

# **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

### In Breach

#### Midsomer Murders

ITV1, 8 November 2007, 16:00

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##### Introduction

*Midsomer Murders* is a long-running detective series set in the fictional idyll of the English countryside. These two-hour dramas are produced for an evening slot between 20:00 and 21:00 and are then repeated during the daytime.

This episode was the second part of the story: *The Electric Vendetta*. A viewer was concerned about the violent images in the re-cap of the previous episode at the start of this episode, and other violent scenes during it; including burnt dead bodies, electrocutions and a car crash in which a man was thrown violently through a windscreen. A viewer complained that this material was unsuitable for any children who could be watching television at this time of the afternoon.

Ofcom wrote to Channel Television, who comply this series on behalf of ITV1, for its comments in relation to Rule 1.3 (children must be protected by appropriate scheduling) and Rule 1.11 (violence must be appropriately limited if shown before the watershed) of the Code.

##### Response

Channel Television stated that this episode had previously been shown in the same format on 3 May 2007 at 14:05, when Ofcom had not received any complaints.

The broadcaster explained that the two reprises of the electrocution (once in the re-cap at the start and once towards the end of the episode) were both solitary shots of the electrocution, which were brief, in long shot and with no detail shown. The more extended flashback also showed a couple of long shots of the car and a body with smoke around it in the aftermath of the murder. Although the method of murder employed may have been novel, Channel did not believe that it was explicit or gruesome. When considering this episode for daytime showing, Channel ensured that the scenes involving the electrocution were shortened and made less explicit.

In Channel's view, the brief sequence of a man being pushed down the stairs to his death involved no unpleasant detail. At the end of the episode, there was a car chase and the man pursued collided with a combine harvester. He was thrown through the windscreen and killed. The broadcaster said that there were only two brief shots of his dead body with some blood on his face.

Channel Television stated that it had been the compliance licensee for *Midsomer Murders* since 2000. Around 2005, ITV had decided to repeat the series in daytime. It was now in its eleventh series. Everything intended for repeat was reviewed and any necessary edits carried out to make it suitable for its transmission time. In the light of

Ofcom expressing its concerns about the amount of violence in soaps in 2007<sup>1</sup> and an earlier decision about *Midsomer Murders* in Bulletin 93, Channel reviewed the criteria for establishing its suitability for daytime slots and, as part of that process, a small number of episodes had been put aside for further consideration, and a number were edited again as “a matter of prudence”.

In the broadcaster’s view, all necessary steps had been taken to ensure that this series would be suitable for daytime repeats. It accepted that it was a question of judgement whether this had been achieved, but taking together the low level of complaint with the relatively high viewing figures, Channel believed it was meeting the expectations of the audience.

## Decision

Rule 1.11 states that “Violence, its after-effects and the depictions of violence, whether verbal or physical, must be appropriately limited in programmes broadcast before the watershed and must also be justified by the context.” In Bulletin 93, Ofcom upheld complaints about two separate episodes of *Midsomer Murders* shown at 16:00 on ITV1 on weekdays. On that occasion, the episodes were in breach of the Code for both violence and offensive language. Ofcom reminded the broadcaster that care should be taken on making sure that material made for an evening slot should be suitably edited for any daytime repeats.

Rule 1.3 requires children to be protected from unsuitable content by appropriate scheduling. We recognise that Channel has taken care to ensure that episodes of this series are suitable for afternoon repeats. This episode was first repeated at 14:00 on a weekday before being shown on this occasion at 16:00. Although the 16:00 repeats of this series attract a low child audience – it ranged between 25,000 to 59,000 children for this run of repeats – overall, there is general acknowledgement that a larger child audience is available to view at 16:00 than at 14:00. The total child audience available to watch all channels at 14:00 is 650,000, but this rises to 1.4 million children at 16:00. This means that the total number of children available to view at 16:00 is over double the amount available to watch television at 14:00. This puts a greater responsibility on broadcasters to make sure material is suitable at this later time of the afternoon, as they must decide *before* a programme is broadcast whether it has been scheduled appropriately.

Given that the first episode had shown five scenes of dead bodies with burnt hands examined in the crop circles and the morgue, as well as the murder by electrocution and the finding of the electrocuted body in the car, it is questionable whether this two-part drama as a whole was suitable for transmission at 16:00. However in the second episode there was a concentration of violent images in the recap, which showed a body with a severely burnt hand, an electrocution of a man in his car showing smoke emanating from the body and a couple finding a burnt hand in a field. Added to this, during the second part there was a longer sequence showing how the electrocution had been carried out, which again showed the moment of electrocution with smoke rising, and a car crash at the end with the body thrown through the windscreen and two shots of the man’s bloody face.

Whilst acknowledging that Channel had sought to make this episode suitable for an afternoon transmission, there were a relatively large number of violent images that when taken together made it inappropriate for a 16:00 slot, when a significant number of

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<sup>1</sup> See Note to Broadcasters, “Violence in soaps and Rule 1.11”, Broadcast Bulletin 83, 23 April 2007

children are available to view. On this basis, Ofcom concluded that the episode was in breach of Rules 1.3 and 1.11.

**Breach of Rules 1.3 and 1.11**

## The Jon Gaunt Show

*talkSPORT (National), 11 February 2008, 10:00*

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### Introduction

The programme comprises phone-in led discussions on current affairs issues. In this edition, for example, the programme discussion featured issues on drug cheats in sport, the Taliban and the appropriate punishment for mutiny. During the discussion, the presenter promoted the website, GoToMyPC, which allows computer users to access their office desktop (such as files, emails, programs and network) remotely. He promoted a 30 day free trial by telling listeners to: "...visit *GoToMyPC.co.uk*, click the try it free button and use promo code, *talkSPORT*."

Ofcom was concerned by this promotion, particularly as it appeared unclear whether the presenter was broadcasting an advertisement or promoting the website and its free trial in programming. We therefore asked the broadcaster to clarify whether the material broadcast was programming or advertising and sought its comments under Section 10 of the Code – in particular:

- Rule 10.2, which states: "Broadcasters must ensure that the advertising and programme elements of a service are kept separate"; or
- Rule 10.3, which states: "Products and services must not be promoted in programmes..."

### Response

talkSPORT confirmed that the output was a presenter-read advertisement and provided a copy of the script, the content of which had been approved for broadcast by the Radio Advertising Clearance Centre (RACC).

The broadcaster therefore addressed Rule 10.2 of the Code, claiming that "there was significant separation from editorial due to the clarity and nature of [the] advertising message within the environment that it was placed." It added that the programme was a "hard-hitting phone-in led environment that carries no sponsor led features or consumer advice slots. Thus the soft issues of business PC management and/or services do not relate to the editorial nature of the show." talkSPORT provided a running order for the show, which featured "Gotomypc read" as the penultimate item, ending shortly before an "Ad break".

### Decision

The clear separation of programming and advertising, as required by Rule 10.2, is one of the basic principles of UK commercial broadcasting. To ensure that the two elements are distinguishable from one another, radio advertisements that have a similar style to the programming in which they are placed should generally be separated by other material, such as a jingle or station ident. Alternatively, they can be placed in the middle of an advertising break. Whatever method is used, listeners should not be left confused about what they are listening to.

This presenter-read advertisement may have contained material that was not generally of the type discussed in the programme. Nevertheless, the seamless way in which the presenter flowed from one topic into the GoToMyPC promotion and out again, with only a brief time check, did not provide - in Ofcom's view - sufficient separation for listeners

to realise that a stand-alone advertisement was taking place. The presenter continued to speak in his relaxed, conversational style, the promotion of GoToMyPC contained a clear reference to the station brand and a clear and pre-recorded advertising break took place around only 90 seconds later, all of which created the impression that the advertisement was in fact editorial. This was in breach of Rule 10.2 of the Code.

**Breach of Rule 10.2**

## Not in Breach

### The Brit Awards 2008

ITV1, 20 February 2008, 20:00

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#### Introduction

*The Brits* is an annual music awards ceremony broadcast on ITV1. A total of 128 viewers raised concerns about bad language and the portrayal of the use of alcohol in the ceremony. Particular reference was made to an incident in which presenter Sharon Osbourne swore at Vic Reeves for his drunken behaviour.

#### Decision

*The Brits* is an established pop music awards ceremony with a reputation for controversy.

Ofcom noted that, although this show is aimed at a mixed audience rather than children specifically, it was aired during half-term for many schools. However, over the years it has not attracted large numbers of the youngest viewers. As with previous years, this year's coverage was also scheduled later in the evening, bridging the 21:00 watershed.

The incident between Sharon Osbourne and Vic Reeves, which many viewers highlighted, occurred around 21:35. During the presentation of an award, which Vic Reeves was having some difficulty announcing, Sharon Osbourne turned to him and said: "*Get on with it, you pisshead*", and shortly afterwards, "*Shut up you're pissed, piss off! Piss off you bastard. . . piss off*".

While we understand that this language may have been offensive to some viewers, it was broadcast after the watershed and in a programme with a particular reputation. We believe that regular viewers would have been aware of the likelihood of this kind of material. Further, Ofcom research indicates that the examples of language quoted are generally considered quite mild<sup>2</sup>.

As to the portrayal of the use of alcohol in the ceremony, Ofcom considered that this was limited and incidental to the coverage. In the context of a live awards ceremony, such images of guests celebrating as were broadcast, were editorially justified. In Ofcom's view, the programme did not condone or glamorise alcohol misuse. The effect of these images was more likely to be cautionary than attractive.

#### Not in breach

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<sup>2</sup> *Language and Sexual Imagery in Broadcasting: a contextual investigation* Ofcom September 2005

## Resolved

### “Films to Die For” Promotional Trailer

*Virgin 1, January 2008, various dates and various times during daytime*

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#### Introduction

Through early January 2008, Virgin 1 broadcast a promotional trailer for forthcoming films to be screened on the channel. The promotion featured clips from films including *Platoon*, *Rob Roy*, *Robocop 3* and *Road House*. The images in the trailer focussed on characters' faces as they met violent deaths. Ofcom received five complaints about this trailer from viewers concerned by the broadcast of scenes of violence during the daytime when they expected the output to be suitable for family viewing.

Ofcom asked Virgin to comment with reference to Rules 1.3 (children must be protected by appropriate scheduling) and 1.11 of the Code (violence must be appropriately limited in programmes before the watershed).

#### Response

Virgin replied by stating that a decision was initially made to restrict this promotion to times when children were unlikely to be viewing the channel, based on audience viewing figures. It also argued that Virgin 1 is targetted at adult men and is not specifically aimed at children or families, and that the images shown would be familiar to their audience as they were taken from well known and popular films. With regards to the inclusion of the violent scenes of death, the channel said that:

“...we initially considered that the rapid juxtaposition of such a variety of slo-mo shots across a wide range of genres...clearly places the scenes in another world and time. We believed the effect of this would be to help viewers distance the shots from any sense of reality.”

However, after the channel was contacted by Ofcom to request a recording of the broadcast and were notified about the nature of the complaints, Virgin took the decision to permit transmission of the trailer only after 21:00.

#### Decision

The Code does not prevent material featuring violence from being broadcast in promotional trailers before the 21:00 watershed. Broadcasters must however ensure that the content of such promotions is suitable for the time of transmission and complies fully with the Code.

Rule 1.11 of the Code requires broadcasters to ensure that violence be appropriately limited in pre-watershed programming and be justified by the context. We had concerns regarding the suitability of this trailer for broadcast during daytime because the clips depicted violent death and serious injury at close quarters and was shown quite frequently in daytime schedules without any prior warning.

However, we note the broadcaster's swift action in restricting the promotion to post-watershed broadcast only. Therefore, we consider that the matter is resolved.

#### Resolved

## **Fizz Music**

*Fizz, 31 January 2008, 15:20*

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### **Introduction**

A viewer objected to the appearance of the word “cunt” displayed on screen in a text submitted to this interactive pop music channel by a viewer. The complete text was: “*Am fae stevenston every cunt fae parisley is idiots come the gers*”. The complainant believed broadcast of this offensive language was inappropriate for this time of day when young viewers might have been watching.

We asked Fizz for a recording to assess this content.

### **Response**

In reply Fizz explained that broadcast of this offensive word was not because of human error. The person moderating the texts at that time was an experienced supervisor. The problem was caused by a ‘screen refresh’ while two people were using the system for training, which resulted in the text being passed for sending to air unedited.

Fizz apologised to anyone who may have been offended by this error. It assured Ofcom that it has now improved its technical systems to avoid a recurrence of this problem.

### **Decision**

Section 1.14 of the Code requires that “The most offensive language must not be broadcast before the watershed”. Research into swearing carried out by Ofcom indicates that the word complained of is amongst those considered the most offensive, and therefore this language should not have been broadcast by Fizz before the watershed.

However, Ofcom noted the broadcaster’s apology, that the error resulted from an unforeseen technical error and that Fizz has taken steps to ensure this problem does not recur. We therefore consider the matter resolved.

### **Resolved**

## Fairness and Privacy Cases

### Partly Upheld

#### Complaint by Mrs Amanda Kenton

*The Bulls\*\*t Detective, BBC3, 26 April 2007*

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

An edition of BBC3's current affairs and entertainment programme, *The Bulls\*\*t Detective*, included a segment investigating the merits of Feng Shui. Three Feng Shui practitioners were invited to make suggestions in relation to the presenter's home and the programme was premised on testing and comparing the advice of the three practitioners. Mrs Amanda Kenton was one of the practitioners featured in the programme.

Mrs Kenton complained that she was treated unfairly in the programme.

Ofcom found as follows:

- a) Mrs Kenton was not given sufficient information regarding the nature and purpose of the programme in order for her give informed consent for her participation. Ofcom considered that the programme, which combined a light hearted tone with strong criticism of the Feng Shui industry, involved testing Mrs Kenton and highlighting inconsistencies between her suggestions and those of the other practitioners. This approach was not reflected in the description of the programme provided to Mrs Kenton in advance. This was unfair to Mrs Kenton. Ofcom did not consider that other issues raised significantly compromised Mrs Kenton's ability to provide informed consent for her participation and therefore did not result in unfairness to her.
- b) The programme makers did not unfairly edit Mrs Kenton's contribution. The material broadcast was a fair reflection of what Mrs Kenton said in the unedited material and the editing of the programme would not have significantly affected viewers understanding of Mrs Kenton's advice regarding Feng Shui.
- c) Whilst the programme makers tested Mrs Kenton and highlighted inconsistencies between the practitioners, no significant allegations of wrongdoing were made against Mrs Kenton that would have required an opportunity for her to respond to.

#### Introduction

On 26 April 2007, BBC3 broadcast an edition of its current affairs and entertainment programme the *Bulls\*\*t Detective*. The programme's stated aims are to "rubbish" the "overblown claims" of "bullsh\*\*t merchants", through staged stunts and practical demonstrations. The programme was introduced by the presenter as follows:

*"My aim is to expose the patter and spin of the 21<sup>st</sup> century, confront those responsible and finally show it up for what it really is, bulls\*\*t."*

This edition included a feature on Feng Shui practitioners (Feng Shui is the ancient Chinese practice of placement and arrangement of space to achieve harmony with the

environment). The programme makers invited three Feng Shui practitioners to make suggestions for the arrangement of the presenter's lounge (the house used was not the presenter's real home). The complainant, Mrs Amanda Kenton, was one of the practitioners invited to the house.

The programme showed the three practitioners making recommendations about the positioning of various items in the room. They were also shown describing the possible benefits of Feng Shui, which included improved energy levels, relationships and finances. Once each practitioner had made recommendations, the presenter stated:

*"I have had three different Feng Shui consultations, each one absolutely contradicting the previous one. If you ask me Feng Shui is nothing more than interior design with an alternative twist."*

One of the Feng Shui practitioners, Ms Amravati Mitchell, was then asked to return to the house where the presenter explained that the entire exercise had been staged.

Mrs Kenton complained that she had been treated unfairly in the programme as broadcast.

### **The Complaint**

In summary Mrs Kenton complained that she had been treated unfairly in the programme as broadcast in that:

- a) The programme makers did not provide her with an opportunity to give informed consent for her participation in the programme. Mrs Kenton said that she was misinformed in the following ways:
  - i) The programme makers failed to give her a clear explanation of the nature and purpose of the programme. Mrs Kenton said that her questions about the programme's approach were met with extremely evasive answers. She had been misinformed about the programme, which she had been told would be:
    - *"A new lifestyle and current affairs series for BBC3, each programme will look beneath the surface of the worlds of retail, sales and alternative lifestyle through interviews, investigations and demonstrations"*.
    - *"[The programme makers] would like to invite [Mrs Kenton] to our presenter's house to Feng Shui his living room/lounge for him. Our cameras will film you as you talk to him about Feng Shui and the changes that could be implemented to improve his lounge. After you have finished your consultation and left we will film the presenter making the suggested changes to his lounge"*.
  - ii) Mrs Kenton had not been advised of the programme's date of broadcast (despite an email from the programme makers telling her that this information would be provided), and the programme makers ignored her enquiry as to whether she would be able to view the programme before it was finalised.
  - iii) By using a house which was clearly not the presenter's actual place of residence, (the house showed signs of being uninhabited, such as empty rooms upstairs) rather than the home of member of the public, it was not possible for her to carry out a full and proper evaluation of the property.

- iv) Mrs Kenton was not advised of any contractual rights or obligations until moments prior to filming taking place, at which time she was given a form to sign. Mrs Kenton said she felt under pressure to sign it despite many of the terms being quite unreasonable.
- v) The subterfuge of the programme makers, referred to above, was not justified. Mrs Kenton acknowledged that while the potential benefits of Feng Shui could be debatable, the practice could never be said to cause harm to anybody.
- b) The programme makers edited her contribution unfairly. Mrs Kenton said that her disclaimers about the effectiveness of Feng Shui, and how to achieve the best results from Feng Shui, were removed, and her comments were taken out of context. Mrs Kenton said her recommendations were assessed piecemeal, rather than as part of a cohesive whole.
- c) The programme makers did not offer Mrs Kenton an opportunity to respond to any of the wrongdoings implied in the programme. These wrongdoings, as identified by Mrs Kenton, have been summarised in the following way:
  - i) The programme's presenter stated in the programme that his intention was to "*expose the patter and spin of the 21<sup>st</sup> century, confront those responsible and show it up for what it is: bullshit.*" Mrs Kenton said her inclusion in the programme therefore put all of the contributors (including her) into this bracket.
  - ii) The programme implied her recommendations were flawed and was given no opportunity to justify her recommendations.
  - iii) The programme referred to Feng Shui practitioners charging large sums of money. Mrs Kenton said that she did not receive any money for her contribution, and also noted that her fees as an interior designer were far higher than those as a Feng Shui practitioner.

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

In summary, the BBC responded to the complaint as follows:

- a) With reference to the complaint that the programme makers did not provide Mrs Kenton with an opportunity to give informed consent, the BBC stated:
  - i) The release form which was provided to Mrs Kenton and which she signed, described the programme perfectly well. The BBC said the release form described the programme as a "*consumer affairs*" programme; referred to possible covert filming; and said it would look "*beneath the surface*" and that it may involve investigations. Further, the BBC said pre-transmission correspondence with Mrs Kenton made it "perfectly clear that Ms Kenton was being invited to participate in something which was more than just an unquestioning look at lifestyle topics".

The BBC referred to the programme maker's email correspondence with the complainant (prior to the filming of her contribution) and the unedited recordings of Mrs Kenton's contribution. It said that neither of these showed evidence of a history of Mrs Kenton pressing for more information about the programme, or that she had been met with evasion by the programme makers.

- ii) In response to the complaint that Mrs Kenton had not been advised of the programme's date of broadcast, the BBC said this information was not provided at the time of filming because the dates had not yet been confirmed. The BBC stated that when the transmission dates were known, most of the staff connected with the programme had moved on and unfortunately no one contacted Ms Kenton to inform her of the date. The BBC stated that "*Mrs Kenton should have been informed of the transmission date as a courtesy and we regret that this did not happen*". Notwithstanding this, it said that this failing did not in any way amount to unfair treatment in the programme as broadcast.

The BBC responded to the complaint that the programme makers ignored Mrs Kenton's enquiry into when she would be able to view the programme before it was finalised. The BBC said it was clear from the email correspondence that no commitment was given to either provide the complainant with a copy of the programme before transmission, or to involve her in the editorial process in any way. The BBC said that Mrs Kenton did contact the production company after transmission requesting a copy of the programme and a copy had been provided to her.

- iii) In response to the complaint that it was not possible for Mrs Kenton to carry out a full and proper evaluation of the property, the BBC said it did not accept that the "*modest deception to the effect that the presenter lived in the house*" had been unfair. The BBC said that any assessment Mrs Kenton would have made, would have been on an "*un-provable, tendentious and unscientific*" basis. The BBC said that the complainant would have had to satisfy Ofcom that an analysis based on the precise configuration of doors, stairs, windows, points of the compass and birth date of the actual inhabitant would have yielded valid conclusions. The BBC submitted that there was no basis on which this could be demonstrated.
- iv) In relation to Mrs Kenton's complaint that she had not been advised of any contractual obligations until moments prior to filming taking place, the BBC said it was perfectly normal practice for contributors to be asked to sign release forms prior to filming. The BBC did not accept that Mrs Kenton had been pressured to sign the release form or that she had made it known to the programme makers that she was unhappy with any of the terms of the form.
- v) In response to the complaint that the subterfuge of the programme makers was not justified, the BBC said the investigative techniques used were perfectly acceptable given that they did not result in any significant deception of Mrs Kenton and did not result in any unfairness to her.

In relation to Mrs Kenton's comment that it could never be said that Feng Shui caused harm to anybody, the BBC said it disagreed. The BBC said that if Feng Shui consultants could not agree on what the problems with a particular environment might be, or what the solutions were, then consumers have a right to know that there are no fixed principles upon which any assessment (for which they are paying a fee), might be based.

- b) With reference to the complaint that Mrs Kenton's contribution had been unfairly edited, the BBC referred to the unedited recording of Mrs Kenton's interview.

The BBC said that in her full interview Mrs Kenton made two caveats in relation to the effectiveness of Feng Shui, neither of which the BBC believed were effective. The BBC said the first caveat had nothing to do with the effectiveness of Feng

Shui, but to do with how quickly any measures may take to have an effect. The second caveat had been extremely modest and was followed by clear assurances that the presenter could expect benefits in terms of wealth and improvements in his personal relationships.

The BBC said it was true that some of Mrs Kenton's remarks, relating to how to achieve the best results from Feng Shui, were not used in the programme. However, the BBC contended that such omission of some of Mrs Kenton's views served to show the complainant in a rather better light than perhaps was merited. In support of this, the BBC referred to a remark by Mrs Kenton about "*'chi' flying up the stairs instead of wafting around the living room, bringing health, wealth and happiness to its occupants*" which was omitted from the transmitted programme.

The BBC said the remarks by Mrs Kenton, which had been used in the programme, had been used in the correct context and were entirely consistent with what Mrs Kenton had said in her full interview.

- c) With reference to the complaint that Mrs Kenton had not been provided with an opportunity to respond to any of the wrongdoings implied in the programme, the BBC said that Mrs Kenton was not the focus of the programme. The BBC said the programme sought to test the validity of claims made by Feng Shui and its practitioners generally by investigating whether these were underpinned by a uniform set of ideas and principles.
- i) The BBC said there were no particular allegations of wrongdoing made against Mrs Kenton. It said the word "bullshit" was being applied to Feng Shui not to individual practitioners (who plainly believe in it). The BBC said that in these circumstances there was no allegation of wrongdoing to put to Mrs Kenton.
  - ii) The BBC made no specific comments regarding Mrs Kenton's complaint concerning her recommendations.
  - iii) With regard to the complaint that it was unfair for the programme to refer to Feng Shui practitioners charging large sums of money, the BBC said that the fact that Mrs Kenton was not paid for her contribution did not go to any point about the fees charged by Feng Shui practitioners. The BBC stated that there are kinds of advice for which even the lowest fee could be considered excessive.

## 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. 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 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 and supporting documentation from both parties, a recording of the programme as broadcast, a copy of the programme transcript and a copy of the unedited material.

- a) Ofcom first considered Mrs Kenton's complaint that the programme makers did not provide her with an opportunity to give informed consent for her participation in the programme. Mrs Kenton identified five instances relating to how she was misinformed.

In considering each element of Mrs Kenton's complaint at Head (a), Ofcom took account of Practice 7.3 of the Code which provides that where a person is invited to make a contribution to a programme (except when the subject matter is trivial or their participation minor) they should normally, at an appropriate stage: be told the nature and purpose of the programme, what the programme is about and be given a clear explanation of why they were asked to contribute and when (if known) and where it is likely to be first broadcast; be told what kind of contribution they are expected to make, for example live, pre-recorded, interview, discussion, edited, unedited, etc; be informed about the areas of questioning and, wherever possible, the nature of other likely contributions; and be given clear information, if offered an opportunity to preview the programme, about whether they will be able to effect any changes to it.

- i) Ofcom first considered Mrs Kenton's complaint that the programme makers failed to give her a clear explanation of the nature and purpose of the programme.

Ofcom noted that in an email to Mrs Kenton dated 19 January 2007 from the assistant producer of the programme, Mrs Kenton was invited to participate in the programme. In the email, the assistant producer described the programme as:

*"a new lifestyle and current affairs series for BBC3, each programme will look beneath the surface of the worlds of retail, sales and alternative lifestyle through interviews, investigations and demonstrations"; and stated:*

*"Within our programme looking at alternative lifestyles we are making an item on Feng Shui...we would like to invite you to our presenter's house to Feng Shui his living room/lounge for him. Our cameras will film you as you talk to him about Feng Shui and the changes that could be implemented to improve his lounge. After you have finished your consultation and left we will film the presenter making the suggested changes to his lounge".*

It was clear from the written submissions before Ofcom that Mrs Kenton believed that she had been misled about the nature and likely content of the programme. It was equally clear from the written submissions that the programme makers did not believe that they had misled Mrs Kenton. In this regard, Ofcom noted the BBC's statement in response that they considered the references in their correspondence with Mrs Kenton, to "consumer affairs", "look beneath the surface" and "investigations" together with the details in the consent form, made it clear to Mrs Kenton the nature of the programme she was to participate in.

In considering this issue, Ofcom took account of the tone of the programme and the approach that the programme makers took to the presentation of the subject matter in the programme as broadcast. It appeared to Ofcom that the programme contained elements of both a “hard hitting” investigative piece and a humorous expose. In this regard, Ofcom noted the following excerpts from the programme [Ofcom’s emphasis]:

Pre-title Introduction:	<i>We get out and about and oust <b>charlatans</b> like Feng Shui experts, hypnotherapy people and ghost hunters, some people will believe anything, luckily we have the Bulls**t Detective.”</i>
Presenter’s Introduction:	<i>“My aim is to expose the patter and spin of the 21<sup>st</sup> Century, confront those responsible and <b>finally show it up for what it really is, bulls**t.</b>”</i>
Segment Introduction:	<i>“The self help industry is a <b>goldmine</b>, there are countless experts selling you all kinds of weird and wonderful ways to improve your life, <b>in return for a hefty fee...</b>”</i>  <i>“So if it doesn’t improve your life you can be sure that it <b>certainly improves their bank balance...</b>”</i>  <i>“...Feng Shui experts claim that they can improve your life by rearranging the furniture in your home...<b>Ancient Chinese wisdom or...profitable new age nonsense?</b>”</i>
Presenter’s Comments:	<i>“Well, you have seen the evidence, make up your own mind. But remember, <b>if it smells like bulls**t, it probably is.</b>”</i>

Ofcom acknowledged that the above comments were juxtaposed with a humorous and light-hearted tone throughout the programme. This was underscored by the inclusion in the programme of a staged scenario involving psychic mediums and an investigation into breast enlargement through hypnotherapy, both of which were put to the test. However, Ofcom noted that these also contained serious criticisms of the practices under investigation and that the Feng Shui sections were inter-cut with these:

Presenter:	<i>“Well I think mediums are really good...at telling stories and good at repeating everything I said.”</i>
Parapsychologist:	<i>“I think there’s a definite percentage of the psychic and medium community who are conning us essentially, who are in it for the money and they are making a lot of money.”</i>
Presenter:	<i>“Can hypnotherapy really increase breast size or will it just decrease our bank balances?”</i>

Ofcom noted that the BBC considered its pre transmission correspondence with Mrs Kenton made it “perfectly clear that Ms Kenton was being invited to

participate in something which was more than just an unquestioning look at lifestyle topics". However, taking the full context of the programme into account, Ofcom considered that the investigative approach which included serious criticisms of the "self help industry", and involved Mrs Kenton being put to the test, was not reflected in the description of the programme provided to Mrs Kenton.

In Ofcom's view, the programme as broadcast did not simply entail Mrs Kenton "being invited to the presenter's house to Feng Shui his living room", as described by the assistant producer in her email to Mrs Kenton. Rather, it was an invitation to unknowingly participate in a staged stunt in which she was tested and her advice compared with (and in the event found to be inconsistent with) that of other Feng Shui practitioners.

In view of the above, it is Ofcom's opinion that what Mrs Kenton was advised regarding the nature and purpose of the programme, did not resemble the purpose and content of the programme as broadcast.

Accordingly, in all the circumstances, Ofcom considered that it was clear that the programme makers had failed to provide Mrs Kenton with adequate information about the programme's likely nature and content in order for her to provide informed consent for her participation.

Ofcom found that this resulted in unfairness to Mrs Kenton in the programme as broadcast.

- ii) Ofcom next considered Mrs Kenton's complaint that she was not advised of the programme's date of broadcast, despite an email from the programme makers advising her that the information would be provided. Mrs Kenton also complained that the programme makers ignored her enquiry into when she would be able to view the programme before it was finalised.

Ofcom's Broadcasting Code does not require programme makers to offer a preview of their programmes to programme contributors.

On the basis of the information before Ofcom, it did not appear that a guarantee was given to Mrs Kenton by the programme makers that she would be permitted a preview of the programme prior to transmission. However, Ofcom noted that Mrs Kenton raised the issue of a preview in her email of 26 February 2007, and at no stage in subsequent correspondence, did the BBC correct this assumption. Notwithstanding this, and in the absence of material in support of a guarantee concerning a preview, it is Ofcom's view that no unfairness resulted to Mrs Kenton in the programme.

In respect of Mrs Kenton's complaint that she was not advised of the programme's date of broadcast, Ofcom noted that no date of broadcast was provided to Mrs Kenton. Ofcom observed that the BBC regretted that Mrs Kenton had not been informed of the broadcast date. However, Ofcom considered that although it is good practice for participants to be advised of the date of transmission in accordance with the Code Practice 7.3 ("participants should normally be told...when (if known) and where it is likely to be first broadcast"), the failure to do so in this case did not significantly compromise Mrs Kenton's ability to provide informed consent for her participation and did not result in unfairness to Mrs Kenton in the programme.

- iii) Ofcom then considered Mrs Kenton's complaint that by using a house which was not the presenter's place of residence, it was not possible for her to carry out a full and proper evaluation of the property.

Ofcom noted that Mrs Kenton was advised she would be filmed "*in our presenter's house*". However, as stated in the programme, the house was not the presenter's but instead was a staged home used by the programme makers. In this regard, Ofcom noted an element of deception in that the property was not the presenter's. However, it was apparent to Ofcom from both the untransmitted and transmitted material, that Mrs Kenton was able to conduct an evaluation of the property despite it not being the presenter's residence. Further, Ofcom noted that in the untransmitted footage, Mrs Kenton commented:

*"...to be honest from the outside it looks a bit like the house isn't lived in, maybe you haven't been here terribly long..."*

Taking into account the above factors, Ofcom considered that whilst the property was not the presenter's, this did not in and of itself, affect Mrs Kenton's consent to participate in the programme (the finding regarding Mrs Kenton's consent in relation to the disclosed nature and purpose of the programme was discussed at decision sub-head (a)(i) above). Accordingly, no unfairness resulted to Mrs Kenton in the programme in respect of this sub-head of complaint.

- iv) Ofcom next considered Mrs Kenton's complaint that she was not advised of any contractual rights or obligations until moments before filming, at which time she was given a form to sign.

As noted above, Practice 7.3 provides that where a person is invited to make a contribution to a programme they should normally, at an appropriate stage, be told the nature of their contractual rights and obligations and those of the programme maker and broadcaster in relation their contribution.

Advising a contributor of this information assists in ensuring that informed consent is obtained from them. In Ofcom's view, consent is a continuum that applies from the commencement of a contributor's participation and continues until their involvement is concluded. The signing of the consent form is one part of the continuum.

Ofcom's duty is not to determine matters of fact (in this case, the manner in which the consent form was signed). Rather, Ofcom's role is to consider the broader issue of whether Mrs Kenton was unfairly put under pressure to participate in the programme.

With reference to Mrs Kenton's complaint, Ofcom considered that it was not evident from the material provided to it regarding Mrs Kenton's dealings with the programme makers (from the initial approach through to the recording of the programme) that she was under pressure to participate in it.

On this basis, and taking into account the wider indications of consent beyond the signing of a consent form, Ofcom considered that no unfairness to Mrs Kenton resulted in the programme in relation to this sub-head.

- v) Ofcom then turned to Mrs Kenton's complaint that the programme makers used subterfuge in their dealings with her and this was not justified. Mrs Kenton acknowledged that the potential benefits of Feng Shui could be debatable, but said the practice could never be said to cause harm to anybody.

In Ofcom's view, the subterfuge complained of by Mrs Kenton was considered in detail above at sub-head (a)(i) relating to the nature and purpose of the programme and at sub-head (a)(iii) in respect to the presenter's home. There is consequently no separate finding at this sub-head of complaint.

Taking into account the findings at sub-heads (a)(i) to (a)(v), Ofcom partly upheld head (a) of Mrs Kenton's complaint.

- b) The second aspect of Mrs Kenton's complaint was that the programme makers edited her contribution unfairly. Mrs Kenton stated that her disclaimers about the effectiveness of Feng Shui were removed and her comments were taken out of context.

In considering Mrs Kenton's complaint under Head (b), Ofcom took account of Practice 7.6 of the Code which provides that when a programme is edited, contributions should be represented fairly. Ofcom also took account of Practice 7.9 of the Code which provides that before broadcasting a factual programme, including programmes examining past events, broadcasts 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 first considered Mrs Kenton's complaint that her disclaimers regarding the effectiveness of Feng Shui were not included in the programme as broadcast. In doing so, Ofcom examined the transcript of the programme as broadcast and viewed the unedited recordings of Mrs Kenton's contribution. Ofcom noted the unedited recordings included the following:

*"I mean there are a lot of different approaches to Feng Shui and at Soothing Spaces [Mrs Kenton's business] we don't see it as an arbitrary set of rules..."*

*"I mean I'm not going to pretend that I can wave a magic wand and all your problems are going to disappear because life just isn't like that."*

*"...there isn't a standard procedure, 'cos everyone is different."*

*"The rules are very useful as a kind of structure...but sometimes when we know those rules really well we can also know when to break them..."*

Ofcom then noted the following excerpt from the programme as broadcast:

Mrs Kenton: *"...I think it's really important not to make it [Feng Shui] into sort of painting by numbers..."*

In Ofcom's view, the comment by Mrs Kenton used in the broadcast fairly encapsulated the points Mrs Kenton made in the unedited material, namely that Feng Shui is not based on a prescribed set of rules and that it is important to recognise this when conducting a Feng Shui consultation. Further, Ofcom noted

the inclusion of comments from the other Feng Shui practitioners in the programme which also endorsed Mrs Kenton's point:

Mrs Mitchell: *"Even in the school [of Feng Shui] that I belong to, no two people would do it [Feng Shui] the same..."*

In respect of Mrs Kenton's complaint that the programme makers failed to include her comments that indicated how to achieve the best results from Feng Shui and took her comments out of context, Ofcom also had reference to both the untransmitted material and the transcript of the programme as broadcast. Having considered this material, Ofcom found that in the context of the programme, the broadcast comments were a fair reflection of her unedited contribution in which she gave varied advice about colour schemes and furniture arrangements all with reference to Feng Shui principles.

Accordingly, in Ofcom's opinion, taking account of the context of the programme as a whole, a sufficient number of comments were included in the programme, both by Mrs Kenton and other participants, that showed how to achieve the best results from Feng Shui and demonstrated that there were limits to the effectiveness of Feng Shui. Further, Ofcom considered that the editing of the programme would not have significantly affected viewer's understanding of Mrs Kenton's advice regarding Feng Shui. The material broadcast was a fair reflection of what Mrs Kenton said in the unedited material. Accordingly, Ofcom found that the editing of Mrs Kenton's contribution did not result in unfairness to her.

Therefore, Ofcom found no unfairness to Mrs Kenton in respect of head (b) of her complaint.

- c) Ofcom next considered Mrs Kenton's complaint that she was not given the opportunity to respond to any of the wrongdoings implied in the programme. Mrs Kenton identified three instances as "wrongdoings" levelled at her. Each was considered in turn.

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.

- i) Ofcom first considered Mrs Kenton's complaint regarding the presenter's comment that he intended to *"expose the patter and spin of the 21st century, confront those responsible and show it up for what is it: Bulls\*\*t"*.

In Ofcom's view, the comment complained of by Mrs Kenton underscored the programme's, at times, critical approach. Ofcom acknowledged that Mrs Kenton could have been associated with the presenter's opening comment and consequently been seen as someone who used "bulls\*\*t" to secure business.

However, Ofcom considered that the comments were posed as areas for investigation and not allegations against Mrs Kenton. Further, in the sections relating to Mrs Kenton the only criticism levelled specifically at her was that her advice (for example over colour schemes, positioning of household effects) differed from that of the two other Feng Shui practitioners featured in the programme.

Ofcom also noted, as discussed above at decision head (a)(i), that the comment by the presenter and other comments referred to at that head were juxtaposed with comical and humorous references and staged antics. This humorous tone was maintained throughout the programme and further, the comments made by the presenter, including that complained of, were not directed specifically at Mrs Kenton.

On this basis, Ofcom considered that the presenter's comment, did not constitute a significant allegation of wrongdoing and no unfairness resulted to Mrs Kenton.

- ii) Ofcom next considered Mrs Kenton's complaint that the programme implied her recommendations were flawed and was given no opportunity to justify them. In Ofcom's view the programme questioned Feng Shui theory and practice robustly and adopted a sceptical approach to Mrs Kenton's recommendations:

Commentary: *"I was given some incredible and conflicting Feng Shui advice."*

*I was disappointed but not surprised to be given conflicting advice by the experts, and so firmly tongue in cheek I have made a few changes of my own."*

However, as discussed at decision sub-head (c)(i), whilst the programme makers tested Mrs Kenton and highlighted inconsistencies between the practitioners, no significant allegations of wrongdoing were made against Mrs Kenton. On this basis, there was no requirement for an opportunity to respond and no unfairness resulted to Mrs Kenton.

- iii) Ofcom lastly considered Mrs Kenton's complaint that the programme referred to Feng Shui practitioners charging large sums of money. Ofcom noted the transcript as follows:

*"... the self help industry is **a goldmine**, there are countless experts selling you all kinds of weird and wonderful ways to improve your life, **in return for a hefty fee**. So if it doesn't improve your life you can be sure that it **certainly improves their bank balance**. Feng Shui experts claim that they can improve your life by rearranging the furniture in your home....Ancient Chinese wisdom or...**profitable** new age nonsense?"*  
[Ofcom's emphasis]

Ofcom considered the complaint only in relation to Mrs Kenton. Ofcom noted that the reference to the self help industry being a "gold mine" may have implied that Feng Shui practitioners were successful financially.

However, in Ofcom's view, the references to "hefty fee", "improving their bank balance" and "ancient Chinese wisdom or profitable new age nonsense" were observations made by the programme which sought to test the three practitioners, and not significant allegations of wrongdoing levelled at Mrs Kenton. As noted above at sub-head (c)(i), the only criticisms levelled at Mrs Kenton were that there were inconsistencies between the advice of the practitioners. In Ofcom's view, these did not constitute significant allegations of

wrongdoing against Mrs Kenton. Therefore, no unfairness resulted to Mrs Kenton in respect of this sub-head of complaint.

On this basis, and for the reasons articulated at sub-heads (c)(i) to (c)(iii), Ofcom considered that significant allegations of wrongdoing were not made against Mrs Kenton. Therefore, it was not incumbent on the programme makers, in the interest of fairness, to offer Mrs Kenton “an appropriate and timely opportunity to respond” to the allegations in accordance with Practice 7.11 of the Code.

**In conclusion, and in light of the finding at head a) i) above, Mrs Kenton’s complaint of unfair treatment was partly upheld by Ofcom and the broadcaster found to be in breach of Rule 7.1.**

## **Complaint by Mr Paul Rouse on his own behalf and on behalf of the Association of Second Home Owners**

*Anglia Special Edition, ITV (Anglia), 19 December 2006*

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**Summary:** Ofcom has upheld part of this complaint of unfair treatment in the programme as broadcast.

This edition of the current affairs programme *Anglia Special Edition* considered the impact that second home owners have on local communities in East Anglia. The programme used a ‘mock trial’ format with two barristers, attempting to convince a jury of twelve audience members that second home owners were either “heroes” or “villains”. Extracts of an interview with Mr Rouse, who was identified as the Chairman of the Association of Second Home Owners (“the ASHO”), featured as part of the case made for second home owners.

Ofcom found as follows:

Mr Rouse was not given the opportunity to provide “informed consent” for his participation in the programme because the broadcaster did not tell him that it would use a “mock trial” format in the programme. This aspect of the complaint was therefore upheld.

Ofcom did not consider that the use of the word “villain” to describe second home owners was likely to have affected viewers’ opinion of either Mr Rouse or the ASHO and its members and thereby to have resulted in unfairness to them. Ofcom took into account the clearly outlined context of the debate; the relatively light-hearted nature of the programme; and the fact that the term was not applied to the complainants specifically.

The use of the phrase “get on your bike” was a reasonable reflection of Mr Rouse’s position and, given the context of the programme did not result in unfairness to him.

The negative images of second home owners in the programme were immediately followed by a counter-balancing positive image and none of the terms were applied to Mr Rouse or the ASHO and its members specifically. Therefore, they were unlikely to have affected viewers’ opinions of them.

Given the clear context of the programme and the presentation of a balanced debate neither the expression of robust opinions by the barrister presenting the case against second home owners nor the presenter’s use of strong imagery amounted to a vilification of second home owners in general. Furthermore, in light of the fact that none of the arguments or the imagery was applied directly to Mr Rouse or the ASHO and its members, it could not be considered as a vilification of Mr Rouse as an individual or the ASHO and its members and therefore it did not result in unfairness to them.

### **Introduction**

This edition of the current affairs programme *Anglia Special Edition* considered the impact that second home owners have on local communities in East Anglia, and in particular house prices. The programme’s format was a mock trial. It consisted of two barristers, one on each side of the debate, attempting to convince a jury of twelve audience members that second home owners were either “heroes” or “villains”. Each barrister made his argument with the aid of pre-recorded contributions from people with

an interest in the topic under debate. Three excerpts of an interview with Paul Rouse, who is the chairman of the Association of Second Home Owners (ASHO), featured as part of the case made for second home owners.

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

## **The Complaint**

### **Mr Rouse's case**

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

- a) He was not aware that his pre-recorded contribution would be edited for use in a "mock trial" about second home owners.
- b) As a second home owner he had been found in the programme to be a "villain", the dictionary definition of which is "wicked or evil".
- c) The 'prosecuting' barrister indicated that he (Mr Rouse) had told local people to "get on your bike".
- d) As a second home owner he had been referred to as part of a group described as "big city fat cats", "selfish migrants" and "bonus rich city workers" without any clear indication of the basis for these references.
- e) As a second home owner he had been vilified.

In summary, Mr Rouse complained that the ASHO and its members were treated unfairly in that:

- f) second home owners were found to be "villains", the dictionary definition of which is "wicked or evil";
- g) second home owners were described as "big city fat cats", "selfish migrants" and "bonus rich city workers" without any clear indication of the basis for these references; and,
- h) second home owners were vilified.

### **ITV's case**

In summary ITV responded to Mr Rouse's complaint as follows:

- a) ITV accepted that Mr Rouse was not made aware of the "mock trial" format of the programme and that, had he been aware of it, it might have affected his initial decision to participate in the programme. The broadcaster explained that it had not decided upon this format when Mr Rouse agreed to take part, but added that once it had made this decision, Mr Rouse should have been informed and given further details regarding the programme. ITV apologised to Mr Rouse for having failed to do so although it also clarified that rather than being designed to vilify anyone the "mock trial" format was intended to ensure that both sides of the debate would be forcefully put to the studio panel and that the debate would be as balanced and impartial as possible. In addition, ITV confirmed that henceforth it would make certain that contributors knew when this format was to be used

and had been informed about the nature of any other contributors before taking part.

- b) & f) With regard to the complaints at heads b) and f) ITV did not consider that describing second home owners as either “heroes” or “villains” or indicating that the studio jury had delivered a 10-to-2 verdict that they were “villains” resulted in unfairness to Mr Rouse or the ASHO and its members. The broadcaster argued that, firstly, the meanings of the terms “heroes” and “villains” had been made clear in the programme both in the presenter’s introduction and in the barristers’ respective arguments. It said that viewers would not therefore have considered Mr Rouse or the ASHO and its members in accordance with the dictionary definition of these terms (i.e. “wicked or malevolent persons” or “distinguished by exceptional courage, nobility, fortitude, etc.” or “possessing superior qualities in any field”). Secondly, ITV said that the process and the verdict of the jury vote were transparent, free and fair. ITV also noted that the result was similar to that of previous viewers’ polls on the issue undertaken by ITV Anglia.
- c) In relation to the complaint that the programme had unfairly said that Mr Rouse had told people to “get on your bike”, ITV noted that Mr Rouse had argued that people have to move away in order to earn money to keep themselves. It believed that it was fair for the barrister presenting arguments against second home owners to summarise Mr Rouse’s argument as his having told people to get “*on your bike*”. The broadcaster also noted that this summary was clearly a reference to a speech by Norman Tebbit (at the time of the Toxteth and Handsworth riots in 1981) and the misquoted catchphrase, “on your bike”, with which Norman Tebbit subsequently became associated.
- d) & g) With regard to the complaints at heads d) and g) ITV argued that the “stereotypes” used to describe second home owners did not result in unfairness to Mr Rouse or the ASHO and its members because these descriptions (“big city fat cats”; “bonus rich city workers” and “selfish”) were fully explored in the programme. ITV said that each term was only used once, and during the rest of the programme the barrister for the defence sought to challenge them through various arguments including Mr Rouse’s own view that second home owners were “*highly respectable people*”. In relation to the portrayal of the ASHO specifically, ITV argued that each stereotype was counterbalanced with a positive description of second home owners and that none was specifically applied to the ASHO or its members. ITV also said that no contributor used the term “selfish migrants” to describe second home owners as Mr Rouse had stated in his complaint.
- e) & h) With regard to the complaints at heads e) and h) ITV did not accept that Mr Rouse or the ASHO and its members were vilified in the programme. It argued that the issues surrounding second home ownership were explored in a way that was “fair, accurate and balanced”. It argued that an opportunity to contribute was given to those for and against second home ownership and that the former group’s arguments were persuasively explained, not least by Mr Rouse himself in three separate clips. In relation to the portrayal of the ASHO specifically, ITV argued that strong imagery was used on both sides of the debate.

#### *Mr Rouse’s comments on ITV’s statement*

In summary Mr Rouse commented that:

- e) ITV's description of the programme as fair, accurate and balanced was not suitable because the broadcaster had failed to even carry out basic research. Mr Rouse illustrated this point by arguing that a short search on the internet was enough to prove that claims made in the programme that the average house price in the area was £292,000 and the starting price was "*at least £200,000*" were untrue. Mr Rouse indicated that he had found a two-bedroom house in Hunstanton for less than £100,000 and a two bedroom bungalow in Brancaster for £149,000. He also noted that Mr Wagstaff, an estate agent who was interviewed in the programme, had a website full of houses which started at £135,000.

#### *ITV's response to Mr Rouse's comments*

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

- e) It maintained that the programme was fair, accurate and balanced and denied that it had not carried out research. By way of example, the broadcaster noted that it had spoken to a range of interested parties (including second home owners, local tradesman and an MP) and that its comments on Brancaster had been based on two reports on the area; the first written by the Commission for Rural Communities ("the CRC") and the second commissioned by the Norfolk Coast Partnership, the Countryside Agency and North Norfolk District Council.

With regard to the question of house prices in the area, ITV noted that the average house price of £292,000 in Brancaster was based on the CRC report, which in turn had used HM Land Registry and CACI Ltd. as its sources. The broadcaster also noted that the second (Norfolk) report had found that the average house price in Brancaster was £351,458. However, the programme maker had chosen not to use this figure because it was based on a limited sample size.

Finally, ITV argued that, in contrast to Mr Rouse's assertion, Mr Wagstaff's comment that "*the starting off price in the area is at least £200,000*" was accurate, and directed Ofcom's attention to the website of Mr Wagstaff's estate agency (Bedfords) to illustrate this fact.

#### **Decision**

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

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

transparent, accountable, proportionate and consistent and targeted only at cases in which action is needed.

The case was considered by Ofcom's Executive Fairness Group. In reaching its decision, the Group had regard for a copy of the programme, the programme transcript, and both parties' written submissions.

- a) Ofcom first considered the complaint that Mr Rouse had not been told that the programme would use a "mock trial" format.

Ofcom took account of Practice 7.3 of Code which requires that "where a person is invited to make a contribution to a programme (except when the subject matter is trivial or their participation minor) they should normally, at an appropriate stage: be told the nature and purpose of the programme, what the programme is about and be given a clear explanation of why they were asked to contribute and when (if known) and where it is likely to be first broadcast" ... [and] "be made aware of any significant changes to the programme as it develops which might reasonably affect their original consent to participate, and which might cause material unfairness".

With regard to this head of complaint, Ofcom noted that ITV accepted that it had not made Mr Rouse aware of its decision, which was made after Mr Rouse's contributions were recorded, to use a "mock trial" format in the programme.

In Ofcom's view the decision to use this format represented a significant change to the programme. This, in turn, significantly changed the context in which Mr Rouse's comments were used and therefore might have affected his decision to participate in the programme. Therefore, in Ofcom's view it was incumbent upon the broadcaster to have contacted Mr Rouse again to let him know of this change.

In light of the fact that the broadcaster did not contact Mr Rouse to let him know of the change in format which might have affected his original willingness to contribute, Ofcom considered that Mr Rouse was not given the opportunity to provide "informed consent" for his participation in the programme. Ofcom therefore found that the use of his contributions resulted in unfairness to Mr Rouse in the programme as broadcast.

Ofcom upheld this head of complaint.

- b) & f) Ofcom next considered Mr Rouse's complaint that as a second home owner he and the ASHO and its members had been found to be "*villains*".

In relation to this complaint Ofcom took account of the general requirement that broadcasters must avoid unjust or unfair treatment of individuals in programmes (as set out under Rule 7.1 of the Code).

In considering whether or not the use of the word villain to describe second home owners had resulted in unfairness to Mr Rouse or the ASHO and its members, Ofcom took account of several factors.

First, Ofcom noted that the term "*villains*" was not specifically applied to Mr Rouse or to the ASHO and its members.

Furthermore, it noted that the context of the programme made it clear that use of the generic terms “*heroes*” and “*villains*” was designed to juxtapose two opposing views in the debate over whether second home ownership in the area was a good or bad thing for the local community. It also noted that they were used as a means for the programme to light heartedly signpost the issues under discussion rather than as a means of labelling any individual homeowners as “wicked or evil”.

Ofcom considered that in the circumstances of this case (namely, the clearly outlined context of a debate, the relatively light-hearted nature of the programme and the fact that the term was not applied to the complainants specifically), the use of the word “*villains*” to describe second home owners was unlikely to have affected viewers’ opinions of Mr Rouse or to the ASHO and its members. Ofcom therefore found that the use of these words resulted in no unfairness to Mr Rouse or to the ASHO and its members.

Ofcom did not uphold these heads of complaint.

- c) Ofcom then turned to Mr Rouse’s complaint that the ‘prosecuting’ barrister (Matthew McNiff) had unfairly indicated that he (Mr Rouse) had told local people to “get on your bike”.

In relation to this complaint Ofcom took account of the general rule against unfairness (as set out above) and of Practice 7.9 of the Code which states that the broadcaster should take reasonable care before broadcasting a factual programme to satisfy itself that material facts have not been presented, disregarded or omitted in any way that is unfair to an individual or organisation.

With regard to this head of complaint, Ofcom observed that in the programme the prosecuting barrister’s comment was made after Mr Rouse was shown:

Paul Rouse: *“In 1969 I had to go 40 miles to... when we got married I moved 40 miles away from the family home to find a job that meant I could afford to buy a house. People do have to move away in order to earn money to keep themselves. And you can’t expect, because you are born in a place that you’ve got a right to a job and a house. It doesn’t work like that”.*

Matthew McNiff: *“All we say members of the jury is, have a heart. On your bike says Mr Rouse. [In] 1969 he had moved 40 miles, well, what good would that be? 40 miles will not magic up an income that is sufficient to buy a house at the prices that exist in this area”.*

Ofcom noted that Mr Rouse’s position was that economic reality means that sometimes people must move in order to secure better job opportunities and a sufficient salary to purchase a home. It also noted that he had indicated that being born in a particular place neither automatically confers on that person the right to a job nor the ability to own his/her own home within that place. In Ofcom’s view the comment made by Mr McNiff in the programme was clearly used as a means of encapsulating Mr Rouse’s previously articulated position.

In the context of this programme Ofcom considered that it was clear that phrase was used to remind the studio audience and the programme viewers that Mr Rouse believed that sometimes one has to move in order to get a job and thereby to buy one's own home.

Ofcom also considered that the colloquial nature of the comment was in keeping with way in which the debate was framed and the overall informal nature of the programme.

Taking all of these factors into account, Ofcom was of the view that the use of this phrase in these particular circumstances did not result in unfairness to Mr Rouse.

Ofcom did not uphold this head of complaint.

d) & g) Ofcom considered Mr Rouse's complaint that he and the ASHO and its members had been referred to as part of a group described as "big city fat cats", "selfish migrants" and "bonus rich city workers".

As with head c) above Ofcom took particular account of Rule 7.1 and Practice 7.9 with regard to this head of complaint. It also took account of Practice 7.11 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 looked at the transcript of the programme and notably the occasions when these phrases, or phrases like them, were used in the broadcast.

Ofcom observed that the presenter, Tim Curtis, opened the programme by asking two questions:

*"Are they big city fat cats buying up all the housing and pricing locals out of the market? Or are they wealthy benefactors breathing new life into dying rural communities? Tonight we put second home owners on trial."*

*"Welcome once again to the 'Anglia Special Edition' courtroom. In the dock tonight – second home-owners, are they the most selfish people in the country, killing rural communities by pushing house prices through the roof, or are they the saviours of our quiet coastal villages, their bulging wallets bringing new jobs and new life into places which would otherwise become ghost towns?"*

It also observed that following the broadcast of some background information about the area, the presenter then introduced the barristers and indicated which side of the debate each would represent:

*"Time now to explore the evidence for and against second home-owners in details. For the prosecution, Matthew McNiff will outline the case against bonus rich city workers who are accused of depriving locals of much needed housing. And for the defence, John Morgans will argue in favour of those who bring vital income into dying coastal communities by boosting employment and using local shops and services."*

Ofcom noted that in contrast to Mr Rouse's complaint the programme had not referred to second home owners as "selfish migrants" but had posed the question "*are they the most selfish people in the country*".

In Ofcom's view, it was clear that the presenter had used this term, and the other two referred to in this head of complaint, in order to frame the debate at the beginning of the programme and to outline the structure (i.e. the mock trial) which would be used to explore the opposing views of the impact of second home owners in the area. In particular, Ofcom recognised that on each occasion the presenter had referred to second home owners using a negative image this had immediately been followed by a counter-balancing positive image.

Ofcom noted that the programme presented opposing views of the impact of second home ownership in the area in order to enable the studio audience and the programme's viewers to make up their own minds about the issue.

The panel considered that, from the start of the programme, viewers were given the clear and accurate impression that the programme would test differing views of second home ownership in the community. As noted above, in relation to the use of the terms "villain", Ofcom considered that the imagery used by the presenter to frame the debate was in keeping with the relatively light-hearted and entertaining nature of this type of programme and did not refer to any individual homeowner.

It also recognised that none of the terms referred to in this head of complaint were applied to Mr Rouse or the ASHO and its members specifically and that therefore they were unlikely to have affected viewers' opinion of them.

Taking these factors together Ofcom did not consider that the use of these terms resulted in unfairness to Mr Rouse or the ASHO and its members.

Ofcom did not uphold this head of complaint.

e) & h) Ofcom considered Mr Rouse's complaint that he and the ASHO and its members were unfairly vilified in the programme.

As with head c) Ofcom took particular account of Rule 7.1 and Practice 7.9 with regard to this head of complaint.

Ofcom again noted that the context of the programme was made clear to viewers. Namely, that it would present a debate about the impact of second home ownership in the area.

In Ofcom's view, and taking into account the findings at heads b), c), d), f) and g) above, the programme plainly outlined the opposing views in this debate and in doing so it accurately and fairly presented several positive views of second home ownership, including those put forward by Mr Rouse.

Ofcom noted that the outcome of the debate (i.e. the 10 to 2 vote against second home owners) was clearly explained to be based on the opinions of the studio audience.

In Ofcom's view the expression of robust opinions against second home ownership in the programme occurred within the context of a debate that was framed by the use of strong imagery (accorded to both viewpoints) and which

included similarly robust opinions in favour of second home ownership. In these circumstances Ofcom considered that neither the expression of these opinions by the barrister presenting the case against second home owners nor the presenter's use of strong imagery amounted to an unfair vilification of second home owners in general or Mr Rouse and the ASHO and its members in particular.

Ofcom did not uphold this head of complaint.

**Ofcom has upheld part of this complaint of unfair treatment in the programme as broadcast.**

## Not Upheld

### Complaint by Mr John Bryant

*Meet the Foxes, Channel 4, 26 April 2007*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment by Mr John Bryant.

This documentary told the story of a number of urban foxes and their attempts to survive on the streets of North London, and examined the relationship between the animals and the various people they encountered. This included local residents, some of whom responded positively to the foxes, and others who tried different ways to get rid of them. One couple featured, referred to as Val and Howard in the programme, kept chickens in their back garden which were periodically attacked and sometimes killed by foxes. The programme explained that “[the] *local council has recommended local fox specialist, John*” (Mr Bryant, the complainant) and he was shown visiting their home discussing the problem with Val and suggesting humane solutions to it.

Mr Bryant complained that he was treated unfairly in the programme as broadcast in that: he agreed to participate in the programme on the assurance that the other contributions would be balanced which was not the case; he was told that he would be able to watch a preview of the programme which did not happen; and, that his contribution to the programme was unfairly edited.

Ofcom noted the contribution to the programme of a pest controller who reflected a contrary viewpoint to that of Mr Bryant, namely that urban foxes should be killed. However Ofcom was satisfied that this contained nothing that could have arguably created the situation that would lead to unfairness to Mr Bryant. Ofcom took the view that it was therefore reasonable to include the pest controller’s comments in the programme and found no unfairness to him in this respect.

Ofcom was satisfied that whether or not Mr Bryant was offered a preview of the programme, this did not form part of his decision to give his informed consent in contributing to the programme. Ofcom therefore found no unfairness to Mr Bryant in this respect.

Ofcom noted that the programme makers were not obliged to include all or any of the footage taken of him. Ofcom was also satisfied that Mr Bryant’s contribution was edited fairly overall in the programme and comments made about Mr Bryant by other contributors did not result in unfairness to him.

### Introduction

On 16 April 2007, Channel 4 broadcast an edition of *Cutting Edge*, a documentary series that focused on human interest stories and the social and/or political context behind them. This particular episode was entitled *Meet the Foxes* and it told the story of a year in the life of a family of urban foxes and their attempts to survive on the streets of North London. The programme also examined the relationship between the animals and the various people they encountered. This included local residents, some of whom responded positively to the foxes, and others who tried different ways to get rid of them.

The programme featured one couple Val and Howard who kept chickens in their back garden which were periodically attacked and sometimes killed by foxes. The programme explained that “[the] *local council has recommended local fox specialist, John*” (Mr John

Bryant, the complainant) and he was shown visiting their home and discussing the problem with Val.

Mr John Bryant complained to Ofcom that he was treated unfairly in the programme as broadcast.

## **The Complaint**

### **Mr Bryant's case**

In summary, Mr Bryant complained to Ofcom that he was treated unfairly in the programme in that:

- d) He agreed to co-operate with the programme on the assurance that it would be balanced and not perpetuating the usual myths about foxes (for example, that they attack or pass disease to humans). In the event, this was not the case. A pest controller was shown shooting and cage-trapping foxes and stating in interview that he knew of cases where foxes had attacked babies and were a threat to domestic animals. Mr Bryant complained that this was not balanced by a contribution from him or anyone else and that the audience was not informed that the pest controller had a criminal record.
- e) He was told by the programme's producer that he would be invited to see the completed programme before it was broadcast, but this did not happen.
- f) His contribution to the programme, as a professional wildlife consultant specialising in humanely resolving urban fox problems, was unfairly edited. In particular, Mr Bryant stated that:
  - i) He was filmed for one hour and this was edited down to about 10 seconds;
  - ii) He was filmed advising the owner of the chickens who featured in the programme that:
    - more chickens would be lost if they were allowed to free-range round the garden;
    - the wire pen in which they were housed was not adequate protection from foxes;
    - no repellents would deter foxes from this natural prey;
    - killing the foxes would be pointless as other foxes would fill their place; and,
    - a "Scarecrow" water device could be used to fire a burst of water at the foxes which were said to roam near the house and on the patio.

Mr Bryant complained that "*virtually all*" this advice was edited out; and,

- iii) The owner of the chickens, Val, was shown informing her husband, Howard, of Mr Bryant's visit and Howard was shown concluding that the advice given by Mr Bryant was "useless".

### **Channel 4's statement**

In summary, and in response to the complaint, Channel 4 stated that:

- a) It rejected Mr Bryant's claim that he was in any way misled about the nature and purpose of the programme or his role in it. Channel 4 said that the programme's producer, Ms Riete Oord, and Mr Bryant had met for a working lunch after the programme was commissioned. During this lunch, the nature and purpose of the programme was discussed in detail and it was explained to Mr Bryant that the programme would be part wildlife film and part social documentary. They discussed the problem with urban foxes in general and that the programme would give a balanced picture. In this context, Channel 4 said that both Ms Oord and Mr Bryant discussed various press reports about foxes, for example foxes eating babies (which Mr Bryant said were like conspiracy theories relating to foxes), that were widely believed by people who were frightened of them. Channel 4 said that Ms Oord gave Mr Bryant no assurances that reference to such reported incidents would not be made in the programme. During this meeting, they also discussed what filming the programme makers might want to do with Mr Bryant, namely observational filming of him with a client. Channel 4 said that Mr Bryant appeared to be willing to be filmed.

Channel 4 said that Mr Bryant was invited to take part in the filming and it was explained to him that two of the programme's main contributors, Val and Howard kept chickens and had lost several to foxes. Channel 4 said that Ms Oord explained to Mr Bryant that, as the programme was to be observational in nature rather than conducting a conventional interview, she wanted him to be filmed without her intervention in the natural course of his work. Ms Oord also explained that he would be filmed in "actuality" and then edited. Channel 4 said that Ms Oord had also given Mr Bryant a clear idea of the other contributors who had already been filmed and the nature of their contributions. Channel 4 said that Mr Bryant freely agreed to participate without any conditions attached to his consent. He was paid a fee and he signed a release form.

Channel 4 said that at this stage of the production, the pest controller had not been filmed and that Val and Howard only approached the pest controller after being disappointed by Mr Bryant's advice. When the programme makers realised they were going to use the pest controller's contribution they telephoned Mr Bryant to inform him. During this telephone conversation, Mr Bryant made it clear that he did not agree with pest controllers who shoot foxes but that he understood the programme makers' desire to make a balanced programme. Channel 4 said that Mr Bryant did not mention any objection to his own contribution being used in the programme.

