestion in its submissions that the ward’s use of electricity was wasteful was not specifically made as an allegation in the programme as broadcast, nor was it put to the Trust for them to respond to.

Taking all these factors into consideration the Committee was not satisfied that the purpose of the filming was to make the point that the supposed evidence of waste by the hospital was largely contributing to the hospital’s financial deficit or that the footage obtained was central to the programme’s “*main theme of resource constraints*”. In the Committee’s opinion, the footage obtained of Ward 9 could not therefore be described as being in the public interest.

In the circumstances, the Committee found that the programme makers’ actions in surreptitiously filming the hospital premises and then broadcasting the footage, were not warranted and were therefore unfair.

- d) The Trust complained its privacy was unwarrantably infringed in both the making of the programme and the programme as broadcast, in that the programme makers did not follow the practices set out in Practice 8.8 of the Broadcasting Code. This section of the code outlines the practices to be followed by programme makers when filming or recording in institutions, organisation or other agencies:

*When filming or recording in institutions, organisation or other agencies permission should be obtained from the relevant authority or management, unless it is warranted to film or record without permission. Individual consent of employees or others whose appearance is incidental or where they are essentially anonymous members of the general public will not normally be required. However in potentially sensitive places such as ambulances, hospitals, schools, prisons or police stations, separate consent should normally be obtained before filming or recording and for broadcast from those in sensitive situations (unless not obtaining consent is warranted). If the individual will not be identifiable in the programme then separate consent for broadcast will not be required.*

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

#### Was there an infringement of privacy?

In reaching a decision about whether the privacy of the Trust was infringed in the making and/or in the broadcast of the programme, the Committee first sought to establish whether the Trust had a reasonable expectation of privacy.

Due to the sensitive nature of a hospital's function, both its patients and the activities of a hospital receive a degree of protection from the public eye. The Committee noted that whilst a hospital might provide a public service, it is not altogether a public place in the same way, for example, as a high street or a public park and Practice 8.8 of the Broadcasting Code recognises places such as a hospital as "potentially sensitive" and therefore attracting a higher expectation of privacy. Although there may be an implied licence to enter a ward for treatment or visits, this could not be said to extend to access for filming.

Additionally, in relation to Ward 9, the Committee noted that the public could not gain access to the ward at the time of filming, as it had been formally closed by the Trust. This, together with the fact that the doors had been locked (as noted in the report itself) showed a clear intention of prohibiting entry to all unauthorised persons.

The Committee concluded that these factors demonstrated that the nature of the information and the form in which it was kept was private, and therefore that the Trust had a legitimate expectation of privacy in respect of the closed ward.

As regards the general hospital footage, as noted above, the Committee had regard to the fact that hospitals are within a category of places to which the public may have access but which nevertheless attract a greater expectation of privacy. There was therefore no automatic right to film there without permission,

notwithstanding the fact that the general footage was of the hospital's foyer and stairwell.

Additionally, the filming had been carried out surreptitiously and the footage had been broadcast without the consent of the Trust.

In the circumstances, the Committee found that the Trust's privacy was infringed both in the making of the programme and in the programme as broadcast because appropriate consent had not been gained to film and to broadcast the general shots inside the hospital and the shots of Ward 9.

#### Was the infringement of privacy warranted?

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.

Sky maintained that there was prima facie evidence that the condition of Ward 9 indicated a waste of resources. Sky explained that evidence of such wastage was central to the report's main theme of resource constraints.

The Committee was not satisfied that the broadcaster had provided any evidence to show that they had a reason for carrying out surreptitious filming since there was nothing in the submissions to demonstrate that Sky had reason, prior to filming, to go looking for specific footage they could not otherwise obtain. From the broadcaster's submissions it was evident to the Committee that the broadcaster simply planned to gain footage that showed the ward was closed. The Committee was not persuaded that there was any evidence that the Trust would have refused permission to gather such footage.

With regard to the broadcast of the programme the Committee found, as previously detailed at head c), that the footage of Ward 9 did not reveal any information that it considered as being evidence of waste or wrongdoing on behalf of the Trust or the hospital. In showing footage of a closed ward and in the manner of its presentation, the report did not, in the Committee's view, add anything new (i.e. it did not expose any wrongdoing on the part of the Trust), and did not provide information that was not already in the public domain.

In the circumstances the Committee found that the infringement of the Trust's privacy during the making of the programme, and in the programme as broadcast was not warranted.

