

Ofcom Broadcast Bulletin

**Issue number 127
9 February 2009**

Contents

Introduction

Standards cases

In Breach

Penn & Teller: Bullshit!

TV6 Sweden, 27 September 2008 at 19:55 5

Axe Gamekillers

TV6 Sweden, 12 October 2008, 13:30 9

Overnight Hit Mix

*Your Radio (West Dunbartonshire, Argyll & Bute),
11 October 2008, 00:00* 13

Northern Media Group radio stations (Northern Ireland),

6 September 2008, 18:00 15

Various programmes

*Channel U, August 2008, various dates and times
Fizz, August 2008, various dates and times* 18

'Minx Girl' Promotion

Chart Show TV, 20 October 2008 at 17:50 19

Hell's Kitchen USA

ITV2, 12 November 2008, 20:00 20

Resolved

Funniest Ever You've Been Framed

ITV1, 1 November 2008 at 18:00 21

George Lamb

BBC 6 Music, 5 November 2008, 10:00 23

The Alex Zane Breakfast Show

XFM, 20 August 2008, 07:20 24

Programme trailer

Viking FM, 21 October 2008, 17:20 27

Music Express

Nepali TV, 1 October 2008, 17:15 29

Fairness & Privacy cases

Partly Upheld

Complaint by Dr Christian Farthing

*Conning the Conmen, BBC3, 29 March 2007
(repeated 4 April 2007 and 30 July 2007)*

30

Complaint by Dr Peter Proud

*Conning the Conmen, BBC3, 29 March 2007
(repeated 4 April 2007 and 30 July 2007)*

65

Other programmes not in breach/resolved

89

Introduction

The Broadcast Bulletin reports on the outcome of investigations into alleged breaches of those Ofcom codes which broadcasting licensees are required to comply. These include:

- a) Ofcom's Broadcasting Code ("the Code") which 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/>
- b) the Code on the Scheduling of Television Advertising ("COSTA") which came into effect on 1 September 2008 and contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken. COSTA can be found at http://www.ofcom.org.uk/tv/ifi/codes/code_adv/tacode.pdf.
- c) other codes and requirements that may also apply to broadcasters, depending on their circumstances. These include the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code. Links to all these codes can be found at <http://www.ofcom.org.uk/tv/ifi/codes/>

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

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

Standards cases

In Breach

Penn & Teller: Bullshit!

TV6 Sweden, 27 September 2008 at 19:55

Introduction

TV6 is a Swedish language channel licensed by Ofcom that is controlled and complied by Viasat Broadcasting UK Limited ("Viasat"). Viasat holds 27 Ofcom licences for separate television channels which broadcast from the United Kingdom to various Scandinavian countries, including Sweden. The Viasat compliance department is based in London and manages compliance for all these licensees centrally. TV6 is not on the Sky Electronic Programme Guide and cannot be received in this country on normal satellite equipment.

Penn & Teller: Bullshit! is a US entertainment series, originally broadcast on the US subscription channel Showtime. The series is hosted by the two American comedians/magicians Penn Jillette and Teller (known as Penn & Teller). The programme is described on the official Showtime website as a "high-octane, weird, wacky, entertaining journey through some bizarre territory that no one else is brave enough to touch" and aims to cause controversy by applying Penn & Teller's critical approach to various beliefs and philosophies. Previous topics featured in the series had included 'new age medicine', 'being green' and 'world peace'. The episode complained of was called 'War on Porn' and was broadcast in English with Swedish subtitles.

Ofcom received a complaint from a Swedish viewer about the sexual content included in the programme. The viewer was particularly concerned that the programme was inappropriately scheduled before the watershed on a Saturday evening, when young children were likely to be watching.

Ofcom obtained a copy of the programme from Viasat. It featured frequent, but brief, clips of adult sexual content. These included shots of men and women simulating sexual intercourse, women touching themselves and other women in a sexual manner, shots of naked breasts and footage of an adult industry convention - including shots of sex toys, such as dildos and whips.

The programme also contained varying levels of offensive language. It was broadcast in English with Swedish sub-titles. The original sound-track in English contained several uses of the word "fuck" together with references to "cunt" and "motherfucker." It also featured milder language such as, "dick", "tits", "cock", and "pissed".

Ofcom commissioned an independent translation of the Swedish subtitles used in the broadcast in order to identify how the language used in the English original sound-track was translated for the Swedish audience. The English translation indicated that the Swedish subtitles also included references to the word "fuck" and "cunt", together with references to milder language, such as "cock" and "tits."

We asked Viasat for its comments in relation to the following Rules of the Code:

- Rule 1.3 - Children must be protected by appropriate scheduling from material that is unsuitable for them;
- Rule 1.14 - The most offensive language must not be broadcast before the watershed or when children are particularly likely to be listening;
- Rule 1.16 - Offensive language must not be broadcast before the watershed, or when children are particularly likely to be listening, unless it is justified by the context;
- Rule 1.17 - Representations of sexual intercourse must not occur before the watershed, or when children are particularly likely to be listening, unless there is a serious educational purpose; and
- Rule 2.3 - Material which may cause offence must be justified by the context.

Response

Viasat highlighted that TV6 Sweden is aimed at men from the ages of 15 to 49 and therefore its viewers expect more challenging programming.

With regard to the offensive language featured in the programme, the broadcaster pointed out that although the language is offensive in English the same words are not regarded as offensive in Swedish. It stated that, although English offensive language is used throughout the programme, the majority of this offensive language was either not translated into Swedish or translated into mild or inoffensive language in the subtitles. Viasat also highlighted that the broadcast of offensive language in Sweden is not restricted to post-watershed programmes, and the viewer expectations of a Swedish audience are different from those of an English speaking audience. Viasat therefore believed the programme was suitable for the time of broadcast with regard to language.

Concerning the sexual content, however, Viasat acknowledged that the scheduling of the programme was in breach of its compliance procedures. The programme had been given a post-watershed restriction but nonetheless the scheduling team took an independent decision to show this programme at 19:55, without prior consultation with the Viasat compliance department.

Viasat said it has pointed out the seriousness of this error to those involved. It has also employed new staff in the scheduling department to ensure that proper compliance procedures are adhered to at all times in the future.

Decision

Offensive language

Ofcom noted that the programme was broadcast in English, with Swedish subtitles. It had regard to Viasat's comments concerning the language used in the programme, including its statement that offensive language is not restricted to post-watershed programmes in Sweden. It also took into account that some of the most offensive language that featured in the English original sound-track of the programme, such as "*motherfucker*", was either omitted or replaced with milder language when translated in the Swedish subtitles. However, Ofcom was concerned that certain references to the most offensive words in English were also broadcast in the subtitles translated into their Swedish equivalent. These included references to "*fuck*" and "*cunt*."

Ofcom recognises that Swedish audiences may have different expectations regarding the use of offensive language before the watershed. However, Viasat is a

broadcaster licensed by Ofcom and therefore it is required to comply with its licensing obligations in the United Kingdom. This includes ensuring that all of its broadcast output complies with the Code. Rule 1.14 of the Code states unequivocally that “the most offensive language must not be broadcast before the watershed...” Ofcom therefore concluded that the broadcast of “*fuck*” and “*cunt*” before the watershed was clearly unacceptable and Rule 1.14 of the Code was breached.

Rule 1.16 of the Code states that “offensive language must not be broadcast before the watershed, or when children are particularly likely to be listening, unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed.”

With regard to context, Ofcom noted that the programme was broadcast on a Saturday night at 19:55, and not preceded by any warning. Ofcom acknowledges that the channel is aimed at men from the ages of 15 to 49. However, child audience figures provided by the independent Swedish regulator, GRN, indicate that approximately 7,000 children between the ages of 4 and 15 watched this programme. Therefore, Viasat must take account of the fact that the programme was scheduled and broadcast at a time when children could have been (and in fact were) viewing. In light of this, Ofcom considered that the frequency and nature of the offensive language used was not justified by the context and was therefore in breach of Rule 1.16 of the Code.

Sexual content

With regard to the sexual content of the programme, Ofcom noted Viasat’s acknowledgement that the programme was broadcast at an inappropriate time and its explanation for this error. Rule 1.17 of the Code states that “representations of sexual intercourse must not occur before the watershed, or when children are particularly likely to be listening, unless there is a serious educational purpose.” Ofcom noted that the programme included brief scenes of sexual acts, including men and women simulating sexual intercourse. Given that the programme’s format was an entertainment series and was not used for educational purposes, Ofcom considered that this material was therefore in breach of Rule 1.17.

Given these breaches of Rules 1.14, 1.16 and 1.17 relating to material shown before the watershed, Ofcom also considered the programme in breach of Rule 1.3, which requires that “children must...be protected by appropriate scheduling from material that is unsuitable for them”.

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

With regard to the language used in the programme, in general, offensive material can be broadcast, so long as it is justified by the context. Ofcom again noted that the channel was aimed at a male audience aged 15 to 49. However, given factors such as the time of broadcast - Saturday night at 19:55 - and the effect that the material might have had on viewers who may have come across it unawares, Ofcom considered that the broadcast of this offensive language at this time was not justified

by the context. The programme therefore did not apply generally accepted standards and breached Rule 2.3 of the Code.

With regard to the sexual imagery in the programme, Ofcom considered that, given the nature and strength of the material, this had a clear potential to cause offence. Therefore its treatment by the broadcaster required justification in the context to provide adequate protection for viewers. Ofcom acknowledges that the channel is aimed at an adult male audience and has an audience expectation for more challenging content. However, Ofcom was particularly concerned with the nature of the content and the time of broadcast. The programme contained numerous clips of simulated sexual intercourse and nudity. Taking into account the scheduling of the programme and that it was transmitted without a warning, Ofcom was concerned by the degree of offence likely to be caused to viewers watching at this time and the significant effect this material would have had on those who came across it unawares. In Ofcom's view, in light of these factors, the broadcast of this offensive material was not justified by the context and was a breach of generally accepted standards. Therefore Rule 2.3 was also breached with regard to the sexual content of the programme.

Breach of Rules 1.3, 1.14, 1.16, 1.17 and 2.3

Please see note on page 12 concerning Viasat's compliance record

In Breach

Axe Gamekillers

TV6 Sweden, 12 October 2008, 13:30

Introduction

TV6 is a Swedish language channel operated by Viasat Broadcasting UK Limited ("Viasat").

Axe Gamekillers is a programme in which a male contestant who believes he is on a reality dating show, goes on a series of dates with an actress who he believes to be a fellow contestant. Every situation he finds himself in is staged, and during every date he is confronted by a 'Gamekiller' (an actor or actress whose purpose is to throw the date off course and ruin the contestant's chances of success). If the contestant overcomes the challenges faced on the date his name is etched onto the *Axe Gamekillers* chalice.

The series was fully funded by Axe (a brand of men's deodorant) and acquired by Viasat from the USA. The programme contained the following references to Axe:

- Axe was etched on the *Axe Gamekillers* chalice which was shown on two occasions;
- On three occasions, during the sections of the programme where the contestant's score was calculated, the word 'Axe' appeared at the bottom of the screen; and
- On three occasions, during sections of the programme called 'Axe Tips', the narrator referred to 'Axe Tips' and this appeared as text in the centre of the screen. The word 'Axe' also appeared at the bottom of the screen during these sections.

A viewer complained that the purpose of the programme was to "expose the AXE trademark".

On viewing a recording of the programme, Ofcom noted that, in addition to Axe funding the series, the programme was also sponsored by Viasat-To-Go (Viasat's mobile TV business). The voice-over in the sponsorship credits at the beginning and end of the programme, as well as either side of the commercial break, stated:

"Axe Gamekillers sponsored by Viasat-To-Go, Real TV in your mobile. Learn more on viasat.se/mobil-tv".

We asked Viasat for its comments in relation to the following Code Rules:

- Rule 9.5 - there must be no promotional reference to the sponsor, its name, trademark, image, activities, services or products or to any of its other direct or indirect interests. There must be no promotional generic references. Non-promotional references are permitted only where they are editorially justified and incidental.

- Rule 9.7 - the relationship between the sponsor and the sponsored channel or programme must be transparent.
- Rule 9.13 – sponsorship must be clearly separated from advertising. Sponsor credits must not contain advertising messages or calls to action. In particular, credits must not encourage the purchase or rental of the products or services of the sponsor or a third party.

Response

Rule 9.5 – sponsor references

Viasat said that the references to Axe within the programme appeared “occasionally” on the *Axe Gamekillers* chalice and during the ‘Axe Tips’ sections. It said that it did not consider the references to be unduly prominent, nor promotional in the context of the programme, and stated that they formed “an integral part of the of the programme editorially”. The broadcaster added that it considered the reference to Axe on the chalice to be editorially justified because “Axe is the sponsor of the programme and therefore eligible to provide a prize to the winning contestants”.

Rule 9.7 - transparency of sponsorship arrangement

Viasat said that the programme was sponsored by Axe and Viasat-To-Go. The original name of the programme was ‘The Gamekillers’, but when TV6 acquired the programme, it chose to refer to it as *Axe Gamekillers* in the sponsorship credits, in the viewer competition at the end of the programme, and in Swedish programme listings. Viasat added that, in its view, these references to Axe made the sponsorship arrangement transparent.

Rule 9.13 – sponsorship must be clearly separated from advertising

In relation to the Viasat-To-Go sponsorship credit, the broadcaster said that the statement “*Real TV in your mobile. Learn more on viasat.se/mobil-tv*” provided a brief description of the service plus contact details for the viewer to find out more about the sponsor’s service. Viasat said that “the inclusion of ‘*Learn more on*’ [was] not promotional or encouraging, but a standard way of communicating in relation to a website address”.

Decision

Ofcom’s rules on programme sponsorship prevent “unsuitable sponsorship” by ensuring that:

- the editorial independence of the broadcaster is maintained and that programmes are not distorted for commercial purposes;
- sponsorship arrangements are clearly identified and transparent; and
- sponsor credits are separated from programme content and distinct from advertising.

Rule 9.5 – sponsor references

Programme sponsorship¹ provides sponsors with an opportunity to associate their brands/products with programmes. It does not however provide sponsors with an opportunity to ‘place’ their brands within programme content. There must be no promotional references (actual or generic) to a sponsor or a sponsor’s product or service within a programme it is sponsoring. Any non-promotional reference to a

¹ The sponsorship rules in the Code also apply to advertiser-funded programmes.

sponsor or its product or service must be editorially justified and must also be incidental. Guidance² issued by Ofcom states that “A reference to the sponsor within a programme must not be a condition of the sponsorship arrangement. Broadcasters should be aware that a reference to a sponsor within a programme may create a higher presumption of editorial influence by the sponsor”.

Ofcom is aware that the programme was originally produced for broadcast as part of an advertising campaign for Axe Dry deodorant in the USA. The references to Axe throughout the programme were therefore likely to have been included specifically for the purpose of promoting the brand.

Ofcom did not accept the broadcaster’s argument that the references to Axe during the programme were editorially justified. The references to Axe within the tips and scoring sections of the programme, and on the chalice did not appear to serve any clear editorial function other than as prominent references to the sponsor’s brand. These therefore appeared to Ofcom to have been included for the purpose of promoting the sponsor within the programme. The programme was therefore in breach of Rule 9.5 of the Code.

Rule 9.7 – transparency of sponsorship arrangement

Ofcom noted that Viasat had re-named the programme *Axe Gamekillers* as the broadcaster considered that this made Axe’s sponsorship of the programme clear. Ofcom also noted that the broadcaster had used sponsor credits around the programme to identify Viasat-To-Go’s sponsorship.

Ofcom considered that the use of these different methods of identifying the two sponsors had the potential to create viewer confusion over the nature of the relationship between Axe, Viasat-To-Go and the programme. As it was not apparent who the programme sponsor was and who had funded the programme, Ofcom judged the programme to be in breach of 9.7 of the Code.

Rule 9.13 – sponsorship must be clearly separated from advertising

Rule 9.13 states that sponsorship must be clearly separated from advertising. Sponsor credits must not contain advertising messages or calls to action. In particular, credits must not encourage the purchase or rental of the products or services of the sponsor or a third party.

Guidance issued by Ofcom³ states:

“If sponsor credits contain contact details, these include the minimum information necessary to allow viewers to make initial contact with the sponsor should they so wish. Contact details may include a description of the means of contact (e.g. tel.; text:) but must not invite or exhort viewers to contact the sponsor. Any direct appeals to the viewer to buy or try the sponsor’s goods or services or to contact the sponsor for more information are likely to breach Rule 9.13”

Ofcom judged “*Learn more on viasat.se/mobil-tv”* to be an invitation to the viewer to contact the sponsor, in breach of Rule 9.13.

Breach of Rules 9.5, 9.7 and 9.13

² <http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/guidance9.pdf>

³ See footnote 2.

Note regarding Viasat's compliance record

Ofcom has significant concerns regarding the overall compliance record of a number of television services operated by Viasat and broadcast from the United Kingdom to Scandinavia. The 27 licences held by Viasat are complied and managed centrally by a compliance department based in London. Ofcom considers that a Licensee which holds multiple licences and chooses to comply them centrally should exercise appropriate care in the management and supervision of all of its channels. Should breaches occur on separate channels in these circumstances Ofcom may consider the contraventions together.

It appears to Ofcom that the broadcaster may have inadequate procedures in place to ensure compliance with the Code. In light of this, Ofcom will meet with Viasat at the broadcaster's office, to discuss its compliance record and processes.

Viasat is also put on notice that any further significant breaches of the Code will be taken extremely seriously and, in such circumstances, Ofcom will consider the imposition of a statutory sanction, which includes financial penalties.

In Breach

Overnight Hit Mix

Your Radio (West Dunbartonshire, Argyll & Bute), 11 October 2008, 00:00

Introduction

This programme was pre-recorded and broadcast 'as live'. During the programme, the presenter announced her forthcoming birthday and then solicited texts for anyone having a birthday *"this weekend"*.

The presenter said: *"...text me in if you want a 'Happy Birthday' to yourself, to somebody, to your friend – 60300 – and we'll get them on air next..."*

A listener who responded to the invitation subsequently accessed the station's website which indicated that the programme had been pre-recorded. The listener therefore realised that her message could not have been acknowledged on air at the time of the broadcast.

We asked Your Radio for its comments on the matter, with reference to Rule 2.2 of the Code, which requires that "...items or portrayals of factual matters must not materially mislead the audience."

Response

Your Radio said that the presenter's invitation to listeners to text the programme was "a spur of the moment error of judgement" and that, "in trying to make her show more entertaining and interactive [the presenter] gave out part of the text contact details." The broadcaster said that the presenter was "a young and inexperienced broadcaster." Your Radio stressed that there was never any deliberate attempt to mislead its audience.

Your Radio said it had taken the matter very seriously. It said that all presenters who pre-record programmes had been made aware that there should be no attempt to encourage listeners "to contact a show that does not have a live presenter in the studio". Further, all pre-recorded overnight shows had been suspended and would be presented by experienced presenters if reintroduced. The broadcaster advised that it had also changed its approach to training new presenters.

Decision

Presenters should avoid broadcasting any 'call to action' that states or implies the prospect of audience interaction with a programme, if such interaction is not possible. In this case, during a pre-recorded programme which was broadcast 'as live', the presenter mistakenly invited listeners to text in birthday messages for her to broadcast. While we accept that this was not intentional, this materially misled listeners into believing they could interact directly with that programme when they could not.

Ofcom notes the extensive action taken by Your Radio to avoid recurrence. However two Ofcom Findings have been published previously (on 25 February and 11 August

2008) concerning similar issues¹. The broadcaster therefore should have been aware of the problems associated with inviting listeners to interact with pre-recorded programmes and should have taken steps to ensure the inexperienced presenter was aware of the need to take special care with regard to this issue.

The broadcast materially misled listeners, in breach of Rule 2.2 of the Code.

Breach of Rule 2.2

Please see the Note to Broadcasters, below (page 17)

¹ Findings concerning Dream 100 FM, in Broadcast Bulletins 103 and 115, at: http://www.ofcom.org.uk/tv/obb/prog_cb/obb103/ and http://www.ofcom.org.uk/tv/obb/prog_cb/obb115/

In Breach

Saturday Night Warm-Up

Northern Media Group radio stations (Northern Ireland), 6 September 2008, 18:00

Introduction

Saturday Night Warm-up was a dance music show. This edition of the programme was pre-recorded and broadcast ‘as live’ and networked across Northern Media Group’s six commercial radio stations in Northern Ireland: Five FM, Six FM, Seven FM, Q97.2, Q101 West and Q102.

During the programme, the presenter invited listeners to contact the show on a number of occasions. These invites included:

- *“...your chance to be part of the show. All you’ve got to do is text us, let us know what songs you want to hear – what you’re up to on the biggest party night of the week. Pick up your cellphone, insert the number 7, write your message and send it to us at eight double-three double-nine”;*
- *“...let us know what you’re up to tonight, if you want to be part of the show. It’s the biggest party night of the week – we’re with you all the way. This is your official Saturday Night Warm-up...”;*
- *“Tonight from 8 o’clock we’re playing Planet Love anthems. Just text what song made it for you at this year’s Planet Love or any year over the last decade – Text...”;*
- *“OK we’re going to go live in ‘The Mix’ in minutes – we’ve got the Pioneer C DJs ready – and we’re still taking your texts. What song has made it for you at Planet Love over the last ten years? It could be a new song but, er, judging by your response on the text, most of them are old school anthems. Let us know what song you want to hear inside the next five minutes on...”;* and
- *“Thanks for all your texts tonight – a lot of texts requesting that one from Underworld ‘Born Slippy’.”*

A listener complained that the presenter invited the audience to interact with the programme by using a text short code “which notoriously generates money for the company.” The complainant was concerned that, as the programme was pre-recorded, “listeners’ dedications and other contributions [had] no chance of being used or featured.”

We asked Northern Media Group (referred to in this finding as “NMG” or “the broadcaster”) for its comments with reference to Rule 2.2 of the Code, which requires that “...items or portrayals of factual matters must not materially mislead the audience.”

Response

NMG confirmed that the programme was pre-recorded but said that there had been no intention to harm or mislead listeners. There was no commercial motivation for

encouraging listeners to contact the station as it received no income from the text service promoted. However, NMG acknowledged that it was unacceptable to suggest to listeners that they could interact with a pre-recorded programme when this was not possible. It apologised for doing so.

NMG explained that the presenter included the invitations to “make the show more interesting”. Messages that were sent to the broadcaster during the pre-recorded programme were checked in the days that followed and the presenter was encouraged to use them in the next available programme.

The broadcaster said that the practice resulted from deficiencies in its policies and procedures. It advised that it had amended its procedures to ensure listeners are not encouraged to interact “as-live with pre-recorded programmes”. All presenters of pre-recorded programmes have been instructed not to encourage listener interaction in such broadcasts. NMG added that where presenters invite listeners to correspond with them, it will be clear to the listener that their contribution will not be used immediately.

In response to specific questions raised by Ofcom, NMG advised that some of the messages referred to during the programme in question were not genuine but made up by the presenter. The broadcaster also explained that *The Saturday Night Warm Up* was broadcast weekly from 9 August 2008 and the majority of shows broadcast were pre-recorded. The broadcaster explained that, prior to the issue being brought to its attention, it was likely that most shows would have encouraged listeners to interact. However, following notification of the complaint and copies of Ofcom’s Findings in this area, no pre-recorded editions of the programme had encouraged audience interaction.

NMG added that listeners who submitted texts in response to the on air invitations paid only their “standard network rate”. While the text shortcode used provided the station with an option to charge a premium for each SMS received, the charge would be applied only when a return message was sent to the sender of the original message. As the broadcaster did not reply to the inbound messages, the cost to listeners of sending a text to the number promoted would have been their standard network rate.

Decision

Ofcom notes NMG’s apology and the action it has taken to avoid recurrence.

However, Ofcom is extremely concerned that the broadcaster failed to have sufficient procedures in place to prevent the deception of its audience. In this case the presenter not only pre-recorded ‘calls to action’ that stated or implied the possibility of immediate audience interaction with the programme but also reported on fictitious messages, which the presenter claimed to have received during the programme. This was unacceptable and in breach of the Code.

Ofcom accepts that this was not pre-meditated in order to deliberately deceive the audience. However, Ofcom considers that it should have been clear to those involved in producing the programme that to deceive the audience in this way was unacceptable. Further, the breaches occurred after Ofcom published Findings¹

¹ Findings concerning Dream 100 FM, in Broadcast Bulletins 103 and 115, at: http://www.ofcom.org.uk/tv/obb/prog_cb/obb103/ and http://www.ofcom.org.uk/tv/obb/prog_cb/obb115/

against other broadcasters for similar Code breaches. NMG should therefore have been aware of Ofcom's concerns in this area and taken steps to prevent this practice.

Ofcom noted that listeners' texts were not charged at premium rate but at standard network rates. Nevertheless, by repeatedly telling listeners that they could interact with the programme when they could not, the audience was materially misled. As the programme progressed, the audience would have believed that some listeners had interacted with it. The presenter appeared to intend deliberately to deceive listeners, in a serious breach of listener trust. The broadcast materially misled listeners, in breach of Rule 2.2 of the Code.

This is a serious breach of the Code. Ofcom will consider further regulatory action in the event of any similar breach by any NMG station.

Breach of Rule 2.2

Note to Broadcasters: Calls to action in pre-recorded output broadcast 'as live'

To date, Ofcom has published four Findings concerning material broadcast in pre-recorded radio programmes. In each case the broadcast stated or implied that listeners could interact with the programme when they could not [the two Findings above and two Findings against Dream 100 FM published previously, on 25 February and 11 August 2008].