- b) Neither the producer nor any member of the production team offered Mr Bryant the opportunity to view the programme before broadcast.
- c) Channel 4 said that it rejected Mr Bryant's claim that his contribution was unfairly edited. In response to the particular points raised by Mr Bryant under this head of complaint, Channel 4 said that:
- i) In relation to Mr Bryant's complaint that only 10 seconds of the hour long footage taken of him in Val and Howard's garden was used in the programme, Channel 4 said that the interview with him in the garden lasted for about 30 minutes. Channel 4 said that it was during this part of the interview (an excerpt of which was shown in the programme) that Val spoke with Mr Bryant about the foxes that visited her garden and the threat they posed to her chickens. The remaining twenty five minutes or so mostly comprised footage of Mr Bryant talking about his preferred anti-fouling repellent and the mating habits of foxes and a further lengthy sequence outside showing him setting up and

demonstrating the “Scarecrow” water device. Channel 4 said that reference to the mating habits of foxes was included but discussed by another contributor.

Channel 4 said that the sequence in the programme involving Mr Bryant lasted 51 seconds. The ratio of footage shot and used in respect of Mr Bryant was more or less in line with that of other contributors. Further to this, and as stated above, Channel 4 said that the programme’s producer, Ms Oord, had explained to Mr Bryant that his contribution would be edited.

ii) Channel 4 said that it was incorrect for Mr Bryant to state that “*virtually all*” the advice he had given to Val was edited out. Although some of his advice was edited out, what remained of Mr Bryant’s contribution was extremely important and interesting; in particular, his clear advice to Val that ultimately there was little she can do to protect her free-range hens from foxes given their predatory nature. Channel 4 explained why parts of Mr Bryant’s contribution were omitted from the programme, in particular:

- In relation to Mr Bryant’s complaint of the omission of his advice to Val that allowing the birds to free-range around the garden without constant supervision would result in further hens being lost Channel 4 said that as can be seen from the transcript of the unedited footage of Mr Bryant, his advice about this was somewhat less clear. Although he did say (in the context of describing the “Scarecrow” device) that “*it wouldn’t be safe to leave your chickens wandering around here, even, even if you were within twenty yards*”, he had earlier advised Val that her chickens “*in that run are having a far better life than ninety nine percent of the chickens in the country anyway. So I wouldn’t worry too much about them being out and risking, risking you going to a telephone call and coming out and finding them all dead.*” In the circumstances, a decision was taken by the programme makers not to include this as it appeared to conflict with owners’ statutory duty to protect their animals from predators.
- In relation to Mr Bryant’s complaint of the omission of his advice that the wire pen in which the birds were housed was not adequate protection from foxes, Channel 4 said that as can be seen from the transcript of the unedited footage, his advice to Val was somewhat less emphatic. Channel 4 said that although Mr Bryant expressed “surprise” that the wire pen in which the family’s chickens were housed had been fox proof for eighteen months he went on to say that “*if that’s proved adequate, fine*”. He subsequently advised using “*stronger mesh than chicken wire, cos they can get hold of it and they can work at it and work at it until they break it*”. Following his visit, Channel 4 said that Howard did, in fact, strengthen the chicken house, but unfortunately a few days later foxes managed to gain access for the first time and killed all but one of the hens. As a result, Val and Howard speculated that had they ignored the advice and left the chicken run as it was, the foxes would have been unable to gain access. In the circumstances, a decision was taken by the programme makers not to include any specific reference about the adequacy or otherwise of the chicken run before or after Mr Bryant’s visit to the house.
- In relation to Mr Bryant’s complaint of the omission of his advice that there were no repellents that deter foxes from natural prey, Channel 4

said that the programme makers had already included a very clear expression of his opinion that there was nothing Val and Howard could do to protect their chickens if they were free ranging other than monitor them around the clock.

- In relation to Mr Bryant's complaint of the omission of his advice to Val that killing the foxes would be pointless because their vacant territory would be filled immediately by other neighbouring foxes Channel 4 stated that this is not correct and that Mr Bryant's opinion about this was clearly covered in the film and attributed to him.
  - In relation to Mr Bryant's objection to the fact that he was not shown demonstrating a water device called "the Scarecrow" which could be used to fire a burst of water at approaching foxes, Channel 4 said that this demonstration was not included for several reasons. Firstly, Val was unimpressed with the device which was clear from the unedited footage. Secondly, Mr Bryant had himself acknowledged that the device that he was using at the time was "faulty". Thirdly, the programme makers found no independent evidence that the device worked. Fourthly, Mr Bryant himself alluded to the limited use of the device. Finally, given the above considerations, as Mr Bryant sells this product at about £60 each the programme makers felt it would be inappropriate to feature it in the film.
- iii) Channel 4 said that it was incorrect for Mr Bryant to claim that Val, when shown informing her husband of his visit, concluded that his advice was "useless". Howard was shown in the programme to actually say *"So in fact, no help at all from the local council is what it boils down to"*.

Furthermore, Channel 4 said that "Howard's" remarks would have been understood by viewers in the context in which they were made. Initially, he was very clearly shown looking to the council to provide a solution to his problem. Following the visit from Mr Bryant, who had been recommended to him by the council, Howard had found himself no further towards finding a solution to the fox problem. Also, he had been told that there was, in effect, no solution and that the chickens (or at least some of them) would inevitably be killed if they free-ranged unless they were continuously monitored. Channel 4 said that it believed that it was entirely reasonable for Howard to express his frustration in a manner which was faithful and accurate to him and that it would have been clearly understood as such by viewers given the broader context within which his comments were made. It also believed that viewers would have been able to contextualize appropriately his entirely spontaneous expression of his frustration. Channel 4 said that it was also clear from the Howard ultimately followed the wrong path in trying to get rid of the foxes, in effect vindicating Mr Bryant.

### **Mr Bryant's comments**

In summary, and in response to Channel 4's statement, Mr Bryant repeated and elaborated upon a number of his initial complaints. Those material to his fairness complaint are, in summary:

- a) That the original intention, as he understood it, was for the programme makers to accompany Mr Bryant during one or two of his normal call-outs to clients. Ms Oord, the programme's producer, contacted him to say that some friends of hers

who lived nearby had been having problems with foxes and she suggested that this would be a good opportunity for Mr Bryant to be filmed giving advice on fox deterrence.

- b) Mr Bryant said that at no time did he Mr Bryant ask for the opportunity to see the completed programme, but that when he called the programme's producer to ask if a date for broadcast had been fixed, she told him she would invite him to see the completed film. Mr Bryant said that having watched the programme as broadcast, it became clear to him why the invitation never came, namely that he would have been outraged that the pest controller was invited to take part in the programme. In particular, Mr Bryant said that he would have been outraged at the pest controller's unchallenged claim that children had been bitten by foxes.
- c) Mr Bryant noted that he had never met or discussed fox problems with Howard, but did spend a lot of time advising Val on fox behaviour and demonstrated a "Scarecrow" device that detects intruding animals and fires a jet of water to scare them away. The actual machine Mr Bryant had with him had a fault, but he said that it worked well enough to demonstrate its capabilities. Virtually none of this advice was shown and that the few words Val told Howard of Mr Bryant's visit later were dismissed by him as "no help at all". He said this in relation to the Council, but as it was claimed that the Council had recommended Mr Bryant, the clear implication in the programme was that the advice was useless. If a reasonable section of the time Mr Bryant spent giving advice to Val had been shown, viewers would have considered the advice of both educational and practical value.

#### **Channel 4's final statement**

In summary, and in relation to Mr Bryant's comments, Channel 4 responded as follows:

- a) Channel 4 said that both Howard and Val were acquaintances of Ms Oord and they were filmed solely because of their problems with the foxes. Channel 4 referred back to its initial response to the complaint. Channel 4 said that Ms Oord, the programme's producer, was sure that she had told Mr Bryant that the pest controller would be in the programme and she recalled Mr Bryant restating that he thought he was a "disreputable" character.

Channel 4 said that it referred to its original response to the complaint. It said that the pest controller's comments were included in the programme because they were self-evidently anecdotes and stories already circulating in the press and the public domain and although his comments may well be considered partial they were balanced with the equally partial views of contributors who supported the foxes.

- b) Channel 4 rejected the claim that Mr Bryant had been invited to see the programme and referred to its original response.
- c) Channel 4 referred to its original response.

#### **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, a recording of the unedited footage of Mr Bryant and the written submissions from both parties.

- a) Ofcom considered Mr Bryant's complaint that he agreed to co-operate with the programme on the assurance that it would be balanced and not perpetuating the usual myths about foxes. Mr Bryant said that the inclusion of the pest controller and his comments were not balanced by Mr Bryant or anyone else contributing to the programme. Also, the pest controller's criminal record was not disclosed to viewers.

In considering this element of the 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 7.3 of the Code which says that where a person is invited to make a contribution to a programme they should normally be told matters such as the nature and purpose of the programme, the contribution they are expected to make and the areas of questioning and where possible, the nature of other contributions. Taking measures such as these is likely to result in the consent that is given being 'informed consent'.

Ofcom considered what Mr Bryant was told by the programme makers about his contribution to the programme that resulted in him agreeing to take part.

Ofcom noted from the material submitted by both parties to this complaint that the programme makers appeared to have behaved reasonably towards Mr Bryant in informing him of the nature and purpose of the programme subsequently broadcast; that it would explore the problems with urban foxes in general and would include a variety of viewpoints to create a balanced picture. This was not, it appeared to Ofcom, disputed by Mr Bryant, nor was the programme makers' explanation to Mr Bryant concerning the form his contribution would take. Ofcom also noted that the programme makers fully explained to Mr Bryant that other contributors would be making a variety of views and relating their experiences of urban foxes.

Ofcom considered the issue of Mr Bryant's and the programme maker's recollection on whether or not he was told of the pest controller's contribution would be included in the programme. Ofcom recognised that there was a conflict of evidence between the complainant and the programme makers. Ofcom was not required to resolve conflicts of evidence as to the nature or accuracy of particular accounts of events but to adjudicate on whether the complainant has been treated unfairly in the programme as broadcast.

In these circumstances, it was not possible for Ofcom to conclude whether or not Mr Bryant was aware that the pest controller would appear in the programme. The issue for Ofcom was to consider whether the inclusion of this particular contributor would have led to unfairness to Mr Bryant or not. Ofcom recognised that there was no obligation on programme makers or broadcasters to disclose the identity of other contributors, or the substance of their contribution, unless it is likely to create

unfairness to other contributors. In the particular circumstances of this case, Ofcom was satisfied that the content of the pest controller's contribution, while reflecting a contrary viewpoint to that of Mr Bryant, consisted of nothing that could have arguably created the situation that would lead to unfairness to Mr Bryant. Ofcom took the view that it was therefore reasonable to include the pest controller's comments in the programme and found no unfairness to him in this respect.

- b) Ofcom considered Mr Bryant's complaint that while he was told that he would be able to view the programme before broadcast, this did not happen.

In considering this element of the complaint, Ofcom took account of Practice 7.3 of the Code which is set out under head a) of the Decision above.

Ofcom considered the issue of Mr Bryant's and the programme maker's recollection as to whether or not he was offered an opportunity to watch a preview of the programme before its broadcast. Ofcom recognised that there was a conflict of evidence between the complainant and the programme makers and, as discussed above, Ofcom was not required to resolve conflicts of evidence as to the nature or accuracy of particular accounts of events but to adjudicate on whether the complainant has been treated unfairly in the programme as broadcast.

In these circumstances, it was not possible for Ofcom to conclude whether or not Mr Bryant was told by the programme makers that he could preview the programme before broadcast. However, Ofcom recognised that there was no obligation for programme makers or broadcasters to provide contributors to a programme a preview of it before it is broadcast. Ofcom noted that Mr Bryant said that he had never asked the programme makers whether or not he could see the programme before it was broadcast. In these circumstances, Ofcom was satisfied that whether or not he was offered to view the programme, it did not form part of his decision to give his informed consent in contributing to the programme. Ofcom therefore found no unfairness to Mr Bryant in this respect.

- c) Ofcom considered Mr Bryant's complaint that his contribution to the programme was edited unfairly.

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

In particular, Ofcom considered the specific points raised by Mr Bryant in his complaint and took into account both Practices 7.6 and 7.9 referred to above:

- i) Ofcom considered Mr Bryant's complaint that only ten seconds of his interview with Val was shown in the programme.

Ofcom noted that it did not appear, from the material submitted to it by either Mr Bryant or the broadcaster that any assurance was given to Mr Bryant about how much of the unedited footage taken of him would be eventually

used in the programme as broadcast. Ofcom recognised that the use of footage in a programme was a matter for the programme makers to decide, as long as it did not result in unfairness. However, in any event, it was clear from the consent form signed by Mr Bryant that he agreed that his contribution would be edited as the programme makers deemed fit and that they were not obliged to include all or any of the footage taken of him. In these circumstances, Ofcom found no unfairness to Mr Bryant in this respect.

- ii) Ofcom considered Mr Bryant's complaint that "virtually all" the advice he was filmed giving Val was edited out in the programme as broadcast.

In considering this element of the complaint, Ofcom considered the unedited footage of Mr Bryant's visit to Val and Howard and read a transcript of it and of the programme broadcast. It also watched the programme as broadcast and the relevant part of the edited footage included in the programme which stated:

Val: *"I want to be a nice green person and have nice organic chickens and eggs and all the rest of it. What do I do..."*

John: *"Right."*

Val: *"...to stop foxes coming in and literally just biting off the heads of the chickens?"*

John: *"Well, you can't basically".*

Val: *"I can't?"*

John: *"Because they've got endless patience. As long as there are chickens here, they will always be waiting for the opportunity. They know where every rabbit hutch is; they know where the dogs live, where the cats live, where the ponds are that they can get a drink and steal a frog from; it's all mapped out, and chickens, well, they just would not be able to resist it."*

Ofcom considered that Mr Bryant's advice to Val that keeping chickens in her garden would inevitably attract foxes and about the behaviour of urban foxes in remembering their food sources and where potential predators were to be found, which were key points made by him in his full untransmitted interview, was fairly presented in the programme. Ofcom also took the view that the programme made it clear that Mr Bryant had advised Val that it would be pointless killing the foxes as others would come into the area and take their place.

Ofcom also noted the following exchange in the programme between Val and Howard:

Val: *"He [John] surprised me, 'cos he was saying, you know, I mean we're trying to be green, having ponds and bird feeders and organic eggs and all the rest of it, and he was saying all those things will just attract foxes"*

*because you know, that's what, that's what the foxes want."*

Howard: *"What did he say about shooting them?"*

Val: *"Oh, I didn't ask him about shooting them because he's very much pro animal welfare, said if you kill them, you just get more foxes come in to consume the same amount of food that's available".*

Ofcom took note that the programme did not specifically include Mr Bryant's comments regarding using repellent to rid the garden of the foxes, the use of the "Scarecrow" water device; or that the wire pen was inadequate. However Ofcom considered that it was clear in the programme, that Mr Bryant believed that killing the foxes would not solve the problem and that unless a constant vigil was kept over the chickens then foxes would always be attracted to the garden. It would have been clear to viewers that deterrents such as repellent; the "Scarecrow" water device and the strengthening of the wire pen would have been unlikely to have been effectual in the long term. In these circumstances, Ofcom took the view that Mr Bryant's contribution had been edited fairly overall and therefore that the omission of some of the advice he had given would not have affected viewers' understanding of Mr Bryant in a way that was unfair to him. Ofcom therefore found no unfairness to Mr Bryant in this respect.

- iii) Ofcom considered Mr Bryant's complaint that his advice was portrayed as "useless".

Ofcom considered what Howard said in the programme after Val had told him that Mr Bryant had said that killing the foxes would only result in other foxes replacing them:

Howard: *"So in fact, no help at all from the local council is what it boils down to."*

Ofcom also noted the conclusion of the programme in which Howard a few months later, after engaging the services of a pest controller who killed the foxes, was shown stating that:

Howard: *"So they're clearly not gone. No way. I mean it's amazing, they're two feet away, and this is after we shot them, after they've been poisoned, you know it's just crazy. Blood things."*

Ofcom considered that, in view of the conclusion of the programme it was not unfair for the programme makers to include "Howard's" comments. In Ofcom's view, it was clear that neither Val nor Howard were content with the advice given by Mr Bryant and so did not take it and that their position was clearly presented in the programme by the inclusion of his comments. Ofcom also noted that the programme went on to show that Howard hired a pest controller to kill the foxes that were attacking the chickens and that the programme ended showing the situation a few months later when new foxes had taken over their territory and Val and "Howard's" chickens were still being killed as predicted by Mr Bryant. Ofcom therefore found that the inclusion of "Howard's" comments in the programme did not result in

unfairness to Mr Bryant and his advice to the couple was portrayed fairly in the overall context of the programme.

**According, Ofcom has not upheld Mr Bryant's complaint of unfair treatment in the programme as broadcast.**

## **Complaint by Mr Paul Manning**

*BBC Newslines, BBC1 Northern Ireland, 24 September 2007*

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**Summary:** Ofcom has not upheld Mr Manning's complaint of unwarranted infringement of privacy.

This edition of *BBC Newslines* contained footage of the complainant, Mr Manning, being issued with a fine for dropping litter. In the programme, Mr Manning's face had been blurred-out.

Mr Manning complained to Ofcom that the filming of him, receiving a fine, and the subsequent broadcast of the footage unwarrantably infringed his privacy. Mr Manning said the programme makers had been "sneaky" in their filming of him and the obscuring of his face had not been adequate protection of his identity.

In its decision, Ofcom found no material to suggest that the programme makers had concealed the fact that they were filming Mr Manning or that their actions were in any way surreptitious. Ofcom also found that in the particular circumstances of this case, in which Mr Manning had been filmed being issued with a fine for committing an offence in a public place, he did not have a legitimate expectation of privacy in relation to either the recording of the footage nor the broadcast of that footage.

Accordingly Ofcom has not upheld Mr Manning's complaint of unwarranted infringement of privacy in either the making or broadcast of the programme.

### **Introduction**

On 24 September 2007, BBC Northern Ireland broadcast an edition of its news programme *BBC Newslines*, which contained a report about the introduction of fines for dropping cigarette litter, in Belfast.

The report showed footage of the complainant, Mr Paul Manning, being issued with a fine for disposing of his cigarette butt on the ground. In the broadcast footage, Mr Manning's face had been blurred-out.

Mr Manning complained to Ofcom that his privacy had been infringed in the making and broadcast of the programme.

### **The Complaint**

In summary, Mr Manning complained that his privacy had been unwarrantably infringed in both the making and broadcast of the programme in that the programme makers filmed and broadcast footage of him receiving a fine without his knowledge or consent. Mr Manning said the programme makers had been "sneaky" in filming him from a distance and the blurring of his face had been inadequate in concealing his identity. Mr Manning said the programme showed the logo of his employer (which was on his shirt) and that several people had recognised him from the broadcast.

### **The BBC's first statement in response to the complaint**

The BBC stated that the report was on the new litter regulations, and looked in particular at litter problems caused by smokers disposing of their cigarette butts and packets.

The BBC said that the reporter had been filming in Blackstaff Square, Belfast, with a litter warden and a City Centre Management representative for approximately 30 minutes. Shortly after the reporter had completed his interview with the Management representative, the interviewee pointed out that the litter warden was issuing a fine to Mr Manning. The BBC said that the reporter at this point, began to film the event.

The BBC said there was nothing “sneaking” about the way Mr Manning had been filmed and the filming had occurred in a public place and in the open. The BBC provided Ofcom with a note of the communications which the programme maker had had with Mr Manning, following broadcast of the programme. The BBC said that during phone conversations with the programme maker, Mr Manning had conceded that he had known he was being filmed (albeit at the time of filming Mr Manning had believed the programme makers were university students) and had raised no objection. The BBC said that Mr Manning’s own acknowledgement, to being aware of the filming, appeared to confirm that the filming had not been “sneaky”.

As regards the filming of Mr Manning being issued with a fine, the BBC said that it did not believe Mr Manning had a right to privacy in the circumstances and his consent was not needed to film or broadcast the material.

The BBC argued that it believed that it would have been perfectly justified in broadcasting the footage of Mr Manning without concealing his identity at all. Notwithstanding this, the BBC said the programme makers had decided to conceal the identities of those who had been filmed, because the fine for dropping litters had only been recently introduced. This was done only as a consideration to those concerned and not because the BBC accepted that the individuals had a right to privacy in the circumstances.

Given the above, the BBC said it was under no obligation to conceal Mr Manning’s identity completely from those relatively few people who might know who his employers were and recognise their logo on his shirt.

### **Mr Manning’s comments in response to the BBC’s first statement**

In summary, Mr Manning said that the BBC’s statement that “[Mr Manning] *had conceded that he had known he was being filmed and had raised no objection*” was incorrect. Mr Manning said that he had seen a camera filming but that at no time was he aware that he was being filmed himself, nor that any footage of him would be shown on the regional news.

### **The BBC’s second statement in response to the complaint**

In its response, the BBC said that the programme maker’s recollection of the phone conversation referred to by Mr Manning (above), was rather different from the complainant’s own.

The BBC said the programme maker clearly recollected that Mr Manning had acknowledged that he knew he was being filmed, but, that he did not realise he was being filmed for inclusion in the programme. According to the programme maker, during the phone conversation, Mr Manning said he thought he had been filmed by students of Queens University. The BBC said it could not explain why he believed this to be the case.

In any event, the BBC reiterated that it did not believe that Mr Manning had a right to privacy in the circumstances in which he was filmed. Therefore, whether or not he

realised he was being filmed was not significant to his complaint of unwarranted infringement of privacy.

## **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 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.

Mr Manning's complaint was considered by Ofcom's Executive Fairness Group. In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and Mr Manning's unedited contribution; transcripts of both programme recordings; and all the written submissions from both parties.

Ofcom first considered Mr Manning's complaint that his privacy had been unwarrantably infringed in both the making and broadcast of the programme, in that, the programme makers filmed and broadcast footage of him receiving a fine, without his knowledge or consent. Ofcom noted that Mr Manning said the programme makers had been "sneaky" in filming him from a distance, the blurring of his face had been inadequate, and that the programme had shown the logo of his employer (which was on his shirt) and several people had recognised him.

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 first determines whether in its view the complainant had a legitimate expectation of privacy in the circumstances. The Code explains that an individual's legitimate expectation of privacy will vary according to the place and nature of the information, activity or condition in question. If Ofcom finds that the complainant had a legitimate expectation of privacy, it will then address itself to two distinct questions: First, had there been an infringement of privacy? Second, if so, was it warranted? (Rule 8.1 of the Code).

### *The making of the programme*

Ofcom first considered Mr Manning's complaint of unwarranted infringement of privacy in the making of the programme.

In considering Mr Manning's complaint that the programme makers had been "sneaky" in filming him, Ofcom viewed a recording of the complainant's unedited programme contribution and made the following observations. It appeared to Ofcom that the filming took place on a public street and in the open (i.e. noted that the footage had been filmed from a clear vantage point and did not display any of the signs of poor quality that are usually associated with surreptitious filming such as graininess, shaking or obstruction). Ofcom recognised that while there is dispute between the parties as to whether Mr Manning knew he was being filmed, Ofcom found no evidence to suggest that the

programme makers had concealed the fact that they were filming him or that their actions were in any way surreptitious.

Ofcom next considered the nature of the footage recorded of Mr Manning. Ofcom noted that the programme makers had filmed Mr Manning receiving a fine for dropping litter. In Ofcom's view in a situation where a person is filmed being fined or an offence, that person's expectation of privacy is diminished in light of their actions. In Mr Manning's case, Ofcom considered that by committing the offence for which he was fined, Mr Manning's expectation of privacy was lessened.

Taking into consideration all of the factors above, it is Ofcom's view that Mr Manning did not have a legitimate expectation of privacy in circumstances where he was filmed, in the open, being fined for committing an offence in a public place. Having found no legitimate expectation of privacy, it was not necessary for Ofcom to further consider whether any infringement of privacy was warranted.

Therefore Ofcom found that Mr Manning's privacy was not infringed in the making of the programme.

#### *The programme as broadcast*

Ofcom next turned to the complaint regarding the broadcast of footage of Mr Manning receiving a fine for dropping litter. Ofcom noted that in his complaint, Mr Manning said that he did not believe the blurring of his face in the programme as broadcast was adequate in protecting his identity as his employer's logo was visible on his street and he was subsequently recognised by several people.

In considering this complaint, Ofcom was first required to consider whether Mr Manning had a legitimate expectation of privacy in relation to the material that was broadcast.

Ofcom viewed a recording of the programme and considered that Mr Manning did not have a legitimate expectation of privacy in relation to the broadcast of footage which showed him being fined for committing an offence (littering), when both the action of the offence and the issuing of the fine, took place in public.

Having found that Mr Manning did not have a legitimate expectation of privacy, it was not necessary for Ofcom to further to consider whether any infringement of privacy was warranted. Notwithstanding this, Ofcom noted that the programme maker had taken steps to obscure Mr Manning's identity through the blurring of his face. This was despite Mr Manning have no legitimate expectation of privacy in the circumstances.

Therefore, Ofcom found that Mr Manning's privacy was not unwarrantably infringed in the programme as broadcast.

**Accordingly, Ofcom has not upheld Mr Manning's complaint of unwarranted infringement of privacy in either the making or broadcast of the programme.**

## **Complaint by Thomas Cook UK Limited brought on their behalf by CMS Cameron McKenna solicitors**

*Panorama: Death on Corfu, BBC1, 2 April 2007*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment, brought by Thomas Cook UK Limited (“Thomas Cook”).

On 2 April 2007, the BBC broadcast an edition of its current affairs programme *Panorama*, entitled *Death on Corfu*. The programme investigated the circumstances surrounding the deaths of Christianne and Robert Shepherd (aged seven and six), who were poisoned by carbon monoxide fumes while on holiday in Corfu. The holiday had been booked through the travel company Thomas Cook.

The programme included interviews with the children’s parents, and their respective partners, who described their contact with Thomas Cook after the deaths and their disappointment with the company. The programme also examined the health and safety check carried out by a Thomas Cook employee at the holiday resort where the children died.

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

The Committee found that the programme’s references to the conduct of Thomas Cook following the deaths of the children did not result in unfairness. The Committee considered that the programme made it sufficiently clear that Thomas Cook had made expressions of sympathy to the families and had also offered various forms of help. In the Committee’s view it was not unfair to Thomas Cook to include the views of the partner of the children’s father (and another contributor) that the help provided by Thomas Cook was not help which best addressed the families’ concerns.

The Committee found that the presentation of Thomas Cook’s statement in the programme did not result in unfairness. The Committee found Thomas Cook’s expressions of sympathy and shock had been represented in a fair manner. The programme’s representation of the company’s views therefore did not result in unfairness to Thomas Cook.

The Committee found that the programme’s description of the Thomas Cook employee, (who carried out the health and safety check at the resort), as “a holiday rep” did not result in unfairness to Thomas Cook. In the Committee’s view, the information provided by Thomas Cook, on the day the programme was to be transmitted, about its employee’s qualifications and company job title were not material facts that were capable of significantly affecting viewers’ understanding of the concerns raised in the programme about the health and safety checks conducted at the hotel.

### **Introduction**

On 2 April 2007, the BBC broadcast an edition of its current affairs programme *Panorama*, entitled *Death on Corfu*. The programme investigated the circumstances surrounding the deaths of Christianne and Robert Shepherd (aged seven and six), who were poisoned by carbon monoxide fumes while on holiday in Corfu.

The children had been holidaying with their father, Neil Shepherd, and his partner, Ruth Beatson, when all four were overcome by carbon monoxide fumes leaking into their holiday bungalow from a gas boiler. An expert heating engineer contributed to the programme and he stated that the gas boiler had not been correctly installed with a flue (a chimney), and had been dangerously modified.

The programme explained that the family's holiday at Louis Corcyra Beach Hotel ("the Hotel") in Corfu, had been booked and paid for through the travel company, Thomas Cook UK Limited ("Thomas Cook").

The programme included interviews with the children's parents Mr Neil Shepherd and Ms Sharon Wood, along with their respective partners. During the programme, the families described their contact with Thomas Cook after the children's deaths and their disappointment with Thomas Cook. In the programme Ms Wood (the children's mother) stated *"I hold Thomas Cook totally and utterly responsible. They should have checked the place they were sending their clients to, was safe"*.

The programme included comments from Mr Nigel Griffiths MP, who the programme explained had been campaigning for tougher safety rules for tour operators since 1990. Mr Griffiths said the letter from Thomas Cook to the families after the children's deaths was *"an unbelievably shocking letter"*.

The programme later focused on the checks which Thomas Cook said had been carried out at the Hotel. The programme said that the hotel "audit", which Thomas Cook had claimed to have completed in line with the Federation of Tour Operators ("the FTO") Code of Practice, *"was not carried out by a dedicated health and safety expert, it was done by a 25 year old holiday rep, and what he filled out was a short tick box questionnaire"*.

The programme included reported statements from Thomas Cook during the programme, and a formal statement from Thomas Cook towards the end of the programme.

Ofcom received a complaint from Thomas Cook brought on their behalf by CMS Cameron McKenna solicitors ("CMS") of unfair treatment in the programme as broadcast.

## **The Complaint**

### **Thomas Cook's case**

In summary, Thomas Cook complained that it had been treated unfairly in the programme as broadcast in that:

- a) The programme misrepresented the conduct of Thomas Cook following the deaths of Christianne and Robert Shepherd. Thomas Cook said the programme did not fully reflect the fact that Thomas Cook had offered the families any of the following: the fullest amount of support possible (in Corfu, directly after their return to the UK and thereafter); open lines of communication; the provision of £10,000 on account of various medical expenses associated with the families' personal injuries; an investigation of the tragedy, including an offer to provide a report into the condition of the boiler; and an assurance that Thomas Cook would take all possible steps to prevent a similar case in the future.

- b) The programme makers unfairly edited Thomas Cook's statement. Thomas Cook said it provided a short statement (166 words) to be used unedited. However, the statement had been edited to remove important information relating to the genuine sympathy that Thomas Cook had for the families of Christianne and Robert Shepherd. Thomas Cook said the editing of its statement in this way failed to give it an appropriate opportunity to respond to the programme and suggested to viewers that it was unsympathetic or unhelpful to the families.
- c) The programme makers failed to reflect that the Thomas Cook employee who carried out the "audit" at the Hotel was a Consumer Affairs Executive who had undertaken specific health and safety training. Thomas Cook said it had provided this information to the programme makers prior to broadcast, but that despite this, the programme as broadcast repeatedly referred to the employee as a "travel rep" and "tour rep". Thomas Cook said this disregard for material facts was unfair as the programme suggested that it was responsible for the deaths of Christianne and Robert Shepherd because it had used a "tour rep" to check the boiler and that this person was unqualified to do so.

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

The BBC provided a written statement in response to the complaint. In summary, the broadcaster responded to the complaint in the following way:

- a) In response to the complaint that the programme misrepresented Thomas Cook's conduct after the children's deaths, the BBC said the programme fairly presented the position of Thomas Cook in this case. The BBC said the complainant's belief, that it offered sincere condolences to the families, and did all it could to support those affected by the tragedy, was not supported by the facts or shared by the families of Christianne and Robert Shepherd.

The BBC said the families of Christianne and Robert Shepherd said they felt that Thomas Cook failed to provide the level of support they expected and failed to engage with them in explaining what steps they were taking to prevent a similar incident in the future. The BBC said the programme makers were guided by these honestly-held views of the families, and were entitled to reflect them in the programme as broadcast.

The BBC referred to the fact that between the date when the children died (26 October 2006) and the broadcast of the programme (2 April 2007) Thomas Cook sent just one letter to each set of parents (the only other communications had been via the parties' solicitors). The BBC said that in light of this it was entirely accurate for the programme to report the comments by the partner of the children's father that:

*"Since we've been home we've had one letter from them saying that they were sorry that this happened and offering a counsellor and a media manager. But not saying that they would do anything to help us find out how it could happen or offering to try and prevent it happening to anyone else."*

The BBC also referred to the offer made by Thomas Cook (through its solicitors) to allow the families to see a copy of the company's expert report on the gas boiler. The BBC said the offer was dependent on the families agreeing to five separate and restrictive conditions. These included providing Thomas Cook with a copy of the families' own independent report, and a commitment not to release the

Thomas Cook report to the media. The BBC said the families strongly believed that the offer was a fact-finding mission for the company's benefit, rather than one made in good faith to help them find out how their children died.

The BBC said that in order to accurately reflect the views of both the families and Thomas Cook the programme reported Thomas Cook's offer to help the families find out what happened:

*"Thomas Cook say they are 'fully committed to investigating the tragedy' and have offered to share information with the family, but have had no response"*

And:

*"Thomas Cook say they do want to meet the family in due course."*

The BBC said the programme fairly represented Thomas Cook's role in this respect.

- b) In response to the complaint that the programme makers unfairly edited Thomas Cook's statement, the BBC made two points.

Firstly, the BBC said that the programme makers gave no assurance that it would broadcast Thomas Cook's statement in full and was not required to do so. The BBC stated that it would be unrealistic for a broadcaster to cede editorial control in this way.

Secondly, the BBC said the statement provided by Thomas Cook failed to address any of the reasonable questions, and issues about events leading up to the tragedy, which the programme raised in its pre-broadcast correspondence. Notwithstanding this, the BBC said the programme accurately reflected the contents of the statement, highlighting the company's commitment to safety and the efforts it said it was making to prevent any similar cases. The BBC said some sections of the Thomas Cook statement were reported verbatim, and others were paraphrased.

The BBC also referred to a section of the programme which showed extracts from a letter sent by Thomas Cook to the families. The BBC said the following phrases of the Thomas Cook letter to the families were clearly legible on-screen in the programme:

*"I cannot begin to imagine what you and your family..."*

*"take this opportunity to express my personal..."*

*"...for your loss..."*

*"I hope your journey home was not too uncomfortable..."*

*"...cannot be easy for you..."*

The BBC said the footage would have visually impressed on viewers how the company had expressed sympathy and concern for the family. The BBC said that the programme reflected all the substance of the statement which was relevant to the criticisms raised in the programme.

- c) In response to the complaint that the programme failed to reflect the qualifications of the Thomas Cook employee who carried out the audit at the Hotel, the BBC first referred to the manner in which the complainant had chosen to respond to the allegation in pre-broadcast correspondence.

The BBC said that the programme makers did ask Thomas Cook for full details about the member of staff who was responsible for the audit on Corfu. The BBC said that given the correspondence between the programme makers and the complainant prior to broadcast, Thomas Cook could have been in no doubt that the role and experience of the employee who carried out the audit, were under investigation by the programme makers. The BBC said that Thomas Cook made no attempt in the course of extensive correspondence to respond to this matter until the day of broadcast.

This aside, the BBC said Thomas Cook misrepresented the extent of the measures that were taken to protect its customers by giving the impression that a meaningful health and safety audit of the Hotel bungalows was carried out by a member of its staff who had the appropriate training and expertise. The BBC said that, in reality, the Thomas Cook staff member failed to carry out any inspection of the bungalow which was sufficient to establish whether the water heating was safe.

The BBC said the substantive fact remained that “whatever the job title”, the Thomas Cook employee who was responsible for the audit patently failed to carry out a competent safety check. The BBC said the manner in which the health and safety check had been carried out was a world away from the impression which Thomas Cook had allowed the families and the public to understand. In the circumstances, it was entirely fair for the programme to question the adequacy of Thomas Cook’s safety procedures.

## **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. 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.

Thomas Cook’s complaint was considered by Ofcom’s Fairness Committee, its most senior decision making body in matters of Fairness and Privacy. In reaching its decision, the Committee carefully considered all the relevant material provided by both parties. This included viewing a recording of the programme as broadcast; reading the transcript; and reading all the written submissions from both parties (which included supporting documents).

The Committee considered each of the complaints below:

- a) The Committee first considered the complaint that the programme misrepresented the conduct of Thomas Cook following the deaths of Christianne and Robert Shepherd. Ofcom considered Thomas Cook's complaint that the programme unfairly alleged it was unsympathetic or unhelpful to the families and "effectively stated that Thomas Cook is cold and uncaring in relation to the tragedy". According to Thomas Cook these allegations were implied because the programme did not explain that it had:
- provided considerable support to Neil Shepherd and Ruth Beatson while they were still in Corfu, in relation to hospital, arranging cars to and from the airport, flights and accommodation.
  - offered counselling, the assistance of an independent media officer and expressly stated to the families that "*you may require a range of information. If you feel that we can be of assistance in providing this to you, please contact us and we will do all we possibly can to assist you*".
  - offered (through its solicitors) a copy of the expert's report that it had obtained into the condition of the boiler.
  - paid the families £10,000 on account of various medical expenses associated with the personal injuries suffered by Neil Shepherd and Ruth Beatson; and
  - had responded to requests for information by the families, through their local MEP, Linda McAvan. Thomas Cook said its response to Ms McAvan at the time explained that it was conducting an extensive review of and an investigation into the cause of the tragedy and the company's procedures and processes.

In considering this complaint, the Committee took account of Practice 7.9 of the Code which states:

*"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 organisation."*

The Committee sought to determine whether the programme makers took proper account of material facts (relating to the help it had offered the families following the deaths of the children) in the programme as broadcast.

The Committee noted that Thomas Cook's complaint (that it was unsympathetic or unhelpful to the families) arose in relation to the subject of the company's communications with the families. This had been mentioned in the programme by Ruth Beatson, the partner of the children's father, and the MP, Nigel Griffiths. The Committee noted that both Ms Beatson and Mr Griffiths referred to the letter which Thomas Cook's Chief Executive had sent to the families shortly after the deaths of the children:

Ruth Beatson  
(the *partner* of the children's father):

[Footage of Thomas Cook's letter of 1 November 2007]

*"Since we've been home we've had one letter from them saying that they were sorry that this happened and offering a counsellor and a media manager. But not saying that they would do anything to help us find out how it could happen or offering to try and prevent it happening to anyone else."*

[Footage of the reporter showing Nigel Griffiths MP the letter from Thomas Cook, referred to above]

Nigel Griffiths, MP: *"This is an unbelievably shocking letter. I mean, I don't know what a blue-chip company like Thomas Cook is thinking about. They should have been sitting down with the family and saying to the family 'Look, how can we avoid this happening?', and 'Here's the fullest information available on how it did happen'."*

Commentary: *"Thomas Cook say they are 'fully committed to investigating the tragedy' and have offered to share information with the family but have had no response."*

Ruth Beatson: *"The only contact that we've had is their solicitor wrote to our solicitor saying that they had done an independent report for the boiler and that we could see theirs, provided that we showed them the one that we've had done. I don't think it's to help us in any way whatsoever."*

The Committee noted that the issue being examined by the programme was that despite Thomas Cook offering various forms of help after the children's deaths, Ms Beatson and Mr Griffiths both felt the offers had been unsatisfactory. This was because, in their view, it was not the type of help or information they were seeking. It was clear that what they wanted to know was the cause of the children's deaths and what measures, if any, Thomas Cook intended to implement to prevent such a tragedy happening again in the future.

Within this context, the Committee went on to consider whether the programme makers, in examining this issue, had omitted or disregarded material facts in a way which resulted in unfairness to Thomas Cook in the programme as broadcast.

The Committee considered each of the bullet points above that Thomas Cook raised in its complaint (above). In relation to the first, second and fourth points the Committee noted that the forms of help referred to by Thomas Cook (i.e. help to the families while still in Corfu; the support of a counsellor, media manager and endeavour to help in the future; and, an the provision of £10,000 in relation to personal injury claims) did not address the issue raised in the programme (i.e. that the help that Thomas Cook had offered to Ms Beatson and Mr Griffiths did not assist in providing further information about the children's cause of death or the measures which Thomas Cook intended to implement to prevent such a tragedy happening again in the future).

In addition the Committee considered that it was not incumbent, in the interest of fairness to Thomas Cook, on the programme makers to have ensured the measures Thomas Cook referred to in these bullet points was included elsewhere

in the programme. It was clear to the Committee that the scope of the programme was to examine the circumstances of the deaths of Christianne and Robert Shepherd and to question how they had occurred. Within this context, the Committee found no requirement on the programme makers to catalogue every communication which Thomas Cook had had with the families (or their solicitors) on matters which did not directly relate to the deaths of the children or the measures the company intended to take to prevent such a tragedy being repeated. (In relation to the programme's representation of the wider position of the company, including its expressions of sympathy for the family see the Committee's decision in head (b) (below).)

The Committee next considered the third and fifth bullet points of the complaint, which related to Thomas Cook's offer to allow the families to see their report into the faulty boiler, and Thomas Cook's response to Linda McAvan MEP's letter.

As regards the offer to provide the families with a copy of the boiler report (the third bullet point of the complaint), the Committee considered that the broadcaster had taken reasonable care to present the material facts surrounding this issue in a way that was not unfair in the programme to Thomas Cook.

In reaching this view, the Committee considered the material submitted by the parties, which included the correspondence on which the facts presented in the programme were based. The Committee noted that the offer had not been initiated by Thomas Cook, but rather had been made following a specific request for the report from the solicitors of the families on 9 January 2007. The Committee also noted that despite Thomas Cook advising the families in its earlier correspondence of 1 November 2006 that the company would "do all [it] possibly can to assist" the families with information they may require, Thomas Cook had offered the boiler report to the families on 25 January 2007, on a conditional basis only. As a result, the Committee considered that it was not unreasonable for the programme to include Ruth Beatson's statement in which she said: "*their solicitor wrote to our solicitor saying that they had done an independent report for the boiler and that we could see theirs, provided that we showed them the one that we've had done*". In view of the correspondence that the Committee had examined, it considered that the inclusion of this remark did not unfairly represent the manner in which the boiler report had been offered to the families.

The Committee next considered whether it was unfair to Thomas Cook for the programme not to refer to Thomas Cook's letter to Linda McAvan MEP, of 21 February 2007 (bullet point five of the complaint). The Committee noted that this letter was in response to one from Ms McAvan (on behalf of the families) of 14 February 2007 specifically asking the company to explain what had caused the deaths of the children and to advise what lessons had been learned and what steps were being taken by Thomas Cook to prevent such deaths occurring in the future. The Committee acknowledged that Thomas Cook's response to Ms McAvan's letter explained that it was "conducting an extensive review of, and investigation into, the cause of the tragedy and [Thomas Cook's] procedures and processes". The response also said that the company had already offered the families a copy of Thomas Cook's report on the condition of the Hotel's boiler. In the Committee's view, the programme makers fairly presented the points being made in this letter in the programme as broadcast, when it stated that:

*"Thomas Cook say they are 'fully committed to investigating the tragedy' and have offered to share information with the family but have had no response."*

Furthermore, the Committee noted that although Thomas Cook did respond to Ms McAvan's direct request for information on behalf of the families, it remained the case that Thomas Cook had not been forthcoming in relation to providing this information when it wrote to the families directly after the death of the children. The Committee carefully examined this part of the programme and noted that it had been made clear to viewers in commentary and through visual prompts that both Ruth Beatson and Nigel Griffiths MP had been initially referring to Thomas Cook's letter of 1 November 2006 (programme extracts of the letter provided above). In the circumstances, the Committee considered that the broadcaster had taken reasonable care to present the material facts surrounding this issue and it was not unfair for the programme to reflect the views of Ruth Beatson and Nigel Griffiths MP (that Thomas Cook's letter of 1 November 2006 had not offered information about how the children's deaths had occurred or what steps it would implement to prevent it from happening in the future).

Taking into account all the factors detailed above, the Committee found that the programme makers did not present, omit or disregard material facts concerning the conduct of Thomas Cook following the deaths of the children in a way which resulted in unfairness to Thomas Cook.

In the circumstances, the Committee found no unfairness to Thomas Cook and has not upheld this head of the complaint.

- b) The Committee next turned to the complaint that the programme makers unfairly edited Thomas Cook's statement. Thomas Cook complained that it had provided a short statement (166 words) to be used unedited. However, the statement had been edited to remove important information relating to the genuine sympathy that its client had for the families of Christianne and Robert Shepherd.

In its complaint to Ofcom, Thomas Cook said that it had provided a statement to be used in the programme unedited. In relation to this part of the complaint, the Committee took account of Practice 7.7 of the Code which states:

"Guarantees given to contributors, for example relating to the content of a programme, confidentiality or anonymity, should normally be honoured".

The Committee considered the pre-broadcast correspondence between Thomas Cook and the programme makers. The Committee noted a letter dated 16 March 2007 (from Thomas Cook's solicitors to the programme makers) in which the complainant made clear its wish to have its statement broadcast unedited. The Committee also noted that nowhere in the correspondence following this letter did the programme makers agree to such terms by offering a guarantee or any other written indication to Thomas Cook that they would broadcast the statement in full. The Committee concluded, therefore, that there was no evidence that any guarantee had been given to Thomas Cook that its statement would be used unedited in the programme.

The Committee next considered whether, in any event, the editing of Thomas Cook's statement resulted in unfairness to the complainant. In looking at this question the Committee took account of Practice 7.13 which states:

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

The Committee considered the following part of Thomas Cook’s statement which it had complained the programme failed to broadcast:

*“Thomas Cook was shocked and saddened by the deaths of Christianne and Robert Shepherd. Never before in the company’s 165 year history has it experienced a situation more tragic and again wishes to express its sincerest condolences to the family and friends of the children.”*

The Committee noted that these sentiments had been referred to elsewhere in the programme. In particular:

The partner of the children’s father, Ruth Beatson stated:

*“Since we’ve been home we’ve had one letter from [Thomas Cook] saying that they were sorry that this happened and offering a counsellor and a media manager...”*

This statement by Ms Beatson was accompanied by footage of the letter from the Chief Executive of Thomas Cook to Ruth Beatson and Neil Shepherd of 1 November 2006. The Committee noted the footage contained a close up image of the first paragraph of this letter which stated:

*“I cannot begin to imagine what you and your family are currently going through and I would like to take this opportunity to express my personal sympathies and those of Thomas Cook for your loss, along with the hope that you both make a full recovery”*

Having viewed the programme, the Committee considered that viewers would have easily seen from this image that Thomas Cook’s letter to the family opened with an expression of shock and sympathy at the death of the children.

The Committee acknowledged that directly after these images, Ruth Beatson went on to speak about how she felt Thomas Cook had not provided the sort of help she most wanted. However, it did not believe that these comments would have altered viewers’ [missing apostrophe] understanding that Thomas Cook had expressed sympathy to the family.

Taking the above factors into consideration, the Committee found that the editing of Thomas Cook’s statement did not misrepresent the wider position of the company, including its expressions of sympathy for the family, in a way which resulted in unfairness to the complainant.

Therefore, Ofcom has not upheld this part of Thomas Cook’s complaint.

- c) The Committee next considered the complaint that the programme makers failed to reflect that the Thomas Cook employee who carried out the “audit” at the Hotel, was a Consumer Affairs Executive who had undertaken specific health and safety training. Thomas Cook said the programme suggested that it was responsible for the deaths of Christianne and Robert Shepherd because it used a “tour rep” to check the boiler and that this person was unqualified to do so.

In reaching a decision about this complaint the Committee took account of Practice 7.9 which relates to the proper consideration of facts (detailed in full above). The Committee also took account of Practice 7.11 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.”

The Committee noted that the segment of the programme, relating to the health and safety checks which had been carried out at the Hotel prior to the children’s deaths, had raised a number of specific issues. These related not only to the check conducted by Thomas Cook, but also the current guidelines of the FTO in relation to health and safety audits. In the Committee’s opinion, by raising these issues the programme was attempting to address the wider question of how various travel companies (including Thomas Cook) could have declared the Hotel safe when boilers and bungalows had been dangerously modified.

In relation to Thomas Cook specifically, the Committee considered that the programme had made the following allegations:

1. That it had been misleading of Thomas Cook to have claimed to the media that the company had conducted an audit of the Hotel which complied with all of the FTO requirements, when according to its information Thomas Cook had completed a four page checklist (which had not identified the existence of a boiler unit), as opposed to the 20 page audit recommended in the FTO’s guidelines.
2. The employee of Thomas Cook who had conducted the health and safety check at the Hotel was not a dedicated health and safety expert or a CORGI registered engineer. Therefore he was not, in the opinion of two contributors to the programme, qualified to determine whether the Hotel was safe.

The Committee considered that these allegations were of a serious nature and as such, Thomas Cook was entitled to an opportunity to respond.

The Committee noted that the programme makers had written to Thomas Cook (and their solicitors) on a number of occasions about these allegations in order to seek their response. The first of these was an email of 7 March 2007:

“For your clarification, we are particularly concerned about the following issues:

[The boilers at the Hotel] were incorrectly installed and dangerous modifications were made. These faults were not spotted or dealt with in subsequent inspections.

Gas water heaters are a known Carbon Monoxide risk and as such should always be inspected by a UK expert to comply with the FTO’s guidelines. Thomas Cook claims its inspections of the Corcyra Beach Hotel adhered to FTO guidelines, but a UK safety engineer was not sent to inspect the gas water heaters as recommended by the FTO.

The qualifications and competence of the Thomas Cook employee who carried out the 2006 annual safety audit of the hotel complex using a tick box questionnaire.”

The programme makers also stated in a letter dated 16 March 2007:

“The safety audits of resorts intended for family holidays should be carried out by Health and Safety experts and not by travel reps.

The safety audit carried out in 2006 by a 25 year old Thomas Cook representative was in fact not a full safety audit recommended by the FTO but a shorter safety checklist (tick box questionnaire) and therefore did not qualify as an FTO compliant audit.”

And in a letter dated 19 March 2007:

“The specific points we would like [the Chief Executive of Thomas Cook] to address are:

1. Why he said at a press conference on October 28<sup>th</sup> that an audit had been carried out showing the property met all FTO requirements, when we now [sic] the FTO’s view is that the check carried out by Mr Carson was not a professional audit in their terms.
2. Whether he believes it is reasonable that the burden of responsibility for these audits of resorts should fall to your holiday reps working for Thomas Cook (in this case a 25 year old) rather than a Health and Safety expert.
3. Why the boiler in question was never seen by a CORGI registered expert given that it was quite clearly within the same building as the two chalets.
4. Whether he believes the FTO guidelines need reviewing/strengthening in the wake of these deaths...”

In light of the clear nature of the information requested and the timely way in which the requests were made, the Committee was satisfied that Thomas Cook had been provided with an appropriate opportunity to respond to the allegations to be made against Thomas Cook.

The Committee went on to consider Thomas Cook’s response to these allegations, with a view to determining whether its presentation in, or absence from, the programme, resulted in unfairness to the complainant.

The Committee noted that Thomas Cook’s initial responses to the allegations were that the company was “*committed to the safety of its customers*”, that “*the health and safety of holidaymakers is paramount*” and that it was “*limited in what it may say about the subject*” due to ongoing Greek and UK investigations (correspondence dated 13, 16 and 20 March 2007).

The Committee noted that on the afternoon of 2 April 2007, solicitors acting on behalf of Thomas Cook for the first time, provided information relating to the qualifications of the Thomas Cook employee who carried out the health and safety checks at the Hotel:

*“The headline [on the Panorama website] states ‘Travel rep checked death bungalow’.* This headline is incorrect and moreover suggests culpability on the part of the Thomas Cook representative in question which is unjustified.

First the Thomas Cook representative is not a ‘travel rep’ or ‘tour rep’. In fact, he was a Consumer Affairs Executive and had undertaken specific training in this respect, including as to health and safety, and therefore had the necessary skills to complete the audit in accordance with the guidelines issued by the FTO”.

And in a fax later that afternoon:

*“You are aware that the representative was not simply a “tour rep””.*

The Committee noted these responses from Thomas Cook had been provided to the programme makers on the afternoon of the day of transmission, 2 April 2007. This was despite the programme makers first making a request for Thomas Cook’s response to the allegations (and specific use of the term “travel rep”) approximately a month earlier on 7 March 2007. It was clear, therefore, that Thomas Cook had been given an appropriate and timely opportunity to respond to the allegations that had been put to it, including to give a full account of the qualifications and experience of the employee who carried out the checks.

In light of these factors, the Committee considered the information provided by Thomas Cook in response to the allegations. The Committee noted that Thomas Cook’s did not directly address (or refute) the allegations which had been put to it prior to broadcast. In particular:

- Thomas Cook did not explain why its Chief Executive had said at a press conference on October 28<sup>th</sup> that an audit had been carried out showing the property met all FTO requirements and did not respond to the allegation that the FTO had said that the check carried out was not a professional audit in their terms.
- Nor did Thomas Cook address the allegations about the nature of the check that had been carried out. The Committee could not find any explanation from Thomas Cook of why, if a shorter safety check (i.e. a tick box questionnaire) was carried out, it may have been appropriate to complete such a check, as opposed to the fuller audit recommended by the FTO.
- Likewise, the Committee noted that Thomas Cook had explained that the employee who carried out the health and safety check had “undertaken specific training in this respect, including as to health and safety and therefore had the necessary skills to complete the audit in accordance with the guidelines issued by the FTO”. However, the company had not provided any meaningful information about the actual qualifications of this employee to carry out the audit.
- The Committee further noted that the information provided by Thomas Cook did not attempt to refute the suggestion by the programme

makers that either a CORGI registered engineer or a health and safety expert should be responsible for the FTO safety audits.

In these circumstances, the Committee considered that the programme's omission of the information provided by Thomas Cook on the day of transmission did not result in unfairness to Thomas Cook as it did not, in the Committee's opinion, materially address the allegations that had been made. The Committee did not believe that the employee's company job title ("Consumer Affairs Executive") or Thomas Cook's assertions about his qualifications (that he had undertaken training and therefore had the necessary skills to be able to complete the FTO audit) would have affected viewers' understanding about the issue.

Taking these factors into consideration the Committee found that the programme makers had given Thomas Cook a timely and appropriate opportunity to respond to the programme's allegations. The Committee was satisfied that material facts relating to the Thomas Cook employee who conducted the health and safety check at the Hotel, were not presented, omitted or disregarded in a way which resulted in unfairness to the complainant.

The Committee has therefore, not upheld this part of Thomas Cook's complaint.

**Accordingly, Ofcom has not upheld Thomas Cook's complaint of unfair treatment in the programme as broadcast.**

## Other Programmes Not in Breach/Out of Remit

### 4 – 17 March 2008

Programme	Trans Date	Channel	Category	No of Complaints
A Girls Guide to 21st Century Sex	19/02/2008	Five Life	Generally Accepted Standards	1
Al Murray's Happy Hour	22/02/2008	ITV1	Generally Accepted Standards	1
Alan Carr's Celebrity Ding Dong	24/02/2008	Channel 4	Generally Accepted Standards	1
All New You've Been Framed	08/03/2008	ITV1	Animal Welfare	1
Animal 24:7	22/02/2008	BBC1	Animal Welfare	1
Ant & Dec's Saturday Night Takeaway	23/02/2008	ITV1	Animal Welfare	5
Ant & Dec's Saturday Night Takeaway	16/02/2008	ITV1	Competitions	1
Ant & Dec's Saturday Night Takeaway	08/03/2008	ITV1	Competitions	1
BBC Look North News	18/02/2008	BBC1	Generally Accepted Standards	1
BBC News	20/02/2008	BBC1	Generally Accepted Standards	1
BBC News	18/02/2008	BBC1	Violence	1
BBC News 24	10/03/2008	BBC News 24	Due Impartiality/Bias	1
BBC News 24	17/01/2008	BBC News 24	Generally Accepted Standards	1
Breakfast	22/02/2008	BBC1	Exorcism/Occult/Paranormal	1
Channel 4 News	25/02/2008	Channel 4	Generally Accepted Standards	1
Chat Lounge	21/02/2008	Babeworld TV	Generally Accepted Standards	1
Chris Moyles Show	10/03/2008	BBC Radio 1	Generally Accepted Standards	1
Chris Moyles Show	29/02/2008	BBC Radio 1	Generally Accepted Standards	1
Classic FM	-	Classic FM	Competitions	1
Coronation Street	22/02/2008	ITV1	Generally Accepted Standards	3
Coronation Street	05/03/2008	ITV1	Generally Accepted Standards	1
Coronation Street	22/02/2008	ITV1	Crime (incite/encourage)	2
Coronation Street	22/02/2008	ITV1	Substance Abuse	1
Coronation Street	22/02/2008	ITV1	Violence	1
Crimewatch	20/02/2008	BBC1	Generally Accepted Standards	1
Dancing On Ice	09/03/2008	ITV1	Use of Premium Rate Numbers	1

Dancing On Ice	09/03/2008	ITV1	Generally Accepted Standards	1
Dancing on Ice: The Skate Off	02/03/2008	ITV1	Competitions	1
Deal Or No Deal	-	Channel 4	Competitions	3
Dexter	27/02/2008	ITV1	Violence	5
Dispatches: Checking-in to Airport Chaos	25/02/2008	Channel 4	Due Impartiality/Bias	2
Dispatches: Checking-in to Airport Chaos	25/02/2008	Channel 4	Crime (incite/encourage)	1
Dotun Adebayo on Sunday	13/01/2008	BBC Radio London	Generally Accepted Standards	1
Duel	23/02/2008	ITV1	Inaccuracy/Misleading	1
Duel (trailer)	-	ITV1	Generally Accepted Standards	2
EastEnders	25/02/2008	BBC1	Generally Accepted Standards	1
Eddie Jordan's Bad Boy Racers	04/02/2008	Discovery	Crime (incite/encourage)	3
Emmerdale	27/02/2008	ITV1	Generally Accepted Standards	2
Emmerdale	19/02/2008	ITV1	Violence	1
England vs Scotland: Tonight	18/02/2008	ITV1	Due Impartiality/Bias	1
Eurovision – Your Decision	01/03/2008	BBC1	Competitions	5
Fifth Gear	03/03/2008	Five	Competitions	1
Flashbox	22/02/2008	The Hits	Generally Accepted Standards	1
Freezing	20/02/2008	BBC2	Offensive Language	1
Friday Night With Jonathan Ross	15/02/2008	BBC1	Offensive Language	1
Game On	05/02/2008	True Movies	Competitions	1
Gay to Z	07/03/2008	Channel 4	Sex/Nudity	2
Gay to Z	07/03/2008	Channel 4	Other	1
Gay to Z	04/03/2008	Channel 4	Sex/Nudity	1
George Galloway	03/02/2008	talkSPORT	Generally Accepted Standards	1
Ghosthunting with Coronation Street	18/02/2008	ITV2	Inaccuracy/Misleading	1
Golden Balls	03/03/2008	ITV1	Crime (incite/encourage)	2
Golden Balls	09/03/2008	ITV3	Generally Accepted Standards	1
Golden Balls		ITV1	Crime (incite/encourage)	1
Grand Designs Revisited	12/03/2008	Channel 4	Other	1
Gwen Stefani – “What You Waiting For?”	29/10/2007	Capital Radio	Offensive Language	1
Hatton v Mayweather	08/12/2007	Sky Box Office	Advertising	1
He Kills Coppers (trailer)	08/03/2008	ITV1	Generally Accepted Standards	1
Hillside Cannibals	16/02/2008	Zone Horror	Violence	1

Hollyoaks	21/02/2008	Channel 4	Violence	1
Hondo	24/02/2008	BBC2	Offensive Language	1
Horizon	05/02/2008	BBC2	Religious Offence	1
Housewife	20/10/2007	Hallmark Channel	Advertising	1
Ian Wright and Adrian Durham	27/02/2008	talkSPORT	Generally Accepted Standards	1
Intelligence (trailer)	-	Hallmark	Inaccuracy/Misleading	1
Irn Bru sponsor XFM Scotland Drivetime	03/04/2006	XFM	Crime (incite/encourage)	1
Jeremy Vine	18/01/2008	BBC Radio 2	Inaccuracy/Misleading	1
Jew Train XX	28/02/2008	History Channel	Generally Accepted Standards	1
Jo Whiley	28/02/2008	BBC Radio 1	Sex/Nudity	3
Jon Gaunt	13/02/2008	talkSPORT	Generally Accepted Standards	1
Jon Gaunt	19/02/2008	talkSPORT	Offensive Language	1
Kerry Katona: Crazy in Love	25/02/2008	MTV	Animal Welfare	1
Kia Motors sponsorship of Law & Order	20/02/2008	Five	Generally Accepted Standards	1
Kia Motors sponsorship of Law & Order	20/02/2008	Five	Dangerous Behaviour	1
Lily Allen and Friends	22/02/2008	BBC3	Offensive Language	1
Live Rugby Union	09/02/2008	BBC1	Religious Offence	2
Lose 30 Stone or Die	26/02/2008	ITV2	Substance Abuse	3
Match of the Day	23/02/2008	BBC1	Generally Accepted Standards	4
Meridian News	10/03/2008	ITV1 (Meridian)	Other	1
Moving Wallpaper	22/02/2008	ITV1	Religious Offence	3
NFL	14/01/2008	Sky Sports 3	Advertising	1
News	02/03/2008	BRFM 95.6	Offensive Language	1
News 24	12/03/2008	News 24	Other	1
News at Ten	19/02/2008	ITV1	Generally Accepted Standards	1
Newsnight	25/02/2008	BBC2	Inaccuracy/Misleading	1
Panorama	25/02/2008	BBC1	Violence	1
Perfect Weapon	04/03/2008	National Geographic	Crime (incite/encourage)	1
Perfect Weapon (trailer)	28/02/2008	FX Channel	Violence	1
Pete Snodden Breakfast Show		Cool FM	Competitions	1
Primeval	23/02/2008	ITV1	Violence	2
Prison Break (trailer)	24/02/2008	Sky Sports 1	Violence	1
Quiz Call		Five	Competitions	1
Quizcall	13/12/2007	Five	Competitions	11
Ready Steady Cook	18/02/2008	BBC2	Generally Accepted Standards	1
Richard and Judy	21/02/2008	Channel 4	Generally Accepted Standards	1
Ricky Gervais: New Hero of Comedy	22/02/2008	Channel 4	Offensive Language	1

Rude Tube	15/02/2008	Channel 4	Animal Welfare	1
Russell Brand	08/03/2008	BBC Radio 2	Generally Accepted Standards	1
Scott Mills	26/02/2008	BBC Radio 1	Offensive Language	1
Sexarama	12/01/2008	Bravo	Sex/Nudity	1
Sexcetera	-	Virgin1	Sex/Nudity	1
Six Nations	02/02/2008	BBC1	Generally Accepted Standards	1
Sky News	20/01/2008	Sky News	Due Impartiality/Bias	1
Stargate Atlantis	15/01/2008	Sky One	Other	1
Stargate Atlantis	22/01/2008	Sky One	Other	1
Supersize vs Superskinny	26/02/2008	Channel 4	Sex/Nudity	2
Supersize vs Superskinny	04/03/2008	Channel 4	Sex/Nudity	1
Teen Taboos	05/03/2008	Channel 4	Sex/Nudity	1
The Alan Titchmarsh Show	05/03/2008	ITV1	Generally Accepted Standards	1
The Allan Lake Show	27/02/2008	Red Dragon FM	Offensive Language	1
The Bollywood Top 20	09/02/2008	Sunrise Radio	Offensive Language	1
The Brit Awards 2008	20/02/2008	ITV1	Offensive Language	146
The Bush and Troy Show	24/01/2008	GWR 96.3FM Bristol	Generally Accepted Standards	1
The Christian O'Connell Breakfast Show	26/02/2008	Virgin Radio	Offensive Language	1
The Dog Whisperer	15/02/2008	Sky Three	Animal Welfare	1
The How Low Auction Competition	06/03/2008	LBC	Competitions	1
The Peoples' Millions	29/11/2007	ITV Border	Competitions	1
The Pete Snodden Show	21/02/2008	Cool FM	Other	1
The Wright Stuff	25/02/2008	Five	Generally Accepted Standards	1
This Morning		ITV1	Competitions	1
This Morning (trailer)	11/03/2008	ITV1	Sex/Nudity	1
Tonight With Trevor McDonald (Trailer)	15/02/2008	ITV1	Due Impartiality/Bias	1
Traffic News	10/03/2008	BBC Radio 2	Inaccuracy/Misleading	1
Trail for Virgin On Demand service	06/03/2008	Virgin 1	Sex/Nudity	1
Trail for Virgin On Demand service	05/03/2008	Virgin 1	Sex/Nudity	1
Trail for Virgin On Demand service	08/03/2008	Bravo	Sex/Nudity	1
Trail for Virgin On Demand service	04/03/2008	Virgin 1	Sex/Nudity	1
Trail for Virgin On Demand service	03/03/2008	Bravo	Sex/Nudity	1
Trisha Goddard	14/03/2008	Five	Offensive Language	1
Vanity Lair	01/03/2008	Channel 4	Generally Accepted Standards	1
Waterloo Road	28/02/2008	BBC1	Generally Accepted Standards	3

Weakest Link	01/03/2008	BBC1	Religious Offence	1
When Hidden Cameras Attack	18/02/2008	Zone Reality X	Offensive Language	1
Wife Swap	24/02/2008	Channel 4	Offensive Language	1
World's Most Dangerous Animals	03/03/2008	Sky Three	Inaccuracy/Misleading	1
Zee TV News	16/02/2008	Zee TV	Undue Prominence	1