**Accordingly the Fairness Committee has upheld in part the Trust's complaint of unfair treatment in the programme as broadcast, and upheld the Trust's complaint of unwarranted infringement of privacy in both the making of the programme and the programme as broadcast.**

## Other Programmes Not in Breach/Out of Remit

3 February 2007 – 17 February 2007

Programme	Trans Date	Channel	Category	No of Complaints
50 Ways to Look Good Naked	15/01/2007	Five	General Acceptance Standards	1
Alison Bell	29/12/2006	LBC 97.3FM	Inaccuracy/Misleading	1
All New You've Been Framed	06/01/2007	ITV1	Dangerous Behaviour	1
American Idol	26/01/2007	ITV2	General Acceptance Standards	2
American Idol	30/01/2007	ITV2	General Acceptance Standards	1
BBC Breakfast	18/01/2007	BBC1	General Acceptance Standards	1
BBC Breakfast	07/10/2006	BBC1	General Acceptance Standards	1
BBC News	17/01/2007	BBC1	General Acceptance Standards	1
BBC News	18/01/2007	BBC1	Inaccuracy/Misleading	2
Bad Lads Army: Officer Class	02/01/2007	ITV4	General Acceptance Standards	2
Bad Lads Army: Officer Class	15/01/2007	ITV4	General Acceptance Standards	1
Best of Soccer AM	27/11/2006	Sky Sports 1	General Acceptance Standards	1
Bobby McVay	27/01/2007	Real Radio	General Acceptance Standards	1
Born Equal	17/12/2006	BBC1	Offensive Language	2
Brainiac	03/01/2007	Sky One	Sex/Nudity	1
Celebrity Big Brother 2007	26/01/2007	Channel 4	Offensive Language	1
Celebrity Big Brother 2007	26/01/2007	Channel 4	General Acceptance Standards	4
Celebrity Big Brother 2007	26/01/2007	Channel 4	Inaccuracy/Misleading	1
Celebrity Big Brother 2007	26/01/2007	Channel 4	Due Impartiality/Bias	1
Celebrity Big Brother 2007	12/01/2007	Channel 4	Competitions	1
Celebrity Big Brother's Big Mouth	24/01/2007	E4	Religious Offence	1
Celebrity Big Brother's Big Mouth	20/01/2007	Channel 4	Religious Offence	1
Celebrity Big Brother's Big Mouth	-	E4	General Acceptance Standards	1
Celebrity Big Brother's Little Brother	22/01/2007	Channel 4	General Acceptance Standards	1
Central News	30/12/2006	ITV1	Flashing images	1
Channel 4 News	18/01/2007	Channel 4	Other	1
Channel 4 News	03/01/2007	Channel 4	General Acceptance Standards	1
Channel 4 News	16/01/2007	Channel 4	General Acceptance Standards	1

Channel Trouble Promo	18/12/2006	Trouble	Sex/Nudity	1
Chris Evans	24/11/2006	BBC Radio 2	Offensive Language	1
Cobra sponsorship of ITV Movies	06/01/2007	ITV2	Violence	1
Colin and Justin on the Estate	18/01/2007	Five	Offensive Language	2
Coronation Street	19/01/2007	ITV1	Commercial References	1
Coronation Street	15/01/2007	ITV1	General Acceptance Standards	2
Coronation Street	12/01/2007	ITV1	General Acceptance Standards	1
Dancing on Ice	20/01/2007	ITV1	Other	2
Dead Clever	01/01/2007	ITV1	Offensive Language	1
Deal or No Deal	15/01/2007	Channel 4	General Acceptance Standards	1
Deal or No Deal	30/12/2006	Channel 4	Competitions	2
Desperate Housewives	17/01/2007	Channel 4	General Acceptance Standards	1
Dispatches: Undercover Mosques	15/01/2007	Channel 4	Other	1
Doctor Who	25/12/2006	BBC1	General Acceptance Standards	1
Eastenders	12/01/2007	BBC1	Sex/Nudity	1
Eastenders	09/01/2007	BBC1	Offensive Language	1
Extraordinary People: Tourette's Rewired	05/02/2007	Five	Offensive Language	1
Flesh	21/01/2007	Film Four	Sex/Nudity	1
Fortune: Million Pound Giveaway	16/01/2007	ITV1	Due Impartiality/Bias	1
Fortune: Million Pound Giveaway	02/01/2007	ITV1	General Acceptance Standards	8
Fortune: Million Pound Giveaway	02/01/2007	ITV1	Crime (payment)	2
Fortune: Million Pound Giveaway	16/01/2007	ITV1	General Acceptance Standards	1
Fox FM	-	Fox FM	Regionality	1
Girls of the Playboy Mansion	16/12/2006	E! Entertainment	Sex/Nudity	1
Happy Days	10/12/2006	Five US	Sponsorship	1
Have I Got News For You	16/01/2007	UKTV G2	General Acceptance Standards	1
Hirsty's Daily Dose	04/01/2007	Galaxy 105FM	Sex/Nudity	1
Hollyoaks	16/01/2007	Channel 4	Offensive Language	1
ITV News	18/01/2007	ITV1	General Acceptance Standards	1
ITV News	18/01/2007	ITV1	Due Impartiality/Bias	2
ITV News	17/01/2007	ITV1	Inaccuracy/Misleading	1
ITV News	31/05/2006	ITV1	Due Impartiality/Bias	1
James Whale	01/01/2007	Talksport	General Acceptance Standards	1
KCR 106.7 (Knowsley)	-	KCR 106.7	Format	1
Kind Hearts and Coronets	23/01/2007	Channel 4	General Acceptance Standards	2
Kindergarten Cop	29/10/2006	ITV2	Sponsorship	1

Lady Chatterley's Lover	30/09/2006	BBC Radio 4	Sex/Nudity	1
Live at 5	30/11/2006	Sky News	General Acceptance Standards	1
Lost	06/12/2006	Sky One	Other	1
Love Island	23/08/2006	ITV1	Substance Abuse	2
Love Island	22/08/2006	ITV1	Substance Abuse	1
Love Island	21/08/2006	ITV1	Substance Abuse	1
MacAulay and Co	25/12/2006	BBC Radio Scotland	Substance Abuse	1
McDonald & McGuire	16/01/2007	Key 103	General Acceptance Standards	1
Monty Don - Growing Out of Trouble	12/12/2006	BBC2	Offensive Language	1
Most Haunted (trailer)	-	Living TV	General Acceptance Standards	1
Neighbours	-	BBC1	Religious Offence	1
News Quiz trailer	04/01/2007	BBC Radio 4	General Acceptance Standards	1
Newsbeat	16/01/2007	BBC Radio 1	Other	1
North East Tonight	03/01/2007	Tyne Tees	Violence	1
Off the Page	19/11/2006	BBC Radio 4	General Acceptance Standards	2
Pete Bristow	-	Dream 100	General Acceptance Standards	1
Popworld	21/01/2007	Channel 4	Animal Welfare	1
Popworld	31/12/2006	Channel 4	Sex/Nudity	1
Popworld	21/01/2007	Channel 4	Sex/Nudity	1
Popworld	20/01/2007	Channel 4	Sex/Nudity	2
Porn preview	28/01/2007	Television X	General Acceptance Standards	1
Project Catwalk	20/12/2006	Sky Three	Sex/Nudity	1
Property Developing Abroad	13/06/2006	Five	Crime (incite/encourage)	2
Question Time	11/01/2007	BBC1	Other	1
Quizmania	10/01/2007	ITV Play	Offensive Language	1
Radio Dawn 107.6FM	04/01/2007	Radio Dawn 107.6FM	Crime (incite/encourage)	1
Room 101	19/01/2007	BBC2	Animal Welfare	1
Scott Mills	24/01/2007	BBC Radio 1	Offensive Language	1
Seabiscuit	01/01/2007	BBC1	Offensive Language	1
Shameless	06/02/2007	Channel 4	Sex/Nudity	2
Shoot the Messenger	30/08/2006	BBC2	General Acceptance Standards	2
Sky News	23/01/2007	Sky	Due Impartiality/Bias	1
Sky News	20/01/2007	Sky News	General Acceptance Standards	2
Sky News	17/01/2007	Sky News	Due Impartiality/Bias	1
Sky News	17/01/2007	Sky News	General Acceptance Standards	1
Sky News	30/11/2006	Sky News	General Acceptance Standards	1
Sky News	18/01/2007	Sky News	General Acceptance Standards	2
Sky News	18/01/2007	Sky News	Inaccuracy/Misleading	1
Sky News	19/01/2007	Sky News	Other	1



Smile	21/01/2007	BBC2	General Acceptance Standards	1
Soccer AM	06/01/2007	Sky Sports 1	General Acceptance Standards	1
SportXXX	12/11/2006	SportXXX	Sex/Nudity	1
Street Crime UK	27/12/2006	Bravo	Offensive Language	1
Street Crime UK	28/12/2006	Bravo	Offensive Language	1
Terry Wogan	18/01/2007	BBC Radio 2	General Acceptance Standards	1
The Amazing Race	09/12/2006	Living TV	Offensive Language	1
The Bill	03/01/2007	ITV1	Inaccuracy/Misleading	1
The British Comedy Awards: Live	13/12/2006	ITV1	Animal Welfare	1
The Daily Show	18/01/2007	More 4	General Acceptance Standards	1
The Friday Night Project	19/01/2007	Channel 4	Dangerous Behaviour	1
The Friday Night Project	19/01/2007	Channel 4	General Acceptance Standards	3
The Friday Night Project	19/01/2007	Channel 4	Religious Offence	1
The Jeremy Kyle Show	04/01/2007	ITV1	Inaccuracy/Misleading	1
The Jeremy Kyle Show	19/01/2007	ITV1	Sex/Nudity	1
The Kev Lawrence Breakfast Show	16/01/2007	Hereward 102.7FM	Competitions	1
The Madness of King George	13/01/2007	Channel 4	Offensive Language	1
The Mint	04/10/2006	ITV1	Competitions	2
The New Paul O'Grady Show	22/01/2007	Channel 4	General Acceptance Standards	1
The Search	21/01/2007	Channel 4	General Acceptance Standards	1
The Secret Life of Brian	01/01/2007	Channel 4	Religious Offence	1
The Secret Policeman's Ball	01/01/2007	Channel 4	Offensive Language	1
The Simpsons	03/01/2007	Channel 4	Violence	1
The Simpsons	10/01/2007	Sky One	Substance Abuse	1
The Sunday Session	07/01/2007	Talksport	General Acceptance Standards	1
The Weakest Link	19/01/2007	BBC2	General Acceptance Standards	2
The Wright Stuff	18/01/2007	Five	General Acceptance Standards	1
Today	18/01/2007	BBC Radio 4	Due Impartiality/Bias	1
Toolan in the Morning	19/01/2007	Key 103	General Acceptance Standards	1
Toonattick	13/01/2007	ITV1	Sex/Nudity	1
Top Gear	04/02/2007	BBC2	Crime (incite/encourage)	1
Top Gear	28/01/2007	BBC2	Crime (incite/encourage)	1
Top Gear	28/01/2007	BBC2	Dangerous Behaviour	2
Top Gear	04/02/2007	BBC2	General Acceptance Standards	1
Top Gear	28/01/2007	BBC2	Crime (incite/encourage)	2
Torchwood	01/01/2007	BBC3	Sex/Nudity	1

Trial and Retribution	14/01/2007	ITV1	Animal Welfare	1
Trial and Retribution	15/01/2007	ITV1	Offensive Language	2
Trial and Retribution	11/01/2007	ITV1	General Acceptance Standards	1
Trial and Retribution	15/01/2007	ITV1	General Acceptance Standards	1
Trial and Retribution	15/01/2007	ITV1	Animal Welfare	1
Ultimate Overseas Property Seminar	07/09/2006	Overseas Property	Advertising	1
Waking the Dead	21/01/2007	BBC1	General Acceptance Standards	1
Waterloo Road	01/02/2007	BBC1	Sex/Nudity	1
Without A Trace	04/12/2006	Channel 4	Advertising	1
Witness	17/11/2006	Al Jazeera	General Acceptance Standards	1
World Championship Darts	28/12/2006	Sky Sports 1	General Acceptance Standards	1
You Are What You Eat: Gillian Moves In	16/01/2007	Channel 4	Crime (incite/encourage)	1
You Are What You Eat: Gillian Moves In	16/01/2007	Channel 4	Dangerous Behaviour	1
You Are What You Eat: Gillian Moves In	16/01/2007	Channel 4	General Acceptance Standards	3
You Are What You Eat: Gillian Moves In	23/01/2007	Channel 4	Crime (incite/encourage)	1
Your Country Needs You	13/01/2007	BBC1	General Acceptance Standards	3