Ofcom acknowledges that broadcasters may wish to make pre-recorded programming as 'natural' as possible. However, broadcasters must not materially mislead their audience by, for example, encouraging listeners to interact with a programme by telephone, when this is not possible. This is particularly important if significant charges are levied (e.g. for contact using phone/text services charged at premium rate ("PRS")), when the potential to cause material harm is greater. However, broadcasters should note that, where lesser (non-premium rate) or no such charges are levied in pre-recorded programmes, an audience can still be materially misled by the inaccurate portrayal of factual matters. In particular, licensees should consider the risk of a fundamental breach of trust between a broadcaster and its audience.

Generally, immediate interaction in pre-recorded programmes is not possible. Requests for members of an audience to correspond with a view to interacting in subsequent output may, however, be possible (e.g. requests for dedications to be included in a subsequent pre-recorded radio programme). Broadcasters must consider carefully whether information they choose to include in pre-recorded programmes broadcast 'as live' (e.g. calls to action) has the potential to materially mislead their audiences.

Ofcom puts broadcasters on notice that we regard breaches of Rule 2.2 of the Code, due to overt deception or a lack of thorough consideration for compliance, as serious. Such breaches result in a fundamental breach of trust between the broadcaster and its audience and Ofcom will not hesitate to consider further regulatory action, when necessary.

In Breach

Various programmes

Channel U, August 2008, various dates and times

Fizz, August 2008, various dates and times

Introduction

Ofcom monitored the output of Channel U, an urban music channel, and Fizz, a pop music channel, on various dates and times in August 2008. At the time, both channels were owned by Video Interactive Television plc¹.

Ofcom noted that at the end of some of the videos on the channels, the following text appeared on the screen “Check www.channelu.tv for Video’s, MP3’s and Realtones!” or “Check www.fizzmusic.co.uk for Video’s, MP3’s and Realtones!”

We noted that the channels’ websites advertised realtones and mp3s for sale.

Ofcom asked the broadcaster for its comments in relation to Rule 10.3, which states that “products and services must not be promoted within programmes. This rule does not apply to programme-related material”.

Response

The broadcaster responded that the on screen messages “Check www.channelu.tv for Video’s, MP3’s and Realtones!” and “Check www.fizzmusic.co.uk for Video’s, MP3’s and Realtones!” were no longer displayed on Channel U and Fizz. It added that the messages had “acted as a signpost to the website where artist information and news is available and as such, [were] programme related items”.

Decision

Rule 10.3 prevents products and services from being promoted in programmes, the only exception to this is where promotions relate to programme-related material (“PRM”). Broadcasters must bear in mind that the ability to promote a product or service as PRM in or around programmes is permitted purely by way of exception to the fundamental broadcasting principle that advertising and programme content must be kept separate. For material to qualify as PRM, it must not only be directly derived from a specific programme but also allow viewers to benefit fully from, or interact with, that programme.

In this case the broadcaster promoted not simply the websites but the availability of products and services (videos, mp3s and realtones) that could be purchased via the websites. These products and services did not meet the definition of PRM in that they were not directly derived from the programmes. As such, it was not appropriate for the broadcaster to promote their availability within a programme and the material was therefore in breach of Rule 10.3 of the Code.

Breach of Rule 10.3

¹ The licences for these channels were transferred from Video Interactive Television plc to Factor 15 Records Limited on 23 January 2009.

In Breach

'Minx Girl' Promotion

Chart Show TV, 20 October 2008 at 17:50

Introduction

Chart Show TV is a pop music video channel operated by CSC Media Group ("CSC"). The channel broadcast a promotion, which was transmitted before the watershed, called *'Minx Girl'*. The promotion stated:

"Are you confident, feisty and easy on the eye? If you are, Chart Show TV wants to hear from you. We are on the look out for a proper Minx Girl for some knicker-clad-naughtiness. We want you to tell us some of your naughtiest secrets and become a proper minx. Just send us a photo of yourself and tell us why you want to be a proper Minx".

The promotional details were voiced over an excerpt of the music video 'Dirrty' by Christina Aguilera - which featured the singer dressed and dancing in a sexually provocative way - and footage of a model (from her waist up) in her underwear lying on a bed, moving in a suggestive manner.

A viewer complained about the inappropriate scheduling of the promotion.

Ofcom asked CSC to comment on the broadcast in relation to Rule 1.3 of the Code (children must be protected by appropriate scheduling from material that is unsuitable for them).

Response

CSC acknowledged that the promotion was unsuitable for a pre-watershed broadcast and apologised for any offence caused. It explained that the error occurred after the promotion was mistakenly marked for 'daytime' rather than 'post-watershed' broadcast.

In response to the complaint, the channel's producers have been reminded of their responsibilities under the Code and of the importance of correctly marking content for 'daytime' and 'post-watershed'. The broadcaster stated that it has a rigorous policy for ensuring under-eighteens are protected and regretted this error.

Decision

In Ofcom's opinion this promotion was clearly unsuitable to be broadcast in the early evening when it was likely that a number of children could be watching. There was a teasing script accompanied by visual material, which was mildly sexually provocative. Ofcom notes that the broadcast of this promotion pre-watershed resulted from human error. It also notes the broadcaster's response to the complaint and its assurances of rigorous compliance for protecting under-eighteens.

However, the broadcast of this material before the 21:00 watershed is a clear breach of Rule 1.3.

Breach of Rule 1.3

In Breach

Hell's Kitchen USA

ITV2, 12 November 2008, 20:00

Introduction

Ofcom received a complaint that one of the contestants taking part in this series of *Hell's Kitchen USA* said "fuck me" in an interview to camera. The broadcaster was asked to comment under Rule 1.14 of the Code which states that the most offensive language must not be broadcast before the watershed.

Response

The broadcaster explained that this programme was subject to a well established and robust compliance process, particularly given that it originally included a considerable amount of strong language and this had to be removed for the programme to be shown at 20:00. However, the intonation and accent of the speaker meant that the word was missed through human error although the broadcaster accepted that it was audible.

The broadcaster accepted that the word should not have been broadcast and apologised. In addition ITV has said that it will further review its internal procedures in the light of this incident.

Decision

The Code requires that licensees do not broadcast the most offensive language before the watershed. The use of the phrase "*fuck me*" in this episode of *Hell's Kitchen USA* was a clear example of this language.

While noting the broadcaster's apology and the fact that this one instance occurred as a result of human error, Ofcom expects all broadcasters to ensure that material broadcast before 21:00 does not include the most offensive language.

Ofcom has therefore recorded a breach of Rule 1.14.

Breach of Rule 1.14

Resolved

Funniest Ever You've Been Framed

ITV1, 1 November 2008 at 18:00

Introduction

Funniest Ever You've Been Framed featured a selection of humorous home video clips, including unseen material and clips shown in previous series of *You've Been Framed*.

This programme broadcast a clip in which a teenage boy microwaved an egg in its shell. The boy was filmed as he removed the heated egg (with its shell intact) from the microwave and held it up to the camera. Moments after this the egg exploded with a loud 'bang', spraying its content over the camera lens.

During the clip the voice over said:

Voice over

(at the beginning of the clip): *"Rule one of many, here's why you should never, ever put whole eggs in the microwave..."*

Voice over

(at end of the clip): *"For pity sake don't try it yourself."*

A viewer felt that the broadcast of this clip was inappropriate and would encourage children to imitate dangerous behaviour.

Ofcom asked ITV to comment with reference to Rule 1.13 of the Code, which includes, "Dangerous behaviour, or the portrayal of dangerous behaviour, that is likely to be easily imitable by children in a manner that is harmful, must not be broadcast before the watershed, or when children are particularly likely to be listening, unless there is editorial justification."

Response

ITV stated that *You've Been Framed* is a "very long running and popular family entertainment show, familiar to most viewers". It said that where clips show any potentially dangerous behaviour ITV always takes care to consider whether the behaviour is likely to be easily imitable by children in a manner that might be harmful.

The broadcaster considered the clip to show an unwise but not seriously dangerous prank. It stated that the clip in question was broadcast in at least three previous *You've Been Framed* series, without raising any viewer concerns.

ITV highlighted the warning given by the voice over at the beginning and end of the clip, which it said "makes it clear that this is not an activity that should be imitated by viewers". ITV stated that, in the context of the repeated warnings and the overall tone of the programme mocking this sort of prank, it considered that the behaviour was not likely to be imitated in a harmful way by children. It also considered that, given the nature of the programme, there was editorial justification for including the clip.

However, in response to the complaint ITV said it removed the clip from the programme (and from all the previous programmes in which it has featured) in order

to prevent any further repeat broadcast. The broadcaster apologised for any distress caused to the complainant.

Decision

Ofcom notes *You've Been Framed* is an established programme that has a familiar style of ridiculous and irreverent humour.

However, the clip in question featured everyday household items: a microwave and an egg. Both items are regularly used and are of easy access. The clip itself clearly showed viewers how to make an egg explode. A potentially dangerous activity which, given its visual impact, may appeal to children. In light of these factors, Ofcom had concerns about the broadcast of this material at a time when a significant number of children were watching; audience data shows that 15.9% of the audience consisted of children under the age of 15 (a total of approximately 864,000 individual children).

Ofcom noted the warning's provided at the beginning and end of the clip. However, given the clip presented laughter from the studio audience after the egg exploded and showed no negative consequences (e.g. any physical harm or pain to the individuals involved), Ofcom considered that this would have weakened the impact of these warnings. As a result, the clip could have been interpreted as both humorous and harmless, therefore encouraging children to imitate such behaviour.

While Ofcom had concerns about the broadcast of this material, it noted ITV's apology and its assurance not to repeat the material. In light of this, Ofcom considers the matter resolved.

Resolved

Resolved

George Lamb

BBC 6 Music, 5 November 2008, 10:00

Introduction

George Lamb presents a live week day show on the BBC digital radio station, 6 Music. The show, co-hosted by Marc Hughes, is described as “inane banter plus amazing bands and guests playing live nearly every morning!” by the official BBC 6 Music website.

During this programme, the presenter discussed a news story concerning a bid by the American property tycoon, Donald Trump, to build a luxury golf course in Scotland and his battle with local fisherman, Michael Forbes, whose farm lies on the site initially approved for the complex. As part of the discussion the presenter said the following:

George Lamb: *“He's [i.e. Mr Forbes] now said ‘I'll give my land to travellers before I give it to Trump’*

Marc Hughes: *Did he say that? Brilliant*

George Lamb: *And you ain't moving travellers off basically. Travellers is [sic] like asbestos basically. The whole gaff is getting condemned.”*

Ofcom received six complaints from listeners who believed George Lamb's comment was racist towards the travelling community.

Ofcom asked the BBC to comment with reference to Rule 2.3 (In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context).

Response

The BBC stated that George Lamb's show is an established feature of the 6 Music schedule and the show has a “loyal following of listeners who understand and enjoy its somewhat quirky format and direction”.

While the BBC accepted that the term “traveller” was used in a negative way during the broadcast, it said that the comment was “not intended to be, nor was it, racist”. However, the BBC said that while the presenter did not set out to be offensive, the station acknowledged that offence might have been caused to some listeners. In consequence the recording of the programme, available on the BBC iPlayer, was withdrawn on the day of broadcast and re-edited to remove the section in question. George Lamb also made an on-air apology the day after his comments were broadcast.

Decision

Ofcom notes the BBC's acknowledgement of the potential offence the presenter's comments could have caused to some viewers and the actions taken by the station shortly after the broadcast to mitigate it. In view of the presenter's on-air apology and subsequent action taken by the BBC, Ofcom considers this matter resolved.

Resolved

Resolved

The Alex Zane Breakfast Show

XFM, 20 August 2008, 07:20

Introduction

In this edition of the *Alex Zane Breakfast Show*, the programme discussed a song which it said was acceptable in the 1960's but would now be "questionable at best". The song was "Code of Love" by Mike Sarne and had been released in 1963. The presenter then played the following sample from "Code of Love":

"Number 1 you find someone, 2 you hold her hand, 3 you kiss her on the cheek. Number 4 you squeeze her, number 5 you tease her, 6, 7, 8, 9, 10, too late to say when."

The presenters then explained that they had been inspired to write and produce their own song, which like Sarne's song would be considered to be inappropriate now but may have been acceptable in the 60's. Before playing their song, one of the presenters said that it would only be played on the radio once but it would be available on the internet later where "the laws are different".

The presenters' song was then played which featured a man describing his amorous and, at times, physical advances, and a woman attempting to refuse them. Lyrics to the song included:

Man: *"What's a girl like you doing out at this time?
Such a crackin bird, like to make you all mine
and I ain't taking 'no' for an answer tonight.*
Woman: *What are you doing let go of my arm!*
Man: *Just settle down and you'll come to no harm
cause I ain't taking 'no' for an answer tonight.*
Man: *I walked her down to where there ain't no big lights.*
Woman: *I'm telling you I'll put up a big fight!*
Man: *But I ain't taking 'no' for an answer tonight."*

Man: *"Do any of your friends know where you are?*
Woman: *Ere you've only gone and torn my new bra.*
Man: *That's cause I ain't taking 'no' for an answer tonight.*
Man: *Why don't you take off some of your clothes?*
Woman: *I swear I am going to punch you in the nose!*
Man: *Don't care I'm not taking 'no' for an answer tonight."*

Man: *"Well she's the type of girl who knocks you right off your feet. That's what I tried to do to her, only she don't seem that interested. Looks like I'm going to have to try harder."*

Woman: *"What are you doing, now why won't you leave me?*
Man: *Have a look at this - it's great believe me.*
Woman: *I told you 'no' and that's my answer tonight.*
Man: *If this was fish and chips it'd be a double portion.*
Woman: *You're going to get another police caution!*
Man: *Look I ain't taking 'no' for an answer tonight."*

Woman: (Police sirens in background.) *Here come the cop cars, sirens wailing.*
Man: *My pickup technique must be failing,
I'll grudgingly accept 'no' as an answer tonight."*

A listener complained that the song had contained connotations of rape.

Ofcom requested XFM's comments in relation to Rule 2.3 of the Code which says, "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context."

Response

XFM explained that the previous day's programme had featured a song from the 1960s by the song writer Mike Sarne called "The Code of Love", which had been discussed as now being politically incorrect. The breakfast team then decided to record their own politically incorrect song called "Won't Take 'No' For An Answer".

Notwithstanding this, the broadcaster stated that the programme makers had not sought advice in advance from XFM's management about the inclusion of the song. It considered the song to have been "inappropriate for broadcast" and that its inclusion had been a "serious misjudgement". As a result, XFM stated that its management had taken steps to remedy the situation, including disciplinary action and compliance training for the staff involved. XFM also broadcast an on-air apology the following day.

XFM also said the station is known for its cutting edge content, and is not aimed at a conservative audience. As such regular listeners would expect content which is at times satirical and irreverent. It added that the proportion of listeners aged under-18 to *The Alex Zane Breakfast Show* is 3.5%.

Decision

Ofcom recognises the sensitivities involved when comedy makes reference to or deals with challenging subjects. Comedy and satire in particular has a long tradition of pushing boundaries and challenging what is acceptable. Taste in comedy can also vary widely between people. Ofcom is not an arbiter of good taste but rather it must judge whether a broadcaster has applied generally accepted standards by ensuring that the audience was given adequate protection from offensive material. In each case when reaching a decision on whether material breached the Code, Ofcom must take into account the broadcaster's right to freedom of expression, which includes the right to hold opinions and to receive and impart information and ideas without interference by public authority unless prescribed by law¹.

The Code itself places no restrictions on the subjects covered by broadcasters, or the manner in which such subjects are treated, so long as offensive material that is broadcast is justified by the context. Context includes such factors as the editorial content of the programme, the degree of harm and offence likely to be caused, the likely expectation of the audience and the time of broadcast.

It is clear from the introduction to the song that the programme was aiming to make a pastiche of Sarne's original song. The presenters were attempting to satirise what used to be acceptable in the 1960's but would now be considered totally

¹ As enshrined in Article 10 of the European Convention on Human Rights.

inappropriate by today's standards. It was therefore always possible that the result could be offensive and therefore the context that such material was presented would be particularly important. .

However, the extract from Sarne's song played by the presenters bore little relation to the pastiche they attempted. The subject matter and tone of "Code of Love" were vastly different to the presenters' own song (which was supposedly inspired by the former). In Ofcom's view, the presenters' song was likely to have been perceived by listeners as recounting a physical and sexual assault. As such, the actions of the man in this song shared little resemblance to those of the suitor in the "Code of Love" extract played by the broadcaster. Ofcom also noted that the subject matter of the presenters' song was portrayed as a light-hearted joke and the material was transmitted at breakfast-time, when children may be in the audience.

Ofcom considers that it is, of course, possible to deal with challenging and sensitive subject matter in a satirical manner. To restrict such treatments would be an unnecessary and inappropriate restriction on freedom of expression. However, broadcasters need to take extra care when attempting such treatments and ensure that the context fully justifies the potential for offence and it is appropriately executed.

Ofcom notes XFM's actions following the broadcast. The Licensee initiated its own investigation into how the material had been broadcast without consultation with senior management. The broadcaster also aired its own on-air apology. Ofcom also noted that XFM introduced compliance workshops for those involved.

In dealing with satire, there is often a fine line between what is and what is not acceptable. It was clear there was an *attempt* in this case to parody what was considered to be acceptable in the 1960's. Although not necessarily appropriately executed, Ofcom acknowledges the actions taken by the broadcaster following transmission of the material and therefore considers the matter resolved.

Resolved

Resolved

Programme trailer

Viking FM, 21 October 2008, 17:20

Introduction

Viking FM is a commercial radio station, which broadcasts chart music shows and local information to the East Yorkshire and Northern Lincolnshire area. It is operated by Bauer Media (“Bauer”).

Ofcom received a complaint about the broadcast of a promotion for the radio station’s late night programme called *The Confessional*. The programme invites listeners to share their stories and experiences in frank and honest discussion with the show’s presenters.

The trailer said the following:

Voice over: *“Tonight on ‘The Confessional’... We’re looking for your stories all about dogging¹.”*

Vox pop: *“There was people having sex... there were a lot of guys really and then another couple came over and kinda joined with them so it ended up being like a big groupie.”*

Voice over: *“We’ll be with you from ten. ‘The Confessional’, a show of secrets on Viking FM.”*

A listener complained that the trailer had been scheduled inappropriately.

Ofcom asked Bauer to comment with reference to the following Rules of the Code:

- Rule 1.3 – “Children must be protected by appropriate scheduling from material that is unsuitable for them”;
- Rule 1.16 – “Offensive language must not be broadcast before the watershed, or when children are particularly likely to be listening, unless it is justified by the context”; and
- Rule 2.3 – “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context”.

Response

Bauer acknowledged that the trailer did not comply with Rules 1.3 or 2.3 of the Code. It apologised to the complainant and stated that it sincerely regretted that the trailer was transmitted at a time when the audience was likely to include children. Bauer explained the error by stating that the trailer was flagged with timing restrictions. However, due to an oversight, the restrictions were overlooked and the trailer was aired at 17.20. It further stated that the error was spotted immediately and the trailer removed from the playout system to prevent any further recurrence.

¹ The term “dogging” refers to the act of having sex with one or more partners in a public place and/or watching others do so.

As a result of this error Bauer said it carried out a full review of its playout procedures to ensure that any material which is not appropriate for broadcast at particular times cannot be incorrectly scheduled. In addition, as part of its review, Bauer stated that it will no longer pre-record and schedule trailers for *The Confessional* programme, as the content of the programme may include material that is not suitable for younger listeners.

Decision

Ofcom notes Bauer's acknowledgement that the scheduling of the trailer did not comply with the Code. Ofcom welcomes the broadcaster's apology to the complainant and the swift compliance measures taken in response to this scheduling error. In view of these actions, Ofcom considers this matter resolved.

Resolved

Resolved

Music Express

Nepali TV, 1 October 2008, 17:15

Introduction

Nepali TV is a general entertainment channel aimed at a UK Bangladeshi audience. Ofcom received one complaint that the opening titles of the programme, *Music Express*, broadcast on 1 October 2008, contained computer-generated visual effects. Some of these effects consisted of rapidly changing images, leading to a 'flashing' effect on the screen.

Certain flashing images present a danger of triggering seizures in viewers who are susceptible to photosensitive epilepsy ("PSE"). Rule 2.13 of the Code therefore requires broadcasters to take precautions to maintain a low risk to viewers who have PSE. Ofcom asked Nepali TV how this opening sequence complied with this Rule.

Response

Nepali TV stated that once it had received the correspondence from Ofcom, it immediately reviewed the opening credits and removed the flashing effects. The opening sequence was then replaced with a still image.

Decision

A technical assessment by Ofcom concluded that the opening titles of the programme contained five distinct sequences where the rate, intensity and screen area occupied by the flashing images exceeded the maximum limits set out in Ofcom's Guidance Note on Flashing Images.

In view of the swift response by Nepali TV, however, Ofcom is treating this matter as resolved.

Resolved

Fairness and Privacy Cases

Partly Upheld

Complaint by Dr Christian Farthing

Conning the Conmen, BBC3, 29 March 2007 (repeated 4 April 2007 and 30 July 2007)

Summary: Ofcom has partly upheld this complaint of unfair treatment and unwarranted infringement of privacy made by Dr Christian Farthing.

Dr Christian Farthing's complaint was considered by the Executive Fairness Group.

In summary Ofcom found the following:

- Ofcom found that in light of the evidence gathered by the BBC at the time of the broadcast Dr Farthing was not portrayed unfairly in relation to the inclusion in the programme of allegations that he provided unnecessary treatments for which he charged large amounts of money and that he used scare tactics in order to get patients to sign up and pay for his treatments. It also found that neither the inclusion of testimony from people with first-hand experience of the complainant's practice nor the tone and context of the programme resulted in unfairness to the Dr Farthing.
- However, Ofcom found that the way in which the programme portrayed Dr Farthing's diagnosis of and recommendations to the three BBC reporters who visited him posing as 'patients' resulted in unfairness to the complainant. This was because despite claiming that Dr Farthing had recommended unnecessary treatment to all three 'patients', the programme did not establish that this was the case.
- In addition, Ofcom found that Dr Farthing was given an appropriate and timely opportunity to respond to the allegations made about him and that his response was represented fairly in the programme.
- In relation to the complaint that Dr Farthing's privacy was unwarrantably infringed due to the obtaining and subsequent use of surreptitiously recorded footage of the BBC 'patients' visits to his practice Ofcom made the following findings:
 - that in relation to the circumstances pertaining to the obtaining of this footage Dr Farthing had a legitimate expectation of privacy and that his privacy was infringed. However, Ofcom also found that this infringement was warranted because the BBC had prima facie evidence that the story was in the public interest, and reasonable grounds to suspect that the surreptitious filming would provide further material in the public interest and that the candid view of the way in which Dr Farthing practised could not be gained through other means; and,
 - that in relation to the circumstances pertaining to the inclusion of this footage in the programme Dr Farthing had a legitimate expectation of privacy and that his privacy was infringed. Ofcom also found that in light of the earlier finding that the way in which the programme portrayed Dr Farthing's diagnosis of and recommendations to the three BBC reporters who visited him posing as 'patients' resulted in unfairness to him, the inclusion of this footage was not

warranted. Ofcom therefore found that Dr Farthing's privacy had been unwarrantably infringed in the broadcast of the programme in this respect.

Introduction

On 29 March 2007, BBC3 broadcast an edition of *Conning the Conmen*. The BBC3 website described *Conning the Conmen* as a new series in which "a maverick team of undercover reporters turns the tables on Britain's rogues and conmen". It added that the series "has launched a new generation of undercover investigations" and that it "combines daring undercover stings with wicked comedy".

Conning the Conmen features intercut reports on people who the programme makers believe to have poorly served or 'conned' the public and the presenters' attempts to con these people in turn. This edition of the programme showed one of the presenters trying to get a drug dealer to take a non-cash payment and a report into a "dodgy plumber" who the programme tried to get to sit in a bath full of baked beans. It also included an investigation into two back specialists, one of whom was Dr Christian Farthing. The programme alleged that these back specialists had been involved in recommending unnecessary treatment to their patients for a condition called "subluxation" or spinal malfunction.

The programme included four sections dealing with subluxation. Dr Farthing was referred to and/or appeared in the each of these sections. During the first two, the presenters staged a pretend 'game show' called "subluxation nation". The 'game show' featured two of the presenters as 'contestants' who, it was explained, were 'representing' one of two back specialists, namely Dr Peter Proud and Dr Christian Farthing. The first part of the 'game show' introduced the two back specialists and set out allegations which the programme was making against them. With regard to Dr Farthing, the programme stated that "*Christian charges patients thousands for treatments they don't need*" and that "*he uses scare tactics to separate them from their cash*". In addition, the programme said that Dr Farthing was suspended by the General Chiropractic Council in 2004. This section of the programme also included extracts from interviews with one of Dr Farthing's former patients (Ms Shingleston), who said "*he did scare the living daylights out of me*", and one of his former employees (Mr Collins), who said that "*patients were purposely being frightened*".

The second section of the programme dealing with subluxation featured the concluding part of the 'game show'. It included covertly filmed footage of undercover reporters posing as 'patients' and attending consultations with Dr Proud and Dr Farthing. Viewers were told that these 'patients' had previously been given the all clear by a chiropractor appointed by the programme. The 'game show' was used as a device to establish which of the two back specialists featured was the "winner" (i.e. which of the two had recommended more unnecessary treatments) and would therefore be "conned" by the programme. Dr Farthing was pronounced the "winner" in that he had recommended treatment for all three 'patients' sent to him while Dr Proud diagnosed two of the three 'patients' sent to him as having "subluxation" or spinal malfunction and recommended treatment.

The third part of the programme in which Dr Farthing featured showed the first of two visits made by the programme to 'con' Dr Farthing. In this section Dan (one of the presenters) said that "*As well as charging patients thousands of pounds for treatment they don't need, he [Dr Farthing] also takes too many x-rays*". The programme then showed Dan visiting Dr Farthing posing as a patient and then 'revealing' to him that his hobby was collecting x-rays and that he was from a weekly magazine called "ARSE" or "Amateur Radiologist Scientific Enthusiasts".

The fourth and last part of the programme which featured Dr Farthing showed another one of the presenters (Rebecca) posing as a surveyor outside his practice (The Ideal Spine Centre). She informed Dr Farthing that the building was not structurally sound due to subsidence. For this section of the programme the presenters said they had “*stolen Dr Farthing’s sales script to see if he would recognise his own sales pitch*” and used the word subsidence in place of the word subluxation. At the end of this section of the programme one of the presenters said that Dr Farthing had responded to its allegations against him by saying that he stood by his diagnosis of the ‘patients’ who visited him and the x-rays he took, his method of treatment is supported by experts around the world, he tells patients the costs before treatment, and he not only corrects subluxation but tries to improve overall wellbeing. The presenter also explained that the programme had received many testimonials from Dr Farthing’s patients who were satisfied customers.

As well as the covertly filmed footage of Dr Farthing advising the ‘patients’ sent by the BBC, the programme included footage of the outside of Dr Farthing’s practice. It also included the following details about Dr Farthing: his nationality, age, his marital status and that he was a local councillor from Canterbury.

Dr Farthing complained to Ofcom that he was treated unfairly in the programme as broadcast and that his privacy was unwarrantably infringed in both the making and the broadcast of the programme.

The Complaint

Dr Farthing’s case

In summary, Dr Farthing complained that he was treated unfairly in the programme as broadcast in that:

- a) Dr Farthing complained that the programme had portrayed him and his work unfairly. Specifically he stated that it had:
 - i) tarnished and destroyed his reputation and personal name which includes his reputation as a city councillor;
 - ii) claimed that he was a conman;
 - iii) made a mockery of his book;
 - iv) indicated that he was wrong when he told people that they had “[spinal] problems” and that he had recommended treatments “unnecessarily”;
 - v) suggested that the opinion of the BBC’s chiropractor (whom the complainant stated had given each of the undercover reporters a “clean bill of health”) was superior to his opinion despite his having provided “extensive research, clinical data, x-ray findings and other opinions to support [his] judgement” that they required treatment;
 - vi) broadcast the distorted views of a disgruntled ex-employee who claimed that the practice was driven by a desire to make money rather than to care for its patients (views which Dr Farthing described as “non-substantiated hearsay”);
 - vii) broadcast an interview with a member of the public about his practice despite the fact that she had not received any treatment from him;

- viii) made a “television mockery” of [his] findings, [his] education process and the methods [he used] to correct the spine” in the programme as broadcast. Dr Farthing noted that within the full programme the segment on his practice was placed in the context of a segment on “dodgy plumbers” and another segment with a man “lying in a bath full of baked beans”;
 - ix) unfairly treated the issue of vertebral subluxation as a “complete joke”, notably through its use of a game show format, and unfairly ignored the differences in scientific opinion on the issue of subluxation, and unfairly ignored the peer-reviewed research provided by Dr Farthing, which supported the complainant’s position on “vertebral subluxation”. Dr Farthing also stated that the BBC had undermined the World Health Organisation’s definition of health as “a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity” by suggesting that an individual cannot have a back or spinal problem unless they experience pain;
 - x) been unbalanced in that it gave only thirty seconds at the end to talk about positive feedback from patients and none of the patients were interviewed; and,
 - xi) relied upon only one “expert, namely, another chiropractor “, when that chiropractor had not seen all the relevant information and that the BBC failed to take account of his full documentation indicating the presence of vertebral subluxation in each undercover reporter.
- b) The BBC did not give him an appropriate and timely opportunity to respond to its accusations. Specifically Dr Farthing complained that:
- i) Despite his continual requests the broadcaster did not provide him with signed medical release forms for the undercover reporters until two weeks prior to the broadcast. Dr Farthing complained that this was unfair because the BBC’s expert witnesses were “in a biased situation” because they were informed about the purpose of the show and the fact that it was trying to “expose” him prior to giving their opinion.
 - ii) Dr Farthing also noted that he was not provided with “any examination or assessment notes” compiled by the BBC’s own chiropractor. In this context, Dr Farthing also complained that the programme was unfair because the BBC’s expert witnesses were “in a biased situation” because they were informed about the purpose of the show and the fact that it was trying to “expose” him prior to giving their opinion.
 - iii) He also noted that none of his questions to the BBC about the training and background of these witnesses, which were noted in a letter sent to it on 22 February 2007 (i.e. just over a month prior to the broadcast), were answered.
 - iv) The BBC did not represent his contributions fairly in the programme as broadcast, notably the documentation and research data and the reports from supportive doctors which he had supplied.
- c) He was filmed covertly while giving consultations to three undercover reporters without securing his consent for the broadcast and without justification.

Specifically, Dr Farthing stated that the BBC had not established that his diagnoses were incorrect. Dr Farthing also stated that all his patients were “well informed” about his background before they commenced treatment.

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

- d) He was filmed covertly while giving consultations to three ‘patients’, whom he later discovered to be undercover reporters, without securing his consent. Dr Farthing stated there was no public interest in filming him because the BBC had not established that his diagnoses were incorrect, and stated that all his patients were “well informed” about his background before they commence treatment. In this context, Dr Farthing noted his belief that there “was no prima facie evidence substantial enough for a story to be created in the public interest”.

The BBC’s case

In summary, the BBC responded to Dr Farthing’s complaint as follows:

By way of background to the entire complaint, the BBC said that Dr Farthing was first suspended by the General Chiropractic Council (“the GCC”) in 2003 and that the GCC had reviewed its decision twice and that he remained suspended. The BBC included copies of both the most recent GCC’s finding (dated 23 March 2007) and the first finding against Dr Farthing which was made in June 2003. The BBC noted that the first finding referred to Dr Farthing having failed to act in the best interests of patients. The BBC argued that regardless of whether “vertebral subluxation” was a real condition, the primary concern of the programme was the way Dr Farthing ran his business. It said that the findings of the GCC supported its view that Dr Farthing’s approach to his patients was unethical in that he sought to convince healthy people that they had a condition called ‘vertebral subluxation’, he made excessive and improper use of x-rays and and he used scare tactics and high pressure sales to get people to spend large amounts of money.

The BBC said that during preparation for the programme a former employee at Dr Farthing’s practice, Mr Dominic Collins, had given them a sales script that Dr Farthing’s employees were obliged to follow. This script was confirmed by a second former employee. The BBC said that this script demonstrated a disdain for patient care and a drive to maximise revenue. They said that there could be no clearer indication that Dr Farthing did not assess his patients’ needs and then decide on a course of action – he simply set out to recommend treatment to anyone who walked in through his door. The BBC also noted that Dr Farthing had an Advertising Standards Agency (“ASA”) finding upheld against him due to his selling techniques in August 2006.

The BBC noted that there was more than one definition of the term ‘subluxation’. It said that in medical terms subluxation meant “a significant structural displacement to any joint or organ which is short of dislocation”. It noted that the World Health Organisation (“the WHO”) said that subluxation would be visible on a static imaging system, such as an X-Ray.

The BBC also said that according to the WHO the chiropractic definition of subluxation was:

“A lesion or dysfunction in a joint or motion segment in which alignment, movement integrity and/or physiological function are altered, although contact

between the joint surfaces remains intact. It is essentially a functional entity, which may influence biomechanical and neural integrity”.

The BBC noted that Dr Farthing offered treatment for ‘vertebral subluxation’ and added that the WHO defines this, under the name ‘subluxation complex (vertebral)’, as a “theoretical model”.

The BBC said that there was a dispute in the world of chiropractic treatment between those who believed that ‘vertebral subluxation’ was a theoretical model and those who viewed it as a real condition. It said that the mainstream profession in Britain, which was regulated by the GCC, believed the former while Dr Farthing believed the latter.

The BBC acknowledged that there was no law against someone setting up a business to treat conditions with no medically agreed definition (and no apparent symptoms) but argued that Dr Farthing had been included in this programme to show the public that people who consult him would almost always be told they need his treatment regardless of whether it was appropriate.

The BBC said that during preparation for the programme the producers had consulted a consultant orthopaedic surgeon, Mr John Getty, and put Dr Farthing’s definition of ‘vertebral subluxation’ to Mr John Getty. The BBC said that Mr John Getty was intensely sceptical of the concept of “vertical subluxation”. The BBC said it also approached two registered chiropractors (recommended by the GCC) and an osteopath to advise them in the programme. The BBC said that one of the chiropractors examined all the BBC’s dummy patients and gave his professional opinion they were in no need of treatment. The BBC also said that the same chiropractors who had, in fact, diagnosed two other potential dummy patients with genuine spinal problems and recommended that they seek treatment. The BBC said that all the ‘patients’ who were shown consulting Dr Farthing were examined by one of the chiropractors who had examined two other potential ‘patients’ and recommended that they seek treatment. The broadcaster explained that with the exception of Mr Getty, its medical experts had wished to remain anonymous.

The BBC then responded to Dr Farthing’s complaint of unfair treatment in the broadcast of the programme:

a) The BBC argued that Dr Farthing was not portrayed unfairly in the programme.

i) + ii)

In response to the complaint that Dr Farthing’s reputation and personal name was tarnished, and that the programme claimed he was a conman, the BBC argued that Dr Farthing was described in the programme as a “conman” because he had used a high-pressure sales operation and scare tactics to persuade people, only some of whom were suffering from back problems, to undergo expensive and unnecessary treatment. The BBC said that its position was supported by the fact that the BBC had sent him three healthy ‘patients’ who he nonetheless suggested should all be treated.

iii) In response to the complaint that the programme had mocked his book, the BBC said that it was not a serious work but a promotional tool for generating more sales.

iv) In response to the complaint that the programme had unfairly indicated that Dr Farthing was wrong when he told people they had “[spinal] problems” and

unfairly indicated that Dr Farthing had unnecessarily recommended treatment, the BBC said that a chiropractor had found nothing wrong with the three 'patients' it sent to Dr Farthing and that therefore this was a factual statement.

- v) In response to the complaint that the programme had suggested that the opinion of the BBC's chiropractor was superior to Dr Farthing's despite Dr Farthing having provided material to support his judgement, the BBC said that this material did nothing more than try to provide a justification for Dr Farthing's approach. The BBC argued that although general statements can be made about appropriate treatments for particular conditions, the programme had evidence from the sales script provided for particular conditions that most people who consulted him received the same diagnosis, of vertebral subluxation, and therefore were offered similar treatments.
- vi) In response to the complaint that the programme included the distorted views of a disgruntled ex-employee (Mr Dominic Collins), the BBC said that Mr Collins' views were corroborated by another former employee of Dr Farthing.
- vii) In response to the complaint that the programme had broadcast an interview with a member of the public [about his practice] despite the fact that she had not received any treatment from him. The BBC said that this woman (Ms Toni Shingleston) was a registered nurse who consulted Dr Farthing when she had a stiff neck in October 2005 and Dr Farthing had examined her and taken four x-rays. The BBC said that for the reason she gave in the programme ("*he did scare the living daylights out of me*") she had declined to have him manipulate her spine and consulted a registered chiropractor instead.
- viii) + ix) In response to the complaint that the programme (and notably the context of the other people featured) – i.e. the "*dodgy plumber*" or the presenter in the bath of beans) had mocked Dr Farthing and the issue of 'vertebral subluxation', the BBC referred back to its position on subluxation (see above) and said that while it accepted that one could have back problems without experiencing pain it did not agree with Dr Farthing that many people had an asymptomatic condition called 'vertebral subluxation'.
- x) In response to the complaint that the programme was unbalanced in that it gave Dr Farthing only 30 seconds to talk about positive feedback from his patients and did not interview any of those patients, the BBC said that the programme had adequately represented the views of those patients.
- xi) In response to the complaint that the BBC had relied on one expert, namely, another chiropractor, when that chiropractor had not seen all the relevant documentation, and that the BBC failed to take account of his full documentation indicating the presence of vertebral subluxation in each undercover reporter, the BBC said that its experienced and competent chiropractor had found that the 'patients' seen by Dr Farthing did not have spinal problems. The BBC also noted that the same expert had found that some other BBC employees (who were being considered as potential dummy patients for the programme) did have back problems.

- b) The BBC argued that Dr Farthing was given an appropriate and timely opportunity to respond to the allegations made about him in the programme.
- i) In response to the complaint that the BBC had not provided signed medical release forms for the 'patients' until two weeks prior to the broadcast, the BBC said that it had written to Dr Farthing on 12 and 15 February 2007 and that he had replied on 17 February 2007. They said that thirty or so letters and e-mails were exchanged over the following weeks and that the medical release forms were sent to Dr Farthing by fax and letter on 26 February 2007 (31 days prior to the broadcast). The BBC noted that Mr Farthing had continued to contact it and that on 12 March 2007 Carter-Ruck Solicitors ("Carter-Ruck") had written, at Dr Farthing's behest, to demand the patient release forms. The BBC also noted that it had replied on 13 March 2007 to point out that it had sent these forms to Mr Farthing two weeks previously.
- ii) + iii)
In response to the complaints that Dr Farthing had not received any examination notes compiled by the BBC's own chiropractor and that the BBC's experts were biased because they had been informed that the purpose of the programme was to 'expose' him, the BBC said that it was not seeking Dr Farthing's views of the chiropractors it had used. It added that it was Dr Farthing, rather than its experts, who had been suspended by the GCC and that he was therefore not licensed by a regulatory body to carry out spinal manipulation.
- iv) The BBC denied that the programme had unfairly represented Dr Farthing's contributions (notably the documentation and the research data he had provided). The BBC said that in his responses to the allegations made about him (i.e. that he charged large amounts of money for unnecessary treatment, he used scare tactics to encourage patients to sign up for his services, and he took x-rays without sufficient medical justification) Dr Farthing was evading the key issue by providing a great quantity of material about the theory of 'vertebral subluxation'. The BBC argued that this material was not relevant because the issue was whether he had provided appropriate treatment for back pain.
- c) In response to the complaint that it was not justified for the BBC to have filmed Dr Farthing covertly, the BBC said that the filming had established that his diagnoses in the case of the three patients were incorrect. It also disagreed with Dr Farthing's claim that his patients were well informed about his background. In particular, it noted that there was no indication within the 'scripts' used by employees that patients were informed that he had been suspended by the GCC.
- d) In summary and in response to Dr Farthing's complaint of unwarranted infringement of privacy in the making and the broadcast of the programme, the BBC stated that the GCC's finding against Dr Farthing in 2004 and the renewal of his suspension in March 2007 had provided a public interest justification for filming Dr Farthing surreptitiously and broadcasting this footage.

The complainant's response to the broadcaster's comments

In summary, the complainant responded to the BBC's statement as follows.

By way of background, Dr Farthing said that the BBC had not answered any of the entertained heads of complaint, had not provided all the untransmitted footage

required, had unfairly edited its surreptitiously filmed footage of the treatment he gave the three 'patients', and had underrepresented him in the report. In particular, he noted his concern that less than 2.7% of the untransmitted material was broadcast and that he was shown responding to the allegations for only 28 seconds out of a total of 820 seconds of transmitted footage. Dr Farthing also argued that the BBC had manipulated evidence to support its position and that its rationale for featuring him in the programme was flawed.

With regard to the meaning of 'vertebral subluxation', Dr Farthing noted that the GCC's website indicated that subluxation "can affect the quality of your life" and argued that it did not say that one had to have experienced back pain to have subluxation. Dr Farthing argued that, contrary to the BBC's position in its statement, the primary concern of the programme was the diagnosis of the subluxation rather than the way in which he ran his business.

Dr Farthing denied that he used scare tactics and high-pressure sales techniques. He argued that the BBC had not provided evidence to support these claims made in the programme. He added that satisfied patients had complained to the BBC about the programme's claims against him, and that current colleagues and professional associates supported him. Dr Farthing also argued that the patient history procedure used by his clinic had been unfairly misrepresented and Mr Collins had lied about the script used for new patients and the clinic's procedures. Dr Farthing also questioned why the BBC had not interviewed other members of the staff to get a balanced view of his practice.

With respect of the ASA finding against him, Dr Farthing acknowledged that he might have worded his advert "better" but argued that this finding was not relevant to the complaint made about the programme.

Dr Farthing denied that his book was "no more than a promotional leaflet" and argued that this comment illustrated the BBC's lack of respect.

Dr Farthing said that the BBC had used "a biomedical pain-based model of health care" when discussing the definition and validity of 'vertebral subluxation' (i.e. its position was that if an individual had no symptoms no intervention was required) whereas he had based his decisions on whether or not to intervene on "postural abnormality rather than symptoms". He argued that there was a split among chiropractic professionals on this issue and that the BBC had unfairly misrepresented subluxation and ignored substantial evidence provided to it in support of his view of subluxation. Dr Farthing said that the BBC was not entitled to rely on the GCC's findings about him because he did not wish to be listed on the GCC's register and did not recognise the GCC's right to regulate him.

Dr Farthing questioned whether the experts used by the BBC were suitably qualified and suggested that they were biased. He argued that Mr John Getty had assessed whether they had medical subluxation which was quite distinct to 'vertebral subluxation'. He reiterated his view that rather than having had "a clean bill of health" each of the three 'patients' had back problems which required treatment.

Dr Farthing said that he was concerned that except for Mr Getty none of the experts used by the BBC was identified to him and he was not informed about their educational background and training (notably with regard to the detection and treatment of 'vertebral subluxation').

Turning to the specific heads of the fairness complaint Dr Farthing made the following comments in response to some heads of the broadcaster's statement:

- a) iv) In relation to the complaint that he had recommended unnecessary treatment, Dr Farthing said that while all three 'patients' might not wish to accept his findings, it had been proven that they did have spinal problems.
- v) In relation to the complaint that the programme had suggested that the opinion of its chiropractor was superior to Dr Farthing's, Dr Farthing said that the material he had supplied to the BBC was evidence-based, not just opinion-based. With regard to the BBC's point that many of his patients received similar treatment, Dr Farthing said that this was because the protocols he followed showed that they needed it.
- vi) In relation to the complaint that the programme had unfairly broadcast the views of Mr Collins, Dr Farthing argued that the BBC had manipulated this interview by coaching Mr Collins. Dr Farthing said that this was apparent from the rushes of the interview during which the interviewer was leading Mr Collins and using techniques which allowed for editing that resulted in his being portrayed unfairly. Dr Farthing also noted that these rushes made it clear that Mr Collins and Dr Farthing's former patient (Ms Shingleston) had met and stated that this demonstrated that the BBC's interview process was a conspiracy. He also argued that Mr Collins had lied about him during the interview and that he had left the Ideal Spine Centre practice because he was unhappy that he did not receive a pay rise, not because he was unhappy with the procedures at the practice. Dr Farthing noted that the BBC had also relied on the testimony of another ex-employee, but said that as this person was an anonymous witness his or her evidence should be dismissed.
- vii) In relation to the complaint that the programme had unfairly broadcast the views of a member of the public (Ms Shingleston), Dr Farthing argued that she had been coached and that techniques had been used to unfairly edit the programme. Dr Farthing argued that it was Ms Shingleston's internet research rather than his diagnosis of subluxation which had scared her and that, contrary to her claim in the rushes, the person who referred her (Mr Heatlie) had not said that he (Dr Farthing) was a chiropractor. The complainant added that Ms Shingleston had been misinformed and had lied about him during her interview.
- viii)+ ix) In relation to the complaint that the programme mocked him and the issue of 'vertebral subluxation' (notably the occurrence of the condition without symptoms), Dr Farthing reiterated his view that the BBC had ignored his diagnosis that the 'patients' had back problems. He asked what evidence the BBC had to support its position that many people did not have 'vertebral subluxation' and he pointed to supplementary documentation indicating that it was a common condition and that it was possible for it to be asymptomatic. Dr Farthing also argued that the BBC had not addressed his complaint that the programme had made a mockery of him and 'vertebral subluxation' and that the context in which he was placed was unfair.
- x) In relation to the complaint that the programme gave him only 30 seconds to respond, Dr Farthing acknowledged that the programme had mentioned the positive testimonials of his patients. However, Dr Farthing said that the

programme had failed to mention his patients' complaints to the programme's producer, to BBC complaints units and to the Director General. He argued that it was unfair that the programme had not sought the views of his patients or staff and reiterated that the programme gave him only 30 seconds to respond and unfairly edited the rushes. Dr Farthing also said that the BBC had ignored a wide range of information (which he had supplied pre-transmission) and thereby presented him unfairly. Dr Farthing also alleged that the BBC had not provided all the rushes requested by Ofcom.

- xi) In relation to the complaint that the programme had relied on one expert, who had not seen the relevant documentation and unfairly failed to take account of his documentation indicating that the three 'patients' had 'vertebral subluxation', Dr Farthing maintained that the BBC's expert was "obviously mistaken".
- b) i) Dr Farthing reiterated that he had not been provided with signed medical release forms for the 'patients' until two weeks prior to broadcast. Dr Farthing said that the BBC had delayed providing these and did not use appropriate means (recorded delivery) to ensure that he received the forms when it first sent them (26 February 2007). He said that he did not receive these forms until after his solicitors, Carter-Ruck, wrote to the BBC again to request these forms (on 12 March 2007). Therefore he had had only 13 days to respond. Dr Farthing argued that this had not left him sufficient time to gather expert testimony in support of his position and that it was disproportionate given that the BBC had prepared its report over some months. Dr Farthing also argued that it was unreasonable for the BBC to have broadcast the programme once it had received Carter-Ruck's follow-up letter challenging the BBC's position that the three 'patients' did not need treatment for back problems and its doubt about the validity of 'asymptomatic vertebral subluxation'.
- ii) +iii) Dr Farthing reiterated that he had unfairly not been provided with the examination notes made by the BBC's expert chiropractor and that the BBC's experts were biased because they had been informed that the purpose of the programme was to 'expose' him. He added that the BBC was wrong to say in its statement that "he is not licensed to carry out spinal manipulation by any regulatory body" because he is licensed in Australia. He added that one does not need to be licensed to carry out spinal adjustments (or manipulation) in the UK and that the GCC only governs those who work under the title "chiropractor" not the function of giving spinal adjustments. He said that the BBC had not addressed his complaint that it had not responded to his questions about the training of the experts upon which it relied.
- iv) Regarding the BBC's response to the complaint that the programme did not represent his contribution fairly, Dr Farthing denied that he had evaded the key issues. He argued that the theoretical material was "absolutely" essential because it explained why he practised as he did. He also said that the BBC had failed to recognise the foundation on which his practice was based and ignored evidence from leaders within the chiropractic profession. This included independent analyses of the three 'patients' X-Rays by Dr Paul Stick, Dr Jane Cook and Dr Ivan Ratnayake. Dr Farthing noted that he had only been able to secure Dr Stick's opinion prior to the transmission of programme, but said that while he helped people reduce their levels of

suffering his primary focus was to correct vertebral subluxation and empower people to live a “wellness lifestyle”.

In addition, Dr Farthing said that he had offered the BBC an interview but that this offer was neither acknowledged nor taken up.

- c) Dr Farthing repeated his argument that the BBC was not justified to have filmed him covertly because it had not established that his diagnoses were incorrect. He said that opinion of the three ‘patients’ that they did not require treatment was irrelevant because they were prejudiced as was the opinion of the BBC’s expert. He also argued that the BBC was wrong to have said in its statement that patients were not informed about this during their consultations. Dr Farthing stated that the untransmitted footage of one of his consultations with a BBC presenter pretending to be a ‘patient’, (namely Sion Taylor) showed that he told Mr Taylor that he had been suspended from the GCC. Dr Farthing added that the documentation which Mr Taylor took away included a letter, which was given to all patients, in which the suspension was detailed.
- d) Finally, in relation to his complaint of unwarranted infringement of privacy in the making and the broadcast of the programme, Dr Farthing maintained that his suspension from the GCC was not relevant because it had occurred four years ago. In addition, he had repeatedly asked to withdraw from the GCC and he did not work under the title ‘chiropractor’. Dr Farthing also noted that the GCC was being investigated for incompetence and failing to provide a fair hearing. He added that due to a loss of confidence in the GCC many chiropractors were voluntarily removing themselves from its register.

The broadcaster’s second statement in response to the complaint

The BBC provided a second statement in response to the complaint as follows:

- a) In summary and specifically in response to the complaint that the programme had ignored the material which Dr Farthing had supplied, the BBC argued that Dr Farthing had misrepresented the qualifications of one of the experts to whom he had sent the medical records of the three ‘patients’ (Dr Ratnayake) and that in contrast to Dr Farthing’s claim in these comments, Dr Ratnayake had assessed whether it would have been safe for these ‘patients’ to have received “conservative manipulative treatment” not whether or not they had needed it. The BBC also argued that Dr Ratnayake had said that in his opinion these three ‘patients’ “may benefit from spinal manipulation” not that they would benefit from it, which Dr Farthing claimed was Dr Ratnayake’s opinion.
- b) In summary and in response to the complaint that Dr Farthing had not been given an opportunity to respond, the BBC said that Dr Farthing had not presented its pre-transmission dealings with him accurately. The BBC referred back to the correspondence to support its position. It reiterated that it had given Dr Farthing adequate notice of the programme’s intentions and that it had supplied the additional information which he had requested 31 days prior to broadcast.

The BBC denied Dr Farthing’s claim that he had offered it an interview and argued that none of the pre-transmission correspondence regarding Dr Farthing’s response to the allegations about him (including the letters written by Carter-Ruck) mentioned him offering to be interviewed.

The broadcaster's addendum to its second statement in response to the complaint

The BBC also supplied a further statement in which it noted that a complaint made to the Advertising Standards Agency ("the ASA") had argued that a number of claims made in Dr Farthing's advertisements (which had appeared in the regional press) were dubious – those relating to 'vertebral subluxation' in particular.

The BBC stated that prior to the broadcast it had received a large volume of material, which Dr Farthing claimed substantiated his position that the majority of the population silently suffered from vertebral subluxation and that further similar material was submitted to Ofcom in January 2008. The BBC stated that the ASA had received the advertising complaint on 13 November 2007 and said in correspondence regarding this complaint Wellness News (the organisation which responded to the ASA complaint on behalf of Dr Farthing) had told the ASA that it was "unable to send evidence to substantiate the claims made [made in the advertisements] at this point in time" but assured the ASA that it would not repeat the claims made in the advertisements until it could send evidence to support them.

The BBC noted the ASA's conclusion that Dr Farthing's "claims were unsubstantiated and the ads were misleading". It further stated that the information which Dr Farthing sent to the BBC and to Ofcom in 2007 and 2008 was available when the ASA was considering the advertising complaint but was not sent to it. The BBC therefore argued that "Dr Farthing has acknowledged to the ASA that large quantities of the material passed to the BBC and Ofcom do not substantiate his claims about vertebral subluxation" and that therefore his complaint about the programme's treatment of the topic is groundless.

The complainant's further comments in response to the broadcaster's addendum to its second statement

Dr Farthing alleged that the BBC was trying to mislead Ofcom and suggested that it might be involved in a campaign to bring a complaint to the ASA about every advertisement he placed. Dr Farthing stated that because he had already had adjudications from the ASA he arranged for an independent company, Wellness News UK, to handle this particular advertising complaint. He said that the owner of Wellness News, Ms Ivy Hancock, had assured him that all the evidence necessary to support his advertising claims was available but that she had been away when the ASA needed this material and therefore could not get to it to the ASA within the time limit. Dr Farthing also said that he had explained this to the ASA and therefore did not feel that it was necessary for him to forward the material which he had previously sent to the BBC and Ofcom to the ASA. Dr Farthing added that Ms Hancock was taking legal proceedings against the ASA.

The broadcaster's statement in response to the complainant's comments on the addendum

The BBC said that it was Dr Farthing who was trying to mislead Ofcom. It said that Dr Farthing had acknowledged that he had been in touch with the ASA, and had chosen not to provide it with the material he had already sent to the BBC and Ofcom but had instead put the onus for defending his advertising claims on to a third party who was apparently unavailable to deal with the ASA's five month long investigation.

In addition, the BBC argued that given the GCC's position on Dr Farthing (which the

broadcaster discussed in its first statement) and the ASA's position on his advertising claims he was an appropriate subject for the programme.

Decision

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

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.

Dr Farthing'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 transcript, both parties' written submissions (along with supporting material including correspondence between the parties), and the available untransmitted footage and transcripts of visits made to Dr Farthing surreptitiously filmed by undercover BBC reporters posing as 'patients'.

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

Ofcom first looked at the individual concerns raised by Dr Farthing in head a) of his complaint, in turn.

- i) +ii)

In Ofcom's view the complaint at head a) i) (that the programme tarnished and destroyed Dr Farthing's reputation and personal name, which included his reputation as a city councillor) was linked to the complaint at head a) ii) (that the programme unfairly claimed that he was a conman). It therefore considered these sections of Dr Farthing's complaint together.

In assessing these sections of Dr Farthing's complaint Ofcom considered the allegations made about him in the programme.

Ofcom noted that the first section of the programme that dealt with subluxation included the following commentary about Dr Farthing which was voiced over sections of a covertly filmed visit made to his practice by one of the programme's presenters posing as a 'patient':

“Christian [Farthing] charges patients thousands for treatments they don’t need. He uses scare tactics to part those patients from their cash”.

Ofcom also observed that, after a section of the covertly filmed footage during which Dr Farthing was heard speaking to some of his patients, the programme included the following voiced over commentary:

“In 2004 he was suspended by the General Chiropractic Council. His specialist subject is also subluxation”.

In light of this commentary Ofcom considered that the programme had clearly stated that Dr Farthing provided unnecessary treatments for which he charged large amounts of money and that he used scare tactics in order to get patients to sign up and pay for his treatments.

In considering whether it was unfair for the programme to make these statements about Dr Farthing Ofcom looked at the source of these claims.

Ofcom’s role was not to establish conclusively, from the broadcast programme or the submissions and supporting material, whether Dr Farthing had provided unnecessary treatments for which he charged large amounts of money and used scare tactics on his patients but rather to address itself to the issue of whether the programme makers took reasonable care in relation to material facts.

Ofcom observed that in its submission the BBC indicated that the programme had based its claims about Dr Farthing on the GCC’s decision to suspend him from practising as a chiropractor in June 2003 (and twice to renew this suspension), the findings which accompanied the original decision in 2003, and the most recent renewal of the suspension on 23 March 2007. Ofcom also noted that the BBC argued that its claims about Dr Farthing were supported by the testimony of Mr Dominic Collins (a former employee of Dr Farthing’s) and Ms Toni Shingleston (a former patient) both of whom were interviewed for the programme. In addition, Ofcom observed that the BBC said its claims about Dr Farthing were supported by the diagnoses and treatments he offered to the three set-up ‘patients’ whom the broadcaster had sent to covertly record Dr Farthing in his practice. The issue of what information Dr Farthing was given about the set-up ‘patients’ who visited his practice and whether or not that information was consistent with that given to the BBC’s independent expert is considered in the Decision in relation to heads a) iv), v) and xi), which are dealt with jointly below.

Ofcom assessed both the GCC’s 2003 and 2007 findings against Dr Farthing (copies of which were provided by the BBC within its submissions in response to this complaint).

Ofcom observed that in relation to all four patients the GCC found that Dr Farthing took x-rays that were not clinically justified. The GGC also found that in relation to patients A and B Dr Farthing kept inadequate medical records and provided inappropriate advice which made them feel compelled to comply with his recommendations, exaggerated both the gravity of their conditions (and, in patient B’s case, the condition of her family) and the efficacy of his treatments. Ofcom also observed that, in relation to these two patients, the GCC found that Dr Farthing inappropriately attempted to reinforce the need for a year-long or

lengthy treatment plan through group lectures, making pre-payment/price reduction offers and exaggerating the consequences of failing to have regular chiropractic care. The GCC also found that Dr Farthing failed to act in the best interests of Patient A in that, in an absence of an improvement in her condition after seventy-six treatments and with clear evidence of deterioration, he failed to reevaluate her condition and/or refer her to another clinician. The GCC found that with regard to Patient B he failed to take steps to minimise the need for further treatment.

Ofcom recognised that the GCC had suspended Dr Farthing from practising as a chiropractor for nine months in June 2003 and that a second finding in January 2004 resulted in this suspension being extended for the maximum period for which the GCC could suspend a chiropractor, namely three years. Ofcom also observed that the most recent finding on 23 March 2007 (six days prior to the first broadcast of this programme) resulted in Dr Farthing being suspended from practising as a chiropractor for a further three years because “the unacceptable professional conduct found [by the GCC] was very serious” and the GCC had seen no evidence that Dr Farthing had heeded the advice it gave him regarding the way in which he ran his practice in June 2003 and again in January 2004.

Ofcom acknowledged that there are different schools of thought on the diagnosis, treatment and prevalence of the condition known as subluxation and that Dr Farthing does not consider that the GCC employs the correct interpretation of this condition or that he should be subject to the GCC’s rules. However, Ofcom also recognised that the GCC is the relevant professional regulatory body for the practice of chiropractic treatment in the UK and that UK legislation requires anyone practicing as a chiropractor in the UK to be registered with the GCC. In addition, Ofcom observed that in its most recent finding, the GCC reminded Dr Farthing that “although suspended from the Register, he remains a chiropractor governed by the codes and standards that apply to the profession”.

Ofcom then looked at the testimony of Mr Collins (Dr Farthing’s former employee) and Ms Shingleston (a former patient). Dr Farthing’s complaints about the validity of the testimony of these witnesses are considered in the Decision in relation to heads a) vi) and vii), which are dealt with jointly below.

Ofcom noted that the programme included the following sections of an interview with Mr Collins, who had worked for Dr Farthing at the Ideal Spine Centre¹ for five months:

“The longer I spent there the more I learnt about the role the more I learnt about what was going on behind the scenes. The way everything was scripted, the way that patients were purposely being frightened.”;

and:

“99% of people who came through the doors had an x-ray”.

¹ Dr Farthing closed the practice which he operated under the name Kent Family Chiropractic some time after the GCC’s initial finding against him in June 2003. He set up a new practice, called The Ideal Spine Centre, at the same location in October 2003.

In addition, Ofcom noted that the programme included the following section of an interview with Ms Shingleston who had consulted Dr Farthing in October 2005 because she had a stiff neck which was very painful:

“He did scare the living daylights out of me. You know, I came out thinking I had a really bad spinal injury”.

Ofcom considered that broadcast comments made by Mr Collins and Ms Shingleston were consistent with the testimony on which the GCC's 2003 finding was based.

In light of the factors noted above, Ofcom considered that the BBC had gathered evidence that Dr Farthing had a history, over a period of years, of providing and charging for unnecessary treatments, as well as taking unnecessary x-rays and using scare tactics on some of his patients. It also observed that the GCC, the regulatory body governing the chiropractic profession in the UK, had suspended Dr Farthing from practising as a chiropractor for a total of more than six years. Ofcom recognised that the GCC had repeatedly imposed the sanction of suspension as a result of what it described as Dr Farthing's “unprofessional conduct” towards patients in 2000 and 2001 and his refusal in the most recent hearing to recognise the authority of the GCC. (The regulatory body noted that he chose “not to submit evidence as to the change in his practice which the [GCC] Committee recommended he make in order to rectify his shortcomings identified at the original hearing in 2003.”).

Ofcom therefore found that the inclusion of the claims that Dr Farthing provided unnecessary treatments for which he charged large amounts of money and that he used scare tactics in order to get patients to sign up and pay for his treatments in the programme did not result in unfairness to the complainant.

- iii) Ofcom looked at the complaint that the programme made a mockery of Dr Farthing's book.

With regard to Dr Farthing's book, Ofcom observed that at the end of the ‘game show’ Nana (the presenter acting as ‘compare’) said:

“So the Winner is Christian Farthing. To our loser six levels of subluxation and a huge bill to treat it and to our winner a free adjustment with Christian and a copy of his book – ‘The World's Best Kept Health Secret Revealed’.”

In light of this commentary Ofcom concluded that Dr Farthing's book was used as a ‘pay-off’ to the ‘game show’, in which both the back specialists featured in the programme were ostensibly ‘competing’ to provide the most unnecessary treatments. It also concluded that the programme included no criticism of the book per se.

Ofcom observed that in the Decision at heads a) i) and ii), it had found that the inclusion of the claims that Dr Farthing provided unnecessary treatments for which he charged large amounts of money and that he used scare tactics in order to get patients to sign up and pay for his treatments in the programme did not result in unfairness to the complainant. This was because the programme had based these claims on the GCC's findings against him, its consequent decision to suspend him repeatedly and credible first-hand testimony about the way Dr Farthing treated patients.

In addition, Ofcom noted that the irreverent and mocking nature of the programme was made clear to viewers from the beginning by the language and tone used by the presenters. It recognised that in the introduction to the programme viewers were informed: *“we go out and we con comen”* and *“its basically a hidden camera secret filming show”*. Ofcom also observed that the mocking tone adopted by the presenters was used consistently across each of the segments of the programme (rather than only in those in which Dr Farthing was featured) as a device to emphasise the allegations being made about the various service providers included.

Given the factors noted above, notably that the programme did not specifically criticise Dr Farthing’s book and that it was used as part of the ‘game show’, which was designed to demonstrate allegations about Dr Farthing (the inclusion of which did not result in unfairness), Ofcom found that the way in which the book was treated in the programme did not result in unfairness to the complainant.

iv), v) + xi)

In Ofcom’s view the complaints at head a) iv) (that the programme indicated that he was wrong when he told people that they had spinal problems and that he had recommended treatments unnecessarily), head a) v) (that the programme suggested that the opinion of the BBC’s chiropractor about the ‘patients’ was superior to his own despite his having provided extensive research, clinical data, x-ray findings and other opinions to support his judgement that they required treatment) and head a) xi) (that the programme relied upon only one expert, namely another chiropractor, when that chiropractor had not seen all the relevant information and that the BBC failed to take account of Dr Farthing’s full documentation indicating the presence of vertebral subluxation in each undercover reporter) all relate to the visits of the set-up ‘patients’ to Dr Farthing’s practice and the opinion of the BBC’s experts about the health of these ‘patients’. Therefore, these heads of complaint will be considered together in relation to whether or not the information that Dr Farthing was given about the medical backgrounds of these ‘patients’ was consistent with that given to the BBC’s independent expert (as set out in the BBC’s initial correspondence). The issue of the material provided by Dr Farthing to the BBC in regard to this programme will be considered in relation to whether or not it was incumbent on the broadcaster to offer Dr Farthing an opportunity to respond to the programme, whether it did so and, if so, whether that response was fairly represented, at the Decision at head b) below.

Ofcom first noted that it is entirely legitimate for a programme to rely upon an independent expert as long as it is editorially justified for it to do so. In addition, Ofcom acknowledged that the BBC had (at the expert’s own request) not given Dr Farthing his name. However, it observed that the broadcaster had provided him with the practitioner’s medical background.

In order to consider this section of Dr Farthing’s complaint Ofcom assessed the covertly obtained recordings and transcripts of the visits by the ‘patients’ to Dr Farthing which were made available to it². Ofcom also assessed the information

² Within its submission the BBC clarified that not all of the ‘patients’ visits to Dr Farthing were recorded. Therefore, it was only able to provide Ofcom with untransmitted footage and transcripts of Sandra’s first and second visits, Dan’s second visit and Sion’s second and third visits. A copy of the untransmitted footage of a recording of Dan’s first visit to Dr Farthing was also provided to Ofcom.

which the BBC said (within its pre-broadcast correspondence with the complainant) was given to Dr Farthing about the symptoms experienced by, and medical histories of, the three 'patients'. In addition, it looked at the claims made about their symptoms and medical histories in the programme and any treatment which Dr Farthing was shown recommending, or was said to have recommended, in the programme.

Ofcom looked at the information given and the claims made about each of the 'patients'.

Ofcom observed that on 12 February 2007 the BBC wrote to Dr Farthing informing him that he would be featured in a forthcoming edition of *Conning the Conmen* (which it explained used humour to expose significant anti-social behaviour) and that three undercover members of the production team had visited his practice. The letter set out their experiences, indicated that Dr Farthing's recommendations to the 'patients' were incorrect and said that the BBC intended to allege that he "charge[d] patients large amounts for unnecessary treatment". The letter also indicated that during the consultation with the BBC's 'patients' Dr Farthing had used scare tactics to encourage them to sign up for his treatments. It added that the programme planned to report on the GCC decisions to suspend Dr Farthing from being able to practise as a chiropractor and his use of x-rays, as well as to include testimony about his mistreatment of patients from an ex-employee (Mr Collins) and a former patient (Ms Shingleston).

Ofcom noted that in a follow-up letter on 19 February 2007 to Dr Farthing the BBC said that each member of the team presented to Dr Farthing "with symptoms of short-term mild back pain".

Ofcom also noted that, within its submission in response to this complaint, the BBC said that "one of the chiropractors examined all the BBC's dummy patients, and gave his professional opinion they were in no need of treatment". It also noted that the BBC said that "the three dummy patients the programme sent to Mr Farthing not only had nothing wrong with them but had been checked over by a chiropractor" and that "the allegation the programme made was that Mr Farthing offered unnecessary treatment to three perfectly healthy individuals who claimed to have back pain".

Sara

Ofcom noted that with regard to Sandra Bennett (the name used by Sara when she posed as a 'patient'), the BBC's letter of 12 February 2007 said that she had visited Dr Farthing's practice on 9 November and 22 November 2006 "complaining of lower back pain". Prior to these visits a chiropractor had told her that "there was some mild tension in [her] left shoulder and that the only treatment [she] required was massage and exercise". The letter also stated that Dr Farthing had "told Sandra she had multiple levels of subluxation, five that had been there for a long time and two that had been there for a shorter period" and that she "would need a course of treatment to correct this".

Turning to the recording of Sara's first visit to Dr Farthing, Ofcom observed that during this visit Sara said she had "been moaning about this pain I had in the bottom part of my back". Ofcom noted that when asked by Dr Tracy (one of Dr Farthing's associates) whether she had had any accidents or injuries at work, Sara said: "I remember quite a heavy load, trying to put some stationery away,

maybe it was about a month ago, where I had quite a bit of a twinge, probably didn't bend my knees properly". It also noted that Sara then described working in a call centre and sitting in one place for long hours and that, when asked if this had aggravated her lower back, she replied "Well that's why I'm here, really, because I have been getting these pains kind of here", which suggested that she might not have been sitting properly and that this might explain the twinges she felt when she got home. Ofcom recognised that the camera did not show to which part of her body Sara was gesturing. However, it noted that in response to further questioning Sara referred to the back pain again, offered to show Dr Tracy where the pain was on her back and that when doing so she said that the pain was "mainly just down here" and that it was "more so on the left". Ofcom also noted that Dr Tracy had said to Sara "the pain you experience is in your lower back". Ofcom observed that during this consultation, Sara also indicated that when she was younger she used "sprint a lot", that she "used always to get sprained ankles", that she now could not wear high heels, and that she "may have fallen off a bike" when she was trying to learn. Sara also said that she had been experiencing lower back pain "for about a month and Jim (a member of the production team who was pretending to be her partner) indicated that this pain had been "constant".

Ofcom observed that one of the presenters (Nana) played the 'host' of a mock 'game show' called "subluxation nation". The 'contestants' were two back specialists, one of whom was Dr Farthing. They were 'represented' in the studio by the programme's other two presenters (Rebecca and Dan), and were supposedly 'competing' to win a conning visit from the programme.

During the second part of this mock 'game show', several sections of covertly filmed footage of the set-up 'patients' visiting the two back specialists were shown. Nana introduced this part of the programme by saying:

"We sent Peter [Proud] and Christian [Farthing] three test patients each. They all pretended to have mild back pain. Our expert said none of them needed any treatment. This is what happened."

With regard to Dr Farthing, the programme then showed a section of the footage of one of each of the visits by the 'patients' to him.

In the section of footage taken from Sara's second visit, Dr Farthing was shown making the following recommendation:

"Now the good news is this is correctable. That can all be fully corrected back to the curve too. And you will do very well"

Nana then said:

"Christian says this patient needs treatment. Next"

Dan

Ofcom noted that the BBC's letter of 12 February 2007 to Dr Farthing indicated that James Connall (the name used by Dan when he posed as a 'patient') had visited the practice on 14 and 29 November 2006 "complaining of lower back pain" and that prior to this visit a chiropractor had "given him a clean bill of health and said he was not in need of any treatment". The BBC's letter stated

that Dr Farthing had diagnosed him with “five levels of subluxation and active degeneration phase two”.

Turning to the recording of Dan’s first visit to Dr Farthing, Ofcom observed that during this visit Dan said to Dr Tracy (Dr Farthing’s associate) that, four years prior to the consultation, he had a car accident in which someone had jumped a red light and hit the passenger side of his car at about 40 or 50 miles an hour. He said that he had been driving and that the impact had gone straight through his knee, although he had walked away from the accident and had not required treatment. Ofcom also noted that Dan said that he had “had lots of running injuries”, including an occasion five years previously when he had broken his ribs after jumping over some bags and landing on his front on the curb, and an occasion two years ago when he had run a mile in five minutes and pain “hit” him in the hip. It observed that Dan had said that, other than the car crash, his worst accident had been when at the age of fourteen he was cycling quite fast and went over the handlebars. Dan explained that this resulted in a broken wrist, a fractured arm and a broken hand.

Ofcom also noted that Dan also mentioned that his “most serious” accident at work had occurred nine years ago, when he had jumped down the stairs, hit his head on the ceiling and fallen backwards, landing on the steps. He said that his only injury on this occasion was a bruise to the head. Dan also said that at thirteen he had broken his foot while jumping of the sofa with his brother on his back. Ofcom noted that, during this consultation Zoe (a member of the production team who was pretending to be Dan’s partner) indicated that Dan was always falling over things.

With regard to his descriptions of pain in his lower back during this consultation, Ofcom observed that Dan said that, one year before this visit, he had been lying in bed and “[he] could not move [he] was in such pain”. Dan explained that this pain “just came on”, rather than being caused by a particular activity, although he added that it might have been the result of lifting his two year-old daughter. Dan added that he had been treated with anti-inflammatory drugs and painkillers. He also said that this episode had been his most painful, but that he had had pain on and off since then and that last week he had a sharp pain. In response to being asked to show Dr Tracy where he had pain, Dan put his hands on his lower back and then pointed to his right hip, saying he experienced sharp pain for a few seconds in his hip which “feels like the joint is going to come out”. He also explained that the pain in his lower back was dull pain that went “on and on”, that he had initially taken prescription anti-inflammatory medicine for it and undertaken some recommended exercises which had helped, and that the pain was aggravated by sitting for long periods and lifting things in an awkward way. Dan also mentioned that his father had a history of back pain.

Ofcom observed that in the section of footage taken from one of Dan’s visits to Dr Farthing the complainant was shown telling him:

“If you want to look after yourself, and you think about getting this corrected. ‘Cos this is correctable. You need to get this done”.

Nana was then shown saying:

“Do I detect a pattern here? Patient number three”.

Sion

Ofcom noted that the BBC's letter of 12 February 2007 to Dr Farthing indicated that Sion had visited the practice on 11, 17 and 18 January 2007. The letter said that previously a chiropractor had given him "a clean bill of health and that, if he had "reported mild short-term, lower back pain", he would have recommended losing weight and some simple exercises". The letter went on to say that when Sion had told Dr Farthing he had these symptoms he was diagnosed with "six levels of subluxation in the spine, four that been there for some time", and quoted a fee of £2,686 for the treatment he needed.

Ofcom recognised that only the second and third of Sion's visits had been recorded and were available, rather than the first in which a medical history would have been given. However, it observed that, during the second visit, Dr Farthing gave Sion his diagnosis and then referred to the significance of a car accident which Sion had had twenty years previously and that Sion responded "Well I can see I had really bad back pain in my lower back and that's kind of getting better really".

Ofcom observed that, in relation to Dr Farthing's recommended treatment for Sion, the programme showed the following exchange:

Dr Farthing *"That's three times a week for twelve weeks. Twice a week for twenty-four weeks. Then weekly adjustments".*

Sion *"Four thousand four hundred and seventy-seven pounds?"*

Dr Farthing *"You won't have to pay that. So what happens it reduces down to a fee of two six eight six. Which gives you a saving of seventeen hundred pounds".*

The programme then included this voiced over commentary:

"Christian says this third patient needs expensive treatment too. That's three out of three for Christian";

followed by Nana ending the 'game show' by saying:

"So the winner is, Christian Farthing. So to our loser six levels of subluxation, and a huge bill to treat it and to our winner a free adjustment with Christian and a signed copy of his book – 'The world's best kept health secret revealed!'".

In light of its assessment of the untransmitted recordings of Sara's and Dan's visits to Dr Farthing, Ofcom considered that in each case the complainant was given a detailed medical history of past experiences. Ofcom noted that both 'patients' had apparently indicated that they had pain for an extended period and Dan had mentioned at least one car crash, a serious cycling accident and series of other physical traumas, as well as a recurring sharp pain in his hip which felt as if the joint was going to come out.

Ofcom also considered that the untransmitted footage of Sion's visits to Dr Farthing which were available made it clear that he had given the complainant a medical history, which included at least one car accident and indicated that he had suffered from "really bad" lower back pain. In addition, Ofcom considered that, in its letter of 12 February 2007 to Dr Farthing, the BBC had

implied that Sion had told Dr Farthing that he had “mild short-term, lower back pain” but had not given these same symptoms to the BBC’s expert who had examined him.

Ofcom observed that in a follow-up letter of 19 February 2007 to Dr Farthing, the BBC said: “Our team gave you accurate medical histories. They each presented with symptoms of short-term mild back pain”.

Ofcom also observed that, in its submission in response to this complaint, the BBC said that:

“The BBC sent him [Dr Farthing] three perfectly healthy dummy patients who he nonetheless suggested should be treated”.

Having assessed all of the material noted above, Ofcom considered from the information available to it that the programme did not explain what information the independent expert was given about the medical histories or symptoms of the ‘patients’ and that the programme said that “*They [the ‘patients’] all pretended to have mild back pain. Our expert said none of them needed any treatment*”. Ofcom also considered that material submitted by the BBC showed that each ‘patient’ had indicated to Dr Farthing that they had suffered from either long-term and/or considerable back pain and each had had accidents in the past (it noted that Dan had indicated a particularly extensive history of accidents).

In light of the material noted above, Ofcom concluded that the programme did not establish that Dr Farthing had recommended treatment for Sara, Dan and Sion which was deemed unnecessary by the independent medical expert because it did not establish that both Dr Farthing and the independent expert were given the same medical histories on which to base their judgements. Ofcom therefore found the inclusion of comments like “*Christian says this third patient needs treatment too. That’s three out of three for Christian*” resulted in unfairness to the complainant.

vi) + vii)

Ofcom considered together the complaints that the programme included the distorted views of a disgruntled ex-employee and an interview with a member of the public about Dr Farthing’s practice despite the fact that she had not received any treatment from him.

Ofcom acknowledged that Dr Farthing argued that Mr Collins was a disgruntled former employee. However, having assessed all the material submitted by both parties, Ofcom considered that he was someone who had first-hand knowledge of how Dr Farthing treated patients on a daily basis.

Similarly, Ofcom recognised that within his complaint Dr Farthing said that Ms Shingleston had not received treatment from him. However, given that within his second submission Dr Farthing acknowledged that he had spoken to Ms Shingleston in a professional capacity (Dr Farthing said that contrary to her testimony included in the programme – see Decision at head a) i)+ ii) above – “she was not scared by what I had told her”), and that the untransmitted footage of Ms Shingleston’s interview showed her talking about a single occasion when she attended Dr Farthing’s clinic. Ofcom concluded that Ms Shingleston had seen Dr Farthing in his professional capacity, albeit that this

was limited to the consultation stage of the process, and therefore had first-hand experience of the way in which he treated patients.

Ofcom noted that the programme had made it clear that Mr Collins was a former employee of Dr Farthing's and that Ms Shingleston had been a patient. It therefore considered that viewers would have been able to assess their testimony in light of the relationship that they had each had to Dr Farthing.

With regard to Dr Farthing's argument that each of these witnesses had been coached by the programme makers, Ofcom acknowledged that during their respective interviews each was asked to repeat themselves or to clarify points which they had made previously. However, in Ofcom's view this is a legitimate and common practice when interviewing, which is used in order to enable the programme makers to obtain material which encapsulates an interviewee's position in a coherent manner. In particular, Ofcom noted that while both Mr Collins and Ms Shingleston were asked to repeat points that they had previously made, the recollections and opinions included in these interviews were their own, and the views they articulated were consistent throughout the interviews.

Ofcom also noted that the testimony provided by Mr Collins, notably with regard to the use of scare tactics on patients, was consistent with the experience Ms Shingleston described and that, as noted in the Decision at heads a) i) + ii) above, the testimony of both fitted with the pattern of treatment presented in the GCC's findings against Dr Farthing which led this body to repeatedly suspend him from practising as a chiropractor.

In light of these considerations, Ofcom found that the inclusion of the testimony of Mr Collins and Ms Shingleston did not result in unfairness to Dr Farthing.

- viii) Ofcom considered Dr Farthing's complaint that the programme made a mockery of his findings, his education process and the methods he used to correct the spine (notably by including him in the context of programme which also included a segment on "*dodgy plumbers*" and another with a man lying in a bath full of baked beans).

As noted in the Decision at head a) iii) above, Ofcom observed that it had already found that the inclusion of the claims made against Dr Farthing (i.e. that he provided unnecessary treatments for which he charged large amounts of money and that he used scare tactics on patients) did not result in unfairness to the complainant (see the Decision at heads a) i) and ii) above) because the programme had based these claims on the GCC's findings, its consequent decision to suspend him repeatedly and credible first-hand testimony about the way he treated patients.

Ofcom again recognised that the irreverent and mocking nature of the programme was clear from the outset and was used consistently across each segment as a device to emphasise the allegations being made about the various service providers included. In particular, Ofcom observed that the two 'conning' visits to Dr Farthing were designed to highlight specific allegations being made against him, namely that he took too many x-rays and that he used scare tactics to encourage patients to sign on for expensive treatment plans for subluxation. In relation to Dr Farthing's specific concern that he was featured alongside a "*dodgy plumber*" and a man lying in a bath full of baked beans, Ofcom noted that it is common practice for undercover consumer affairs

programmes to feature more than one individual or company that is being accused of providing a poor quality service to the public and that this section of the programme was clearly distinct from those in which Dr Farthing was featured.

Given the clear and consistent nature of the programme, the way in which mocking set-ups and references were used to highlight the allegations being made about the people featured (including Dr Farthing) and the fact that Ofcom had found that the inclusion of the allegations against the complainant did not result in unfairness to him, Ofcom found that Dr Farthing was not treated unfairly in respect of the context in which he was shown.

- ix) Ofcom turned to Dr Farthing's complaint that the programme unfairly treated the issue of vertebral subluxation as a "complete joke" notably through its use of the 'game show', and unfairly ignored the differences in scientific opinion on and the material supplied by Dr Farthing regarding subluxation.

With regard to the way in which subluxation itself, rather than either of the back specialists featured on the programme, was treated, Ofcom observed that the programme described it as "*a misalignment in the spinal bones*". In Ofcom's view, this was a neutral description and did not mock the condition. It therefore considered that the programme did not mock vertebral subluxation.

Ofcom observed that, prior to the broadcast of the programme, Dr Farthing sent the BBC a number of letters responding to the allegations which he had been told would be made about him in the programme and setting out his position on the condition of subluxation. Ofcom also observed that the BBC's correspondence with Dr Farthing had begun on 12 February 2007 and ended on 8 March 2007, and that the BBC had acknowledged receipt of Dr Farthing's letters over this period and confirmed that it had read the material which he had sent. Ofcom also noted that on 12 March 2007 Carter-Ruck Solicitors (acting on Dr Farthing's instructions) had sent the BBC an email asking on what date(s) the programme was due to be broadcast. It also observed that on 29 March 2007 and 4 April 2007 Carter-Ruck emailed copies of letters from Dr Paul Stick who, having examined Dr Farthing's case notes on the three 'patients', gave his opinion on the complainant's diagnoses of the them. Ofcom recognised that the BBC had acknowledged receipt of the email of 12 March 2007, but did not acknowledge the last two emails containing the letters from Dr Stick. However, it also noted the first of these was sent on the day prior to the first broadcast of the programme and the second was sent on the day of the second broadcast of the programme. Ofcom considered that the BBC had acknowledged the material supplied to it by Dr Farthing prior to the broadcast of the programme.

In considering this complaint Ofcom recognised that the decision regarding the material that is included in a programme is quite rightly a matter of editorial judgement for the broadcaster.

Ofcom observed that the programme had represented the GCC's position on Dr Farthing in the following way: "*In 2004 he [Dr Farthing] was suspended by the General Chiropractic Council*" and that in relation to the allegation that Dr Farthing used too many x-rays it said "*Zapping everyone with radiation really isn't a good idea. And the General Chiropractic Council agree. They've suspended him [Dr Farthing] for it*".

With regard to the use of the material relating to Dr Farthing which was based upon the decisions published by the GCC, Ofcom recognised that, as noted in the Decision at heads a) i)+ ii) above, the GCC is the professional regulatory body for chiropractic in the UK and therefore that it was reasonable for the broadcaster to reflect this body's view of chiropractic in this country.

Having assessed the references in the programme to the GCC and the full text of the GCC's March 2007 and June 2003 findings against Dr Farthing (provided with the BBC's submission), Ofcom considered that the programme included a fair reflection of the regulatory body's position with regard to the way in which Dr Farthing practised.

Given that it was reasonable for the programme maker to have relied on the GCC's finding against Dr Farthing, Ofcom considered that the use of and references to the GCC in the programme did not result in unfairness to the complainant.

In light of the factors noted above, Ofcom found that the programme did not mock the condition of subluxation. Ofcom also found that Dr Farthing had not been treated unfairly in the programme as a result of the BBC's treatment of the material he supplied or the use of and references to the GCC within the programme.

- x) The complaint at head a) x) (that the programme was unbalanced in that it gave only thirty seconds at the end to talk about positive feedback from patients and none of the patients were interviewed) will be considered in relation to whether or not it was incumbent on the broadcaster to offer Dr Farthing an opportunity to respond to the programme, whether it did so and, if so, whether that response was fairly represented, at the Decision at head b) iv) below.

Ofcom did not uphold heads a) i), ii) and, iii), vi), vii), viii) or ix) of this complaint. However, Ofcom did uphold the complaints at head a) iii), viii) and xi). Head a) x) is considered in the Decision at head b) iv) below.

- b) Ofcom considered Dr Farthing's complaint that he was not given an appropriate and timely opportunity to respond to the allegations that were made in the programme.

In considering this head of complaint Ofcom took particular account of 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), ii) + iii)

Ofcom considered together Dr Farthing's complaints at heads b) i) (that the time he was given to respond to the allegations was unreasonable because, despite his continual requests, the broadcaster did not provide him with signed medical release forms for the undercover reporters until two weeks prior to the broadcast), b) ii) (that he was not provided with any examination or assessment notes compiled by the BBC's own chiropractor) and b) iii) (that none of his

questions about the training and background of the BBC's expert witnesses, which were noted in a letter sent to it on 22 February 2007, were answered³).

Ofcom observed that within this head of complaint Dr Farthing also stated that the programme was unfair to him because the BBC's expert witnesses were "in a biased situation" because they were informed about the purpose of the show and the fact that it was trying to "expose" him prior to giving their opinion. However, it noted that this aspect of Dr Farthing's complaint was considered at heads a) iii), viii) and xi) above.

In looking at this head of complaint Ofcom first assessed whether the programme included allegations about Dr Farthing in relation to which it was incumbent on the broadcaster to offer the complainant an opportunity to respond.

Ofcom observed that the programme alleged that "*Christian charges patients thousands for treatments they don't need*" and that "*he uses scare tactics to separate them from their cash*". Ofcom also noted that the programme explained that it had sent three test patients to Dr Farthing, that its expert had said that "none of them needed any treatment" and that this was then followed by footage of Dr Farthing recommending treatment to all three of the 'patients'. In addition, Ofcom noted that the programme said that Dr Farthing "*also takes too many x-rays*".

Ofcom considered that these comments amounted to serious allegations and that therefore it was incumbent upon the broadcaster to offer Dr Farthing an appropriate and timely opportunity to respond to them. Moreover, Ofcom recognised that, as noted in the Decision at head a) iv), v) and ix) above, Dr Farthing was given such an opportunity in the letter the BBC sent to him on 12 February 2007.

Ofcom observed that the BBC's letter of 12 February 2007 detailed the nature of the report and informed Dr Farthing that he had been visited by three 'set-up patients', all of whom he had misdiagnosed. It also said that the programme would allege that he "charge[d] patients large amounts for unnecessary treatment" and report on his suspensions by the GCC (including the GCC's finding that Dr Farthing had failed to establish sufficient medical justification to take certain x-rays). The letter also noted that the programme would include testimony from Mr Collins (one of Dr Farthing's former employees) and Ms Shingleston (a former patient). Ofcom also observed that the letter invited Dr Farthing to discuss the allegations or make a statement which would be reflected in the programme, by a deadline of 19 February 2007.

Ofcom noted that on 15 February 2007 the BBC wrote to Dr Farthing (by post and fax) and that this letter referred to a telephone conversation which had taken place between the parties on the previous day (14 February 2007). The letter declined an invitation made by Dr Farthing to attend a seminar (which later correspondence made clear was being given by a chiropractor called Dr Deed Harrison), mentioned Dr Farthing's previously articulated intention to send x-rays of Sion (one of the three set-up 'patients') for further analysis and asked for the details of the third party to whom they would be sent, and, in

³ Ofcom noted that this letter referred to the background of the expert who examined the three BBC 'patients' and has considered this section of the complaint with regard to the information requested about and given to Dr Farthing regarding this individual.

response to an earlier query by Dr Farthing, gave some details about the medical background of the expert the BBC used to examine the three 'patients'. The letter also indicated that the programme maker would not extend the deadline for Dr Farthing's responses to its allegations because they concerned patients he had seen, on which he had existing records.

Notwithstanding this, Ofcom noted that Dr Farthing and the BBC continued to correspond between 16 February 2007 and 8 March 2007. This correspondence included discussion between the parties about the treatment offered by Dr Farthing to the 'patients', the BBC's provision of x-ray and medical release forms for these 'patients' and the identity and background of the independent expert used by the BBC. As noted above, Ofcom observed that Carter-Ruck had written to the BBC on 28 March and 4 April 2007 to enclose letters from Dr Stick, in which he gave his opinion of Dr Farthing's diagnoses of the three 'patients'.

Timeliness of opportunity to respond

With regard to a comment made within Dr Farthing's email of 16 February 2007 to the BBC that the programme maker had nearly four months to "make investigations" for the programme, Ofcom considered that the length of time taken by the programme maker to produce a report or programme was not the key issue. Rather, the issue was whether Dr Farthing was given a timely and appropriate opportunity to respond to the allegations made about him.

In relation to Dr Farthing's complaint that he was not provided with signed medical release forms for the undercover reporters until two weeks prior to the broadcast, Ofcom recognised that the parties had repeatedly corresponded about this matter. In particular, Ofcom observed that it appeared that Dr Farthing mentioned his intention to send x-rays of Sion to a third party in a telephone conversation with the BBC on 14 February 2007 and that his first formal request for the release of Sion's x-rays and medical records was made in a letter to the BBC dated 17 February 2007. Ofcom recognised that, in response (dated 19 February), a BBC producer wrote "as you have informed me that Mr Taylor's records [i.e. Sion's] will be sent to Dr Deed Harrison, Dr Paul Stick and an independent radiologist I enclose the necessary authority". Ofcom also observed that in a follow-up letter of 26 February 2007 the BBC indicated that it had faxed through a signed release for Sion's data on 20 February 2007 and that it was attaching a second copy of the same.

Ofcom noted that Dr Farthing first requested the release of the x-rays and records for the two other 'patients' who visited him (Sara and Dan – who had adopted the names Sandra and James for these visits) in an email sent to the BBC on 26 February 2007. It also noted that on the same day the BBC informed Dr Farthing (via email) that it had tried to fax the releases for this data but that his fax machine appeared to be engaged, confirmed that Dan and Sara were happy for their records to be forwarded to the third parties already identified by Dr Farthing and indicated that it would send further copies of the release forms by post.

Ofcom observed that, in an email sent to the BBC on 12 March 2007, Carter-Ruck (writing on behalf of Dr Farthing) indicated that its "client urgently requires the patient release forms he has sent you back signed by the relevant individuals". Ofcom also noted that on the same day the BBC emailed Carter-

Ruck to explain that it had sent the signed forms to Dr Farthing as soon as he had agreed to name the third parties who would examine the medical records.

In light of the factors noted above, Ofcom concluded that, within a day of being told to whom the data would be given, the BBC had sent a copy of the release form for Sion's x-rays and medical records to Dr Farthing. On the same day it received the request regarding Sara and Dan's records it tried to send the release forms to Dr Farthing by fax, and having failed to do so, clearly stated in an email that they would be happy for Dr Farthing to forward their records to the third parties he had specified. Ofcom also noted that that further copies of all three release forms were faxed to Dr Farthing on 28 February 2007, one month prior to the first broadcast of the programme (as well as apparently being posted on 1 March 2007). Ofcom therefore considered that the opportunity to respond given to Dr Farthing was timely.

Appropriate information about the programme and allegations

Ofcom turned to the complaints that Dr Farthing was not provided with any examination or assessment notes compiled by the BBC's own chiropractor and that none of his questions about the training and background of this person were answered.

Ofcom observed that it was not incumbent on the broadcaster to provide the notes compiled by its own chiropractor to the complainant, but rather to give Dr Farthing an appropriate and timely opportunity to respond to the allegations made about him. It also noted that the BBC had first written to Dr Farthing on 12 February 2007 setting out the nature of the programme and the allegations which would be made about him and that the programme maker had engaged in almost a month of correspondence with Dr Farthing about these issues. In particular, Ofcom recognised that in its letter to Dr Farthing of 19 February 2007 the BBC responded to queries (as opposed to statements) put to it by Dr Farthing in his earlier correspondence. This letter included a response to Dr Farthing's request for Sion's medical records, further explanation of the specific allegations that the programme planned to make about the way Dr Farthing practised, and a comment that the BBC felt that it had given Dr Farthing sufficient information and time to respond to its allegations, but that it would seriously consider the request if Dr Farthing could "demonstrate why extra time is needed". The letter also indicated that the BBC had already given Dr Farthing information about the qualifications and the expertise of the chiropractor who examined the set-up 'patients'.

In relation to this last point, Ofcom observed that in a letter to Dr Farthing dated 15 February 2007 the BBC informed the complainant that the 'patients' "were examined by a fully qualified chiropractor who was a member of the British Chiropractic Association ("the BCA") and registered with the GCC. The letter also explained that this person was an internationally renowned expert in the diagnosis and management of spinal pain and said that the BBC would ask if he was happy for it to release his details. Ofcom also observed that in its submission in response to this complaint the BBC indicated that all except one of the experts it consulted for this programme wished to remain anonymous because of the contentious nature of the debate over vertebral subluxation (the expert who examined the set-up 'patients' was one of those who wished to remain anonymous).

Ofcom considered that the BBC responded promptly to Dr Farthing's queries over nearly a month-long period prior to transmission of the programme and that its letters to Dr Farthing included clear details about the nature of the programme in which he would be featured and the allegations about him which would be made. Furthermore, the BBC sent release forms for the x-rays and medical records of three 'patients' who visited Dr Farthing as soon as it was informed to whom they would be sent in the case of Sion, and as soon as they were requested, in the case of Sara and Dan, and this last action occurred a month before the first transmission of the programme. Ofcom therefore considered that Dr Farthing was given an appropriate and timely opportunity to respond to the allegations made in the programme.

- iv) Ofcom considered the complaint that the programme did not represent Dr Farthing's contributions fairly, notably the documentation, research data and the reports from supportive doctors which he had supplied. Ofcom also considered the complaint at head a) x) that the programme was unbalanced because it gave only thirty seconds at the end to talk about positive feedback from [his] patients and none of the patients were interviewed) within this section of its Decision.

As noted in the Decisions at heads b) i), ii) and iii) above, Ofcom considered that the programme included a serious allegation of misconduct on the part of Dr Farthing, that it had been incumbent on the broadcaster to offer him an appropriate and timely opportunity to respond to this allegation and that the broadcaster had offered him such an opportunity.

Therefore, in considering this section of Dr Farthing's complaint Ofcom assessed his response to the BBC's allegations and how it was represented within the programme. In doing this Ofcom took particular account of Practice 7.6 of the Code, which states that when a programme is edited contributions should be represented fairly.

Ofcom observed that programme makers can quite legitimately select, omit or edit material contributed to a programme, as long as doing so does not result in unfairness. It recognised that this is rightly an editorial decision for programme makers to take. Therefore, Ofcom was not concerned with the nature, number or length of contributions made by Dr Farthing. Rather, it sought to determine whether the way in which the programme represented Dr Farthing's response resulted in unfairness to him.

Ofcom noted that, in his letters responding to the broadcaster's allegations, Dr Farthing denied that he had offered the 'patients' unnecessary treatment and indicated that the BBC misunderstood the theory of chiropractic that he employed, which he said was used and supported around the world. In particular, Ofcom observed that, within his 17 February 2007 letter, Dr Farthing said that "I reject the allegations in your letter as factually incorrect and see them as an attempt to slander my reputation", explained that there were divergent attitudes regarding the condition of vertebral subluxation across the world, rejected the way chiropractic was operated and regulated in the UK and indicated that he did not feel that an assessment of the BBC's set-up 'patients' made by a BCA or GCC chiropractor was relevant, as this person would not understand the basis of his diagnosis and treatment of vertebral subluxation. In this letter, Dr Farthing also said that while the practice's "focus initially is on the detection and correction of subluxation we introduce many other lifestyle factors in an attempt to improve overall lifestyle and wellbeing for our patients".

With regard to the allegation that he charged excessive amounts, Dr Farthing said "I pre-inform all patients of costs, time and commitment before they commence care" and in response to that allegation that he took unnecessary x-rays, he said "In regard to x-rays, I am compliant with the laws of this country". Ofcom also observed that a letter emailed on 29 March 2007 to the BBC from Carter-Ruck (on behalf of Dr Farthing) stated that "our client has numerous testimonials from patients that he can give you".

Having considered Dr Farthing's response to the broadcaster's allegations, Ofcom looked at how they were reflected in the programme. It observed that, at the end of the last section of the programme dealing with subluxation, images of Dr Farthing in his practice were shown with the following voice-over commentary:

"Christian Farthing says he would stand by his diagnosis of subluxation based on our visits to his practice and the x-rays he took. He says his method of treatment is supported by experts through out the world and that he tells patients the costs before they start care at his practice. Mr Farthing says although his focus is initially the detection and correction of subluxation he also attempts to improve overall wellbeing. He has sent us many testimonials from satisfied customers".

In Ofcom's view this was a fair reflection of Dr Farthing's response to the allegations of misconduct made about him in the programme, in that it included the pertinent points he made about the world-wide support for his method of chiropractic and made clear that Dr Farthing believed that the BBC's investigation into him was deeply flawed and therefore that the claims the programme made about him were untrue.

In addition, having examined Dr Farthing's letters to the BBC it did not appear to Ofcom that Dr Farthing had sent testimonials from happy customers to the broadcaster prior to the transmission of the programme. However, it noted that Carter-Ruck's letter of the 29 March 2007 indicated that he could do so and, in Ofcom's view, this statement would not have adversely affected viewers' opinion of Dr Farthing.

Given these factors, Ofcom considered that no unfairness to Dr Farthing resulted from the way in which his responses to the allegations of misconduct made about him were represented in the programme.

In light of the evidence above in relation to heads b) i) to iv) of this complaint, Ofcom found that that Dr Farthing was given an appropriate and timely opportunity to respond to the allegations made against him in the programme and that his response to these allegations was fairly represented.

- c) Dr Farthing complained that he was treated unfairly in the programme as broadcast, in that it included covertly recorded footage of him giving consultations to three undercover reporters without securing his consent for the broadcast and without justification. Specifically, Dr Farthing stated that the BBC had not established that his diagnoses were incorrect. Dr Farthing also stated that all his patients were "well informed" about his background before they commenced treatment.

Ofcom considered that this complaint related to Practice 7.14 of the Code, which states that broadcasters or programme makers should not normally obtain or seek information, audio, pictures or an agreement to contribute through misrepresentation or deception. (Deception includes surreptitious filming or recording.) However it may be warranted to use material obtained through misrepresentation or deception without consent if it is in the public interest and cannot reasonably be obtained by other means.

Nonetheless, Ofcom also recognised that this section of the Code was explicitly linked to Practices 8.11 to 8.15, the last two of which concern unwarranted infringement of privacy in the making or the broadcast of a programme as a result of the obtaining and use of footage which was filmed surreptitiously.

Given that Ofcom entertained a privacy complaint by Dr Farthing about the recording and use of surreptitiously filmed footage, the element of the overall complaint at head c) will be considered within the Decision on the privacy complaint at head d) below.

- d) Ofcom addressed Dr Farthing's complaint of unwarranted infringement of privacy in the making and broadcast of the programme. Dr Farthing complained that he was filmed covertly while giving consultations to three 'patients' whom he later discovered to be undercover reporters without securing his consent. He stated that there was no public interest in filming him because the BBC had not established that his diagnoses were incorrect, and stated that all his patients were "well informed" about his background before they commence treatment. In this context, Dr Farthing noted his belief that there "was no prima facie evidence substantial enough for a story to be created in the public interest".

In Ofcom's view, the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about the unwarranted infringement of privacy both in relation to the making and the broadcast of the programme, Ofcom must consider two distinct questions: First, has there been an infringement of privacy? Secondly, if so, was it warranted? (Rule 8.1 of the Code). In the Code, "warranted" has a particular meaning. It means that where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted.

Recording of material

In considering this head of complaint Ofcom took particular account of Practice 8.13 of the Code, which states that surreptitious filming or recording should only be used where it is warranted. Normally, it will only be warranted if:

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

In relation to this complaint, Ofcom first considered whether Dr Farthing had a legitimate expectation of privacy in relation to the use of surreptitious filming in the making of the programme. Ofcom recognised that Dr Farthing's expectation of privacy was lowered by the fact that filming took place in his practice, which is accessed by members of the public. However, it also recognised that Dr Farthing's expectation of privacy was heightened by a number of factors including the fact

that he was filmed while giving individual consultations to people whom he believed to be patients and that therefore he could reasonably have expected that matters discussed between them would be treated as being of a private, rather than a public, nature. Also, that these 'patients' were seeing Dr Farthing as a result of an invitation to attend a pre-arranged meeting, rather than because they had walked in off the street. Ofcom also recognised that Dr Farthing's expectation of privacy in these circumstances was heightened because actions which took place during these meetings were filmed surreptitiously. Therefore, on balance, Ofcom considered that Dr Farthing had a legitimate expectation that his privacy would not be infringed by the surreptitious filming of actions which took place in his practice.

Given these factors Ofcom considered that Dr Farthing's privacy had been infringed by recording of the visits by the 'patients' to his practice.

Ofcom then turned to consider whether the infringement of Dr Farthing's privacy in the making of the programme by virtue of surreptitious filming was warranted.

Ofcom observed that, in its 12 February letter 2007 to Dr Farthing, the BBC informed him of the dates on which the three 'patients' had visited his practice. The letter stated Sandra [real name Sara] had visited Dr Farthing on 9 November and 22 November 2006, James [real name Dan] had visited him on 14 and 29 November 2006 and Sion on 11, 17 and 18 January 2007.

Ofcom then assessed what prima facie evidence of a story in the public interest was available to the programme makers at the time each of these 'patients' visited Dr Farthing.

Ofcom observed that when the three 'patients' made their visits to Dr Farthing the programme maker was aware that, as noted in the Decision at head a) i) + ii) above, Dr Farthing had been twice been suspended from practising as a chiropractor by the GCC because he was found to have provided inappropriate or unnecessary treatments to four patients, and that the second suspension was for the maximum period available as a sanction to the GCC (three years).

Ofcom also noted that at this time (i.e. prior to the 'patients' visits) the programme maker had the testimony of Mr Collins (a former employee of Dr Farthing's) who had indicated in an interview during the making of the programme that Dr Farthing had taken x-rays of and diagnosed subluxation in almost all of the people who came to see him and used scare tactics to get people to sign up for treatments, and Ms Shingleston (a former patient) who, in an interview given at the same time, indicated that Dr Farthing had misdiagnosed her and unduly scared her about the seriousness of her condition.

In light of the above observations Ofcom considered that the BBC had presented evidence that, at the stage when it sent reporters to surreptitiously record Dr Farthing's actions with regard to patients visiting his practice (i.e. prior to filming), it had information which clearly indicated that Dr Farthing had a history of providing some patients with unnecessary treatments, using an unduly alarmist manner and taking too many x-rays. Therefore, it considered that at the time of the visits by the 'patients' the BBC had sufficient information to conclude that the story about Dr Farthing was in the public interest. Ofcom also considered that the BBC had reasonable grounds to suspect that surreptitious filming of Dr Farthing would provide further material in the public interest and that it was necessary to the

authenticity and credibility of the story, as a candid view of the way in which Dr Farthing practiced could only be obtained through surreptitious filming.

Taking these factors together, Ofcom found that with regard to the making of the programme, the infringement of Dr Farthing's privacy due to surreptitious filming of his consultations with the three 'patients' was warranted.

Broadcast of material

Ofcom then addressed Dr Farthing's complaints of unwarranted infringement of privacy in the broadcast of the programme due to the inclusion of covertly filmed footage of him while giving consultations to three 'patients', whom he later discovered to be undercover reporters, without his consent.

In considering this part of this head of complaint Ofcom took particular account of Practice 8.14 of the Code, which states that material gained by surreptitious filming and recording should only be broadcast when it is warranted.

Ofcom first considered whether Dr Farthing had a legitimate expectation of privacy in these circumstances.

Ofcom recognised that Dr Farthing's expectation of privacy was lowered by the fact that material in question was footage of his practice, which is accessed by members of the public. However, it also recognised that Dr Farthing's expectation of privacy was heightened by a number of factors, including the fact that the footage broadcast was of him giving individual consultations to people whom he believed to be patients (and that therefore he could reasonably have expected that matters discussed between them would be treated as being of a private, rather than a public nature) and that he had invited the 'patients' included in the footage to pre-arranged meetings, rather than having them walk in off the street. Ofcom also recognised that Dr Farthing's expectation of privacy in these circumstances was heightened because the footage of the actions which took place during these meetings was filmed surreptitiously.

Therefore, on balance, Ofcom considered that Dr Farthing had a legitimate expectation of privacy with regard to broadcast of the footage filmed in these circumstances.

Given that surreptitiously filmed footage of Dr Farthing's consultations with the 'patients' was included in the programme, Ofcom considered that his privacy had been infringed in the broadcast.

Ofcom turned to consider whether the infringement of Dr Farthing's privacy in the broadcast of the programme by virtue of surreptitious filming was warranted. As noted above, the Code indicates that the word "warranted", in the context of justifying an infringement of privacy, has a particular meaning. It means that a broadcaster must be able to demonstrate why the infringement was justified and, if the justification put forward is that it is in the public interest, why, in the particular circumstances of the case, the public interest outweighed the complainant's right to privacy.

Ofcom observed that, by the time the programme was first transmitted, the GCC had again renewed Dr Farthing's suspension from being able to practice as a chiropractor for the maximum three-year period available to it as a sanction.

However, Ofcom also observed that in the Decision at heads a) iv, v) and xi) above (which concerned the way in which the complainant's diagnosis of and recommendations to the three BBC reporters who posed as 'patients' was portrayed) it had found that Dr Farthing had been treated unfairly.

Ofcom recognised that it had made this finding because it considered that the programme did not explain what information the independent expert (who examined these 'patients' prior to their visits to Dr Farthing) was given about the medical histories or symptoms of the 'patients', despite including the following assertion: "*They [the 'patients'] all pretended to have mild back pain. Our expert said none of them needed any treatment*". Ofcom also considered that material submitted by the BBC showed that each 'patient' had indicated to Dr Farthing that they had suffered from either long-term and/or considerable back pain and each had had accidents in the past (it noted that Dan had indicated a particularly extensive history of accidents).

In light of the material noted above, Ofcom concluded that the programme did not establish that Dr Farthing had recommended treatment for Sara, Dan and Sion (the three 'patients') which they did not need and that, in the context of the 'game show' comments like "*Christian says this third patient needs treatment too. That's three out of three for Christian*" resulted in unfairness to the complainant.

Given this earlier finding, Ofcom considered that the inclusion of sections of the surreptitiously recorded visits of Sara, Dan and Sion to Dr Farthing did not provide information that was in the public interest and consequently that their inclusion was not warranted.

Therefore, Ofcom found that the broadcast of the surreptitiously recorded footage of these consultations unwarrantably infringed the complainant's privacy.

Accordingly, Ofcom has not upheld heads a) i) to iii) and vi) to ix) and heads b) i) to iv), but has upheld heads a) iv), v) and xi) of Dr Farthing's complaint of unfair treatment. Head a) x) of the fairness complaint (which concerned the time given to Dr Farthing's contribution in the programme) was considered within the Decision about the representation of the complainant's response at head b) iv). In addition, Ofcom has not upheld Dr Farthing's complaint of unwarranted infringement of privacy in the making of the programme but has upheld his complaint of unwarranted infringement of privacy in the broadcast at head d). Given its view that head c) of the fairness complaint was inextricably linked with Dr Farthing's privacy complaint Ofcom considered this complaint as part of the Decision at head d).

Partly Upheld

Complaint by Dr Peter Proud

Conning the Conmen, BBC3, 29 March 2007 (repeated 4 April 2007 and 30 July 2007)

Summary: Ofcom has partly upheld this complaint of unfair treatment and unwarranted infringement of privacy made by Dr Peter Proud.

Dr Peter Proud's complaint was considered by the Executive Fairness Group.

In summary Ofcom found the following:

- Ofcom found that in light of the evidence gathered by the BBC at the time of the broadcast, Dr Proud was not portrayed unfairly in relation to the inclusion in the programme of allegations that he provided unnecessary treatments for which he charged large amounts of money and that he used scare tactics in order to get patients to sign up and pay for his treatments. It also found that neither the way in which the General Chiropractic Council's position was reflected nor the tone of the programme resulted in unfairness to the Dr Proud.
- However, Ofcom found that the way in which the programme portrayed Dr Proud's diagnosis of and recommendations to the three BBC reporters who visited him posing as 'patients' resulted in unfairness to the complainant. This was because despite claiming that Dr Proud had recommended unnecessary treatment to all three 'patients', the programme did not establish that this was the case.
- In addition, Ofcom found that Dr Proud was given an appropriate and timely opportunity to respond to the allegations made about him and that his response was represented fairly in the programme.
- In relation to Dr Proud's complaint that his privacy was unwarrantably infringed in the making of the programme due to the obtaining of surreptitiously recorded footage of the BBC reporters' visits to his practice, Ofcom found that in relation to the circumstances pertaining to the obtaining of this footage Dr Proud had a legitimate expectation of privacy and that his privacy was infringed. However, Ofcom found that this was warranted because the BBC had prima facie evidence that the story was in the public interest, and reasonable grounds to suspect that the surreptitious filming would provide further material in the public interest and that the candid view of the way in which Dr Proud practised could not be gained through other means.
- In relation to the complaint that Dr Proud's privacy was unwarrantably infringed in the broadcast of the programme Ofcom made the following findings:
 - in light of the fact that personal details disclosed about Dr Proud in the programme were already in the public domain, he did not have a legitimate expectation of privacy in relation to their inclusion in the programme and his privacy was not infringed in this respect;

- in light of the fact that the location of Dr Proud's home was not disclosed in the programme, he did not have a legitimate expectation of privacy in relation to this information and his privacy was not infringed in this respect; and,
- in relation to the circumstances pertaining to the inclusion of the surreptitiously filmed footage of the BBC reporters' visits to his practice in the programme Dr Proud had a legitimate expectation of privacy and his privacy was infringed. Ofcom also found that in light of the earlier finding that the way in which the programme portrayed Dr Proud's diagnosis of and recommendations to the three BBC reporters who visited him posing as 'patients' resulted in unfairness to him, the inclusion of this footage was not warranted. Ofcom therefore found that Dr Proud's privacy had been unwarrantably infringed in the broadcast of the programme in this respect.

Introduction

On 29 March 2007, BBC3 broadcast an edition of *Conning the Conmen*. The BBC3 website described *Conning the Conmen* as a new series in which "a maverick team of undercover reporters turns the tables on Britain's rogues and conmen". It added that the series "has launched a new generation of undercover investigations" and that it "combines daring undercover stings with wicked comedy".

Conning the Conmen features intercut reports on people who the programme makers believe to have poorly served or 'conned' the public and the presenters' attempts to con these people in turn. This edition of the programme showed one of the presenters trying to get a drug dealer to take a non-cash payment and a report into a "dodgy plumber" who the programme tried to get to sit in a bath full of baked beans. It also included an investigation into two back specialists, one of whom was Dr Peter Proud. The programme alleged that these back specialists had been involved in recommending unnecessary treatment to their patients for a condition called "subluxation" or spinal malfunction.

The programme included four sections dealing with subluxation. Dr Proud was referred to and/or appeared in the first two of these sections. During these two sections of the programme the presenters staged a pretend 'game show' called "subluxation nation". The 'game show' featured two of the presenters as 'contestants' who, it was explained, were 'representing' one of two back specialists, namely Dr Peter Proud and Dr Christian Farthing. The first part of the 'game show' introduced the two back specialists and set out allegations which the programme was making against them. With regard to Dr Proud, the programme stated that "*Peter charges patients hundreds for treatment they don't need*" and that "*This year he was struck off the General Chiropractic Council for exaggerating how bad his patients' backs were and recommending treatment patients didn't need*". This section of the programme also included an interview with one of Dr Proud's former patients who said she felt that she had been 'conned' by him.

The second part of the 'game show' included covertly filmed footage of undercover reporters posing as 'patients' and attending consultations with Dr Proud and Dr Farthing. Viewers were told that these 'patients' had previously been given the all clear by a chiropractor appointed by the programme. The 'game show' was used as a device to establish which of the two back specialists featured was the "winner" (i.e. which of the two had recommended more unnecessary treatments) and would therefore be "conned" by the programme. Dr Farthing was pronounced the "winner" in that he had recommended treatment for all three 'patients' sent to him while Dr Proud diagnosed two of the three 'patients' sent to him as having "subluxation" or

spinal malfunction and recommended treatment. At the end of the second part of the 'game show' one of the presenters said that Dr Proud had responded to its allegations against him by saying that the programme was not impartial, independent or honest and that many spinal specialists around the world agreed with the way he practised. The presenter also explained that the programme had received many testimonials from Dr Proud's patients who were happy with their treatment.

As well as the covertly filmed footage of Dr Proud advising the 'patients' sent by the BBC the programme included the following details about Dr Proud: his nationality, age, marital status and the name of the town in which he lived and worked.

Dr Proud complained to Ofcom that he was treated unfairly in the programme as broadcast and that his privacy was unwarrantably infringed in both the making and the broadcast of the programme.

The Complaint

Dr Proud's case

In summary, Dr Proud complained that he was treated unfairly in the programme as broadcast in that:

- a) The programme unfairly and unjustly portrayed him as a 'conman'. Specifically he stated that:
 - i) the allegation that he provided unnecessary treatment and charged large amounts was unfounded by the recommendations he gave in the programme;
 - ii) the information given by the 'set-up' patients was inconsistent with the initial correspondence sent by the BBC, in that the actors lied about their names, and the information that he was given about their medical background was not consistent with the conditions the BBC said they presented with;
 - iii) the recommendations he made to the actors for treatment and his wider work were supported by international research, and evidence from the World Health Organisation (WHO), Dr Paul Stick, an independent expert, and Dr Deed Harrison from Clinical Biomechanics of Posture, but the BBC did not listen to or make any mention of this in the show choosing only to be guided by the General Chiropractic Council ("the GCC") who do not understand or recognise his form of treatment. Dr Proud complained that this made a mockery of vertebral subluxation.
- b) He was not given an opportunity to respond to the allegations that were made in the programme. Specifically he stated that:
 - i) the time frame that he was given to respond to the allegations was unreasonable and did not allow him time to formulate a thorough response. He stated that he was allowed one week when the programme makers had had months to plan the programme.
 - ii) the BBC was uncooperative when he requested consent to access medical records of the three actors who attended his practice for a diagnosis, resulting in him being unable to obtain third party expert opinions in relation to those actors, and preventing him from defending himself against the BBC's allegations.

- iii) the recommendations he made to the actors for treatment and his wider work were supported by international research, and supporting evidence from the World Health Organisation (WHO), Dr Paul Stick, an independent expert, and Dr Deed Harrison from Clinical Biomechanics of Posture, but the BBC did not listen to or make any mention of this in the show, choosing only to be guided by the GCC which does not understand or recognise his form of treatment. Dr Proud complained that this made a mockery of vertebral subluxation.

In summary, Dr Proud complained that his privacy had been unwarrantably infringed in the making of the programme in that:

- c) The BBC reporters entered his property without his consent with concealed cameras which was an unwarranted infringement of his privacy, given that he was not aware that he was being filmed.

In summary, Dr Proud complained that his privacy had been unwarrantably infringed in the broadcast of the programme in that:

- d) The BBC reporters gave out details of where he lived, his nationality and his marital status during the programme; along with showing undercover footage of him treating the BBC's 'patients' (recorded by the concealed cameras). Dr Proud complained that this material identified him to friends, relatives and patients as a 'conman'.

The BBC's case

In summary the BBC responded to Dr Proud's fairness complaints as follows:

- a) The BBC denied that the programme had portrayed Mr Proud¹² unfairly. By way of background to its response, the broadcaster gave details of the removal of Mr Proud from the GCC's Register of Chiropractors. It submitted a copy of the GCC's most recent finding on Mr Proud and argued that this finding supported its view that Mr Proud's approach to his patients was unethical in that he sought to convince healthy people that they had a condition called vertebral subluxation and used scare tactics and high pressure sales to get people to spend large amounts of money.

The BBC noted that there was more than one definition of the term subluxation and that in medical terms subluxation is a significant structural displacement to any joint or organ which is short of dislocation.

The BBC said that there was a dispute in the world of Chiropractic between those who believed that vertebral subluxation was a theoretical model and those who viewed it as a real condition. It said that the mainstream profession in Britain, which was regulated by the GCC, believed the former while Mr Proud believed the latter.

The broadcaster acknowledged that there was no law against someone setting up a business to treat conditions with no medically agreed definition (and no apparent symptoms) but argued that Mr Proud had been included in this programme to show the public that people who consult him would almost always be told they needed his treatment regardless of whether it was appropriate.

¹² The BBC referred to the complainant as Mr Proud rather Dr Proud throughout its submission.

The BBC noted that it had consulted an orthopaedic surgeon and spinal specialist, Mr John Getty, who had rejected the definition of vertebral subluxation provided by Dr Farthing (the other back specialist who appeared in the programme). It also noted that as well as Mr Getty, it had used two registered chiropractors and an osteopath to advise on the programme. The BBC said that all the 'patients' who were shown consulting Mr Proud were examined by one of the chiropractors who said that they did not need treatment. The BBC noted that the same chiropractor had examined two other potential 'patients' and recommended that they seek treatment. The broadcaster explained that with the exception of Mr Getty, its medical experts had wished to remain anonymous.

The BBC responded to the three sub-sections of this head of complaint in turn.

- i) In response to the complaint that the programme had unfairly alleged that Mr Proud provided unnecessary treatment and charged large amounts, the BBC argued that the GCC finding was evidence that Mr Proud had put personal gain above the welfare of his patients. The BBC also said that in light of this evidence it had sent in three 'patients', none of whom had back problems, to see how he would diagnose them and that the footage of these consultations in the programme showed that Mr Proud had said that two of these 'patients' needed treatment.
- ii) The BBC responded to Mr Proud's complaint that the information he was given by the three BBC 'patients' was inconsistent with the correspondence sent by the broadcaster about their medical backgrounds and that the actors lied about their names.

The BBC said that it was true but not unfair that Mr Proud was not given the 'patients' correct names when they consulted him. The broadcaster also said that during the consultations each of the three 'patients' had told Mr Proud that they had back pain and that 'Paula' had added that her back pain had been brought on by lifting weights in the gym. The BBC explained that after these consultations were filmed it sent letters to Mr Proud [copies of which it enclosed with its submission] which set out what the patients were told by an independent chiropractor who had examined them, and compared that to the diagnosis and treatment recommended by Mr Proud.

- iii) The BBC addressed Mr Proud's complaint that the programme was unfair because it did not mention that the recommendations he made to the 'patients' for treatment and his wider work was supported by international research, the WHO and two independent experts (Mr Deed Harrison and Mr Paul Stick¹³), because it relied on the GCC's guidance and because it thereby mocked 'vertebral subluxation'.

The broadcaster acknowledged that the programme did not mention his wider work. It said that the programme had showed unfavourable testimony from one of Mr Proud's former patients, who said that he *"took a lot of money off me"*, and argued that the programme had fairly reflected Mr Proud's response to the allegations made about him.

The BBC said that Mr Harrison and Mr Stick were not independent, but rather that they were spinal care practitioners who adhered to the belief that vertebral

¹³ The BBC referred to the Dr Harrison and Dr Stick as Mr Harrison and Mr Stick throughout its submission.

subluxation was widespread. It also argued that Mr Harrison had been given no information about the three 'patients' and that Mr Stick's view of the condition of the 'patients' was not independent because it was made on the basis of the notes he received from Mr Proud.

The BBC stated that the WHO had made no statement about the three 'patients' who visited Mr Proud and argued that to claim that the WHO supported Mr Proud's system of treatment was to misquote its guidelines on basic training and safety in chiropractic. The broadcaster added that although there was an element of mockery in the programme about Mr Proud's approach this was justified by his behaviour and the GCC's finding.

- b) The BBC argued that Mr Proud was given an appropriate and timely opportunity to respond to allegations made about him in the programme.
- i) The BBC denied that Mr Proud was allowed only one week to respond to the allegations made about him in the programme. It said that the programme makers' initial letter was sent to Mr Proud on 13 February 2007 and that he responded on 16 February 2007, that the complete exchange consisted of 20 pieces of correspondence over six weeks, and that this was plenty of time for him to formulate an adequate response.
- ii) The BBC denied that it was uncooperative with regard to Mr Proud's request for the medical records of the three 'patients'. It argued that Mr Proud's attempt to get these records was an attempt to evade the issues. The broadcaster also said that based on the medical history he took and his examination of these 'patients' he recommended that two of three 'patients', all of whom had no spinal problems, should have treatment. The BBC added that in contrast to his claim in the complaint Mr Proud had obtained a third party opinion on these 'patients' from Mr Stick and that this opinion was received by the BBC (via Mr Proud's solicitor) before the programme was broadcast.
- iii) The BBC turned to Mr Proud's complaint that the programme did not give him an opportunity to respond to the allegations made about him because it did not mention that the recommendations he made to the 'patients' for treatment and his wider work was supported by international research, the WHO and two independent experts (Mr Deed Harrison and Mr Paul Stick), because it relied on the GCC's guidance, and because it thereby mocked 'vertebral subluxation'.

The BBC said that it was unclear what Mr Proud was complaining of in this section of his complaint. However, the broadcaster stated that if Mr Proud was complaining that no material from the WHO was included in the programme its response was that the WHO did not support the concept of vertebral subluxation. The BBC rejected any suggestion, which Mr Proud might have been making, that the programme should have included an interview with either Mr Harrison or Mr Stick because such material would not have been relevant. The BBC also said that if Mr Proud was saying that the GCC was not qualified to pronounce on whether the form of chiropractic practised by Mr Proud was safe or effective it rejected this contention.

In summary the BBC responded to Dr Proud's complaint that his privacy had been unwarrantably infringed in the making of the programme as follows:

- c) The BBC argued that it was justified in having infringed Mr Proud's privacy in the making of the programme by obtaining footage via surreptitious filming.

It said that it had had prima facie evidence of story in the public interest which included both the GCC's finding against Mr Proud (i.e. his removal from the GCC's Register of Chiropractors) and testimony from five former patients who said that their treatment had been unacceptable. The BBC said that the unacceptable treatment these patients received included unnecessary twelve-month treatment plans, excessive use of x-rays and the use of scare tactics to persuade them to have more treatment. The broadcaster said that while it accepted that Mr Proud had had a reasonable expectation of privacy in his place of work, the infringement was warranted because there was a public interest in filming him in order to demonstrate how he dealt with patients and what diagnosis he would give to individuals whom an independent expert (a GCC registered chiropractor) had declared to be healthy. The BBC argued that this material could not have been gained without the use of surreptitious filming.

In summary the BBC responded to Dr Proud's complaint that his privacy had been unwarrantably infringed in the broadcast of the programme as follows:

- d) The BBC denied that the programme had infringed Mr Proud's privacy by including details about his nationality, marital status and where he lived.

It said that the two sections of the programme that were relevant to this section of the complaint described Mr Proud as: "*Australian charmer Peter Proud*" and continued "*He's thirty-four, married and he lives and works in Stourbridge*".

The BBC argued that most of this information had been put into the public domain by Mr Proud by virtue of his having called a press conference which resulted in an article published in the Stourbridge News on 12 October 2006. The broadcaster said that the article had included the following sentence:

"A Stourbridge therapist has hit back at BBC claims he cons patients and leaves them in greater pain. Peter Proud, from the Living Health Family Spine Centre, Norton..." and gone on to give Mr Proud's age and note that he was Australian.

The BBC acknowledged that this article had not indicated that Mr Proud lived in Stourbridge (as the programme had) but argued that, given that the population of Stourbridge was 82,000, the inclusion of this information in the programme had not disclosed the location of his home and therefore had not unwarrantably infringed Mr Proud's privacy.

The BBC also argued that the "limited and unspecific information" which the programme had revealed about Mr Proud was warranted by the public interest in unambiguously identifying the individual who had acted as it alleged Peter Proud had and preventing any confusion with other people of the same name.

The BBC did not address Mr Proud's complaint that his privacy was unwarrantably infringed due to the broadcast of the surreptitiously filmed footage of him treating the BBC's 'patients'.

Decision

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public

and all other persons from unfair treatment and unwarranted infringement of privacy in, or in the making of, programmes included in such services.

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.

Dr Proud'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 transcript, both parties' written submissions (along with supporting material, including correspondence between the parties), and the available untransmitted footage and transcripts of visits made to Dr Proud by undercover BBC reporters posing as 'patients'¹⁴.

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

Ofcom looked at each of the individual concerns raised by Dr Proud in relation to this head of complaint in turn.

- i) It considered the complaint that the allegation that Dr Proud provided unnecessary treatments and charged large amounts was unfounded given the recommendations he gave in the programme.

In assessing this section of Dr Proud's complaint Ofcom considered the allegations made about Dr Proud in the programme. The issue of what information Dr Proud was given about the set-up 'patients' who visited his practice and whether or not that information was consistent with that given to the BBC's independent expert is considered in the Decision at head a) ii) below.

Ofcom noted that the first section of the programme that dealt with subluxation included the following commentary:

"Peter [Proud] charges patients hundreds for treatment they don't need. This year he was struck off the General Chiropractic Council for exaggerating how bad his patients' backs were and recommending treatment patients didn't need. His specialist subject is the back condition subluxation".

¹⁴ The BBC did not record all of these visits and was only able to supply material relating to three of the visits made by its reporters to Dr Proud.

In light of this commentary Ofcom considered that the programme had clearly stated that Dr Proud provided unnecessary treatments for which he charged large amounts of money.

Ofcom's role was not to establish conclusively from the broadcast programme or the submissions and supporting material, whether Dr Proud had provided unnecessary treatments for which he charged large amounts of money but rather to address itself to the issue of whether the programme makers took reasonable care in relation to material facts.

Ofcom observed that in its submission the BBC said that the programme had made this claim about Dr Proud based on the GCC's decision to remove Dr Proud from its register and the finding that accompanied this decision which was published by the GGC in January 2007. Ofcom also noted that the BBC argued that this claim was also supported by the testimony of Ms Donna Evans, a former patient of Dr Proud's who had been interviewed for an edition of the BBC consumer affairs programme *Watchdog* in October 2006 and five other former patients of Dr Proud's, to whom the BBC had spoken to during its research for the programme, who said that he had mistreated them as well.

Ofcom assessed the GCC's January 2007 finding against Dr Proud, which it noted was in part based upon a previous finding by the GCC in February 2006 that resulted in Dr Proud's being suspended from practising as a chiropractor for eighteen months. Ofcom noted that the 2007 finding (a copy of which was provided by the BBC in its submission) examined Dr Proud's treatment of four patients between February 2004 and December 2005.

It observed that in relation to Patients A and B the GCC found that Dr Proud's diagnosis was not based on an "adequate examination", his treatment was "inappropriate, excessive and contrary to the best interests of the patient", that he took x-rays that were "not clinically justified" and made "alarmist comments" when discussing the patients' prognosis or symptoms. Ofcom noted that in relation to Patient B Dr Proud also failed to keep adequate records of treatment and progress and failed to modify the treatment given in response to the patient having indicated that the treatments gave her pain. Ofcom observed that the GCC made similar although slightly less extensive findings in relation to Patient C and found that having "spoken in an unduly alarmist manner" to patient D and "misrepresented the gravity of [her] condition" Dr Proud recommend a 12-month course of treatment at a cost of £3,000. In addition, Ofcom noted that the GCC found that Dr Proud attempted to mislead potential patients by placing advertisements which could lead them to believe he was a medical doctor and that despite changing the name of his practice from "Living Health Chiropractic" to "Living Health Family Spine Centre" at some point in either 2004 or 2005 and indicating to new patients that he was not a chiropractor Dr Proud's treatments continued unchanged.

The GCC said that the literature which Dr Proud provided to patients remained the same except for the substitution of the word "spinal" for the word "chiropractic" and found that he had in fact continued to work as a chiropractor. Ofcom observed that the GCC finding had concluded that Dr Proud had "shown an unacceptable lack of concern, empathy and respect towards his patients" and that "he placed personal gain above the welfare of his patients".

As noted above, Ofcom recognised that the GCC had already suspended Dr Proud from practising as a chiropractor for eighteen months in February 2006.

Ofcom also observed that, in light of this and the findings detailed above, as well as Dr Proud's decision not to recognise the GCC's authority on matters concerning chiropractic in the UK (he contended that he was not subject to the GCC because he was a spinal specialist rather than a chiropractor), in January 2007 (two months prior to the first broadcast of this programme) the GCC considered that the only suitable sanction it could impose was to remove Dr Proud from its register of chiropractors. Ofcom also noted that this was the first occasion on which the GCC had imposed such a sanction.

Ofcom acknowledged that there are different schools of thought on the diagnosis, treatment and prevalence of the condition known as subluxation and that Dr Proud does not consider that the GCC employs the correct interpretation of this condition or that he should be subject to the GCC's rules. However, Ofcom recognised that the GCC is the relevant professional regulatory body for the practise of chiropractic in the UK and that UK legislation requires anyone practising as a chiropractor in the UK to be registered with the GCC. It also recognised that the GCC considered that despite changing the name of his practice Dr Proud was still practising as a chiropractor.

With regard to the testimony of Ms Evans, Ofcom noted that the programme included the following section of an interview which she originally gave to the BBC for the edition of *Watchdog* broadcast in October 2006:

Ms Evans: *"He told me he was a spinal specialist, he took a lot of money from me and he said I needed help and I feel such an idiot for believing this man."*

Ofcom also noted that the BBC referred to five other unnamed former patients of Dr Proud within its submission whom it said were mistreated.

In light of the factors noted above, Ofcom considered that the BBC had gathered evidence that Dr Proud had a history, over a period of years, of providing and charging for unnecessary treatments, as well as unduly alarming some of his patients, and that as a result of this pattern the regulatory body governing the chiropractic profession in the UK had recently removed him from its register of practitioners. It therefore found that the inclusion in the programme of the claim that Dr Proud provided unnecessary treatment for which he charged large amounts of money did not result in unfairness to him.

- ii) Ofcom considered the complaint that the information Dr Proud was given about the medical backgrounds of the set-up 'patients' was inconsistent with that given to the BBC's expert (as set out in the BBC's initial correspondence) and that they lied about their names.

In order to consider this section of Dr Proud's complaint Ofcom assessed the covertly obtained recordings and transcripts of the visits by the 'patients' to Dr Proud which were made available to it¹⁵. Ofcom also assessed the information which the BBC said (within its pre-broadcast correspondence with the complainant) was given to Dr Proud about the symptoms experienced by and medical histories of the three 'patients'. In addition, it looked at the claims made about their symptoms and medical histories in the programme and any treatment

¹⁵ Within its submission the BBC clarified that not all of the 'patients' visits to Dr Proud were recorded. Therefore, it was only able to provide Ofcom with untransmitted footage and transcripts of Rebecca's first and second visits and Dan's second visit to Dr Proud.

which Dr Proud was shown recommending, or was said to have recommended, in the programme.

Ofcom acknowledged that the three set-up 'patients' who visited Dr Proud's practice gave false names ('Rebecca' and 'Dan' gave Dr Proud different surnames and 'Zoe' gave a different first name and surname; during her visit to Dr Proud she went under the name 'Paula Smith'). However, Ofcom considered that this would not have affected Dr Proud's understanding of their symptoms and medical histories or his subsequent diagnoses and, where applicable, recommendations for treatment. Therefore, Ofcom did not consider that this could have resulted in unfairness to Dr Proud.

Ofcom looked at the information given and the claims made about each of the 'patients'.

Ofcom observed that on 13 February 2007 the BBC wrote to Dr Proud informing him that he would be featured in a forthcoming edition of *Conning the Conmen* and that three undercover members of the production team had visited his practice (the letter set out their experiences, indicated that his recommendations to the 'patients' were incorrect and alleged that that as a result of these visits the BBC had concluded that Dr Proud "charge[d] patients large amounts for unnecessary treatment"). The letter also indicated that the programme planned to report on Dr Proud's removal from the GCC register and an accusation of mistreatment made by one of his former patients, Ms Evans.

Ofcom noted that in a follow-up letter on 21 February 2007 to Dr Proud the BBC said that "each member of our team presented to you with symptoms of short-term mild back pain".

Ofcom also noted that within its submission in response to this complaint the BBC said that "all three individuals had previously been examined by a GCC registered chiropractor, who had assured them they had no spinal problems – and none of them actually had any back pain".

Rebecca

Ofcom noted that with regard to Rebecca the BBC's letter of 13 February 2007 said that she had visited Dr Proud's practice on 30 November and 6 December 2006 "complaining of back pain" and that prior to these visits a chiropractor had told her "she [was] in the peak of physical health and that her examination was entirely unremarkable". The letter also noted that an osteopath whom she had consulted had said that "she had some tightness in her muscles which exercise and yoga would improve but that treatment beyond that was unnecessary". In addition, the BBC's letter stated that Dr Proud had "told Rebecca that she had very long-term subluxation in her spine and that subluxation can take anything from twelve months to five years to correct".

Turning to the recording of Rebecca's first visit to Dr Proud, Ofcom observed that during this visit Dr Proud referred to "lower back pain" which Rebecca had "been experiencing for two or three months". It noted that Rebecca told Dr Proud that in 1999 she had been in car accident travelling at thirty or forty miles an hour, that the car was "hit head on" and that afterwards she had suffered from "neck pain". She also spoke of two other occasions during her childhood when she had been involved in car accidents. Ofcom also noted that Rebecca told Dr Proud that for three years she had been working in a sedentary job, that she had fallen from her

horse about ten times when she was a child and that on one of these occasions she had fractured her coccyx. During this visit Rebecca also spoke of being “quite achey” when she sat badly, getting “pins and needles sometimes”, sometimes having neck pain when she woke up and getting headaches once or twice a fortnight for which she took over the counter pain medication.

Ofcom observed that one of the presenters (Nana) played the ‘host’ of a mock ‘game show’ called “subluxation nation”. The ‘contestants’ were two back specialists, one of whom was Dr Proud. They were ‘represented’ in the studio by the programme’s other two presenters (Rebecca and Dan), and were supposedly ‘competing’ to win a conning visit from the programme.

During the second part of this mock ‘game show’ several sections of covertly filmed footage of the set-up ‘patients’ visiting the two back specialists was shown. Nana introduced this part of the programme by saying:

“We sent Peter [Proud] and Christian [Farthing] three test patients each. They all pretended to have mild back pain. Our expert said none of them needed any treatment. This is what happened. Peter first.”

The programme then showed a section of the footage of Rebecca’s second visit to Dr Proud in which he was shown recommending the following treatment:

“We would really be looking at a minimum of twelve months of spinal care. But what I would recommend is, just initially just by doing a ninety day period”.

Nana then said:

“Peter says this patient needs treatment. Not true”.

Zoe

Ofcom noted that the BBC letter of 13 February 2007 to Dr Proud indicated that Paula Smith (the name used by Zoe when she posed as a ‘patient’) had visited the practice on 22 January 2007 “complaining of lower back pain brought on by lifting weights in the gym” and that prior to this visit a chiropractor had told her that “her range of motion tests for each area of the spine were unremarkable and that her orthopaedic and neurological tests were again unremarkable”. The BBC’s letter stated that Dr Proud had “told Paula that she was putting more weight through one side of her body than the other and that this could be a sign of subluxation” and that “on this occasion he “didn’t feel any treatment was necessary beyond a visit to a sports masseur”.

No recordings or transcripts of Zoe’s visit(s) to Dr Proud’s practice were available.

Ofcom observed that during the second part of the mock ‘game show’ Nana referred to Dr Proud’s diagnosis of Zoe in the following way:

“The second person gets the all clear”.

Dan

Ofcom noted that the BBC letter of 13 February 2007 to Dr Proud indicated that Dan had visited the practice on 5 and 12 February 2007 “complaining of lower back pain” and that prior to these visits a chiropractor had told him that “he was

not in need of any treatment and that his examination was entirely unremarkable". The BBC's letter stated that Dr Proud had "told Dan that he was suffering from a number of areas of subluxation, with long-standing subluxation in his lower back" and that he had "a large imbalance in his nervous system". The letter stated that Dr Proud had recommended that Dan have "an initial month long treatment programme of three adjustments a week costing £396".

Ofcom recognised that only the second of Dan's visits had been recorded and was therefore available. However, it observed that during this visit Dan referred to the "sort of lower back pain I had", Dr Proud referred to the "problems" Dan had been having for "the last eighteen months or so [that had] kind of gone away [but] come back recently". Ofcom noted that in response to Dr Proud's comment to Dan that his finding of "long-standing areas of subluxation correlates with what Dan had previously told him, Dan said "there's a sort of lower back pain". Ofcom also noted that during this visit Dan and Dr Proud discussed Dan's "history of trauma" and that Dan confirmed that four or five years previously he had been "hit from the side at thirty-five miles an hour" and that he added "as I said ...I wasn't hurt or anything [and] walked out of the car no problem". In addition, Ofcom observed that Dan said "I was just hoping I wouldn't get the back pain again" and that he referred to having been "given exercises to do before when [he] reported problems to [his] GP".

Ofcom observed that during the second part of the mock 'game show' Nana introduced Dr Proud's diagnosis of Dan by saying: "*What about the third patient?*" and that the programme then showed footage of Dr Proud telling Dan: "*I would see you for three adjustments a week for a month*".

The programme then included the following voice over commentary:

"That's Peter telling two out of three people they need treatment when actually they don't".

In light of its assessment of the untransmitted recordings of Rebecca and Dan's visits to Dr Proud, Ofcom considered that in each case the complainant was given a detailed medical history of past experiences. Ofcom noted that both 'patients' had apparently indicated that they had pain for an extended period and both had mentioned at least one car crash in which they had been involved. In particular, Ofcom observed that Rebecca indicated to Dr Proud that she had a history of physical trauma from childhood including one incident where she fell from a horse and fractured her coccyx.

In light of the fact that no recordings of Zoe's visits to Dr Proud were available Ofcom could not assess the exact symptoms or medical history she gave to Dr Proud. However, it noted that the BBC's 13 February 2007 letter to Dr Proud indicated that, like Rebecca and Dan, Zoe had told Dr Proud that she suffered from back pain.

Ofcom also observed that in its submission in response to this complaint the BBC said that prior to seeing Dr Proud:

"All three individuals had previously been examined by a GCC registered chiropractor who had assured them [that] they had no spinal problems – and none of them had any back pain".

Ofcom also noted that the BBC said that in response to Dr Proud's complaint that he was given inconsistent information about the 'patients', the BBC said that in its letters to Dr Proud:

"the only reference to their medical condition is that they complained of back pain, with the additional information in the case of 'Paula Smith' that the pain was brought on by lifting weights in the gym".

Having assessed all of the material noted above, Ofcom considered from the information available to it that the programme did not explain what information the independent expert was given about the medical history or symptoms of the 'patients' and that the programme said that "*They [the 'patients'] all pretended to have mild back pain. Our expert said none of them needed any treatment*". It also considered that material submitted by the BBC showed that Rebecca had reported to Dr Proud a long history of accidents, recent aches, pins and needles, neckpain, and headaches; and that Dan had reported to Dr Proud that he had pain for eighteen months which had gone away but returned recently and a "history of trauma " including a car crash four or five years previously. Ofcom therefore concluded that the programme did not establish that Dr Proud had recommended treatment for Rebecca and Dan which was deemed unnecessary by the independent medical expert because it did not establish that both Dr Proud and the independent expert were given the same medical histories on which to base their judgements. Ofcom therefore found the inclusion of comments like "*So that's Peter telling two out of three people they need treatment when actually they don't*" resulted in unfairness to the complainant.

In relation to Zoe, Ofcom noted that the programme indicated that Dr Proud did not recommend treatment for her. It therefore found that the way Dr Proud was portrayed in the programme in relation to Zoe did not result in unfairness to him.

- iii) Ofcom considered the complaint that the programme was unfair because it did not mention that the recommendations Dr Proud made to the 'patients' for treatment and his wider work was supported by international research, the WHO and two independent experts (Mr Deed Harrison and Mr Paul Stick), because it relied on the GCC's guidance and, because it thereby mocked 'vertebral subluxation'.

In assessing this section of Dr Proud's complaint Ofcom considered the way in which the BBC dealt with Dr Proud's correspondence, its reference to and use of the GCC in the programme as broadcast and the issue of whether the programme mocked vertebral subluxation. The issue of how the programme represented Dr Proud's contribution within the programme is considered in the Decision at head b) iii) below.

Ofcom observed that prior to the broadcast of the programme Dr Proud sent the BBC a number of letters responding to the allegations which he had been told would be made about him in the programme and setting out his position on the condition of subluxation. Ofcom also observed that the BBC's correspondence with Dr Proud had begun on 13 February 2007 and ended on 15 March 2007 and that the BBC had acknowledged its receipt of Dr Proud's letters over this period and on several occasions confirmed that it had read the material which he had sent. Ofcom also noted that on 28 March 2007 and 4 April 2007 Carter-Ruck Solicitors (acting on Dr Proud's instructions) had sent the BBC letters from Dr Paul Stick who, having examined Dr Proud's case notes on the three 'patients', gave his opinion on the complainant's diagnoses of them. Ofcom recognised that the BBC had received, but did not acknowledge, these letters from Carter-Ruck.

However, it also noted that the first was sent on the day prior to the first broadcast of the programme and the second was sent on the day of the second broadcast of the programme. Ofcom considered that the BBC had acknowledged the material supplied to it by Dr Proud prior to the broadcast of the programme.

However, Ofcom recognised that the decision regarding the material that is included in a programme is quite rightly a matter of editorial judgement for the broadcaster.

Ofcom noted that the BBC had relied on the GCC in the making of this programme in that it based its decision to feature Dr Proud in part on the GCC's removal of him from its register and the finding which supported that decision.

Ofcom also noted that the programme had represented the GCC's position on Dr Proud in the following way: *"this year he [Dr Proud] was struck off the General Chiropractic Council for exaggerating how bad his patients' backs were and recommending treatment patients didn't need"*.

With regard to the use of the material relating to Dr Proud which was based upon the decision published by the GCC, Ofcom recognised that, as noted in the Decision at head a) i) above, the GCC is the professional regulatory body for chiropractic in the UK and therefore that it was reasonable for the broadcaster to reflect this body's view of chiropractic in this country.

Having assessed the reference in the programme to the GCC and the full text of the GCC's January 2007 finding against Dr Proud (provided with the BBC's submission), Ofcom considered that the programme included a fair reflection of the regulatory body's position with regard to the way in which Dr Proud practised.

Given that it was reasonable for the programme maker to have relied on the GCC's finding against Dr Proud, Ofcom considered that the use of and references to the GCC in the programme did not result in unfairness to the complainant.

Ofcom then addressed the complaint that the programme was unfair because it mocked vertebral subluxation. Ofcom acknowledged that the use of a game show format in the two sections of the programme in which Dr Proud was featured was mocking. However, it also noted that when discussing subluxation itself rather than either of the back specialists featured on the programme, the programme described it as "a misalignment in the spinal bones". In Ofcom's view this was a neutral description and did not mock the condition. It therefore considered that the programme did not mock vertebral subluxation.

In light of the factors noted above, Ofcom found that Dr Proud had not been treated unfairly in the programme as broadcast as a result of the way in which it dealt with each of these issues.

Ofcom did not uphold heads a) i and iii) of this complaint. However, Ofcom did uphold the complaint at head a) ii).

- b) Ofcom considered Dr Proud's complaint that he was not given an opportunity to respond to the allegations that were made in the programme.

In considering this head of complaint Ofcom took particular account of Practice 7.11 of the Code, which states that if a programme alleges wrongdoing or

incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

Ofcom looked at each of the individual concerns raised by Dr Proud in relation to this head of complaint in turn.

- i) It considered Dr Proud's complaint that the time he was given to respond to the allegations was unreasonable and did not allow him to formulate a thorough response. He stated that he was allowed one week when the programme makers had had months to plan the programme.

Ofcom observed that the programme alleged that "*Peter charges patients hundreds for treatment they don't need*" and that it had shown footage of Dr Proud recommending treatment to two of the three 'patients' followed by this commentary: "*Peter telling two out of three people they need treatment when actually they don't*".

Ofcom considered that these comments amounted to a serious allegation and that therefore it was incumbent upon the broadcaster to offer Dr Proud an appropriate and timely opportunity to respond to them. Moreover, Ofcom recognised that, as noted in the Decision at head a) ii) above, Dr Proud was given such an opportunity in the letter the BBC sent to him on 13 February 2007.

With regard to Dr Proud's comment that the programme makers had had months to plan the programme, Ofcom considered that the length of time taken by the programme makers to produce a report or programme was not the key issue. Rather, the issue was whether Dr Proud was given a timely and appropriate opportunity to respond to the allegation made about him.

Ofcom observed that the BBC's letter of 13 February 2007 letter detailed the nature of the report and informed Dr Proud that he had been visited by three 'set-up patients', two of whom he had misdiagnosed. It also said that as a result of these visits the programme would allege that he "charge[d] patients large amounts for unnecessary treatment", report on his removal from the GCC register of chiropractors and include the case of Ms Evans, one his former patients, who had accused him of mistreating her. Ofcom also observed that the letter invited Dr Proud to discuss the allegations or make a statement, which would be reflected in the programme, by a deadline of 20 February 2007.

Ofcom noted that on 16 February 2007 Dr Proud wrote to the BBC to invite the Assistant Producer who had written to him to attend a seminar on the "Clinical Biophysics of Posture" presented by Dr Harrison. On 18 February 2007 Dr Proud wrote a second letter to the BBC saying that in his view the information the BBC planned to broadcast was "not factual" and was "biased as it [was] associated with the GCC". He indicated that the claims the BBC planned to make about his treatment of the 'patients' were incorrect. He also said that the one week deadline he had been given for his response was unreasonable. In addition he enclosed x-ray and medical release forms for the three 'patients' to be signed and returned to him.

On 19 February the BBC replied to both of Dr Proud's letters. It declined the invitation to the seminar, reiterated the allegations it had made in relation to the two 'patients' to whom it said Dr Proud had offered unnecessary treatment and indicated that it was content to enable Dr Proud to get a second opinion regarding his diagnoses of the 'patients' but asked for details about the third party to whom

the details of the 'patients' would be sent. The BBC also said that it would consider a request for extra time if he could demonstrate why it was necessary.

Ofcom noted that that Dr Proud and the BBC continued to correspond between 20 February 2007 and 15 March 2007 and that this correspondence included discussion between the parties about the treatment offered by Dr Proud to the 'patients', the BBC's provision of x-ray and medical release forms for these 'patients' and the identity and background of the independent experts used by the BBC. As noted above, Ofcom observed that Carter-Ruck had written to the BBC on 28 March and 4 April 2007 to enclose letters from Dr Stick in which he gave his opinion of Dr Proud's diagnoses of the three 'patients'.

The BBC responded promptly to Dr Proud's queries over a month-long period prior to transmission of the programme and its letters to Dr Proud included clear details about the nature of the programme in which he would be featured and the allegations about him which would be made. In light of this, Ofcom considered that Dr Proud was given an appropriate and timely opportunity to respond to the allegation made in the programme in relation to this head of complaint (see also heads b) ii) and iii) below).

- ii) Ofcom considered Dr Proud's complaint that the BBC was uncooperative when he requested consent to access the medical records of the three actors who attended his practice for a diagnosis, resulting in him being unable to obtain third party expert opinions in relation to those actors, and preventing him from defending himself against the BBC's allegations.

As noted in the Decision at head b) i) above, Ofcom recognised that the parties had corresponded about the release of the x-rays and medical notes relating to the visits made by the three 'patients' to Dr Proud. In particular, Ofcom noted that in his first response to the BBC (dated 16 February 2007) Dr Proud enclosed three blank release forms for x-rays and medical notes and asked for them to be signed by the 'patients' and returned to him. Ofcom also noted that in its reply of 19 February 2007 the BBC indicated that it would be happy to provide Dr Proud with authorisation to release the x-rays but "due to patient confidentiality" it needed him to provide information about the third party to whom he would pass the patients' records.

In his letter of 28 February 2007 Dr Proud said that "the practice file notes pertaining to each of your actors will be sent to either a professional chiropractic association for review, a chiropractic consultant or a UK based chiropractic program [sic]". In its 2 March 2007 response to this letter, the BBC reiterated its position by saying the 'patients' "are happy for their practice records to be examined by a third party but want to know exact details as to who that will be". On 7 March 2007 Dr Proud emailed the BBC enclosing a letter from Dr Stick (in which he confirmed that he would examine the medical records of these 'patients') and three further release forms which detailed that the medical records would be passed to a radiologist and Dr Stick. On the same day the BBC sent an email to Dr Proud in which it acknowledged receipt of these forms and said that copies of the signed forms would be faxed to him that day and couriered the next day.

Ofcom observed that in an email sent to the BBC on 13 March 2007 Carter-Ruck (writing on behalf of Dr Proud) indicated that its "client only received the [medical] releases yesterday" and that in its response (written on the same day) the BBC explained that it had sent the signed forms to Dr Proud as soon as he had agreed to name the third party who would examine the medical records.

In light of the factors noted above, Ofcom concluded that three days after Dr Proud's request for the release of these medical records the BBC clearly stated that it would be happy to provide the release forms if the complainant informed it of the name of the third party to whom the records would be sent. Ofcom also concluded that that the BBC had provided the release forms as soon as this information was provided. Therefore, Ofcom considered that Dr Proud was not treated unfairly in this respect (see also head b) i) above and b) iii) below).

- iii) Ofcom considered the complaint that the programme was unfair because it did not mention that the recommendations Dr Proud made to the 'patients' for treatment and his wider work were supported by international research, the WHO and two independent experts (Dr Deed Harrison and Dr Paul Stick), because it relied on the GCC's guidance and because it thereby mocked 'vertebral subluxation'.

As noted in heads b) i) and ii) above, Ofcom considered that the programme included a serious allegation of misconduct on the part of Dr Proud, that it had been incumbent on the broadcaster to offer him an appropriate and timely opportunity to respond to this allegation, and that the broadcaster had offered him such an opportunity.

Therefore, in considering this section of Dr Proud's complaint in the context of his claim that he was not given an opportunity to respond to the allegation made about him, Ofcom assessed his response to the BBC's allegation and how it was represented within the programme. In doing this Ofcom took particular account of Practice 7.6 of the Code, which states that when a programme is edited contributions should be represented fairly. It also recognised that the editing of material is a matter of editorial judgement for the broadcaster and that therefore its concern lay with whether the editing resulted in unfairness to Dr Proud.

Ofcom noted that in his letters responding to the broadcaster's allegation Dr Proud denied that he had offered the 'patients' unnecessary treatment and indicated that the BBC misunderstood the theory of chiropractic that he employed and which he said was used and supported around the world. In particular, Ofcom observed that within his 18 February 2007 letter Dr Proud said that "the information that the BBC intend to present is not factual and is biased as it is associated with the GCC" and that "the program [sic] you intend to run is not independent, impartial or honest". Ofcom also observed that in his email of 28 February 2007 Dr Proud said: "it would appear that the purpose of this program [sic] is to show a one-side, biased and unbalanced view on internationally supported, evidence based, subluxation-centred care. It is also aimed at defamation of my character".

Having considered Dr Proud's response to the broadcaster's allegation Ofcom looked at how it was reflected in the programme. It observed that at the end of the second section of the programme dealing with subluxation images of Dr Proud in his practice were shown with the following voice-over commentary:

"Peter Proud wrote to us and told us many spinal specialists around the world agree with the way he practises. He says in his opinion our investigation was not independent, impartial or honest. We have also received testimonials from many happy customers".

In Ofcom's view this was a fair reflection of Dr Proud's response to the allegation of misconduct made about him in the programme in that it included the pertinent point he made about the world-wide support for his method of chiropractic and

made clear that Dr Proud believed that the BBC's investigation into him was deeply flawed and therefore that the claims the programme made about him were untrue.

In addition, having examined Dr Proud's letters to the BBC it did not appear to Ofcom that Dr Proud indicated that he had received testimonials from many happy customers. However, in Ofcom's view this statement would not have adversely affected viewers' opinion of Dr Proud.

Given these factors, Ofcom considered that no unfairness to Dr Proud resulted from the editing of his response to the allegation of misconduct made about him in the programme.

In light of the evidence above in relation to heads b) i), ii) and iii) of this complaint, Ofcom found that Dr Proud was given an appropriate and timely opportunity to respond to the allegation made against him in the programme and that his response to this allegation was fairly represented.

Ofcom then addressed Dr Proud's complaints of unwarranted infringement of privacy.

In Ofcom's view, the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about the unwarranted infringement of privacy both in relation to the making and the broadcast of the programme, Ofcom must consider two distinct questions: First, has there been an infringement of privacy? Secondly, if so, was it warranted? (Rule 8.1 of the Code).

c) Ofcom considered Dr Proud's complaint of unwarranted infringement of privacy in the making of the programme in that reporters entered his property with concealed cameras and filmed without his knowledge or consent.

In considering this head of complaint Ofcom took particular account of Practice 8.13 of the Code, which states that surreptitious filming or recording should only be used where it is warranted. Normally, it will only be warranted if:

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

In relation to this complaint, Ofcom first considered whether Dr Proud had a legitimate expectation of privacy in relation to the use of surreptitious filming in the making of the programme. Ofcom recognised that Dr Proud's expectation of privacy was lowered by the fact that filming took place in his practice, which is accessed by members of the public. However, it also recognised that Dr Proud's expectation of privacy was heightened by a number of factors including the fact that he was filmed while giving individual consultations to people whom he believed to be patients (and that therefore he could reasonably have expected that matters discussed between them would be treated as being of a private rather than a public nature) and that these 'patients' were seeing Dr Proud as a result of an invitation to attend a pre-arranged meeting rather than because they had walked in off the street. Ofcom also recognised that Dr Proud's expectation of privacy in these circumstances was heightened because actions which took place during these meetings were filmed surreptitiously. Therefore, on balance, Ofcom

considered that Dr Proud had a legitimate expectation that his privacy would not be infringed by the surreptitious filming of actions which took place in his practice.

Given these factors Ofcom considered that Dr Proud's privacy had been infringed by recording of the visits by the 'patients' to his practice.

Ofcom then turned to consider whether the infringement of Dr Proud's privacy in the making of the programme by virtue of surreptitious filming was warranted.

Ofcom observed that in its 13 February 2007 letter to Dr Proud the BBC informed Dr Proud of the dates on which the three 'patients' had visited his practice. The letter stated that Rebecca had visited Dr Proud on 30 November and 6 December 2006, Paula had visited him on 22 January 2007 and Dan had visited him on 5 and 12 February 2007.

Ofcom then assessed what prima facie evidence of a story in the public interest was available to the programme makers at the time each of these 'patients' visited Dr Proud.

Ofcom observed that when Rebecca and Paula made their visits to Dr Proud the programme maker was aware that, as noted in the Decision at head a) i) above, Dr Proud had been suspended from practising as a chiropractor for eighteen months by the GCC in February 2006. This was because he had treated several patients who had complained to the GCC that he had dealt with them in an unduly alarmist manner and provided them with inappropriate or unnecessary treatments and because "he placed personal gain above the welfare of his patients".

Ofcom noted that at this time (i.e. prior to Rebecca and Paula's visits) the programme maker had the testimony of Ms Evans (a former patient of Dr Proud's) who had indicated in an October 2006 edition of *Watchdog* that Dr Proud had taken a lot of money from her for unnecessary treatment. Ofcom also noted that the BBC said it had spoken to five other former patients of Dr Proud's during the making of this programme who claimed that he had mistreated them as well.

In addition, Ofcom observed that at the time Dan made his visits to Dr Proud the GCC had decided to remove Dr Proud from its register of chiropractors, in light of its previous finding against him and his decision not to recognise its authority on matters concerning chiropractic in the UK.

In light of the above, Ofcom considered that the BBC had presented evidence that, at the stage when it sent reporters to surreptitiously record Dr Proud's actions in regard to patients visiting his practice (i.e. prior to filming), it had information which clearly indicated that Dr Proud had a history of providing some patients with unnecessary treatments and using an unduly alarmist manner. Ofcom recognised that this evidence was strengthened after January 2007 when the GCC published its decision to remove Dr Proud from its register of chiropractors. However, it considered that even at the time of Rebecca and Paula's visits, i.e. before the GCC's decision to remove Dr Proud from its register, the BBC had sufficient information to conclude that the story about Dr Proud was in the public interest. Ofcom also considered that the BBC had reasonable grounds to suspect that surreptitious filming of Dr Proud would provide further material in the public interest and was necessary to the authenticity and credibility of the story as this material could only be elicited through surreptitious filming.

Taking these factors together Ofcom found that with regard to the making of the programme the infringement of Dr Proud's privacy due to surreptitious filming was warranted.

- d) Ofcom considered Dr Proud's complaint of unwarranted infringement of privacy in the broadcast of the programme in that reporters gave out details of where he lived, his nationality and his marital status during the programme; along with showing undercover footage of him treating the BBC's 'patients' (recorded by the concealed cameras). For ease of understanding Ofcom has divided this head of complaint into three sub-sections.

Ofcom observed that Dr Proud also complained that the disclosure of this material identified to him to friends, relatives and patients as a conman. However, it noted that the complaint that Dr Proud had been unfairly portrayed as a conman was considered in the Decision at head a) above. It therefore considered this head of complaint in relation to the issue of whether any material of a private nature was disclosed in the programme and thereby unwarrantably infringed Dr Proud's privacy.

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

- i) *Personal details*

Ofcom first considered whether Dr Proud had a legitimate expectation of privacy in relation to his complaint that his nationality and marital status were disclosed in the programme.

It noted that at the start of the first section of the programme which dealt with subluxation one of the presenters (Dan) indicated that it was doing a feature on two "*back specialists*". Ofcom also noted that in the same section the programme showed another presenter (Rebecca) making the following comments about Dr Proud:

"I'm representing Australian charmer Peter Proud"

and;

"[He's] married and he lives and works in Stourbridge".

Ofcom noted that Dr Proud claimed that the inclusion of these details identified him to friends, relations and patients as a conman.

Ofcom observed that in its submission the BBC had supplied a copy of an article which had appeared in the *Stourbridge News* on 12 October 2006. This article included a photograph of Dr Proud standing next to a woman with her arms linked through his, and accompanied a group of patients who supported his work, all of whom were shown in front of building. Ofcom also observed that this article, which reported on the closure of Dr Proud's clinic in Norton Road, Stourbridge after his eighteen-month suspension by the GCC, included both the complainant's first name and surname and indicated that he was an "Australian therapist".

Ofcom therefore considered that Dr Proud's nationality and the location of his practice was already in the public domain at the time the programme was

broadcast, following an interview which Dr Proud agreed to give to the *Stourbridge News*, and that, from the photograph included in this article, it would be reasonable for members of the public to have assumed that Dr Proud was married or had a close female partner.

In light of the fact that the personal details disclosed about Dr Proud in the programme (about which he complained) were already in the public domain, Ofcom did not consider that he had a legitimate expectation of privacy in regard to the inclusion in the broadcast of his nationality or material status.

ii) *Location of home*

Ofcom then considered whether Dr Proud had a legitimate expectation of privacy in relation to his complaint that the location of his home was disclosed in the programme.

Ofcom recognised that there is a general expectation that a broadcaster will not disclose the location of a person's home or family unless it is warranted. It considered that, in the circumstances of this case, where the location of Dr Proud's home was not relevant to the story being presented and there was no evidence to suggest that his home was in any way accessible by the public or that the location of his home was already in the public domain he could have had a legitimate expectation of privacy in relation to the disclosure of this information.

However, Ofcom observed that the programme indicated that Dr Proud lived in Stourbridge and that it did not give any additional information about the location of Dr Proud's home. In light of this Ofcom concluded that while the programme did indicate the town in which Dr Proud lived the location of Dr Proud's home was not disclosed in the programme as broadcast.

It therefore considered that he did not have a legitimate expectation of privacy with regard to the disclosure of the location of his home in that this information was not disclosed in the programme as broadcast.

iii) *Inclusion of surreptitiously record footage*

In considering this part of this head of complaint, which concerned the inclusion of surreptitiously filmed footage of Dr Proud in the programme as broadcast, Ofcom took particular account of Practice 8.14 of the Code, which states that material gained by surreptitious filming and recording should only be broadcast when it is warranted.

Ofcom first considered whether Dr Proud had a legitimate expectation of privacy in these circumstances.

Ofcom recognised that Dr Proud's expectation of privacy was lowered by the fact that material in question was footage of his practice, which is accessed by members of the public. However, it also recognised that Dr Proud's expectation of privacy was heightened by a number of factors including the fact that the footage broadcast was of him giving individual consultations to people whom he believed to be patients (and that therefore he could reasonably have expected that matters discussed between them would be treated as being of a private rather than a public nature) and that he had invited the 'patients' included in the footage to pre-arranged meetings, rather than having them walk in off the street. Ofcom also recognised that Dr Proud's expectation of privacy in these circumstances was

heightened because the footage of the actions which took place during these meetings was filmed surreptitiously.

Therefore, on balance, Ofcom considered that Dr Proud had a legitimate expectation of privacy with regard to broadcast of the footage filmed in these circumstances.

Given that surreptitiously filmed footage of Dr Proud's consultations with the 'patients' was included in the programme, Ofcom considered that his privacy had been infringed in the broadcast.

Ofcom turned to consider whether the infringement of Dr Proud's privacy in the broadcast of the programme by virtue of surreptitious filming was warranted. The Code indicates that the word "warranted" in the context of justifying an infringement of privacy has a particular meaning. It means that a broadcaster must be able to demonstrate why the infringement was justified and, if the justification put forward is that it was in the public interest, why in the particular circumstances of the case, the public interest outweighed the complainant's right to privacy.

To determine whether the broadcast of the footage was warranted, Ofcom weighed up the rights of the broadcaster to freely express information that is in the public interest, and Dr Proud's own right to privacy.

As noted in the Decision at head c) above, it was Ofcom's view that it was warranted for the BBC to have infringed Dr Proud's privacy by filming him surreptitiously because the broadcaster had presented convincing evidence that before it filmed it had prima facie evidence of a story in the public interest and reasonable grounds to suspect that further material evidence could be obtained and that this material would be necessary to the credibility and authenticity of the programme.

However, Ofcom also observed that in the Decision at head a) ii) above it had found that Dr Proud had been treated unfairly in that the programme did not establish that Dr Proud had recommended treatment for Rebecca and Dan which they did not need and that comments like *"So that's Peter telling two out of three people they need treatment when actually they don't"* resulted in unfairness to the complainant. In light of this, Ofcom considered that the inclusion of the surreptitiously recorded visits of Rebecca and Dan to Dr Proud did not provide information that was in the public interest and consequently that it was not warranted.

Therefore, Ofcom found that the broadcast of the surreptitiously recorded footage unwarrantably infringed the complainant's privacy.

In light of the evidence above in relation to the first two sections this head of complaint, Ofcom concluded that that Dr Proud did not have a legitimate expectation of privacy in relation to his complaints that the programme included personal details about him and disclosed the location of his home. Therefore, Ofcom found that Dr Proud's privacy had not been infringed in the programme as broadcast and it was not necessary for Ofcom to further consider whether any infringement of privacy was warranted in respect of these aspects of his complaint.

However, in relation to the section of this head of complaint which relates to the broadcast of surreptitiously recorded footage Ofcom found that Dr Proud's privacy was unwarrantably infringed in the programme as broadcast.

It therefore upheld part of this head of complaint.

Accordingly, Ofcom has not upheld heads a) i) and iii) and heads b i) to iii), but has upheld head a) ii) of Dr Proud's complaint of unfair treatment. In addition, it has not upheld Dr Proud's complaint of unwarranted infringement of privacy in the making the programme at head c). However, while it has not upheld Dr Proud's complaint of unwarranted infringement of privacy in the broadcast of the programme at heads d) i) and ii), it has upheld the complaint at head d) iii).

Other Programmes Not in Breach/Resolved

Up to 3 February

| Programme | Transmission Date | Channel | Category | Number of Complaints |
|------------------------------------|-------------------|---------------------|--------------------------------|----------------------|
| "Booby Song" | 09/01/2009 | Real Radio Scotland | Generally Accepted Standards | 6 |
| 90210 | 26/01/2009 | E4 | Generally Accepted Standards | 2 |
| A Room With a View | 25/01/2009 | Film4 | Sex/Nudity | 4 |
| Andy Nash / Jon Wyer | 06/01/2009 | Beacon Radio | Religious Offence | 1 |
| BBC Breakfast | 03/12/2008 | BBC1 | Crime (incite/encourage) | 1 |
| BBC News | 10/01/2009 | BBC1 | Offensive Language | 1 |
| BBC News | 20/01/2009 | BBC1 | Generally Accepted Standards | 1 |
| BBC News | n/a | BBC | Inaccuracy/Misleading | 1 |
| BBC Sports Personality of the Year | 14/12/2008 | BBC1 | Flashing images | 1 |
| Bear Grylls: Born Survivor | 25/01/2009 | Discovery | Animal Welfare | 1 |
| Big Brother's Little Brother | 01/09/2008 | E4 | Generally Accepted Standards | 17 |
| Born to Kill | 08/12/2008 | Sky Three | Generally Accepted Standards | 1 |
| Brainiac: Science Abuse | 17/01/2009 | Sky Three | Sex/Nudity | 1 |
| Brainiac: Science Abuse | 23/01/2009 | Sky Three | Sex/Nudity | 1 |
| Brainiac's Test Tube Baby | 07/12/2008 | Sky Three | Dangerous Behaviour | 1 |
| Channel 4 News | 06/11/2008 | Channel 4 | Generally Accepted Standards | 1 |
| Channel 4 News | 27/11/2008 | Channel 4 | Violence | 1 |
| Channel 4 News | 11/12/2008 | Channel 4 | Due Impartiality/Bias | 1 |
| Channel idents | n/a | Eden | Unconscious influence/hypnosis | 1 |
| Chickens, Hugh and Tesco Too | 26/01/2009 | Channel 4 | Offensive Language | 1 |
| Children In Need | 14/11/2008 | BBC1 (Scot) | Religious Offence | 5 |
| Chris Rock: Kill The Messenger | 28/11/2008 | Channel 4 | Generally Accepted Standards | 6 |
| Christmas My Arse | 22/12/2008 | 4 Music | Generally Accepted Standards | 1 |
| Combat Chefs | 26/11/2008 | Five | Offensive Language | 1 |
| Coronation Street | 08/12/2008 | ITV1 | Crime (incite/encourage) | 1 |
| Coronation Street | 22/01/2009 | ITV1 | Generally Accepted Standards | 1 |
| Coronation Street | 26/01/2009 | ITV1 | Animal Welfare | 1 |
| Country House Rescue | 16/12/2008 | Channel 4 | Offensive Language | 7 |
| Country House Rescue | 16/12/2008 | Channel 4 | Generally Accepted Standards | 1 |
| Cowards | 20/01/2009 | BBC4 | Offensive Language | 1 |
| Cowboy Builders | 22/01/2009 | Five | Dangerous Behaviour | 1 |
| CSI: Miami | 25/11/2008 | Five | Crime (incite/encourage) | 1 |
| Dancing on Ice | 18/01/2009 | ITV1 | Use of Premium Rate Numbers | 1 |
| Dancing on Ice | 25/01/2009 | ITV1 | Use of Premium Rate Numbers | 4 |
| Deals on Wheels | 08/12/2008 | Discovery Turbo | Offensive Language | 1 |
| Demons | 03/01/2009 | ITV1 | Offensive Language | 22 |
| Demons | 24/01/2009 | ITV1 | Offensive Language | 1 |
| Demons (Trailer) | 22/11/2008 | ITV1 | Violence | 1 |
| Dermot O'Leary | 08/11/2008 | BBC Radio 2 | Generally Accepted Standards | 1 |
| Dexter (Trailer) | 11/01/2009 | ITV1 | Violence | 1 |
| Dickinson's Real Deal | 20/01/2009 | ITV1 | Competitions | 1 |
| Dirty Sanchez | 08/01/2009 | TMF | Dangerous Behaviour | 1 |
| Doctors | 18/11/2008 | BBC1 | Sex/Nudity | 1 |

| | | | | |
|-------------------------------------|------------|-------------------|---|---|
| Eamon Holmes | 06/12/2008 | BBC Radio 5 Live | Sex/Nudity | 1 |
| Eastenders | 08/01/2009 | BBC1 | Other | 1 |
| Emmerdale | 04/12/2008 | ITV1 | Violence | 4 |
| FA Cup Football | 14/01/2009 | ITV1 | Unconscious influence/hypnosis/ subliminal | 1 |
| Five News | 02/12/2008 | Five | Sex/Nudity | 1 |
| Five News | 22/01/2009 | Five | Inaccuracy/Misleading | 1 |
| Foxy Bingo sponsorship of | 03/12/2008 | ITV2 | Generally Accepted Standards | 1 |
| Gay TV | 18/01/2009 | Gay TV | Use of Premium Rate Numbers | 1 |
| Geoff Lloyd's Hometime Show | 07/01/2009 | Absolute Radio | Generally Accepted Standards | 1 |
| Going for Gold | n/a | Five | Competitions | 2 |
| Gok Wan: Too Fat Too Young | 27/01/2009 | Channel 4 | Offensive Language | 1 |
| Golden Balls | 04/12/2008 | ITV1 | Generally Accepted Standards | 1 |
| Golden Balls | 27/01/2009 | ITV1 | Generally Accepted Standards | 1 |
| Goldenballs | 05/05/2008 | ITV1 | Other | 1 |
| Gordon Ramsay (Trailer) | 11/12/2008 | Channel 4 | Animal Welfare | 1 |
| Grand Designs | 28/01/2009 | Channel 4 | Inaccuracy/Misleading | 1 |
| Grey's Anatomy | 29/01/2009 | Living | Sex/Nudity | 1 |
| Harry Hill's TV Burp | 29/11/2008 | ITV1 | Dangerous Behaviour | 4 |
| Harry Hill's TV Burp | 13/12/2008 | ITV1 | Sex/Nudity | 4 |
| Harry Hill's TV Burp | 22/12/2008 | ITV1 | Generally Accepted Standards | 1 |
| Hollyoaks | 11/12/2008 | Channel 4 | Generally Accepted Standards | 1 |
| Hollyoaks | 12/12/2008 | Channel 4 | Violence | 1 |
| Hollyoaks | 09/01/2009 | Channel 4 | Offensive Language | 1 |
| Home and Away | 28/01/2009 | Five | Crime (incite/encourage) | 1 |
| Hot Fuzz | 12/01/2009 | Sky Movies Comedy | Offensive Language | 1 |
| Ian Collins | 20/01/2009 | Talksport | Generally Accepted Standards | 1 |
| In Our Time | 27/11/2008 | BBC Radio 1 | Generally Accepted Standards | 1 |
| Inside Sports | 08/12/2008 | BBC1 | Generally Accepted Standards | 1 |
| Is TV Too Rude? Tonight | 23/01/2009 | ITV1 | Due Impartiality/Bias | 5 |
| Jamie Saves Our Bacon | 29/01/2009 | Channel 4 | Animal Welfare | 2 |
| Jim Davis | 15/11/2008 | LBC 97.3FM | Generally Accepted Standards | 1 |
| Jimmy Carr Live: Comedian | 05/12/2008 | Channel 4 | Generally Accepted Standards | 2 |
| Journey to the Centre of the Earth | 29/11/2008 | Sky One | Violence | 1 |
| Kill It, Cook It, Eat It (Trailer) | 08/12/2008 | BBC Three | Generally Accepted Standards | 1 |
| Law and Order: Special Victims Unit | 31/12/2008 | Hallmark | Generally Accepted Standards | 1 |
| Little Dorrit | 10/11/2008 | BBC1 | Violence | 1 |
| Live at the Apollo | 12/12/2008 | BBC1 | Generally Accepted Standards | 1 |
| Live at the Apollo | 16/01/2009 | BBC1 | Generally Accepted Standards | 1 |
| Live FA Cup Football | 04/01/2009 | ITV1 | Unconscious influence/hypnosis | 1 |
| Live Football | 06/12/2008 | Sky Sports 1 | Offensive Language | 1 |
| Living With Jade Goody | 07/12/2008 | Living | Offensive Language | 1 |
| Loose Women | 12/12/2008 | ITV1 | Generally Accepted Standards | 1 |
| Loose Women | 15/12/2008 | ITV1 | Generally Accepted Standards | 1 |
| Loose Women | 23/01/2009 | ITV1 | Generally Accepted Standards | 2 |

| | | | | |
|---------------------------------------|------------|------------------|------------------------------|---|
| Man Hunters: Our Turkish Toyboys | 09/12/2008 | Channel 4 | Generally Accepted Standards | 6 |
| Man Hunters: Our Turkish Toyboys | 09/12/2008 | Channel 4 | Inaccuracy/Misleading | 1 |
| Manchester United v Chelsea | 11/01/2009 | Sky Sports 1 | Offensive Language | 5 |
| Midsomer Murders | 12/01/2009 | ITV1 | Offensive Language | 1 |
| Midsomer Murders | 23/01/2009 | ITV1 | Offensive Language | 1 |
| Million Dollar Mansions | 23/11/2008 | Living 2 | Offensive Language | 1 |
| Most Haunted | n/a | Living TV | Exorcism/Occult/Paranormal | 1 |
| Most Haunted Live (trailer) | 13/01/2009 | Living | Exorcism/Occult/Paranormal | 3 |
| My Parents Are Aliens | 22/01/2009 | CITV | Generally Accepted Standards | 1 |
| Never Mind the Buzzcocks | 04/12/2008 | BBC2 | Animal Welfare | 2 |
| New You've Been Framed | 13/12/2008 | ITV1 | Generally Accepted Standards | 1 |
| News | 21/11/2008 | BBC Radio 5 Live | Generally Accepted Standards | 1 |
| News | 09/12/2008 | Sky News | Generally Accepted Standards | 1 |
| News | 13/01/2009 | BBC News 24 | Offensive Language | 1 |
| News | 20/01/2009 | Sky Sports News | Inaccuracy/Misleading | 1 |
| Newsnight Review | 05/12/2008 | BBC2 | Generally Accepted Standards | 1 |
| Nick Ferrari | 05/12/2008 | LBC 97.3FM | Generally Accepted Standards | 1 |
| Outnumbered | 06/12/2008 | BBC1 | Generally Accepted Standards | 4 |
| Oz & James Drink to Britain | 15/01/2009 | BBC2 | Generally Accepted Standards | 1 |
| Oz & James Drink to Britain | 22/01/2009 | BBC2 | Offensive Language | 1 |
| Panorama | 08/12/2008 | BBC1 | Generally Accepted Standards | 1 |
| Panorama | 26/01/2009 | BBC1 | Generally Accepted Standards | 1 |
| Pulling | 12/01/2009 | BBC Three | Animal Welfare | 1 |
| QI | 05/12/2008 | BBC2 | Religious Offence | 1 |
| Question Time | 11/12/2008 | BBC1 | Generally Accepted Standards | 1 |
| Radio 1 Chart Show | 25/01/2009 | BBC Radio 1 | Generally Accepted Standards | 1 |
| Ramsay's Kitchen Nightmares (Trailer) | 11/12/2008 | More4 | Animal Welfare | 1 |
| Relentless | 07/12/2008 | Channel 4 | Sex/Nudity | 1 |
| Road Wars | 24/01/2009 | Sky One | Violence | 1 |
| Ross Lee's Ghoulies | 13/12/2008 | Nickelodeon | Generally Accepted Standards | 2 |
| Rude Tube | 10/12/2008 | E4 | Animal Welfare | 3 |
| Rude Tube | 02/01/2009 | Channel 4 | Animal Welfare | 1 |
| Rude Tube | 02/01/2009 | Channel 4 | Generally Accepted Standards | 1 |
| Sally Jessy Raphael | 20/01/2009 | ITV2 | Generally Accepted Standards | 1 |
| Saving Africa's Witch Children | 12/11/2008 | Channel 4 | U18's in Programmes | 1 |
| Shannon - the Mother of All Lies | 04/12/2008 | BBC1 | Scheduling | 3 |
| Shannon - the Mother of All Lies | 04/12/2008 | BBC1 | Generally Accepted Standards | 1 |
| Sky News | 08/10/2008 | Sky News | Inaccuracy/Misleading | 1 |
| Snooker | 13/12/2008 | BBC1 | Dangerous Behaviour | 1 |
| Sonya Mac Show | 07/01/2009 | Cool FM | Crime (incite/encourage) | 1 |
| Star Stories | 04/12/2008 | Channel 4 | Generally Accepted Standards | 7 |
| Steve Allen | 25/11/2008 | LBC 97.3 FM | Religious Offence | 1 |
| Steve Penk at Breakfast | 07/11/2008 | The Revolution | Generally Accepted Standards | 1 |

| | | | | |
|-------------------------------------|------------|--------------|---|---|
| Supernatural | 25/01/2009 | ITV2 | Advertising | 1 |
| Supersize vs Superskinny | 20/01/2009 | Channel 4 | Sex/Nudity | 1 |
| Supersize vs Superskinny | 27/01/2009 | Channel 4 | Sex/Nudity | 2 |
| Surviving | 09/11/2008 | Sky Three | Generally Accepted Standards | 1 |
| Terry Wogan | 08/12/2008 | BBC Radio 2 | Animal Welfare | 1 |
| The 12 Crimes of Christmas: Tonight | 05/12/2008 | ITV1 | Due Impartiality/Bias | 1 |
| The Alan Titchmarsh Show | 23/01/2009 | ITV1 | