

# **Ofcom Broadcast Bulletin**

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## Introduction

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

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

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

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

## Standards cases

### Notice of Sanction

#### Notice of Revocation

In the case of Ebak Ltd (TLCS975) in respect of its service Smart Shop TV

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##### Summary

Ofcom has decided, in accordance with Section 238 of the Communications Act 2003 (“the Act”), that the Licence held by Ebak Ltd (“the Licensee”) to provide the service known as Smart Shop TV (TLCS975) (“the Channel”) should be revoked for the following reasons.

Condition 29(3)(b) of the Licence states that Ofcom may revoke the Licence if there is a change in the nature, characteristics or control of the Licensee such that, if it fell to Ofcom to determine whether to award the Licence to the Licensee in the new circumstances, Ofcom would not award the Licence to the Licensee.

Ebak Ltd, the holder of the Smart Shop TV Licence has remained a dormant company since its incorporation in March 2005 and never traded. The holding company of the Licensee, Smart Shop TV Ltd, entered into voluntary liquidation on 17 March 2008. As Ebak Ltd never traded, Smart Shop TV Ltd, until it went into voluntary liquidation, funded the television broadcasting operations of the Licensee.

Given the Licensee was a dormant company and the Licensee’s holding company is now insolvent this effected a change in the nature, characteristics or control of the Licensee in such a way that Ofcom would not now award the Licence.

Ebak Ltd was notified on 20 March 2008 that Ofcom was minded to revoke the Licence. The Licensee failed to make any representations. Therefore Ofcom considered that it was appropriate to proceed with the revocation of the Licence with effect from 4 April 2008.

Prior to revocation, Ofcom had issued formal Directions to Ebak Ltd requiring it to, among other things:

- supply a full and complete response to the Broadcast Committee of Advertising Practice (“BCAP”) executive in respect of questions it had raised about advertising on Smart Shop TV;
- cease transmission of an advertisement that had previously been found in breach of the BCAP Television Advertising Standards Code (“the Advertising Code”) by the Advertising Standards Authority (“the ASA”); and
- supply a full and complete response to Ofcom in respect of information it had requested.

At the time of revocation, Ofcom had also invoked its fast-track sanctions procedure and was considering the imposition of statutory sanctions against Ebak Ltd -

including the possibility of revoking its licence. This was for repeated and serious breaches of the Advertising Code and breaches of its Licence conditions<sup>1</sup>.

## Background

Ebak Ltd became the holder of Ofcom Licence TLCS975 dated 28 September 2005 for the service known as Smart Shop TV, which was formerly known as Look4Less.

On 20 December 2007, the ASA referred Ebak Ltd to Ofcom for the consideration of the imposition of a statutory sanction<sup>2</sup> in respect of its service Smart Shop TV. The ASA had found the Licensee in breach of the Code on three separate occasions. These breaches were a result of the Licensee repeatedly failing to provide adequate substantiation to support the claims made in three long-form advertisements during the period March to September 2007. These breaches related to the published adjudications concerning the following advertisements:

- Genie Personal Sauna System (March 2007);
- Vibra Tone (March 2007); and
- Epil Stop and Spray (September 2007).

These adjudications are available at [www.asa.org.uk/asa/adjudications/broadcast/](http://www.asa.org.uk/asa/adjudications/broadcast/). The ASA also stated that the Licensee had failed to respond to enquiries by the BCAP Executive.

During January 2008, while investigating this case, Ofcom noted that the advertisement for Epil Stop and Spray, which had been subject to the ASA adjudication in September 2007, was being broadcast (on 29 and 30 January 2008 and 1,4 and 5 February 2008). Ofcom therefore issued a Direction to Ebak Ltd under the terms of its Licence requiring the Licensee:

- to cease transmission of the advertisement for Epil Stop and Spray product that had previously been found in breach of the Advertising Code by the ASA;
- not to transmit any advertising of the Epil Stop and Spray product until such time that the BCAP executive could confirm to Ofcom that such advertising complied with the terms of the Advertising Code;
- to supply a full and complete response to the BCAP executive in respect of questions it had raised about advertising on Smart Shop TV; and
- to supply a full and complete response to Ofcom in respect of information it had requested.

Further, Ebak Ltd was warned that failure to comply with a Direction issued by Ofcom is grounds for revocation of its Licence.

Smart Shop TV confirmed in writing that it had removed the advertising.

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<sup>1</sup> The duty to regulate broadcast advertising is now carried out by the Advertising Standards Authority ("ASA") and its industry arm, the Broadcast Committee of Advertising Practice ("BCAP"). The ASA makes adjudications against the TV and radio codes; BCAP supervises and reviews the codes. This arrangement operates on a formal footing agreed with Ofcom and sanctioned by Parliament. Ofcom has reserved its powers of statutory sanction and can impose sanctions on licensees following referrals of serious cases to Ofcom by the Director General of ASA. The Memorandum of Understanding between the parties can be found at [http://www.ofcom.org.uk/consult/condocs/reg\\_broad\\_ad/update/mou/](http://www.ofcom.org.uk/consult/condocs/reg_broad_ad/update/mou/).

<sup>2</sup> Under Section 27 of the memorandum of Understanding between Ofcom and the ASA, if a Licensee fails to comply or co-operate fully and promptly with decisions or reasonable requests made by the ASA, the ASA may refer the matter to Ofcom with a request that it consider the imposition of an appropriate sanction in the case of the Licensee. Such a referral was made by the ASA in relation to Smart Shop TV on 20 December 2007 in the light of the broadcaster's repeated poor compliance record.

At this time, it also came to Ofcom's attention that the holding company of Ebak Ltd, Smart Shop TV, would be entering voluntary liquidation on 17 March 2008. Further investigation revealed that Ebak Ltd, the holder of the Licence was in fact a dormant company, and as the Licensee's holding company was insolvent this effected a change in the nature, characteristics and control of the Licences that would have precluded the original grant of the Licence. Therefore, Ebak Ltd was notified by Ofcom on 20 March 2008 that this was a breach of Licence Condition 29(3)(b) and Ofcom were minded to revoke the Licence. Ebak Ltd was invited by Ofcom to make representations about this matter by 31 March 2008.

As no representations were made by Ebak Ltd, by the deadline, Ofcom duly revoked the Licence with effect from 4 April 2008.

### **Decision**

Notwithstanding the decision to revoke the Licence under Licence Condition 29(3)(b), Ofcom was separately investigating Licence breaches, breaches of the Advertising Code, and its general poor compliance record. Ofcom considered that the Licensee had seriously, repeatedly and recklessly breached the Code and the terms of its Licence. The Licensee was in the fast-track process for the consideration of the imposition of a statutory sanction. Consideration was to be given to the revocation of Ebak Ltd's licence in respect of the service, Smart Shop TV.

As the holding company of the Licensee has now been placed into voluntary liquidation and the Licence in respect of Smart Shop TV has been revoked, Ofcom has discontinued its consideration of a statutory sanction for this service. However, the serious and repeated nature of the Licensee's breaches of the Code and the terms of its Licence indicate to Ofcom that the Licensee (including the persons managing and/or controlling the Licensee) was unable to ensure compliance with the Conditions of the Licence and the relevant Codes.

Under the Act, Ofcom is entitled to refuse an application for a Television Licensable Content Service (TLCS) Licence where, amongst other things, Ofcom is satisfied that if the Licence were granted, the provision of the service would be likely to involve contraventions of the relevant Codes. Ofcom is required by the Broadcasting Acts (as amended) to do all it can do to secure that those applying for a broadcasting Licence, and those holding existing Licences, are not granted new Licences and/or do not continue to hold existing Licences if Ofcom is not satisfied that the Licensee is a fit and proper person or is otherwise disqualified by legislation from holding a broadcasting Licence.

Accordingly, Ofcom reserves the right to consider whether to grant broadcasting Licences in future to the sanctioned Licensee (and those involved in its management or control or otherwise responsible for it) as well as to consider whether such persons should continue to hold/be responsible for any other existing broadcast Licences.

## In Breach

### Place in the Sun

*Discovery Real Time, 14 October 2007, 16:00*

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#### Introduction

*A Place in the Sun* is an established long-running series, which assists people looking to find a property abroad. This series, broadcast on Discovery Real Time (“Discovery”), was sponsored by Atlas International, a company specialising in finding properties abroad. During this episode a red interactive prompt button, which was labelled “Free DVD”, remained on screen throughout the duration of the programme.

Ofcom received a complaint from a viewer who accessed the interactive prompt to find an advert for Atlas International, the sponsor of the programme. The complainant expressed concern that an advert for the sponsor was linked to the editorial content of the programme. Ofcom asked Discovery for comments under Rule 9.5 of the Code which says that there must be no promotional references to the sponsor in the content of the sponsored programme.

#### Response

Discovery was unable to supply a visual image of the interactive element available once the red button had been pressed. However the broadcaster confirmed that the red button with the text “Free DVD” was shown for the duration of the programme and that it took the viewer through to further information about the sponsor Atlas International.

Discovery stated that, although Atlas International was the sponsor of the programme, and further information on the service was available via the red button labelled “Free DVD”, the company had no involvement in the editorial content or scheduling of the programme. Furthermore, there was no direct promotional reference to the sponsor, nor any visual or verbal references to Atlas International, during the course of the programme.

Discovery accepted that there was a “minimal degree of integration of advertising and programme elements” and that the text “Free DVD” was unduly prominent. However, it argued that the editorial independence of the programme was not affected as there were no visual or verbal references to the sponsor and it considered that there was a clear separation between the programme and the sponsor.

#### Decision

The red interactive button with the text “Free DVD” formed part of the programme content. In this case, when the viewer activated the red button it took the viewer directly to promotional material for the sponsor Atlas International and not to any programme-related material, such as further information about the programme.

There is no absolute prohibition on making references to the sponsor during the programme being sponsored, provided that those references are not promotional and

are both editorially justified and incidental, as required under Rule 9.5 (previously 9.6). However, as advised in Bulletin 102 ([www.ofcom.org.uk/tv/obb/prog\\_cb/obb](http://www.ofcom.org.uk/tv/obb/prog_cb/obb)), broadcasters should be aware that any reference to a sponsor within a programme may create a higher presumption of editorial influence by the sponsor. Non-promotional references are more likely to be acceptable if they appear to occur naturally within the programme.

In this particular case a reference to the sponsor's product, that is a DVD, was featured during the entire duration of the programme. Further, on pressing the red button, viewers were immediately directed to promotional material for the sponsor. This was in breach of Rule 9.5. Even if the on screen reference to the sponsor's product had not been promotional, it was clearly neither editorially justified nor incidental.

Given that Atlas International was the sponsor of the programme, the inclusion within the programme of promotional references about the sponsor could reasonably have been perceived by the audience as an attempt by the sponsor to influence the programme editorially.

### **Breach of Rule 9.5**

## **Drivetime with Martin Malyon**

*Skyline FM, 25 February 2008 , 16:00*

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### **Introduction**

Skyline FM is a locally run community radio station serving listeners in Eastleigh, near Southampton. Ofcom received a complaint from a listener who claimed that an interview with his daughter broadcast live by the broadcaster was in breach of the fairness and privacy Rules in the Code.

### **Response**

The broadcaster was unable to provide Ofcom with a copy of the programme because its logging system had failed to record the station's output since the previous point at which it had been reset.

### **Decision**

In the absence of a recording we were unable to consider the complaint put forward in this case. It is a condition of Skyline FM's licence that recordings of output are retained for 42 days after transmission, and that they must provide Ofcom with any such material upon request.

Failure to supply this recording is a serious and significant breach of the broadcaster's licence. This will be held on record.

### **Breach of Licence Condition 11**

## Resolved

### **Suicidal Squirrels**

*AXN Europe, December 2007 and January 2008; various times before the 21:00 watershed*

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#### **Introduction**

This series of one minute cartoons was broadcast at various times during the day in December 2007 and January 2008 on AXN Europe, an entertainment service owned by Sony Pictures Television International (“Sony Pictures”). The channel is licensed by Ofcom but received in various countries across Eastern Europe.

The animation series was titled “*Suicidal Squirrels – 100 squirrels kill themselves*”. In summary it showed a cartoon squirrel committing suicide in various ways. For example in one episode the character deliberately painted stripes on itself before lying on a zebra crossing to be run over and killed. Its blood-spattered body was thrown onto the windscreen and the gore wiped away by windscreen wipers. In another episode, the squirrel got into a vehicle with a crash test dummy, crashed through the windscreen on impact and there was a slow motion sequence with the character’s skull smashing into a wall and spraying blood. In the title sequence there were shots of the squirrel putting its head into a noose and placing the barrel of a revolver against its head. We received a complaint from the regulator of television in Romania that the subject matter of this series was unsuitable for daytime broadcast when it was likely children would be watching.

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

#### **Response**

Sony Pictures confirmed to us that this animation was acquired for post-watershed transmission as an interstitial in place of advertising. It informed Ofcom that it was never the intention that these episodes should be broadcast pre-watershed but a scheduling mistake was made over the Christmas period.

Sony Television agreed that this series was unsuitable for children’s viewing and that it should not have been broadcast during the day, even though AXN’s target audience is over 18. It has now confirmed that *Suicidal Squirrels* has been removed from the AXN library and will not be transmitted again.

#### **Decision**

Sony Television came forward to us voluntarily and independently of the complaint with a full disclosure of the incidents and admitted these scheduling errors. As Sony Television recognised immediately when the compliance issues with this series were pointed out, the subject matter of this animation was not suitable for broadcast before the watershed. Although the character shown was a cartoon squirrel, the content was darkly comic and adult in tone with a sharp contrast between the macabre and violent death scenes and the light-hearted music which accompanied them. The series was a cartoon and therefore more likely to attract children. Despite the fact that this channel is targeted at an adult audience, it was broadcast on an unencrypted service during the day, and children could have come across the series unawares.

Ofcom welcomes the action that Sony Television has taken in contacting the Romanian regulator, assuring it that this series will not be broadcast in future, amending its compliance processes, and broadcasting charity advertisements in place of the slots originally scheduled for the series.

Ofcom therefore considers the matter resolved.

**Resolved**

## Wild and Crazy

*Zone Reality, 12 February 2008, 23:00*

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### Introduction

*Wild and Crazy* is an American series that uses clips of bizarre or comical behaviour and events. It is broadcast on Zone Reality, a channel which, according to the broadcaster, features “the extraordinary aspects of real life”. The item complained of in this programme was made up of Russian clips and was described by the broadcaster as seeking to “highlight the customs and behaviour of Russians that to Western eyes seem strange and at times shocking”.

In this episode a sequence of short film clips shot in a snow covered landscape in Russia showed young babies being briefly submerged in icy water several times and, in one case, a baby being thrown by its arms some ten feet or so into the water before being dunked. The clips were accompanied by commentary explaining that “*to Western eyes such activity seems insane, dangerous and completely irresponsible*” but that Russian mothers believed the activity prevented winter colds and benefited the baby.

A viewer expressed concern that the images of the baby being thrown a distance and dunked in ice cold water were upsetting and offensive, particularly as the baby was heard crying and appeared to be in distress. Ofcom asked the broadcaster for comments in relation to Rule 2.3 (material which may cause offence must be justified by the context).

### Response

The broadcaster told Ofcom that this film was not staged for the purposes of the programme but recorded a genuine Russian ritual. To criticise the clip of the baby being thrown some distance would therefore “fail to take into account any cultural differences in respect to child rearing practices between UK and Russia”. Given that the general context of the programme was clearly established at the beginning – that is, unusual events and practices from around the world – the broadcaster believed that programme overall complied with Rule 2.3 because the clips used were justified by context.

Zone Reality pointed to further examples of contextual information that supported the inclusion of the baby sequences: information to viewers warning them about the content (both before the item and within the item’s narration itself), the programme’s late start time, and the programmes scheduled before and afterwards. These all provided context to alert the viewer to the content. In addition, although the narration was tongue in cheek it did make clear the reason why the mothers carried out this activity, and it clearly stated the ritual might seem “insane” and “dangerous” and “completely irresponsible” to Western eyes. Further, the baby who had been thrown some distance into the icy pond was shown safe and unharmed in the arms of its mother after the incident. For the most part the images were, therefore, presented with a degree of contextualising explanation, reassurance and cautionary comment.

However, the broadcaster conceded that, with the benefit of hindsight, the particular sequence of the baby being thrown did have the potential to cause offence and was not fully justified by the context, given that that this activity was not explained as being part of the ritual and was accompanied by light-hearted narration.

## **Decision**

Rule 2.3 states that in applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by context. Context includes, but is not limited to: the editorial content of the programme, the audience expectation, and the degree of harm and offence likely to be caused.

The commentary did provide some editorial context and Ofcom noted that the broadcaster had sought to provide further advice to viewers by including warnings at the beginning of the programme and during the item itself that the material would “shock” viewers and stating that viewers should not attempt to recreate the “stunts” in the programme. However, in Ofcom’s view, the general context – a light-hearted ‘clip-show’ – and the information offered did not fully justify broadcasting the most alarming and upsetting of the scenes showing a baby being thrown some distance.

Ofcom notes that the broadcaster acknowledges that this particular sequence had the potential to cause offence. We also note the broadcaster’s acknowledgement that this clip was not sufficiently justified by explanatory and cautionary material, and had been subsequently marked as unsuitable for broadcast in the context of a programme like *Wild and Crazy*. Ofcom therefore considers this case resolved.

## **Resolved**

## **Sky News**

*Sky News, 24 February 2008, 20:23*

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### **Introduction**

A news report on Sky News featured an item about the Academy Awards ('the Oscars'). This item was sponsored by Givenchy. A viewer queried whether segments within news programmes, other than weather forecasts, could be sponsored.

Rule 9.1 of the Broadcasting Code prohibits the sponsorship of news and current affairs programmes on television. We therefore requested Sky's comments.

### **Response**

Sky said that Givenchy had sponsored Sky News' coverage of the Oscars for the last four years. It said that the item itself was neither news nor current affairs, but rather "a short specialist report" akin to a sports or a weather report.

However, whilst Sky did consider that in principle the item could be sponsored, it agreed that more could have been done to separate the item from the main news bulletin. It said that, due to the constantly changing broadcast environment implicit in the operation of a rolling news channel, Sky News' usual rules regarding such items were not implemented on this occasion. Sky advised that Sky News will ensure that in future all short specialist reports are sufficiently separate from news or current affairs programmes.

### **Decision**

The Communications Act 2003 requires that "unsuitable sponsorship" is prevented and "that news included in television and radio services is presented with due impartiality..." and "...is reported with due accuracy." Sponsorship must not compromise these requirements. Further and importantly, European legislation, the Television without Frontiers Directive, states that "News and current affairs programmes may not be sponsored" (Article 17).

Nevertheless, short specialist reports following a news programme may be sponsored. Whilst these tend to be sport, travel, and weather reports, Ofcom accepts that, in principle and depending on the context, an entertainment report may also be sponsored. However, to avoid the impression that the main news is sponsored, the sponsored report must be clearly separated from the news programme, for example by end credits for the news programme, a channel ident, or by a commercial break.

In this particular case, Ofcom considered that the item was not clearly separated, with the result that it appeared to be an integral part of the main news programme. For example, the sponsorship credits for Givenchy came immediately after a news item regarding Hillary Clinton and the Sky News logo was prominently displayed. However, in view of Sky's recognition of its error on this occasion and assurances regarding future specialist reports, we consider the matter resolved.

### **Resolved**

## Fairness and Privacy Cases

### Not Upheld

#### Complaint by Mrs Hazel Jacobson and Mr Brian Bews

*At War With Next Door, Five, 7 December 2006*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment by Mrs Hazel Jacobson and Mr Brian Bews.

This programme looked at difficult relationships between neighbours and attempted to resolve their problems. The programme featured two families: Mrs Hazel Jacobson, her partner Mr Brian Bews and their children; and Mr James Gray, his partner Ms Zoey Mortimer and their children. Colonel Bob Stewart, a former UN negotiator featured in the programme attempting to negotiate an accommodation between them. To demonstrate the breakdown of the relationship between the families, the programme included a number of disputed matters and allegations made about each other.

Mrs Jacobson and Mr Bews complained that they were treated unfairly in the programme as broadcast in that the programme misrepresented their past actions. They also complained that Colonel Stewart referred to Mrs Jacobson as a “bitch” and that assurances given to them by the programme makers concerning the broadcast of unsubstantiated allegations about them were not adhered to. Finally Mrs Jacobson and Mr Bews complained that none of their comments made after their previewing of the programme were taken into account in the broadcast programme

In summary, Ofcom found the following:

- the programme accurately presented Mrs Jacobson and Mr Bews and that it was not edited in a way that resulted unfairness to them;
- the inclusion of Colonel Stewart’s comment *“I think she was being rather a bitch”* was clearly presented as his personal view, borne of frustration with the negotiation process. In Ofcom’s view this would not have affected viewers’ understanding of Mrs Jacobson when taken within the context of the programme as a whole and did not therefore result in unfairness;
- given Mrs Jacobson’s and Mr Bews’ specific request that the reference to Mr Gray having made a serious allegation should remain in the programme, and in light of Mr Gray’s apology for the allegation, Ofcom found that the inclusion of this material in context did not result in unfairness;
- the programme makers took reasonable care to ensure that complainants’ concerns were considered and acted upon where appropriate, including changes to the final programme. Ofcom therefore found no unfairness to the complainants.

#### Introduction

On 7 December 2006, Five broadcast an edition of *At War With Next Door*, a series that looked at difficult relationships between neighbours and attempted to resolve the

problems that existed. This particular edition featured two neighbouring families: Mrs Hazel Jacobson, her partner Mr Brian Bews and their children; and Mr James Gray, his partner Ms Zoey Mortimer and their children. The programme followed the format of this series by introducing the two families to a former United Nations negotiator, Colonel Bob Stewart. In the programme, Colonel Stewart employed the assistance of his former army associate Mr Martin McGowen Scanlon to try to find out the reason for the estrangement between the two families, while Colonel Stewart tried to negotiate a way for the families to live next door to each other without ill feeling.

To demonstrate the breakdown of the relationship between the two families, the programme included a number of matters in which they were in dispute and allegations that they had made about each other. For instance, the programme included: a dispute about a children's playhouse in Mrs Jacobson's and Mr Bews' garden that overlooked Mr Gray's property; a number of allegations against both sides in which they accused each other of aggressive and anti-social behaviour; and suggestions that Mr Gray had made allegations against Mr Bews that were "*too libellous to broadcast*".

Both Mrs Jacobson and Mr Bews complained that they had been treated unfairly in the programme as broadcast.

## **The Complaint**

### **Mrs Jacobson's and Mr Bews' case**

In summary, Mrs Jacobson and Mr Bews complained that they were treated unfairly in the programme as broadcast in that:

- a) The editing of the programme unfairly misrepresented their past actions in relation to their neighbours and the contributions they made to the programme. Specifically, Mrs Jacobson and Mr Bews complained that:
  - i) The programme did not show Mrs Jacobson clarifying a comment that she made indicating that she would not be prepared to change the location of the family's playhouse. This was despite the fact that the programme makers were aware that she had tried to relocate the playhouse to the bottom of the garden but had moved it back closer to the house, following continued harassment by her neighbours' children. Also, moving the playhouse further away from the fence adjoining her neighbours' property was not feasible because of septic tanks on the other side of the garden.
  - ii) The programme gave the impression that in making the comment "just let kids be kids" Mrs Jacobson was referring to her own children rather than to her neighbours' children.
  - iii) The programme presented Mrs Jacobson as "uncooperative" and "not open to making any resolution whatsoever" despite the fact that the programme makers were given evidence to the contrary.
  - iv) Mrs Jacobson and Mr Bews had been told that the programme would be entitled "The Negotiator" (rather than *At War With Next Door*) and were led to believe that the main focus of the programme would be negotiation. They said that the negotiation scene was heavily edited and did not show the "truth" of the situation. This unfairly presented Mrs Jacobson as "a bully"

who insisted that the negotiation continued even after her neighbours had decided to end it.

- v) The programme edited out Mr Bews' explanation of why he had said that he would like to see Mr Gray "behind bars". Mr Bews indicated that this was because of the fear that Mr Gray had induced in Mr Bews' son by making "slit throat gestures" at him and taking his photograph.
- vi) The programme edited out pertinent information from two witnesses. Specifically, Mrs Jacobson and Mr Bews said that in the programme:
- a comment made by a local policeman, PC Humphries, who said that "there may well be things on both sides that are being done, however, there is evidence against James Gray". Mrs Jacobson and Mr Bews believed that this comment gave the inference that there was no similar evidence against them; and
  - an explanation from Ms Gill Brewster of West Kent Mediation about why Mrs Jacobson had refused to take part in mediation. Mrs Jacobson indicated that this was because the incidents with her neighbour had become the subject of a police investigation and were therefore beyond the point of mediation.
- vii) The end of the version of the programme that was shown to Mrs Jacobson and Mr Bews prior to broadcast included a "full apology" from Mr Gray in which "he apologised for [his] harassment [of his neighbours], [his having made] false allegations and acknowledged that this had all started when he had hit his partner, Ms Mortimer", and she had called Mrs Jacobson, "for help". It also included Ms Mortimer saying to Mrs Jacobson that "I did things to you as well". However, in the broadcast version of the programme this was edited in a way that resulted in "glossing over the apology".
- viii) The section in which Colonel Stewart was seeking to secure an apology from Mr Gray unfairly made Mrs Jacobson "look like a hard-nosed woman upping the demands [as to the extent of the apology]".
- b) Mrs Jacobson and Mr Bews said that Colonel Stewart unfairly referred to Mrs Jacobson in the programme as "a bitch".
- c) Mrs Jacobson and Mr Bews said that they were assured by the programme makers that "no slander could be aired" and were led to believe that "the truth would emerge". Yet incorrect or unsubstantiated allegations made by Mr Gray about them were broadcast in the programme. In particular, the allegations included:
- i) That the argument was started by Mrs Jacobson hanging a washing line on a weak fence post adjoining the two properties. Mrs Jacobson indicated that the programme makers had evidence that this line had been in place some months before Mr Gray moved in.
  - ii) That Mrs Jacobson had attacked Mr Gray's six year old daughter. Mrs Jacobson said that no police report to this effect was ever made and that given the presence of CCTV cameras on Mr Gray's property, he would have had evidence for such a report if this attack had taken place.

- iii) That Mrs Jacobson's and Mr Bews' family had flags "up all over the place" and Mrs Jacobson had referred to Mr Gray as "English white trash". Mrs Jacobson denied these claims and indicated that more research on the part of the production team would have shown these statements to be untrue.
  - iv) Mr Bews, who is a teacher, noted that Mr Gray had made "career-ending slanderous remarks" about him and that, while the production company had, as promised, not broadcast these remarks, the way in which it had dealt with them was unfair.
- d) Mrs Jacobson and Mr Bews were shown a version of the programme prior to broadcast and told by the producers that the issues that they had raised "would be addressed and taken care of". However, despite submitting two pages of objections regarding "inaccuracies and omissions" to the producer after they had viewed this version of the programme, they were not shown the final re-edited version of the programme prior to broadcast and, when they viewed the programme as it was broadcast they found that none of their concerns had been addressed in this final broadcast version of the programme and that it had been re-edited in a way to misrepresent them even further.

### **Five's case**

In summary, and in response to Mrs Jacobson's and Mr Bews' complaint of unfair treatment, Five said that:

- a) In response to the particular points raised under this Head of complaint, Five made the following comments:
  - i) Regarding the relocation of the playhouse. Five said that Colonel Stewart was prompted to ask the specific question as to why the playhouse could not be moved by the programme's producer. The producer explained that viewers might wonder why Mrs Jacobson did not move the playhouse if its current location was the only location from which Mrs Jacobson's children could see Mr Gray's gestures. Colonel Stewart asked Mrs Jacobson the question and her immediate response, as shown in the programme, was "*No – shouldn't have to. I'm not gonna let him bully my family into doing things to suit him*". Five said that it was clear from this comment that her primary motivation for her refusal to move the playhouse elsewhere was her view that she shouldn't have to do so simply to avoid conflict with Mr Gray.

Later in the programme, Five said that Colonel Stewart again asked Mrs *Jacobson* whether she would consider moving the playhouse to ensure gestures from the other side of the fence could not be seen. Mrs Jacobson replied: "No", to which Colonel Stewart expressed his opinion that she was being "pretty inflexible". The background information was therefore not included in the programme because it was not felt by the programme makers to be relevant to the primary issue of whether Mrs Jacobson would even consider moving the playhouse; regardless of the practicalities of doing so and notwithstanding its previous location.

Furthermore, the version of the programme previewed by Mrs Jacobson and Mr Bews on 6 July 2006 did not contain any of the background information and was substantially the same as the broadcast version of the programme. Neither Mrs Jacobson nor Mr Bews raised this as an issue in any of their correspondence or conversations with the programme makers

or Five prior to transmission of the programme. It was therefore reasonable for the programme makers and Five to believe Mrs Jacobson and Mr Bews did not feel this sequence was edited in a way that was unfair to them.

- ii) Five said that it could not find the comment “Let kids be kids” in the programme.
- iii) Five rejected Mrs Jacobson’s assertion that she was portrayed as “uncooperative” and “not open to making any resolution whatsoever”. Five said that the following scenes gave viewers a good understanding of the situation and of Mrs Jacobson’s position:
  - Background information made it clear that both families had formerly enjoyed good relations and that Ms Zoey Mortimer considered Mrs Jacobson to be a confidante. This was followed by a description, from Mrs Jacobson’s point of view, of how relations deteriorated and her allegations of Mr Gray’s conduct towards her and her family;
  - The programme’s commentary described the involvement of the police, social services, and the council;
  - Mrs Jacobson expressed her view that the situation had “reached the point of unrecoverable” with Mr Gray;
  - A comment from Ms Gill Brewster of Sevenoaks District Council Mediation Service that it was Mrs Jacobson who first enquired about mediation between the families;
  - Mrs Jacobson indicating that, “*as [she’s] said from the start*”, she would be prepared to meet with Ms Mortimer and possibly with Mr Gray, despite Mr Bews’ refusal to meet him;
  - The comment that she was “*not in it to be confrontational with Zoey*”; and
  - After some persuasion, she agreed to meet with Mr Gray.

Five said that none of the scenes referred to above could be viewed as portraying Mrs Jacobson as “uncooperative” or not open to reaching a resolution. On the contrary, Five said that she was shown to have tried to have resolved matters in the past and, despite her feelings about Mr Gray, and Mr Bews’ absolute refusal to become involved, she had agreed to meet Mr Gray. Five said that given her almost immediate change of heart it did not feel that the programme unfairly portrayed her in the manner about which she has complained.

Later in the programme, Five said that Mrs Jacobson was shown to be willing to try other ways of resolving the tension. When the main negotiation failed, Colonel Stewart raised the idea of using Ms Mortimer as a way of finding some common ground. Mrs Jacobson was shown to welcome this idea and told Colonel Stewart that she liked it because it gave Ms Mortimer some control over the situation. Mrs Jacobson agreed she would meet Ms Mortimer “any day”, an attitude which could not be described as uncooperative or unwilling to find a resolution.

Five said that as the programme drew to a conclusion, Mrs Jacobson was seen initially to refuse Colonel Stewart’s suggestions for compromise. Almost immediately afterwards, as Colonel Stewart was wondering where to go next, Mrs Jacobson was shown to offer a final “olive branch” by offering to accept Mr Gray’s apology on behalf of Mr Bews. Prior to the scene where

Mr Gray apologised, Colonel Stewart was seen explaining to Mrs Jacobson that *“any resolution requires people to be, to come to the table with a, a slight willingness to compromise”* and he asked her to compromise, to which she agreed.

Furthermore, the programme was viewed by both Mrs Jacobson and Mr Bews on 6 July 2006. Neither raised any issue over the manner in which her approach to the situation was portrayed. Five said it was therefore reasonable for the programme makers to believe they did not feel the programme’s portrayal of Mrs Jacobson’s attitude was unfair to her.

- iv) Regarding the title of the programme and portrayal of Mrs Jacobson, Five said that Mrs Jacobson and Mr Bews were recruited to the programme through the *Neighbours From Hell* website, a site to which Mrs Jacobson was a regular contributor. The contributor agreements signed by the complainants showed the title *“The Negotiator”* as the current working title. Five argued that it was therefore apparent to the contributors that the title of the programme may change, as was subsequently the case, and that change did not reasonably affect their consent to participate, nor cause material unfairness to them.

Five said that at no point was Mrs Jacobson portrayed as a “bully” and there was no suggestion that Mrs Jacobson “insisted that the negotiation continue even after her neighbours had decided to end it”. It was clear from the programme that it was Ms Mortimer and Colonel Stewart who persuaded Mr Gray and Mrs Jacobson to return to the table; the programme’s commentary noted that *“The Colonel gets the warring parties back into the room”*. Nothing in the scene could have been taken to suggest Mrs Jacobson was a “bully” or that she was trying to continue the negotiation in the absence of her neighbours’ agreement.

Furthermore, Five said that the programme was viewed by Mrs Jacobson and Mr Bews on 6 July 2006. Neither raised any issue over the manner in which the negotiation scene was portrayed or edited. It was therefore reasonable for Five and the programme makers to believe they did not feel the programme’s portrayal of the negotiation scene was unfair to Mrs Jacobson, or that the programme differed substantially from the nature of the programme they had been asked to participate in.

- v) Regarding the programme’s portrayal of Mr Bews’ feelings towards Mr Gray and the reasons for them, Five argued that these were clear to viewers. Mr Bews accepted that he would like to see Mr Gray “behind bars” but complained that the programme did not include his reasons for doing so. In Five’s view, viewers would have been acutely aware that his reasons for expressing this point of view were Mr Gray’s actions towards his, Mr Bews’, children. It was not, therefore, unfair to Mr Gray for those reasons not to have been repeated or re-explained at the point in the programme at which his desire to see Mr Gray “behind bars” was expressed.

This section of the programme remained unedited following the complainant’s viewing of the programme on 6 July 2006 and no objection was raised to it at any stage prior to transmission. Five therefore argued that it was reasonable for the programme makers to believe Mr Bews did not find this scene unfair to him.

vi) Regarding the editing of material, Five replied to the two points under this head of complaint as follows:

- In relation to the comment by PC Humphries which was not included in the broadcast programme, Five argues that the “rough cut” of the programme Mrs Jacobson and Mr Bews viewed on 6 July 2006 contained a comment from PC Humphries regarding a specific incident. Martin McGowan Scanlon, Colonel Stewart’s “deputy” negotiator, asked him why only Mr Gray received a caution following that incident, and PC Humphries replied that “*the evidence against Gray was far greater.*” However, PC Humphries had earlier stated in relation to the animosity between the parties as a whole that he thought that both parties were equally to blame. The decision was therefore taken to focus on the general situation as a whole, rather than a single incident. In this context it would have been unfair to Mr Gray to suggest that overall, there was more evidence against him.

Furthermore, Five said that earlier in the programme the commentary noted that “*Jamie [Gray] was... arrested, although all charges were dropped*”. Viewers were therefore aware that Mr Gray’s actions had previously caused the police to have sufficient grounds to arrest him, alerting them to the potential seriousness of Mr Gray’s past behaviour, of which Mrs Jacobson and Mr Bews were the obvious victims. The decision not to include PC Humphries’ comment in the broadcast version of the programme did not, therefore, cause any unfairness to the complainants because it was clear that Mr Gray’s previous conduct had led to him being arrested, a far more serious allegation than any of those being made about the complainants. In addition, the rough cut of the programme viewed by Mrs Jacobson and Mr Bews contained a comment from their landlord that Mr Gray’s comment to him (the landlord) to move to alternative accommodation “*would seem to give more credibility to [Mr Gray’s] story*”. In order to ensure fairness to Mrs Jacobson and Mr Bews the decision was taken to remove this sequence.

- In relation to the comment by Ms Brewster of the West Kent Mediation Service, Five said that it was clear in the programme that Mrs Jacobson made the first call made to West Kent Mediation Service, having been referred by Sevenoaks District Council. The programme’s commentary went on to explain that Mrs Jacobson later refused to be involved in mediation “because of police involvement”. This is not disputed by Mrs Jacobson and she confirmed it in her email to Richard Watsham on 16 May 2006. Five said that any further clarification from Ms Brewster was therefore unnecessary and its absence did not result in unfairness to Mrs Jacobson.

vii) Regarding the apology from Mr Gray, Five said that the programme contained a full and clear apology from Mr Gray for all the false allegations that he made. Although there was some confusion as to whether the apology was genuine or not, moments later, Mrs Jacobson was shown describing Colonel Stewart as the “man of the moment” and expressing her view that he had achieved “a better ending to this than [she] thought [he] could do”. Mr Bews described himself as being “stunned” by the agreement. A bottle of champagne was shown on the table as Mrs Jacobson and Mr Bews prepared to celebrate. Five said that from these scenes, viewers

would have understood that Mr Gray's apology had been to each allegation which had been made the day before, and that Mrs Jacobson and Mr Bews had accepted it and were pleased with the result.

Five said that it did not agree that the programme "glossed over" Mr Gray's apology, nor did it see how the absence of any reference to the issue of whether Mr Gray had slapped his wife resulted in any unfairness to Mrs Jacobson or Mr Bews. Mr Gray made a clear apology to the complainants which they accepted and this was clear to viewers of the programme.

- viii) Regarding the editing of the apology from Mr Gray, Five said that Mrs Jacobson did not suggest that the section was edited to make her "look like a hard-nosed woman upping the demands". Five noted that her actual complaint was that "Stewart made it appear that I had only asked for an apology about two comments, and then made me look like a hard nosed woman upping the demands", that is, that Colonel Stewart's comments about her were unfair to her.

Five said that the sequence of events prior to the scene Mrs Jacobson complained about was as follows. After the failed face-to-face negotiation, Colonel Stewart returned to the Gray household to discuss his idea of creating "Zoey's list" of things which might help to calm the situation. He then went to the Jacobson/Bews house to tell them of his plan, which they said they liked. The following morning Colonel Stewart returned to the Gray house and helped Ms Mortimer to draw up the list. He also raised the possibility of Mr Gray apologising to Mr Bews for the "slandorous" remark he made the previous day during the negotiation, to which Mr Gray agreed. Colonel Stewart took "Zoey's list" to Mrs Jacobson and Mr Bews, along with the offer of Mr Gray's apology. As they went through the list, it became clear that Mrs Jacobson and Mr Bews were not prepared to agree to all of the points on it.

Colonel Stewart left the house and was followed a few moments later by Mrs Jacobson who offered to accept Mr Gray's apology (for the "slandorous" remark) on her partner's behalf and to withdraw her complaint to the police. Colonel Stewart thanked her and agreed to talk to Mr Gray. Colonel Stewart spoke to Mr Gray and persuaded him to apologise on two points. Mrs Jacobson was shown refusing to accept an apology on two matters alone, despite previously having told Colonel Stewart she would be willing to accept an apology on Mr Bews' behalf. Colonel Stewart explained he could only offer an apology on two matters, and that he was under the impression that there were only two matters he needed to ask Mr Gray to apologise on. Colonel Stewart returned to see Mr Gray and Ms Mortimer. Mr Gray suggested Mrs Jacobson was "holding [him] to ransom" but Colonel Stewart was shown disagreeing whilst admitting Mrs Jacobson was asking for more than he expected. Colonel Stewart returned to Mrs Jacobson and explained that she would need to offer compromise too. In response, she readily agreed to state that she was only aware of one occasion on which Mr Gray had slapped Ms Mortimer. The parties were then reunited and the negotiation continued.

Five said that it did not accept that Colonel Stewart's behaviour during this sequence, or the programme's portrayal of Mrs Jacobson, could be described as unfairly making her "look like a hard-nosed woman upping the demands". The sequence was an accurate representation of the events

which occurred and its depiction did not cause any unfairness to Mrs Jacobson. Five argued that this section of the programme remained unedited following the complainant's viewing of the programme on 6 July 2006 and no objection was raised to it at any stage prior to transmission. It was therefore reasonable for Five to believe Mrs Jacobson did not find this scene unfair to her.

- b) Five said that the comment "bitch" was made by Colonel Stewart after two scenes; the first in which Mrs Jacobson answered his enquiry as to whether she would consider moving the playhouse, the second in which she agreed to meet her neighbours face to face. Colonel Stewart's comment that Mrs Jacobson was "being rather a bitch" was his personally held opinion regarding her initial refusal to meet with Mr Gray and what he described as "ultimate negotiation gameplay".
- c) Five said that the first part of the programme contained a number of allegations, from both sides about their neighbour's conduct. The allegations were included to demonstrate the level of animosity between the parties. Five argues that the nature of each allegation was such that it would be virtually impossible to prove its truth or otherwise. Because of the nature of some of the allegations, Five said that both parties were shown a "rough cut" of the programme in advance of transmission to ensure that the programme was factually accurate and that the contributors were given an opportunity to respond to the allegations where appropriate. The version of the programme previewed by the complainants was subsequently edited to address concerns where necessary. The allegations were included to demonstrate the nature of the dispute between the parties, not to assert the truth of them. It would not have been possible to include all of the views expressed by each contributor, or each and every single fact or allegation surrounding an issue, in full. Allegations were made on each side and appropriate denials were included. Taken as a whole, and in the context of the whole programme, the allegations did not result in unfairness to Mrs Jacobson or materially affect viewers' opinion of her in an unfair way.
  - i) Regarding the portrayal of the start of the argument between the two families, Five said that it was clear from the programme that relations soured after Ms Mortimer told Mrs Jacobson that Mr Gray had hit her and showed her the bruises. The version of the programme previewed by Mrs Jacobson on 6 July 2006 contained the further allegation that Ms Jacobson knew the fence post was weak and that she deliberately pulled the fence over. In subsequent correspondence with the programme makers, Mrs Jacobson claimed that the washing line was up before Mr Gray and his family moved in, and that Mr Gray had weakened the post by pushing on it. The commentary was therefore changed to remove the suggestion that Mrs Jacobson knew the fence post was weak, or that she deliberately pulled the fence over. This was communicated to Mrs Jacobson in a letter from the programme makers dated 1 August 2006.
  - ii) Five said that the programme did not contain any allegation that Mrs Jacobson had attacked Mr Gray's six year old daughter. Mr Gray's allegation that she had sworn at his three year old daughter was included in the programme. In a telephone conversation between Mrs Jacobson and the programme makers, she confirmed to them that she wanted this allegation to remain in the programme to demonstrate, in her view, how unreasonable Mr Gray was. It was also agreed that the allegation would be followed by commentary that would make it clear that Mrs Jacobson denied

that she ever shouted at the children. Five said that the programme reflected this agreement.

- iii) Five said that Mr Gray's response to Colonel Stewart's enquiry about how many Canadian flags flew in the complainants' garden was that "they have them all over the place normally". It was clear that these flags did not offend Mr Gray. Five said that the programme makers confirmed that there were two very large Canadian flags on display at the property during filming, and that they were extremely prominent and visible from a variety of positions so as to give the effect of being "all over the place". Five said that it did not consider that an allegation of displaying flags required further clarification or comment from Mrs Jacobson or Mr Bews.

Five said that the "English white trash" allegation was made during the negotiation scene. Mrs Jacobson raised the issue of the Canadian flag by removing her jumper and asking whether the Canadian T-shirt she wore underneath it offended him. Five said that given that this allegation was made during the face-to-face negotiation, over an issue that Mrs Jacobson had raised, and that she had an opportunity to respond to it there and then, the programme makers did not feel it was unfair to Mrs Jacobson for the comment to remain in the programme. The point of the negotiation was not to go into a detailed analysis of each and every point of fact in dispute. Five said that it was for each side to air their grievances in an attempt to find a resolution.

Five noted that Mr Bews complained that the programme alleged that Mrs Jacobson had a police caution for calling Mr Gray "white trash". Five said that the programme did not contain this allegation and that Mrs Jacobson did not raise any objection to either of these allegations during her correspondence with the programme makers following the previewing.

- iv) Regarding the remarks made about Mr Bews by Mr Gray during filming, Five said that due to the seriousness of the serious nature of the allegation made by Mr Gray during the negotiation, Five and the programme makers decided to discuss the inclusion of the allegation in the programme with Mr Bews and Mrs Jacobson. Five said that Mr Bews suggested that:

- that the sequence should be removed in its entirety, or
- that the allegations themselves should be removed, whilst the fact of the slanderous allegations being made would be left in, or
- that the serious allegation would remain in the programme.

Five said that there was no hint in the programme of what Mr Gray's comments were. They were treated seriously in the programme it was noted that Mrs Jacobson considered them to be so serious she considered calling the police. The programme commentary stated the accusation was "wild" and Colonel Stewart pointed out the allegation was slanderous in his meeting with Mr Gray the following morning.

Furthermore, Five said that it was clear from Mr Gray's apology at the end of the programme that he retracted the allegation he had made about Mr Bews. Also in his consent letter which permitted the fact of the allegation to be broadcast Mr Bews expressly stated that he accepted that Mr Gray had apologised for this comment and had retracted it in its entirety.

Given Mr Gray and Mrs Jacobson's specific request for the fact of the making of the slanderous allegation to remain in the programme Five did not accept its inclusion was unfair to them.

- d) Regarding the decision to provide Mrs Jacobson and Mr Bews with an opportunity to view the programme prior to broadcast, Five said that this unusual decision was taken after a "rough cut" had been edited. The programme makers were particularly concerned to ensure they were aware of each of the allegations which were going to be made and to provide an opportunity to respond to them if appropriate.

Five said that following the viewing the complainants agreed to sign a letter confirming they had watched the programme and consented for it to be broadcast. Over the following four days Mrs Jacobson sent a series of emails to Five outlining her concerns about the programme. Five discussed Mrs Jacobson's concerns, as identified in her emails to the programme makers. It was agreed that the programme would be edited in several respects to address the points she had raised where appropriate. The programme makers subsequently telephoned and wrote to Mrs Jacobson to outline how her concerns would be addressed. Mrs Jacobson indicated that she felt that few of her concerns had been addressed and a further response was sent from Five on 8 September 2006 which explained that the nature of the programme was not to find the truth or otherwise of each and every allegation made. The letter pointed out that Five could not include each and every view and fact expressed during filming, and that the programme would only be unfair to her if footage was excluded which would have materially affected viewers' opinions of her in an unfair way.

Five said that during the post-previewing correspondence it became clear that Mrs Jacobson could not accept that there might be another side to her version of events. Five said that it explained its responsibility to ensure fairness to both parties on numerous occasions to her. During the course of research for the programme it was apparent that independent third parties such as the police and their landlord were of the view that both parties were equally to blame. Five said that it understood that the police have subsequently decided not to bring any charges.

Five said that several edits were made to the programme to address the concerns raised by Mrs Jacobson and Mr Bews. Five argued that the purpose of the programme was never to exonerate one party at the expense of the other. It was made clear to Mrs Jacobson and Mr Bews that both parties would give their side of the story, air their grievances during a controlled negotiation process, and seek to find a resolution to their situation with the assistance of Colonel Stewart. The programme would not and could not seek to establish the truth or otherwise of each and every allegation; the important point was to try and find a way forward.

### **Mrs Jacobson's and Mr Bews' comments in response**

Mrs Jacobson and Mr Bews responded to statements made by members of the production team, provided as part of Five's statement thereby providing background to the points and issues raised in their complaint.

## Five's final statement in response

Five submitted its final statement in response to Mrs Jacobson's and Mr Bews' comments. In summary, Five noted that the complainants did not directly challenge the contents of Five's written statement, but instead commented on the production team's witness statements. Five's response to the complaint itself was dealt with in its statement summarised above.

## Decision

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

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

This complaint was considered by Ofcom's Executive Fairness Group. In reaching a decision it considered a recording and transcript of the programme and all the submissions from both parties.

Ofcom found the following:

- a) Ofcom first considered Mrs Jacobson's and Mr Bews' complaint that they were treated unfairly in the programme as broadcast in that it misrepresented their past actions in relation to their neighbours and the contributions that they made to the programme.

In considering this element of Mrs Jacobson's and Mr Bews' complaint, Ofcom took account of Rule 7.1 of the Code which states that broadcasters must avoid unjust or unfair treatment to individuals and organisations in programmes. Ofcom took account of Practice 7.6 of the Code which states that when a programme is edited, contributions should be presented fairly and Practice 7.9 which states that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation. Taking these Practices into account, Ofcom first addressed separately each of Mrs Jacobson's and Mr Bews' specific points of complaint under this head concerning the programme's treatment of them.

- i) Ofcom considered Mrs Jacobson's and Mr Bews' complaint that the programme did not show Mrs Jacobson clarifying her comments relating to the location of the family's playhouse.

Ofcom noted from the unedited footage that Colonel Stewart specifically asked Mrs Jacobson why the playhouse in her garden could not be moved to a place in the garden where Mr Gray's alleged gestures could not be seen by her children. Mrs Jacobson's response, which was included in the programme as broadcast, was:

**Colonel Stewart:** *"If, err, this is the only place where your children could see the gestures, err, have you considered moving this, moving this bit?"*

**Mrs Jacobson:** *"No – shouldn't have to. I'm not gonna let him bully my family into doing things to suit him".*

Ofcom also noted from Five's statement that although the programme makers were aware of the septic tanks on the other side of the garden (which would present potential difficulties in relocating the playhouse), the point of Colonel Stewart's question was to find out if Mrs Jacobson would be willing to relocate the playhouse, not the reason why she could not. Ofcom also noted that later in the programme, Colonel Stewart again asked Mrs Jacobson if she would consider relocating the playhouse to another part of the garden to which she replied that she would not.

**Colonel Stewart:** *"This platform, Hazel. Here. If it wasn't there, gestures wouldn't be seen by the kids. Would you consider moving that platform?"*

**Mrs Jacobson:** *"No."*

By examining the unedited footage of Colonel Stewart's and Mrs Jacobson's discussion about the playhouse, Ofcom took the view that Mrs Jacobson's primary motivation for not moving the playhouse to another part of the garden was that she believed that she should not have to do so in order to avoid confrontation from Mr Gray. Ofcom also noted that Mrs Jacobson and Mr Bews did not raise any concern with the programme makers about the absence of background information in the version of the programme that they were able to preview before the broadcast of the programme.

Ofcom therefore found that the programme fairly presented Mrs Jacobson's view regarding the location of the playhouse in the programme and that the footage was not unfairly edited.

- ii) Ofcom considered Mrs Jacobson's and Mr Bews' complaint that the programme gave the impression that in making the comment "just let kids be kids", Mrs Jacobson was referring to her own children rather than to her neighbours' children.

Ofcom examined the programme as broadcast and read a transcript of it. It was satisfied that the remark "just let kids be kids" was not included in the programme.

- iii) Ofcom considered Mrs Jacobson's and Mr Bews' complaint that the programme presented them as "uncooperative" and "not open to making any resolution whatever" despite the fact that the production team had been given evidence to the contrary.

Ofcom noted the full broadcast programme and took the view that viewers were given a clear understanding of the situation between Mrs Jacobson and Mr Bews and their neighbours and the position taken by Mrs Jacobson. Ofcom considered that the programme included background information that explained that the complainants had been on good terms with their neighbours at one time and included a description of how their neighbourly

relationship deteriorated. The programme also referred to the involvement of the authorities (namely, the police, social services and the local authority) and made clear that Mrs Jacobson would be prepared to meet with her neighbours. Ofcom also noted that Mrs Jacobson was shown in the programme willing to try ways of resolving the conflict between her family and her neighbours and was shown being receptive to ideas raised by Colonel Stewart in finding common ground when the initial negotiations failed. Ofcom also noted from Five's statement in response to the complaint that neither Mrs Jacobson or Mr Bews raised any issue with the programme makers about her portrayal in the programme when they watched a preview of the programme.

Given the material included in the programme referred to above, Ofcom considered that Mrs Jacobson was shown in the programme as someone who was willing to find a solution to the problems that she and her family were experiencing with her neighbours and that she was prepared to compromise when necessary although she firmly believed that the problems lay with her neighbours. Ofcom was satisfied therefore that the programme makers had taken reasonable care in portraying Mrs Jacobson and this portrayal resulted in no unfairness in the programme.

- iv) Ofcom considered Mrs Jacobson's and Mr Bews' complaint that they had been told that the programme would be called "The Negotiator" rather than "*At War With Next Door*" and its main focus would be negotiation. They said that the "negotiation scene" was heavily edited and Mrs Jacobson was unfairly presented as a "bully" who insisted that the negotiation continue even after her neighbours had decided not to continue.

Ofcom recognised that it was normal practice for programme makers to provide contributors to a programme with background information about it which may include information about the programme's title. In this particular case, Ofcom noted that according to Five's statement in response to the complaint, Mrs Jacobson and Mr Bews were recruited to take part in the programme via a website entitled "*Neighbours from Hell*" and had signed consent forms which explained the title "The Negotiator" was a "current working title". Ofcom took the view that this made it apparent to contributors, including Mr Jacobson and Mr Bews, that the title of the programme might change. Also, from the nature of the website to which Mrs Jacobson was recruited to participate in the programme, Ofcom considered that the form and content of the programme was such that the change in its title did not materially change it in a way that would have reasonably affected Mrs Jacobson's and Mr Bews' consent to participate. In Ofcom's view, its nature and its purpose remained the same. The information given to Mrs Jacobson and Mr Bews was sufficient for them to have been aware that the focus of the programme would be about negotiating with their neighbours. Ofcom was satisfied that the programme makers fairly explained the nature and purpose of the programme to the complainants and that the title of it was a fair description of it and reflected the title of the website.

Ofcom considered whether or not the programme unfairly portrayed Mrs Jacobson as a "bully" who insisted that the negotiations persisted even though her neighbours did not wish to continue. Ofcom noted the programme's commentary:

*“The Colonel gets the warring parties back into the room.”*

Ofcom considered that the programme was clear that it was Colonel Stewart and Ms Mortimer who persuaded Mrs Jacobson and Mr Gray back to negotiating. There was no suggestion in this particular part of the programme that Mrs Jacobson was a bully or that she was persisting with the negotiations despite her neighbours not wanting to. Ofcom was satisfied that the programme’s portrayal of Mrs Jacobson resulted in no unfairness in this respect.

- v) Ofcom considered Mrs Jacobson’s and Mr Bews’ complaint that Mr Bews’ explanation why he wished Mr Gray to be “behind bars” was edited from the programme.

Ofcom noted the comments made by Mr Bews in the opening minutes of the programme about his feelings towards Mr Gray and the behaviour he said that he and his family had endured:

**Mr Bews:** *“[Mr Gray] Gives me death threats. Where he’s gone like that [gestures: slit throat] slit throat to the kids. Six year olds, seven year olds. He’s standing there and – you look up, and right away he’s [gestures: middle finger] or [gestures: ‘wanker’] like this, and you go, like what’s your problem?”*

*“I want that smirk wiped off hid face, that’s what I want. We’re not going to kowtow to that man, he’s not gonna push us around and – I just want him to stop”.*

Ofcom took the view that viewers would have been left in no doubt as to Mr Bews’ feelings and that his views were partially due to Mr Gray’s actions towards Mr Bews’ and Mrs Jacobson’s children. Ofcom considered that, given this wider context, omitting Mr Bews’ specific reasons for expressing his view that he would like to see Mr Gray “behind bars” would not have affected viewers’ understanding of Mr Bews’ feelings in a way that was unfair to him.

- vi) Ofcom considered Mrs Jacobson’s and Mr Bews’ complaint that the programme as broadcast edited out pertinent information from two witnesses. Specifically, Mrs Jacobson’s and Mr Bews’ complained that: the comment from PC Humphries that “there may well be things on both sides that are being done, however, there is evidence against Mr Gray” was omitted from the programme; and, an explanation from Ms Brewster from the West Kent Mediation Service on why Mrs Jacobson had refused to take part in mediation between her family and her neighbours was also not included in the programme.

Ofcom noted Five’s statement in response, in which Five stated that the programme makers had chosen not to include PC Humphries’ comments because it related to a specific incident. Ofcom noted from Five’s submission that PC Humphries had also commented in more general terms about the situation between the two neighbouring families and he believed that both families were to blame for the animosity that existed between them. Ofcom was satisfied it was clear from the broadcast programme itself that Mr Gray’s previous behaviour had led to him being

arrested and that the omission of the comment by PC Humphries in relation to a specific incident involving Mr Gray would not have affected viewers' understanding the situation in a way that would have been unfair to Mrs Jacobson and Mr Bews.

In relation to the omission of Ms Brewster's comments about why Mrs Jacobson had refused mediation, Ofcom noted that the programme's commentary had explained that Mrs Jacobson had declined to participate in mediation "*because of police involvement*". It also noted that it was clear from the programme that Mrs Jacobson had made the first call to the mediation service after being referred to it by the local authority. In these circumstances therefore, Ofcom considered that further clarification from Mrs Jacobson as to why she decided not to participate in mediation would have been unnecessary as the programme made it clear that she had been willing to consider mediation that she had declined it later on due to the involvement of the police. Ofcom therefore found that the omission of Ms Brewster's comments did not result in unfairness to Mrs Jacobson's and Mr Bews'.

- vii) Ofcom considered Mrs Jacobson's and Mr Bews' complaint that the end of the version of the programme previewed by them included a "full apology" from Mr Gray and Ms Mortimer stating to Mrs Jacobson that "I did things to you as well". However, in the broadcast version of the programme, Mrs Jacobson and Mr Bews said that this was edited in a way that resulted in a "glossing over [of] the apology".

Ofcom examined the version of the programme shown to Mrs Jacobson and Mr Bews before the broadcast of the final version of the programme. It also watched the programme as broadcast and noted the programme's commentary:

**Commentary:** *"However, in yesterday's negotiations feelings boiled over, with Jamie Gray making several slanderous allegations. Now to put the peace process back on track, the Colonel needs Jamie to apologise".*

**Col Stewart:** *"What I want you to do is exactly what I ask you to do. Which is go out, make an apology, turn round, and come back. OK? So will you do that".*

**Mr Gray:** *"Yeah. Sure".*

Ofcom noted that this conversation was followed by Colonel Stewart's discussion with Mrs Jacobson who made it clear that she would only accept an apology from Mr Gray on "every single one" of the allegations he had made, not just the two for which Mr Gray had initially agreed to apologise. Ofcom also noted that the programme included the following section:

**Commentary:** *"Bob reunites the two parties and ensures Jamie apologises for the false allegations he made during the negotiation".*

- Col Stewart:** *“Now those things you are, I think, willing to apologise for”.*
- Mr Gray:** *“Yes”.*
- ...
- Mrs Jacobson:** *“Then you can go ahead and apologise”. Mrs Gray: “I’m very sorry that, if I have offended you in any way with these”*
- Mrs Jacobson:** *“False allegations”.*
- Mr Gray:** *“False allegations”.*
- Col Stewart:** *“OK? Now we’ve outlined what they are –”*
- Mrs Jacobson:** *“Accepted”.*
- Mr Gray:** *“OK”.*

Ofcom noted that although there was some debate about whether or not Mr Gray’s apology had been genuine or not, Mrs Jacobson was then shown describing Colonel Stewart as the *“man of the moment”* and expressing her view that he had achieved *“a better ending to this than [she] thought [he] could do”*. Mr Bews was also shown stating that he was *“stunned”* by the accord and preparing to celebrate with Mrs Jacobson over a bottle of champagne.

Ofcom considered that from the programme’s commentary and the reaction of Mrs Jacobson and Mr Bews, viewers would have understood that Mr Gray’s apology had been to each allegation which had been made the day before and that Mrs Jacobson and Mr Bews had accepted it and were pleased with the result.

Given these factors, Ofcom was satisfied that the apology had not been “glossed over” and was clearly and fairly presented in the programme. It also took the view that the absence of any reference to the issue of whether or not Mr Gray had “slapped his wife” could not be considered as resulting in any unfairness to Mrs Jacobson or Mr. Bews. Ofcom therefore found no unfairness to Mrs Jacobson and Mr Bews in this respect.

- viii) Ofcom considered Mrs Jacobson’s and Mr Bews’ complaint that Colonel Stewart’s comments made Mrs Jacobson “look like a hard-nosed woman upping the demands [as to the extent of the apology]”.

Ofcom noted the sequence of events prior to the scene about which Mrs Jacobson and Mr Bews complain. It noted that Colonel Stewart had arranged for Ms Mortimer to write a list of things which might help to calm the situation between the two families and that Mrs Jacobson and Mr Bews had seemed to support the idea. On the next day, Ofcom noted that Colonel Stewart took Ms Mortimer’s list to Mrs Jacobson and Mr Bews, along with the offer of Mr Gray’s apology. As they went through the list, it became clear that Mrs Jacobson and Mr Bews were not prepared to agree to all of the points on it. Ofcom noted that Mrs Jacobson offered to accept Mr Gray’s apology (for the slanderous remark) on Mr Bews’ behalf

and to withdraw her complaint to the police, after which Colonel Stewart thanked her and agreed to talk to Mr Gray.

Ofcom took note that Colonel Stewart persuaded Mr Gray to apologise on two points and that Mrs Jacobson was shown refusing to accept an apology on the two matters alone, despite previously having told Colonel Stewart she would be willing to accept an apology on Mr Bews' behalf. Colonel Stewart was shown in the programme returning to see Mr Gray and Ms Mortimer. Mr Gray suggested Mrs Jacobson was "holding [him] to ransom" but Colonel Stewart was shown disagreeing with him whilst admitting Mrs Jacobson was asking for more than he expected. Ofcom noted that Colonel Stewart then explained to Mrs Jacobson that she would need to offer compromise as well and she responded that she was prepared to state that she was only aware of one occasion on which Mr Gray had slapped Ms Mortimer. The parties were then reunited and the negotiation continued.

Given the background to this part of the programme, Ofcom considered that Colonel Stewart's behaviour during this part of the programme, and the programme's portrayal of Mrs Jacobson, could not be described as unfairly making her "look like a hard-nosed woman upping the demands" and would not have affected viewers' understanding of her in way that was unfair to her. In Ofcom's view, Mrs Jacobson was portrayed as a person who was aggrieved and wanted to get a full apology from Mr Gray. Ofcom was satisfied that the programme fairly presented the events that took place between Colonel Stewart and the two families and no unfairness resulted to Mrs Jacobson and Mr Bews in its depiction.

Taking the above factors into account, Ofcom found that the programme accurately presented Mrs Jacobson and Mr Bews and that it was not edited in a way that resulted unfairness to them.

- b) Ofcom considered Mrs Jacobson's and Mr Bews' complaint that Colonel Stewart referred to Mrs Jacobson as "a bitch".

In considering this element of Mrs Jacobson's and Mr Bews' complaint, Ofcom took account of Rule 7.1 and 7.9 of the Code as referred to at a) above.

Ofcom noted the programme's commentary and that Colonel Stewart had actually said that "*I think she was being rather a bitch*". Ofcom noted that his comment came after Mrs Jacobson had initially refused to meet with Mr Gray and that it was his own personal opinion about Mrs Jacobson's attitude towards negotiating with her neighbours. Ofcom also noted that after Colonel Stewart had made this comment and later in the programme, it was clear to viewer that it was Mrs Jacobson who kept the negotiation going by offering to compromise and accepting Mr Gray's apology.

Ofcom acknowledged that Colonel Stewart's comment had the potential to be derogatory and offensive but accepted that it was his personal view, borne of frustration, of how he perceived her attitude following his observations of the situation and would have been understood as such given the wider context of the programme as a whole. In these circumstances, Ofcom found that the programme fairly presented Colonel Stewart's personal view in a way that would not have affected viewers' understanding of Mrs Jacobson when taken with the

context of the programme as a whole. There was therefore no unfairness to the complainants in this respect.

- c) Ofcom considered Mrs Jacobson's and Mr Bews' complaint that they were assured that by the programme makers that "no slander could be aired" and were led to believe that "the truth would emerge", yet incorrect and unsubstantiated allegations were made by Mr Gray were broadcast in the programme.

In considering this element of Mrs Jacobson's and Mr Bews' complaint, Ofcom took account of Rule 7.1 and 7.9 of the Code as set out in a) above.

Taking the Practices and factors into account, Ofcom first addressed separately each of Mrs Jacobson's and Mr Bews' specific points of complaint under this head concerning the programme's treatment of them.

- i) Ofcom considered Mrs Jacobson's and Mr Bews' complaint that the allegation was unfairly included that the argument between the neighbours was started by Mrs Jacobson hanging a washing line on a weak fence post adjoining the two properties. Mrs Jacobson indicated that the programme makers had evidence that this line had been in place for months before Mr Gray moved in.

Ofcom noted that the programme contained a number of allegations from both families about the conduct of their neighbours and that these were included to illustrate the level of animosity between them. Ofcom also noted that due to the nature of some of the allegations made by both families, they were allowed to see a preview of the programme before it was broadcast and given the chance to raise any concerns. Ofcom noted that Five said in its statement that the preview version of the programme was edited to take account of concerns raised by contributors.

In relation to this particular allegation, Ofcom noted that Mrs Jacobson told the programme makers that the washing line had been in place before Mr Gray and his family moved in to the house next door, and that he had weakened the post by pushing it. In light of this, the programme makers changed the commentary and removed any suggestion that she knew that the fence was weak and that she had deliberately pulled it over. There was no unfairness to the complainants in this respect.

- ii) Ofcom considered Mrs Jacobson's and Mr Bews' complaint that the programme unfairly alleged that Mrs Jacobson had attacked Mr Gray's six year old daughter.

Ofcom noted the commentary in full:

**Mr Gray:** *"Courtney was only three. She went into the garden, and she [Mrs Jacobson] turned round to Courtney and said, 'You can F off'".*

**Commentary:** *"Despite Jamie's claims, Hazel denies that she has ever actually shouted at the children".*

Ofcom noted that there was no reference in the programme to any allegation that Mrs Jacobson physically attacked Mr Gray's six year old daughter. Ofcom noted that the allegation that Mrs Jacobson had sworn

at Mr Gray's three year old was immediately followed by the commentary line which made it clear to viewers that this was an allegation that she denied. Ofcom therefore concluded that the commentary did not result in unfairness to the complainants.

- iii) Ofcom considered Mrs Jacobson's and Mr Bews' complaint that allegations that they had "flags up all over the place" and that Mrs Jacobson had referred to Mr Gray as "English white trash" were untrue and unfair to them.

Ofcom noted Mr Gray's response to Colonel Stewart's question about the number of Canadian flags that Mrs Jacobson and Mr Bews flew in their garden:

**Mr Gray:** *"they have them all over the place normally".*

Ofcom noted that during filming, two large flags were on display which apparently could be seen from a number of positions. In these circumstances, Ofcom considered that the inclusion of Mr Gray's comment was unlikely to have affected viewers' understanding of Mrs Jacobson and Mr Bews in a way that was unfair to them. Ofcom therefore found no unfairness to the complainants in this respect.

In relation to the comment about "English white trash" Ofcom noted the full exchange from the programme's commentary:

**Mrs Jacobson:** *"Does this [a T- shirt decorated with the Canadian flag] offend you at all?"*

**Mr Gray:** *"No."*

**Mrs Jacobson:** *"So why did you file a complaint of racism with the police over a Canadian flag that flies in the back yard?"*

**Mr Gray:** *"The racism was you leaning over the fence, saying 'English white trash. 'And calling our kids English white trash'. That was the complaint. Not for some silly muppet flag".*

**Col Stewart:** *"That's not a muppet flag, actually. All of us here, including you Jamie, have respect for the Canadian flag. I can't put my finger on what it is that's got you two neighbours fighting like, dare I say, cats and dogs. What is it?"*

Ofcom noted that the allegation about calling Mr Gray and his family "English white trash" was made face to face with Mrs Jacobson as part of a wider exploration of their differences. Ofcom noted that Mrs Jacobson did not raise any objection to either of these allegations during her correspondence with the programme makers following the preview of the programme before broadcast. Ofcom considered that the exchange was accurately and fairly presented in the programme and Mrs Jacobson had a chance to raise concerns with the programme makers. The inclusion of this exchange was not unfair to the complainants.

- iv) Ofcom considered Mrs Jacobson's and Mr Bews' complaint that Mr Gray made "career ending slanderous remarks" about Mr Bews who was teacher and that the programme makers had promised not to broadcast the comments.

Ofcom noted from Five's statement that the programme makers, realising the serious nature of the allegations made by Mr Gray, decided to discuss the allegations with Mrs Jacobson and Mr Bews. Mr Bews made it clear to the programme makers that he wanted the fact of the slanderous allegations being made to remain in the programme provided the allegations themselves were removed.

Ofcom noted the programme's commentary:

*"Then in the heat of the moment, Jamie accuses Hazel's partner Brian of something too libellous to broadcast".*

Later in the programme the commentary stated:

*"Hazel calls home. She discusses the possibility of reporting Jamie to the police".*

Ofcom took the view that there was no suggestion in the programme of what Mr Gray's comments were. It was clear that whatever the comments were that the programme treated them seriously and it made the point that Mrs Jacobson considered them to be so serious that she considered calling the police. Ofcom also noted that the programme's commentary further stated that the accusation was "wild" and that Colonel Stewart was shown telling Mr Gray the next day that the allegation was slanderous. Ofcom also considered that it was clear from Mr Gray's apology at the end of the programme that he was retracting his comments about Mr Bews.

Given Mrs Jacobson's and Mr Bews' specific request for the fact of the making of the slanderous allegation to remain in the programme and Mr Gray's apology which effectively retracted the allegation Ofcom found that the inclusion of the fact that allegations and the context in which this was included were made did not result in unfairness to Mrs Jacobson and Mr Bews.

- d) Ofcom considered Mrs Jacobson's and Mr Bews' complaint that they were shown a version of the programme prior to broadcast and told by the producers that the issues that they had raised "would be addressed and taken care of". However, despite submitting two pages of objections regarding "inaccuracies and omissions", when they viewed the programme as it was broadcast they complained that they found that none of their concerns had been addressed and that it had been re-edited in a way to misrepresent them even further.

In considering this element of the complaint, Ofcom had regard to Practice 7.3 of the Code which is set out under a) above. In particular it had regard to the provision that contributors to a programme should be given clear information, if offered an opportunity to preview the programme, about whether they will be able to effect any changes to it.

Ofcom recognised that the programme makers' decision to let the two families preview a version of the programme before broadcast was unusual and that there was no obligation for programme makers or broadcasters to provide contributors to programmes to preview it before broadcast. However, Ofcom took note that there was a need for the both contributing families to be fully aware of the allegations that were to be made and for them to raise any concerns.

Ofcom also noted that after watching the preview, Mrs Jacobson and Mr Bews agreed to sign a letter confirming they had watched the programme and consented for it to be broadcast. Ofcom noted that in the days following the preview, Mrs Jacobson send a series of emails to the programme makers outlining concerns she had about the programme. Ofcom took note that the programme makers considered Mrs Jacobson's concerns and that it was agreed that the programme would be further edited to take account of the concerns she had raised where it was appropriate to do so.

Ofcom took the view from examining the post-preview correspondence between Mrs Jacobson and the programme makers that it was apparent that she had concerns about her portrayal. However, Ofcom considered that the purpose of the programme was not to exonerate one family at the expense of the other and this was made clear to Mrs Jacobson and Mr Bews prior to filming. It was explained that both parties would give their side of the story, air their grievances during a controlled negotiation process, and try to resolve the situation with the assistance of Colonel Stewart.

Ofcom noted the steps the programme makers took to ensure that Mrs Jacobson and Mr Bews were given a chance to raise concerns about any factual inaccuracies and allegations made in the programme by Mr Gray and his family. Ofcom was satisfied that their concerns were considered and acted upon where appropriate including changes to the final programme, Ofcom therefore found that the programme makers took reasonable care to ensure that the complainants were fairly presented in the programme and that their concerns were properly considered.

Taking all the above factors into account, Ofcom found that the programme did not result in unfairness to Mrs Jacobson and Mr Bews in this respect.

**Accordingly, Ofcom has not upheld Mrs Jacobson's and Mr Bews' complaint of unfair treatment in the programme as broadcast.**

## **Complaint by Mr Gary Segal and Mrs Hilary Segal**

*North West Tonight, BBC1 North West, 3 and 11 April 2007*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment and unwarranted infringement of privacy.

Two editions of *North West Tonight*, the weekday evening news programme for the BBC North West region, included a story about a wedding photography business that had not supplied the photographs they had promised to a number of clients. The broadcasts both featured dissatisfied clients of the photographers, Mr Gary Segal and Mrs Hilary Segal, owners of Segal Studios and Memories in the Making. Mr and Mrs Segal complained that they were treated unfairly in the broadcasts and that their privacy had been unwarrantably infringed in the making and the broadcast of the programmes.

Ofcom found as follows:

- a) It was not unfair for the programmes to include the central allegation that the clients had ordered and paid for wedding albums they did not receive. The programmes fairly reflected the fact that the clients were satisfied with Mr and Mrs Segal's professionalism as photographers. Ofcom concluded that information provided to the programme makers by Mr and Mrs Segal was not ignored and was referred to in the programmes. The tone of the programmes was not sarcastic, as complained of, and it would have been clear to viewers that they were watching a consumer news story.
- b) Mr and Mrs Segal were given an appropriate and timely opportunity to respond to the allegations made about them in the programme, both in terms of the information provided to them and the time given to provide a response.
- c) The filming of a conversation with Mr Segal outside his home did not constitute "doorstepping" and was not an infringement of his or his wife's privacy in the making of the programme.
- d) The inclusion of footage of the reporter's conversation with Mr Segal in the programmes did not infringe Mr and Mrs Segal's privacy in the broadcasts.
- e) Photographs of Mr and Mrs Segal used in the programmes were taken from their professional website and were already in the public domain. The use of them was therefore not an infringement of their privacy in the broadcasts.
- f) The broadcast of footage of their home was not an infringement of Mr and Mrs Segal's privacy in the broadcast, as this was also their advertised business premises.

### **Introduction**

Reports concerning Mr Gary Segal and Mrs Hilary Segal were included in two separate editions of *North West Tonight*, the weekday evening news programme for the BBC North West region. The programmes were broadcast on 3 April and 11 April respectively.

Mr and Mrs Segal are the owners of 'Segal Studios' and 'Memories in the Making', wedding photography businesses. The items looked at the stories of a number of their clients. The programme on 3 April 2007 featured Ms Ellen Halpin and Ms Victoria Muir, who had commissioned Mr and Mrs Segal to take their wedding photographs. They said that they had never received the photographs they had ordered, but only received prints and negatives. The programme broadcast on 11 April 2007 featured Ms Eve Harrison, Ms Carla Fell-Gordon and Ms Amanda Hatton, who said they had received nothing from Mr and Mrs Segal and Ms Lorna Thirkell, who said she had received only one photograph. The programme makers visited Mr and Mrs Segal at their property during the making of the programme and asked Mr Segal why he and his wife had not provided the wedding albums their clients had ordered and paid for. Footage of this conversation was shown in the programmes as broadcast.

Mr and Mrs Segal complained that they were treated unfairly in the programme and that their privacy was unwarrantably infringed in both the making and broadcast of the programmes.

## **The Complaint**

### **Mr and Mrs Segal's case**

In summary, Mr and Mrs Segal complained that they were treated unfairly in that:

- a) They were portrayed unfairly in that:
  - Untrue allegations were made about them by clients of theirs who participated in the programmes, who said that they had failed to fulfil orders which had been paid for.
  - It was unfair to Mr and Mrs Segal to include footage of a client who the complainants said had in fact commented on their highly professional photographs and had been completely satisfied with the photographs they had provided.
  - Information and documentary evidence provided to the programme makers by Mr and Mrs Segal in response to the allegations was ignored and dismissed as untrue. Mr and Mrs Segal also noted that the second programme, broadcast on 11 April 2007, appeared to have been recorded at the same time as the first, so it was clear that information provided by Mr and Mrs Segal to the programme makers in between the two broadcasts was ignored.
  - The tone of the coverage of the story was sarcastic and demeaning to Mr and Mrs Segal and ridiculed them.
  - The story was presented on the second occasion as a news story, when it had originally been a consumer story. This was unfair and disproportionate.
- b) Mr and Mrs Segal were not given an appropriate and timely opportunity to respond to the allegations made about them in the programmes:

- Mr and Mrs Segal said the initial contact with them on 28 March 2007 was made out of hours and they then received threatening text messages from the reporter.
- Mr and Mrs Segal informed the programme makers that it was Passover from 2 to 10 April and that, as they were Jewish and this was an important festival, it was difficult for them to respond in the timescale provided to them.
- During the making of the programme, the programme makers referred to copies of letters they had from clients of Mr and Mrs Segal, but copies of these were not provided to Mr and Mrs Segal.
- Unlike the clients who took part in the programme, Mr and Mrs Segal were not offered an opportunity to be filmed for the programmes.

In summary, Mr and Mrs Segal complained that their privacy was unwarrantably infringed in the making of the programme in that:

- c) Mr Segal was doorstepped and filmed without his permission. The reporter informed Mr Segal that she had stopped filming, but left the camera running. Mr Segal said that this filming, which took place during Passover, infringed his privacy.

In summary Mr and Mrs Segal complained that their privacy was unwarrantably infringed in the broadcast of the programme in that:

- d) Footage of the interview with Mr Segal gained by doorstepping him was included in the programmes.
- e) Photographs of Mr and Mrs Segal were included in the programmes without their permission.
- f) The block of apartments where Mr and Mrs Segal live was clearly shown on the programme and referred to as their place of work.

### **The BBC's case**

In summary the BBC responded to Mr and Mrs Segal's complaint as follows:

- a) In response to the complaint that Mr and Mrs Segal were portrayed unfairly, the BBC said in summary:
  - There was no basis for the claim that the couples featured in the programmes had made untrue allegations concerning their dealings with Mr and Mrs Segal. The couples had paid for wedding photographs which were to be displayed in a wedding album. The BBC said the Segals had written to the clients to say that no such albums would be provided. The programme makers saw and filmed the receipts for the couples' payments for the albums and Mr and Mrs Segal's subsequent letters informing them that they would not be provided. Mr and Mrs Segal themselves had confirmed in their complaint that they sent such letters, although emphasising that the letters contained offers to provide photographs and negatives instead, subject to disclaimers to be signed by the couples.

- In response to the complaint that it was unfair to include footage of a client who had in fact commented on their highly professional photographs and had been completely satisfied with the photographs they had provided, the BBC said that Mr and Mrs Segal's professionalism as photographers was never at issue. Both broadcast reports reflected clients' satisfaction with them in that respect. However, the clients' satisfaction with Mr and Mrs Segal's professionalism as photographers was immaterial to the point that they had paid for something that the Segals never supplied.
- The BBC next responded to the complaint that information and documentary evidence provided to the programme makers by Mr and Mrs Segal was ignored and dismissed as untrue. The BBC said that Mr and Mrs Segal took clients' money on the basis that they would supply albums of photographs which they did not provide: the question of why they did not provide them was not answered by saying that they provided something else, namely photographs and negatives, instead. Nor was acceptance of their alternative offers by some clients evidence that matters had been concluded satisfactorily, when the choice being offered to the clients was in effect between receiving something for their money or nothing at all. The documentation provided by Mr and Mrs Segal in connection with the complaints featured in the 3 April 2007 broadcast consisted of a copy of the disclaimer form signed by Ms Halpin. The broadcast fully reflected the fact that both Ms Halpin and another client, Ms Muir, had signed such forms. However, Mr and Mrs Segal had provided no information as to why the couples had not received the wedding albums they paid for. The documentation provided in connection with the complaints featured in the 11 April 2007 broadcast consisted of correspondence and court papers, together with comments by Mr and Mrs Segal on the complaints of the four brides to be featured in the broadcast. Again the documentation contained nothing which addressed the question of why the couples had not received the wedding albums they paid for.

The BBC argued that the information and documentation provided by Mr and Mrs Segal in response to the complaints was not ignored or dismissed, but was carefully considered by the programme makers with the assistance of a BBC lawyer. They concluded that it contained nothing addressed to the point common to all the complaints featured in the broadcasts, namely that they did not provide what had been paid for. Mr and Mrs Segal's general response to the complaints, that the complainants were not telling the truth, was reflected in the broadcast.

On the question of the 11 April 2007 broadcast appearing to have been recorded on the same date as that of 3 April 2007, the BBC said that this was not the case. At the end of the "Buyer Beware" section on 3 April, viewers were informed that the reporter was shortly to begin maternity leave. At that time it was anticipated that she would not appear on air again before her maternity leave began. This plan was changed by the arrival of a significant number of new complaints, prompted by the 3 April 2007 item. It was decided that a follow-up item was warranted and the reporter set about preparing it for broadcast on 11 April 2007. The only footage used on 11 April that was also used on 3 April was the material filmed outside the Segal's home and place of business.

- In response to the complaint about the tone of the coverage, the BBC said that the tone was appropriate to the reporting of a situation where Mr and Mrs Segal were the subject of serious complaints that they had failed to address. Where the tone was pointed, that was justified. However it was not sarcastic, demeaning or tending towards ridicule.
  - In response to the complaint that the story was presented on the second occasion as a news story, when it had originally been a consumer story, the BBC said that *North West Tonight* was a news programme. The *Buyer Beware* segment of the programme in which the 3 April item appeared consisted of news stories about consumer issues. *Buyer Beware* came to an end after 3 April but the 11 April item was shown at roughly the same position in the programme. In the context of *North West Tonight*, there was no material difference between news stories and consumer stories. Both items were given a degree of prominence proportionate to the issues they reported.
- b) In response to the complaint that Mr and Mrs Segal were not given an appropriate and timely opportunity to respond to the allegations made about them in the broadcasts, the BBC said in summary:

- As regards the complaint that the programme makers approached them out of hours and sent aggressive text messages, the BBC said that the reporter first contacted Mr and Mrs Segal on 22 November 2006 regarding a complaint about them from Ms Halpin. Mr and Mrs Segal responded on 24 November 2006 but did not address Ms Halpin's complaint. The reporter contacted the relevant Trading Standards Service and was informed that they had not received any other complaints about Mr and Mrs Segal. She then telephoned Mr and Mrs Segal to say that she would not be pursuing the story at that time. Mr and Mrs Segal were therefore aware of the programme's interest in them from November 2006.

The next contact with Mr and Mrs Segal was on 28 March 2007. The reporter had received a second complaint from Ms Muir, whose experience had been similar to Ms Halpin's and whom Ms Halpin had encouraged to contact the BBC. The reporter emailed Mr and Mrs Segal at 6.25pm on Wednesday 28 March 2007. She reminded them of their previous conversation, notified them of the further complaint and invited their comments, with a view to a possible broadcast the following Tuesday, 3 April 2007. She also left phone and text messages asking them to check their emails. The BBC did not consider that 6.25pm was an unreasonable or unsocial time to initiate contact. The BBC said that Mr and Mrs Segal's home address was also their business address and that, therefore, a call at that time would not have put them at any disadvantage in consulting their records.

The reporter's text messages from the time in question had not been retained, however the BBC said that there was nothing in her emails to suggest that she was likely to have adopted a threatening tone in her text messages.

- The BBC next responded to the complaint that Mr and Mrs Segal informed the programme makers that it was Passover from 2 to 10 April and that it was therefore difficult for them to respond in the timescale provided to

them. The BBC said that it was unclear why Mr and Mrs Segal did not raise this issue until their email to the reporter at 4.46pm on 3 April. The BBC said that Passover, and a 48-hour period during which the laws of Shabbat applied, had begun at nightfall, approximately 7.30pm, on Monday 2 April. Up to this point, there was no basis on which the programme makers could have been expected to be aware that this was a concern for the Segals. Even if they had known the Segals were Jewish, they might reasonably have inferred from their willingness to work on Saturdays (two of the brides featured in the broadcasts had married on Saturdays) that they took a relaxed attitude to Jewish observance. In any event, the promptness of the Segal's response to the reporter's November 2006 enquiry, namely two days, suggested that the period between the reporter's contact on the evening of 28 March and the onset of Passover on the evening of 2 April was more than sufficient for the Segals to respond to the substance of the complaints put to them, had they been minded to do so. This applied equally to the 11 April 2007 broadcast, which was deferred from 10 April 2007 out of consideration for the concerns the Segals had expressed about Passover. Even for the strictly observant, there would have been no inhibition on working between nightfall on Wednesday 4 April and nightfall on Friday 6 April, and again after nightfall on Tuesday 10 April. The question before the Segals was essentially simple, and not such as to require extensive or time-consuming research, namely why the complaining couples had not received what they had originally ordered and paid for. The BBC said that as the Segals still had not addressed this question, it seemed likely the main difficulty they faced in responding was not lack of adequate notice, but lack of an adequate answer.

- As regards the complaint that, during the making of the programme, the programme makers referred to copies of letters they had from clients of Mr and Mrs Segal, but that copies of these were not provided to them, the BBC said that the information given to Mr and Mrs Segal was entirely sufficient to enable them to respond to the issues of complaint.
- In response to the complaint that Mr and Mrs Segal were not offered an opportunity to be filmed for the programmes, the BBC said that fair opportunity to respond did not necessarily mean an opportunity to appear in the programme concerned. However in relation to the broadcast on 3 April the reporter responded to an email from Mr and Mrs Segal at 4.25pm on 3 April with an invitation to appear on camera. In relation to the 11 April broadcast, though there was again little reason to believe that Mr and Mrs Segal would wish to take part, the programme makers emailed at 6.00pm on 5 April and again included an invitation to respond "on or off camera".

In response to the complaint that Mr and Mrs Segal's privacy was unwarrantably infringed in the making of the programme, the BBC said in summary that:

- c) Mr Segal was not doorstepped. He had approached the camerawoman as she was filming exterior shots, from a public place, and engaged her in conversation about the purpose of the filming. She stopped filming when Mr Segal asked her to do so, but in any event, there was no infringement of Mr Segal's privacy, as he had put himself in the frame and the filming was done in a public place.

In response to the complaint that Mr and Mrs Segal's privacy was unwarrantably infringed in the broadcast the programme, the BBC said in summary that:

- d) As regards the use of the filmed footage of Mr Segal, the BBC said that, as set out in the response at c) above, the footage of Mr Segal was not gained by doorstepping, but by Mr Segal approaching the camerawoman, in a public place and evidently in full knowledge that she was filming. The BBC therefore did not consider that there was any infringement of Mr Segal's privacy in the broadcast. If there was an infringement, it was warranted by the public interest in showing Mr Segal's response to the fact that the programme makers were proposing to draw attention to complaints by his clients.
- e) The photographs of Mr and Mrs Segal that were included in the broadcasts were taken from their professional website and were therefore in the public domain.
- f) The BBC responded to the complaint about the inclusion of footage of Mr and Mrs Segal's apartment block and the reference to it as their place of work. The BBC said that, while footage, even if taken from a public place, may be capable of infringing privacy if, when shown, it enabled people's homes to be identified, the legitimate expectation of privacy was greatly offset when the home was also the place of business, as was the case with Mr and Mrs Segal at the time. It was normal practice when covering complaints about businesses to include pictures that would serve to identify the business in question. This was not least to distinguish it from other businesses to which viewers might erroneously conclude the complainants applied. Insofar as the showing of the footage in question involved an infringement of privacy, that was warranted in the public interest.

## Decision

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

The complaint was considered by Ofcom's Executive Fairness Group. In reaching a decision about this complaint Ofcom considered the written submissions of both parties and a recording and transcript of the programme.

Ofcom's findings in relation to Mr and Mrs Segal's specific heads of complaint are outlined below:

- a) Ofcom first considered Mr and Mrs Segal's complaint that they were portrayed unfairly.

In considering this head of complaint, Ofcom took into account Practice 7.9 of the Code. Practice 7.9 states that before broadcasting a factual programme,

including programmes examining past events, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

- Ofcom considered Mr and Mrs Segal's complaint that clients who appeared in the programmes had claimed untruthfully that Mr and Mrs Segal had not fulfilled orders that had been paid for. Ofcom noted that the central complaint was that those clients had paid for wedding photographs that were to be displayed in albums. It was clear from material provided to Ofcom that the clients in question did not receive their photographs in albums. It was, therefore, fair in Ofcom's view for the programmes to include the allegation that Mr and Mrs Segal had not fulfilled the orders. Furthermore, Ofcom noted that it was made clear in the programme that Ms Halpin and Ms Muir subsequently accepted material other than the albums they originally ordered. In the item broadcast on 3 April 2007 the reporter said:

*"...they were asked to sign this – a disclaimer. Now in return they received all the prints and all of the negatives. The disclaimer said they mustn't talk about it".*

On 11 April 2007, the programme featured different clients from those who appeared in the 3 April 2007 broadcast. In relation to Ms Harrison, the reporter said:

*"The family paid just under £1,800 to the Segals. They've had nothing in return".*

The reporter said of Ms Thirkell that she was:

*"£800 out of pocket. This is the only photo the Segals delivered".*

The programme also featured Ms Fell-Gordon. The reporter said in relation to her and her husband:

*"But they have £1,400 from the Fell-Gordons. The Fell-Gordons have nothing".*

Ms Hatton, who also featured in the programme, said:

*"It's cost the family in total around £1,000, and we don't have anything to show for it, apart from a lot of bad memories..."*

Ofcom noted that Mr and Mrs Segal provided the BBC with information and copy correspondence in relation to their dealings with these four clients. However, in Ofcom's view, the information provided by Mr and Mrs Segal to the BBC did not provide evidence that the clients had received their albums or other pictures as ordered, despite the programme makers asking for such evidence a number of times. Nor did the information provided give any reasons for this. Ofcom was therefore satisfied that the central allegation, namely that a number of clients had paid for something that Mr and Mrs Segal never supplied, was not unfairly represented.

- Ofcom considered the complaint that it was unfair to include footage of a client of Mr and Mrs Segal who the complainants said had in fact been completely satisfied with the quality of the photographs provided. Ofcom noted that both broadcasts reflected clients' satisfaction with the quality of the photography and the manner in which Mr and Mrs Segal worked. In the 3 April 2007 item, the reporter said of some of the clients that:

*"They loved the photos".*

In the 11 April 2007 item, one of the clients featured said:

*"They were very, very nice on the day. They were excellent".*

However, in Ofcom's view the clients' satisfaction with Mr and Mrs Segal's professionalism as photographers did not detract from the central allegation that clients had paid for something that Mr and Mrs Segal never supplied.

- Ofcom next considered the complaint that information provided by Mr and Mrs Segal was ignored and that the second item appeared to have been recorded at the same time as the first.

As regards the complaint that information provided by Mr and Mrs Segal was ignored or dismissed by the programme makers, Ofcom noted that Mr and Mrs Segal explained to the BBC that the clients featured were offered photographs in different format than the albums originally paid for and that some of them signed disclaimers accepting what Mr and Mrs Segal were offering. However, in Ofcom's view Mr and Mrs Segal did not explain, in relation to any of the clients, why the albums were not provided as ordered. This was a question that was repeatedly put to the complainants – but not, in Ofcom's view, ever answered. Ofcom noted that each of the broadcasts did nonetheless include references to the information provided by Mr and Mrs Segal. On 3 April 2007, the reporter said:

*"Now the Segals say the brides willingly signed those disclaimers. They say the brides had a very good deal, a great deal, getting hundreds more photos than they'd originally ordered or paid for."*

In relation to the 11 April 2007 broadcast, Mr and Mrs Segal provided the BBC with some information about their dealings with each of the couples to be featured, but did not explain why they had not received the albums they ordered and paid for. Ofcom noted that Mr and Mrs Segal concluded their written statement to the BBC by saying that the people filmed

*"have not furnished you with correct or truthful information".*

In the broadcast, the reporter said:

*"...in a final statement today, the Segals accused their customers of lying".*

In Ofcom's view, each of the broadcasts included a fair summary of what Mr and Mrs Segal had said in response to the complaints by their clients.

Mr and Mrs Segal expressed concern that the second programme appeared to have been filmed at the same time as the first and that, as a result,

information provided by them in the time between the two broadcasts must have been ignored. Given the reference in the 3 April 2007 broadcast to the reporter's impending maternity leave, Ofcom understood why Mr and Mrs Segal might have formed that opinion. However, Ofcom noted that Mr and Mrs Segal were asked **after** the 3 April 2007 broadcast about the clients who appeared on the 11 April 2007 broadcast. Ofcom considered that there were no grounds for it not to accept the BBC's explanation that the first broadcast was intended to be the reporter's last before her maternity leave, but that as she received new complaints about Mr and Mrs Segal, she completed the follow up story for the second broadcast.

- Ofcom did not consider that the tone of either of the broadcasts was sarcastic or demeaning or that Mr and Mrs Segal were ridiculed as a result of the tone. While clearly including criticism of Mr and Mrs Segal, in Ofcom's view the programmes both put both sides of the story in a manner that was not unfair.
- As regards the complaint that one of the broadcasts was in a consumer slot and the other presented as a news item, Ofcom noted the BBC's explanation that the first broadcast was a consumer news slot, but that each programme in which the story appeared was a news programme. Ofcom considered that each of the programmes was clearly presented as a news programme and that it would have been clear to viewers in each of the broadcasts that they were watching a consumer story as part of a news programme. In any event, in Ofcom's view, in this case, no unfairness would have resulted in the item being presented either as a news story or a consumer story.

Ofcom therefore found no unfairness to Mr and Mrs Segal in the programmes' portrayal of them.

- b) Ofcom next considered Mr and Mrs Segal's complaint that they were not given an appropriate and timely opportunity to respond to the allegations made in the programmes.

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

Ofcom acknowledged that the programmes included a significant allegation about Mr and Mrs Segal, namely failing to supply wedding albums that had been ordered and paid for. They were, therefore, entitled to be given an appropriate and timely opportunity to respond to that allegation.

- Ofcom considered Mr and Mrs Segal's complaint about the initial contact made with them by the programme makers. Ofcom noted that the programme makers first contacted Mr and Mrs Segal in November 2006 about a complaint. In view of this, although the story was not followed up at the time, in Ofcom's view it was unlikely that the approach to them in March 2007 would have taken Mr and Mrs Segal completely by surprise. Furthermore, it was clear from correspondence submitted to Ofcom by the BBC that Mr and Mrs Segal were aware that some clients were not happy with the service provided by them, as they had engaged in correspondence with a number of those clients. Ofcom did not consider that an approach at 6.35pm on a week day was unreasonable.

Ofcom noted that the text messages sent by the reporter to Mr and Mrs Segal had not been retained by either side. Ofcom therefore saw no evidence in relation to this complaint. Ofcom did note however that the reporter's emails to Mr and Mrs Segal were not aggressive.

- Ofcom considered Mr and Mrs Segal's complaint that the timing of the approach to them made it difficult for them to respond. Ofcom noted that the two broadcasts were around the time of the important Jewish festival of Passover and that, as Mr and Mrs Segal are Jewish, the timing of the request could have made it difficult for them to provide a response to the programme makers in the timeframe given. However, Ofcom noted that the reporter first contacted Mr and Mrs Segal in relation to the 3 April broadcast on 28 March 2007, at least three working days before Passover began. They could, therefore, have reasonably been expected to make contact with her more promptly than their email to her of 3 April 2007. As regards the broadcast on 11 April 2007, Ofcom noted that there were substantial periods prior to the broadcast when Mr and Mrs Segal could have responded without impinging on their observance of Passover. Furthermore, Ofcom noted that the BBC had originally planned to broadcast the second report on 10 April 2007, but delayed that until 11 April 2007 in order to avoid a broadcast during Passover.
- Ofcom noted that Mr and Mrs Segal were not provided with copies of letters referred to by the programme makers. However the obligation on the programme makers was to provide Mr and Mrs Segal with sufficient information to enable them to respond to the allegations to be made in the programmes, so as to avoid any unfairness. This did not mean, therefore, that Mr and Mrs Segal had to be provided with copies of all the correspondence the programme makers had. Ofcom noted that Mr and Mrs Segal were informed of the names of their clients who had approached the BBC and of their complaints. In Ofcom's view this information was sufficient to enable them to respond to the complaints. Furthermore, Ofcom noted that, despite not having the copy correspondence, Mr and Mrs Segal did provide information to the programme makers about their dealings with those clients.
- Mr and Mrs Segal complained that they were not offered an opportunity to be filmed for the programme. Ofcom noted that the programme makers were required to provide Mr and Mrs Segal with an appropriate and timely opportunity to respond to the allegations made in the programmes. It was not incumbent on the programme makers, however, to offer them an opportunity to be filmed for the programmes. Notwithstanding this, Ofcom noted that in relation to each of the two broadcasts, such an offer was made. Before the first broadcast the reporter emailed Mrs Segal and said:

"Hilary, do you want to appear on camera? Shall I get one to you?"

Before the second broadcast the programme makers emailed again and said:

"Would you respond to those complaints? On or off camera?"

Mr and Mrs Segal were, therefore, offered an opportunity to respond (as well as be filmed).

Ofcom considered that, in all the circumstances set out above, Mr and Mrs Segal were given an appropriate and timely opportunity to respond to the allegations made about them in the programmes.

- c) Ofcom went on to consider the complaint that Mr and Mrs Segal's privacy was unwarrantably infringed in the making of the programme, in that Mr Segal was "doorstepped".

In Ofcom's view, the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about the unwarranted infringement of privacy, Ofcom will therefore, where necessary, address itself to three distinct questions: First, does the complainant have a legitimate expectation of privacy in the circumstances of the case? Second, if so, has there been an infringement of privacy? Third, if there has been an infringement of privacy was the infringement warranted? (as per Rule 8.1 of the Code).

In considering this complaint Ofcom took into account Practice 8.11 of the Code. Practice 8.11 states that doorstepping for factual programmes should not take place unless a request for an interview has been refused or it has not been possible to request an interview, or there is good reason to believe that an investigation will be frustrated if the subject is approached openly, and it is warranted to doorstep. The Code describes doorstepping as "...the filming or recording of an interview or attempted interview with someone...without any prior warning".

Ofcom first considered whether Mr and Mrs Segal had a legitimate expectation of privacy in the making of the programme in relation to this recording of footage. Ofcom watched the footage of the conversation between Mr Segal and the reporter and noted that the filming took place openly in a public place, outside Mr Segal's home, which was also his business address. Mr Segal was clearly aware that he was being filmed and he appeared to engage willingly in conversation with the reporter. In these circumstances, Ofcom did not consider that the approach to Mr Segal amounted to doorstepping, since the broadcaster did not attempt to interview Mr Segal without prior warning. Nor did Ofcom consider that he had a legitimate expectation of privacy given his willingness to engage in a dialogue with the reporter, clearly on camera. Furthermore Ofcom noted that no footage was filmed of Mrs Segal by the programme makers.

In these circumstances, there was no infringement of Mr and Mrs Segal's privacy in the making of the programme. It was therefore not necessary for Ofcom to go on to consider whether or not any infringement was warranted.

- d) Ofcom considered the complaint that Mr and Mrs Segal's privacy was unwarrantably infringed in the broadcast programmes in that footage of the "doorstepping" of Mr Segal was included in the programmes.

In considering this complaint Ofcom took into account Practice 8.11, as set out under decision head c) above.

As set out under decision head c) above, Ofcom did not consider that the reporter's approach to Mr Segal amounted to doorstepping. Ofcom noted that no private information about Mr and Mrs Segal was revealed as a result of the broadcast of the footage of Mr Segal filmed outside his property. Ofcom did not there consider that Mr and Mrs Segal had a legitimate expectation of privacy in

relation to the broadcast of the footage of Mr Segal. There was therefore no infringement of Mr and Mrs Segal's privacy in the broadcast of the programmes in this respect and it was not necessary for Ofcom to go on to consider whether or not any infringement was warranted.

- e) Ofcom next considered the complaint that Mr and Mrs Segal's privacy was unwarrantably infringed in the broadcast as a result of the use of photographs of them without their permission.

In considering this complaint Ofcom took into account Practice 8.6 of the Code, which states that if a broadcast would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement is warranted.

Ofcom noted that the photographs of Mr and Mrs Segal that were used in the broadcasts were taken from their own professional website and had, therefore, been placed by them in the public domain. In these circumstances, Ofcom found that Mr and Mrs Segal had no legitimate expectation of privacy in relation to the photographs and the programme makers were not required to seek their permission before using them.

There was therefore no infringement of Mr and Mrs Segal's privacy in the broadcast of the programmes in this respect and it was not necessary for Ofcom to go on to consider whether or not any infringement was warranted.

- f) Ofcom went on to consider the complaint that Mr and Mrs Segal's privacy was unwarrantably infringed in the broadcast as a result of footage of their apartment block being included in the programmes.

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

Ofcom took the view that Mr and Mrs Segal had some expectation of privacy in respect of the broadcast of footage of their private home. However, this expectation was significantly diminished by the fact that their home was also their advertised business premises. In these circumstances, the use of Mr and Mrs Segal's home as a business premises significantly diminished their expectation of privacy in relation to the broadcast of the footage. On balance, in Ofcom's view, they did not have a legitimate expectation of privacy in this regard. There was therefore no infringement of their privacy in the broadcast of the programmes in this respect and it was not necessary for Ofcom to go on to consider whether or not any infringement was warranted.

**Accordingly the Executive Fairness Group has not upheld the complaint of unfair treatment and unwarranted infringement of privacy.**

## Complaint by Mr W

*Terror in the Skies: A Tonight Special, ITV1, 4 June 2007*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment and unwarranted infringement of privacy.

A special edition of *Tonight* entitled "Terror in the Skies: A Tonight Special", was broadcast by ITV which concerned an investigation into security issues at Birmingham International Airport ("BIA"). The focus of the programme was on a contracted security firm called International Consultants on Targeted Security UK Ltd ("ICTS"), which in part was responsible for the security at BIA. The programme reported the observations of a whistleblower who covertly recorded his experiences as a security officer for ICTS and revealed conduct by ICTS employees including drinking and taking drugs whilst working and general criminal behaviour. The programme also revealed serious staff shortages and the effect on existing staff managing security. Mr W was shown in the programme voicing his grievances in respect of staff shortages.

Mr W complained he was treated unfairly in the programme and his privacy was unwarrantably infringed in the making and broadcast of the programme.

Ofcom found as follows:

- a) Ofcom found that Mr W was not treated unfairly in the programme as broadcast by not being advised he would appear in the programme. Ofcom found that the programme makers took reasonable steps to inform Mr W that he would appear in the programme, including identifying him to his previous employer ICTS and requesting that they contact Mr W and advise him.
- b) Ofcom found that footage of Mr W was not unfairly edited as it was clearly contextualised in the programme by prefacing his comments with commentary that explained he was under considerable pressure due to staff shortages.
- c) Ofcom found that material facts were not misrepresented in that the programme did not imply Mr W was a drunk, took drugs or was a criminal. The sequences in which Mr W featured were clearly contextualised and separated from allegations made about other security employees and it would have been apparent to viewers that Mr W's inclusion in the programme was mainly to demonstrate security lapses due to staff shortages.
- d) Ofcom found that Mr W's privacy was not unwarrantably infringed in the making and broadcast of the programme. Ofcom considered Mr W had a legitimate expectation of privacy and his privacy was infringed. However, Ofcom considered the programme and the inclusion of the material regarding Mr W concerned serious issues of public interest and safety and, in these circumstances, it was warranted to record and broadcast the material.

### Introduction

On 4 June 2007, ITV1 broadcast an edition of its current affairs programme *Tonight* entitled *Terror in the Skies: A Tonight Special*. The programme reported the observations of a whistleblower and an undercover reporter who covertly recorded their experiences of working as security officers at Birmingham International Airport ("BIA"). The whistleblower and the undercover reporter worked for the company International Consultants on Targeted Security UK ("ICTS") which is a private security company responsible in part, for providing the security at BIA.

On the basis of the whistleblower and an undercover reporter's covert recordings, which were examined by an airport surveillance expert, the programme alleged that there were serious security failings at the airport. These included incomplete and ineffective security checks of passengers, on-board luggage, baggage holds, and cabin areas. The programme also alleged that security officers at the airport had been involved in a range of inappropriate behaviour including misuse of security procedures, drinking and sleeping while on duty, stealing, drug use and drug smuggling.

One part of the programme showed a covertly filmed conversation between a security supervisor and the whistleblower in which the supervisor described his staff shortage problems. The supervisor explained that he did not have enough staff to properly carry out the security checks on a Continental Airlines flight and that he would either have to carry out only partial security checks, or borrow a staff member from another team. The supervisor decided on the second option and the programme showed covertly recorded footage of the supervisor asking the manager of another team if he could spare a staff member. The programme stated *"but his colleague is also short staffed and feeling the pressure"*, then showed covertly recorded footage of the manager from the other team's response (which was subtitled as follows):

*"For f\*\*k sake now you're telling me to run my whole flight by myself. You know what, f\*\*k Continental. I'm f\*\*king sick of Continental. No one give a f\*\*k about anything in this whole airport apart from Continental. I hope the f\*\*king flight f\*\*king blows up."*

Part of this covertly recorded footage was also included in the programme's introduction. Another part of the programme included covertly recorded footage of a security officer making the comment: *"Amar and Prim are running around like headless chickens trying to get that folder signed."*

Ofcom received a complaint from Mr W (also referred to as "Amar") who is referred to and quoted above as the manager of the second security team.

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

## The Complaint

### Mr W's case

In summary Mr W complained that he had been treated unfairly in the programme as broadcast in that:

- a) He was not informed that he would be shown in the programme. Mr W said that after the programme was broadcast, he spoke to a number of his ex-colleagues who had featured in the programme, and they had all been told before broadcast of the programme that they would be shown.
- b) The programme unfairly edited footage of him in conversation with a colleague. Mr W said the footage showed him as being equivalent to a Muslim terrorist who wanted the plane to be blown up. Mr W said that in reality, he had worked an eighteen hour shift, was short staffed, and had the responsibility to check passengers for security. Mr W said that in these circumstances he was understandably concerned that without additional staff he would be severely restricted.
- c) Mr W said he was not a drunk, did not take drugs and was not a criminal. He said it was unfair for the programme to link him to those colleagues who did.

In summary, Mr W complained that his privacy was unwarrantably infringed in the making and broadcast of the programme in that:

- d) The programme filmed and broadcast surreptitiously recorded footage of him, during a private conversation, without his knowledge or consent. Mr W said the footage, together with the programme's later use of his name "*Amar*", made him identifiable to the public including his friends and family who knew that he worked at BIA.

### ITV's case

In summary, ITV responded to the complaint as follows:

- a) With reference to Mr W's complaint that he was not informed he would appear in the programme, ITV accepted that Mr W was not contacted directly prior to the transmission of the programme. ITV stated that Mr W's former employer (ICTS) was contacted on 18 May 2007, two weeks prior to transmission, as it did not have Mr W's contact details. ITV said it advised ICTS of the names of all individual employees referred to in the investigation and details of the evidence relating to them which intended to be included in the programme. ITV stated further that the letter also provided that the programme makers did not intend to approach the ICTS employees directly, and requested that ICTS inform the employees featured in the programme and reflect their views back to ITV. ITV stated it received no indication that the message was not communicated to employees who had left ICTS since the filming.

ITV stated it regretted that Mr W did not receive notice of his appearance in the programme and had it known this to be the case the programme makers would have contacted him independently. ITV contended that it took reasonable steps in the circumstances to notify Mr W via his former employer and that the programme fairly contextualised his remarks and his involvement in the security problems at the airport.

- b) With reference to Mr W's complaint that footage of him in conversation with his colleague was unfairly edited, ITV stated that it disputed this. ITV contended that it made clear that the context of Mr W's remarks were a response to a request from a fellow ICTS supervisor who was short staffed, to borrow some of Mr W's security agents. ITV stated it made clear that in the circumstances Mr W was under pressure. ITV then stated that the sequences of Mr W must be judged in the context of the accompanying commentary and in the wider context of the programme as a whole. ITV said the programme suggested to viewers that ICTS staffing numbers and procedures were inadequate and that various staff were responsible for a number of different serious security lapses. ITV further stated that the programme carefully and fairly contextualised the footage of Mr W and made it clear he was among the frontline staff who were "*close to breaking point*" because of staffing shortages and that in the particular incident he featured in he was directly "*feeling the pressure*" of the staff shortages. ITV stated that the programme did not suggest to the viewer that Mr W was personally responsible for the staff shortages.

ITV said it considered the remark "*I hope the fucking flight blows up*" displayed an attitude on Mr W's part to security and to the safety of the public that was well short of the professionalism the public would expect, despite the pressure he was under. Accordingly, ITV argued it was fair and reasonable to identify Mr W as the maker of the comment. ITV stated it did not accept that the programme suggested or showed Mr W being "*equivalent to a Muslim terrorist*" and that this was unsupported and no reasonable viewer would have drawn that conclusion. Although viewers may have considered Mr W's comment shocking and blameworthy coming from a security official.

ITV concluded that the footage used in the programme represented fairly Mr W's comments and noted that in the untransmitted footage Mr W stated "*fucking blow it up*" rather than "*I hope the fucking flight fucking blows up*".

- c) With reference to Mr W's complaint that it was unfair to link him to colleagues who drank, took drugs and were criminals, ITV contended that the programme did not imply that Mr W was a drunk, took drugs or was a criminal. ITV stated that the programme featured a number of different security officials and security lapses and that it was not unfair to Mr W to feature these individuals. ITV then stated that Mr W's involvement in specific security lapses was made clear and there was no suggestion that he was guilty of the same offences as the other officials (i.e. drug taking/drinking on the job). Further, the only suggested link between Mr W and the officials featured was the factually accurate one, that they were all employed by the same security company at the BIA.
- d) With reference to Mr W's complaint that his privacy was infringed in the making and broadcast of the programme by recording surreptitious footage of him without his consent and referring to him as "*Amar*", ITV submitted that the covert filming was undertaken and broadcast in strict accordance with the Code. ITV then stated that the Code provides that any infringement of privacy must be warranted and in the case of Mr W, it was warranted on the basis that ITV had prima facie evidence that the story (namely security failings at BIA) was in the public interest. ITV argued it was necessary to the credibility and authenticity of the story to include the covertly filmed footage of Mr W as it raised important issues of public interest, specifically staff shortages and the attitude of some security personnel (including Mr W) to the safety of the public.

ITV stated it was arguable whether the conversation between Mr W and his colleague was private given it took place in a part of the airport accessible to the public. ITV then stated regardless of whether Mr W considered it to be a private conversation, the recording and broadcast of the conversation was warranted and in the public interest. As such, ITV disputed that the broadcast infringed Mr W's privacy, and in any event, it was warranted in the circumstances.

With respect to Mr W's complaint regarding the use of his name "Amar", ITV submitted that it did not necessarily suggest to viewers that one of the persons "running around" getting the security directives signed, was the same individual seen in the earlier footage of Mr W. ITV further stated that even if the sequence did potentially identify Mr W to some viewers who might know him personally, it would have conveyed to them that ICTS management procedures in respect to security directives were inadequate and that Mr W was seeking to mitigate these failures before the arrival of an external inspection from Continental Airlines.

ITV concluded that Mr W's privacy was not infringed by the use of the name "Amar", and even if his privacy was infringed it was warranted and justified on the basis that it was in the public interest.

## 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 from unwarranted infringement of privacy in the making and broadcast of programmes, included in such services.

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in a 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.

This case was considered by Ofcom's Executive Fairness Group. In reaching a decision it considered the written submissions from both parties, a recording of the programme, the programme transcript and a copy of the unedited material.

- a) Ofcom first considered Mr W's complaint that he was treated unfairly as he was not informed that he would be shown in the programme.

In considering this aspect of Mr W's complaint, Ofcom considered Rule 7.1 of the Code, which states that broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes. Ofcom also took account of Practice 7.14 which provides that "Broadcasters or programme makers should not normally obtain...pictures...through misrepresentation or deception. (Deception includes surreptitious recording). 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."

Ofcom noted that surreptitiously filmed footage of Mr W was included in the programme which showed him, as an ICTS employee, stating "No one gives a f\*\*k about anything in this airport apart from f\*\*king Continental. I hope the f\*\*king flight f\*\*king blows up."

In Ofcom's view this footage was significant in that it raised serious concerns over how security was being handled in BIA and demonstrated the pressure some of the security staff were under. Both issues are a matter of public interest and therefore such filming was in accordance Code.

Further, it was noted that through ICTS, ITV took reasonable steps to ensure that Mr W was given an opportunity to respond (as discussed in Practice 7.11 of the Code).

Ofcom noted the programme makers' pre-transmission correspondence of 18 May 2007 to ICTS in which ICTS were informed of the programme makers' investigation of security standards at BIA. Ofcom noted the following excerpts from the correspondence:

"A central element of the programme's investigations has been the conduct at the airport of employees of ICTS..."

"Just to advise you it is not our intention to directly approach the ICTS employees named in our report. We would expect you to advise them of the evidence we intend to present and to reflect their views back to us."

Ofcom also observed that the correspondence identified certain ICTS employees who were filmed surreptitiously and who it was advised, would appear in the programme as broadcast, one of whom was Mr W.

Whilst Ofcom noted that Mr W was no longer an employee of ICTS at the time the programme makers contacted the company, in Ofcom's view, reasonable steps were taken by the programme makers to inform Mr W that he would appear in the programme as broadcast via his former employers. Mr W was named in the programme makers' letter to ICTS and ICTS were explicitly requested to inform those individuals identified so that their views could be reflected in the programme (as noted in the above excerpt from the programme makers' letter). Further, the programme makers allowed for two weeks in which ICTS could contact Mr W before the programme was broadcast or alternatively advise the programme makers that they would have to contact Mr W themselves.

Taking into account the above factors, it is Ofcom's opinion that no unfairness resulted to Mr W in respect of this head of complaint since the broadcast of surreptitiously recorded footage of Mr W without his consent was warranted by the public interest in the material, and in any event the programme makers took reasonable steps to inform him of the broadcast of this footage and to provide him with an appropriate and timely opportunity to respond.

- b) Ofcom next considered Mr W's complaint that footage of him in conversation with his colleague was unfairly edited.

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

Ofcom noted the relevant parts of the transmission as follows:

**Commentary:** *"And the frontline staff close to breaking point."*

**Mr W:** *“No one gives a f\*\*k about anything in this whole airport apart from f\*\*king Continental. I hope the f\*\*king flight f\*\*king blows up.”*

**Work colleague:** *“And me.”*

And later:

**Commentary:** *“The supervisor decides to ask another ICTS colleague in charge of a separate flight if he can spare any manpower. But his colleague is also short-staffed and feeling the pressure.”*

**Mr W:** *“For f\*\*ksake now you’re telling me to run my flight by my f\*\*king self. You know what f\*\*k Continental. I’m f\*\*king sick of Continental.”*

**Work colleague:** *“And me.”*

**Mr W:** *“No one gives a f\*\*k about anything in this airport apart from f\*\*king Continental. I hope the f\*\*king flight f\*\*king blows up.”*

**Work colleague:** *“And me.”*

Having viewed the both the programme and the unedited material, in Ofcom’s view, Mr W’s comments used in the programme as broadcast, were a fair reflection of the unedited material.

In reaching this view, Ofcom noted that both references in the programme were clearly prefaced with the commentary: *“But his colleague is also short-staffed and feeling the pressure”* and *“And the frontline staff close to breaking point”* which contextualised Mr W’s comments. Further, given the nature of the investigation, part of which concerned the inadequate number of staff and the pressures on the existing staff, it was not unreasonable for the programme makers to have used Mr W’s reaction to illustrate this. In this regard, Ofcom considered that in light of the nature of the remarks made by Mr W about passenger safety in the course of his duties as a security supervisor, it was in the public interest to include them in the broadcast. Ofcom did not consider that the footage showed Mr W as being equivalent to a Muslim terrorist, as the prefacing commentary clearly indicated to viewers that Mr W was under considerable pressure due to staffing restrictions which were beyond his control and he was voicing his frustration at the situation.

Accordingly, Ofcom considered that there was no unfairness to Mr W in respect of this head of complaint.

- c) Ofcom next considered Mr W’s complaint that he was not a drunk, did not take drugs and was not a criminal and that it was unfair for the programme to link him to colleagues who did drink, take drugs and were criminals.

In considering this head of complaint, Ofcom took account of Practice 7.9 of the Code which states that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not

been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

In viewing the programme as broadcast and reading the transcript, Ofcom noted that the references to the consumption of alcohol, the taking of drugs and criminal behaviour, were presented as separate issues to that of staff shortages in separate parts of the programme.

Ofcom acknowledged that the programme investigated serious allegations relating to certain employees consuming alcohol and engaging in criminal conduct in the work place, and that Mr W was included in the same programme. However, the sequences in which Mr W featured were clearly contextualised and in Ofcom's view it would have been apparent to viewers that Mr W's inclusion in the programme was to demonstrate security lapses due to staff shortages. Further, the issue of inadequate staff was one aspect of a broader investigation into a whole series of allegations.

Taking these factors into account, Ofcom did not consider that the programme makers explicitly or impliedly linked Mr W to the questionable conduct of his colleagues, and as such, did not find that the programme makers misrepresented material facts in a way that was unfair to Mr W.

Accordingly, Ofcom found no unfairness resulted to Mr W.

- d) Ofcom next considered Mr W's complaint that his privacy was unwarrantably infringed in the making and broadcast of the programme in that he was filmed surreptitiously and the footage broadcast without his consent. Mr W also complained that the footage together with the use of his name "Amar" made him identifiable to the public. Ofcom first considered Mr W's complaint in respect of privacy in the making of the programme.

In assessing this head of Mr W's complaint, Ofcom considered Rule 8.1 of the Code which provides that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted. Ofcom also took account of Practice 8.5 of the Code, which states that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted. Practice 8.13 was also taken into account by Ofcom, which provides that surreptitious filming or recording should only be used where it is warranted. Normally it will only be warranted if: there is prima facie evidence of a story in the public interest; and there are reasonable grounds to suspect that further material evidence could be obtained; and it is necessary to the credibility and authenticity of the programme.

In Ofcom's view, the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. When considering and adjudicating on a complaint of unwarranted infringement of privacy, Ofcom must therefore address itself to three distinct questions: First, does the complainant have a legitimate expectation of privacy in the circumstances of the case? Second, if so, has there been an infringement of privacy? Third, if there has been an infringement of privacy, was the infringement warranted?

#### *Privacy in the making*

Ofcom first considered whether Mr W had a legitimate expectation of privacy in relation to the recording of the footage in question. In so doing, Ofcom

recognised that Mr W's conversation was one that could have been overheard as he was in a public place, but that the footage of Mr W was covertly recorded and that he was filmed whilst in his workplace, having a work related conversation with his colleague. Taking account of these factors, Ofcom was satisfied that Mr W did have a legitimate expectation of privacy with regard to the surreptitious recording of material of him at work speaking with his colleague.

Ofcom next considered whether Mr W's privacy was infringed by the recording of the footage of him having a conversation with his work colleague. As noted above, Mr W was surreptitiously filmed in his work place, having a private conversation with his colleague. For these reasons, Ofcom considered Mr W's privacy was infringed in the recording of the material of him.

However, in Ofcom's view, the infringement of Mr W's privacy was warranted on the basis that there was prima facie evidence of a story in the public interest, namely aviation security issues, including staff shortages, at the Birmingham International Airport. Therefore, it was apparent to Ofcom that the programme makers had evidence to support the decision to film covertly and that further evidence was obtained by virtue of the filming. The recording of footage of Mr W directly related to part of the investigation into security lapses as a result of inadequate numbers of staff and the pressure under which airport security is undertaken and as such concerned issues of public safety. On this basis, Ofcom considered in these circumstances, it was not necessary to obtain consent from Mr W as the infringement of Mr W's privacy in the making of the programme was warranted.

Accordingly, Ofcom has not upheld the complaint of unwarranted infringement of privacy in the making of the programme.

#### *Privacy in the broadcast*

Ofcom then turned to whether Mr W's privacy was unwarrantably infringed in the broadcast of the programme. In so doing, Ofcom took account of Practice 8.6 which provides that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. Ofcom also had reference to Practice 8.14 which states that material gained by surreptitious filming and recording should only be broadcast when it is warranted.

Ofcom first considered whether Mr W had a legitimate expectation of privacy in respect of the broadcast of footage of him. Taking into consideration the factors identified above in respect of privacy in the making, namely the nature of the filming which was surreptitious and the location of the filming (at Mr W's place of employment), Ofcom found that Mr W had a legitimate expectation of privacy. Furthermore, in Ofcom's opinion, Mr W's privacy was infringed through the broadcast of the programme. In reaching this view, Ofcom noted that although Mr W was not named in the two scenes in which he was shown (these are quoted at head b), he was clearly identifiable to his local community from the footage broadcast as a result of the camera focusing on Mr W's face for the duration of both scenes. In respect of Mr W's concern that the reference in the programme to "Amar" made him identifiable, Ofcom did not consider this to necessarily be the case. In Ofcom's view, the reference to "Amar" was made in a separate scene to which Mr W was shown, and concerned different subject matter, namely obtaining signatures for the security directives. Further, Mr W was not shown during the scene where the name "Amar" is referred to and there

was no indication from the programme as broadcast that there was any connection between the "Amar" referred to and the scene in which Mr W was shown commenting on the staff shortages. Nevertheless, as noted above, Ofcom was satisfied that Mr W's privacy was infringed on the basis of the footage broadcast of Mr W which revealed his face and made him identifiable.

Ofcom then turned to consider whether the infringement of Mr W's privacy was warranted. Whilst Ofcom recognised that the footage of Mr W was recorded surreptitiously, Ofcom considered that the surreptitious filming of Mr W and the subsequent broadcast of the material was warranted. In Ofcom's view there was considerable public interest value in the broadcast of the material as the programme concerned serious allegations of misconduct and had considerable public safety ramifications. Further, the material gathered and broadcast of Mr W related to significant issues concerning staff shortages at the airport, the pressure under which airport security is undertaken and the limitations on staff to conduct thorough security checks and showed Mr W's response to the situation in his role as a security supervisor at the airport. Taking these factors into account, Ofcom considered that in the circumstances it was justifiable to broadcast the footage of Mr W and as such, the infringement of Mr W's privacy in the broadcast was warranted.

Accordingly, Ofcom has not upheld the complaint of unwarranted infringement of privacy in the broadcast of the programme.

**In conclusion, Mr W's complaint of unfair treatment and unwarranted infringement of privacy was not upheld.**

## Other Programmes Not in Breach/Out of Remit

8 April to 21 April

Programme	Trans Date	Channel	Category	No Complaints
10 Years Younger competition	-	Dune FM	Competitions	1
A Cook's Tour of Spain	03/04/2008	Channel 4	Animal Welfare	4
A Girl's Guide to 21st Century Sex	10/04/2008	Five	Sex/Nudity	3
Adil Ray	02/04/2008	BBC Asian Network	Generally Accepted Standards	3
Adult Cartoon Trailers	10/04/2008	FX Channel	U18 - Coverage of Sexual/other	1
After Thomas	06/01/2008	ITV1	Offensive Language	4
Air Wick sponsorship of Emmerdale	-	ITV1	Generally Accepted Standards	1
Al Murray's Happy Hour	04/04/2008	ITV1	Religious Offence	1
Another Audience with Al Murray	11/04/2008	ITV1	Generally Accepted Standards	3
Ant & Dec's Saturday Night Takeaway	16/02/2008	ITV1	Animal Welfare	1
Ant & Dec's Saturday Night Takeaway	16/02/2008	ITV1	Generally Accepted Standards	1
BBC Look North	10/04/2008	BBC1	Due Impartiality/Bias	1
BBC News	04/04/2008	BBC1	Generally Accepted Standards	1
BBC News	13/03/2008	BBC1	Flashing images	1
Balls of Steel	28/03/2008	Channel 4	Generally Accepted Standards	3
Balls of Steel	11/04/2008	Channel 4	Generally Accepted Standards	1
Balls of Steel	04/04/2008	Channel 4	Generally Accepted Standards	1
Balls of Steel	04/04/2008	Channel 4	Sex/Nudity	1
Battle Royale	07/04/2008	Channel 4	Violence	1
Bear Grylls: Born Survivor	13/04/2008	Channel 4	Animal Welfare	1
Beauty & the Geek	12/04/2008	Channel 4	Sex/Nudity	1
Big Brother: Celebrity Hijack	17/01/2008	E4	Generally Accepted Standards	1
Bones (trailer)	-	Sky One	Generally Accepted Standards	1
Breakfast Show	26/03/2008	Heart 106 FM	Competitions	1
Britain's Got Talent	12/04/2008	ITV1	Inaccuracy/Misleading	1

British Touring Car Championship	30/03/2008	ITV4	Inaccuracy/Misleading	1
CSI (trailer)	04/04/2008	Five	Violence	1
Casualty	12/04/2008	BBC1	Generally Accepted Standards	1
Champions League Live	08/04/2008	ITV1	Other	1
Channel 4 News	07/04/2008	Channel 4	Religious Issues	1
Channel 4 News	03/04/2008	Channel 4	Inaccuracy/Misleading	1
Channel M News	11/04/2008	Channel M	Generally Accepted Standards	1
Chute!	08/03/2008	CBBC	Sex/Nudity	1
Clowns	07/04/2008	BBC2	Offensive Language	1
Cops with Cameras	25/03/2008	ITV1	Generally Accepted Standards	1
Coronation Street	07/04/2008	ITV1	Crime (incite/encourage)	1
Cory in the House	07/04/2008	Disney Channel	Generally Accepted Standards	1
Countdown	03/04/2008	Channel 4	Generally Accepted Standards	1
Crossing Jordan	07/04/2008	Hallmark	Scheduling	1
Crossing Jordan	03/04/2008	Hallmark	Offensive Language	1
Daily Cooks Challenge	04/04/2008	ITV1	Generally Accepted Standards	1
Deal or No Deal	10/04/2008	Channel 4	Other	1
Dexter	09/04/2008	ITV1	Offensive Language	1
Dexter (trailer)		FX	Inaccuracy/Misleading	1
Dirty Sexy Money		Channel 4	Advertising	1
Dispatches: Undercover in Tibet	31/03/2008	Channel 4	Inaccuracy/Misleading	1
Dispatches: Undercover in Tibet	31/03/2008	Channel 4	Due Impartiality/Bias	2
Doctor Who	12/04/2008	BBC1	Offensive Language	5
Doctor Who	05/04/2008	BBC1	Substance Abuse	1
Drivetime - Kath & Eddie	01/04/2008	BBC London 94.9FM	Inaccuracy/Misleading	1
E4 trailers	-	E4	Generally Accepted Standards	1
EastEnders	31/03/2008	BBC1	Generally Accepted Standards	1
EastEnders	15/04/2008	BBC1	Generally Accepted Standards	2
EastEnders	08/04/2008	BBC1	Offensive Language	2
EastEnders	07/04/2008	BBC1	Generally Accepted Standards	1
EastEnders	11/04/2008	BBC1	Generally Accepted Standards	1
Easter Weekend trailer	22/03/2008	Challenge TV	Sex/Nudity	1

Emmerdale	11/03/2008	ITV1	Generally Accepted Standards	1
Emmerdale / Coronation Street	07/04/2008	ITV1	Crime (incite/encourage)	1
Everybody Loves Lil' Chris	05/04/2008	Channel 4	Generally Accepted Standards	1
Extraordinary People: Half Man Half Tree	14/04/2008	Five	Generally Accepted Standards	1
F1: Bahrain Grand Prix Live	06/04/2008	ITV1	Due Impartiality/Bias	1
Five News	25/03/2008	Five	Animal Welfare	1
GMTV	15/04/2008	ITV1	Other	1
GMTV	07/03/2008	ITV1	U18's in Programmes	1
GMTV	27/03/2008	ITV1	Inaccuracy/Misleading	1
George Lamb	10/03/2008	BBC 6 Music	Crime (incite/encourage)	3
He Kills Coppers	06/04/2008	ITV1	Offensive Language	2
Heartbeat	23/03/2008	ITV1	Violence	1
Heartbeat	30/03/2008	ITV1	Animal Welfare	3
Heat Radio	05/04/2008	Heat Radio	Generally Accepted Standards	1
Hollyoaks	31/03/2008	Channel 4	Religious Offence	3
How to Look Good Naked	08/04/2008	Channel 4	Offensive Language	2
How to Look Good Naked	08/04/2008	Channel 4	Sex/Nudity	4
How to Look Good Naked	15/04/2008	Channel 4	Sex/Nudity	1
I Am The Elephant Man: The Bodyshock Special	07/04/2008	Channel 4	Animal Welfare	79
I'd Do Anything	29/03/2008	BBC1	Generally Accepted Standards	1
I'd Do Anything	22/03/2008	BBC1	U18's in Programmes	1
ITV Evening News	24/03/2008	ITV1	Generally Accepted Standards	1
ITV News	14/01/2008	ITV1	Inaccuracy/Misleading	1
ITV News	06/04/2008	ITV1	Due Impartiality/Bias	1
ITV News	03/04/2008	ITV1	Generally Accepted Standards	2
ITV News	29/02/2008	ITV1	U18's in Programmes	3
ITV News	08/04/2008	ITV1	Commercial References	1
Immigration: The Inconvenient Truth (trailer)	01/04/2008	Channel 4	Generally Accepted Standards	27
Immigration: the Inconvenient Truth	07/04/2008	Channel 4	Due Impartiality/Bias	1
Immigration: the Inconvenient Truth	07/04/2008	Channel 4	Inaccuracy/Misleading	1
Immigration: the Inconvenient Truth	07/04/2008	Channel 4	Generally Accepted Standards	2

Jaloos in Bradford	19/01/2008	DM Digital	Violence	1
James Whale	14/04/2008	Talksport	Generally Accepted Standards	1
Jason King	27/03/2008	Key 103	Generally Accepted Standards	1
Jelly Jazz	19/02/2008	Phonic FM	Offensive Language	1
Johnny Vaughan	07/03/2008	Capital Radio	Generally Accepted Standards	1
Kia Motors sponsorship of CSI	-	Five / Five US	Generally Accepted Standards	1
Kia Motors sponsorship of CSI	-	Five	Dangerous Behaviour	1
Lawless Britain: Extreme Porn	09/04/2008	Virgin 1	Generally Accepted Standards	1
Lawless Britain: Savage Sports	02/04/2008	Virgin 1	Violence	1
Love Soup	05/04/2008	BBC1	Generally Accepted Standards	1
Love Soup	05/04/2008	BBC1	Sex/Nudity	1
More4 News	26/03/2008	More4	Due Impartiality/Bias	1
Most Haunted Live	29/03/2008	Living	Other	1
Mums Who Leave Their Kids	24/03/2008	Sky Three	Due Impartiality/Bias	1
Music Videos	19/03/2008	Fizz	Generally Accepted Standards	1
NCIS	04/04/2008	Five	Competitions	1
News at Ten	03/04/2008	ITV1	Due Impartiality/Bias	1
Nick Ferrari	17/03/2008	LBC 97.3FM	Generally Accepted Standards	1
Nick Ferrari	18/03/2008	LBC 97/3FM	Generally Accepted Standards	1
Nip/Tuck (trailer)	25/03/2008	FX	Sex/Nudity	1
North Tonight	12/03/2008	STV	Inaccuracy/Misleading	1
Phil Upton Breakfast Show	20/03/2008	BBC Radio WM	Generally Accepted Standards	1
Phone In	02/04/2008	Arsenal TV	Generally Accepted Standards	1
Play Live Roulette	09/04/2008	FTN	Generally Accepted Standards	1
Poppy Shakespeare	31/03/2008	Channel 4	Generally Accepted Standards	1
Project Catwalk	19/03/2008	Sky One	Generally Accepted Standards	3
Pushing Daisies	13/04/2008	ITV1	Generally Accepted Standards	1
Pushing Daisies	12/04/2008	ITV1	Advertising	1
Pushing Daisies (trailer)	27/03/2008	ITV1	Other	1
Question Time	21/02/2008	BBC1	Generally Accepted Standards	1
Quiz Call	05/04/2008	Five	Competitions	1
Quizcall	04/04/2008	Five	Competitions	1

Road Wars	07/04/2008	Sky One	Generally Accepted Standards	1
Ruth Rendell's Inspector Wexford	15/03/2008	ITV3	Advertising	1
Scooby-Doo, Where Are You?	08/04/2008	Boomerang	Substance Abuse	1
Shameless	08/04/2008	Channel 4	Generally Accepted Standards	1
Shipwrecked 2008 Special	13/04/2008	Channel 4	Animal Welfare	1
Sky News	30/03/2008	Sky News	Other	1
Sky News	27/03/2008	Sky News	Violence	1
Sky News	30/03/2008	Sky News	Violence	1
Sky News	23/03/2008	Sky News	Due Impartiality/Bias	1
Soccer AM	15/03/2008	Sky One	Generally Accepted Standards	1
South Today	16/04/2008	BBC1 (South)	Commercial References	1
Southern FM	30/03/2008	Southern FM	Generally Accepted Standards	1
Street Wars	02/04/2008	Sky Three	Other	1
Talk 107	16/03/2008	Talk 107	Format	1
Teenage Kicks	04/04/2008	ITV1	Generally Accepted Standards	1
Teenage Kicks	28/03/2008	ITV1	Generally Accepted Standards	3
The Apprentice	26/03/2008	BBC1	Generally Accepted Standards	1
The Backyardigans	31/03/2008	Nick Jr	Offensive Language	1
The Basil Brush Show	21/02/2008	CBBC	Generally Accepted Standards	1
The Bill	10/04/2008	ITV1	Sex/Nudity	1
The Bill	02/04/2008	ITV1	Generally Accepted Standards	1
The Catherine Tate Christmas Show	25/12/2007	BBC1	Offensive Language	33
The Catherine Tate Christmas Show	25/12/2007	BBC1	Generally Accepted Standards	10
The Jeremy Kyle Show	31/03/2008	ITV1	Generally Accepted Standards	1
The Jeremy Vine Show	16/02/2004	BBC Radio 2	Other	1
The Jerry Springer Show	22/03/2008	Living	Generally Accepted Standards	1
The Now Show	05/04/2008	BBC Radio 4	Offensive Language	1
The Paul O'Grady Show	04/04/2008	Channel 4	Generally Accepted Standards	1
The Shooting Party	13/04/2008	Channel 4	Offensive Language	1
The Steve Wilkos Show	20/03/2008	Living	Generally Accepted Standards	1
The War at Home	08/09/2006	Channel 4	Substance Abuse	1

The Wright Stuff	03/04/2008	Five	Generally Accepted Standards	1
This Morning	14/02/2008	ITV1	Undue Prominence	1
This Morning	15/04/2008	ITV1	Inaccuracy/Misleading	1
Top Gear	06/04/2008	BBC2	Generally Accepted Standards	1
Torchwood	25/03/2008	BBC2	Sex/Nudity	1
Traffic Cops	09/04/2008	BBC1	Generally Accepted Standards	1
Trailer	30/03/2008	E4	Generally Accepted Standards	1
Trisha Goddard	31/03/2008	Five	Generally Accepted Standards	1
Vanity Lair	29/03/2008	Channel 4	Offensive Language	1
Weakest Link Special	05/04/2008	BBC1	Generally Accepted Standards	3
Weight Watchers sponsorship of Neighbours	-	Five	Inaccuracy/Misleading	1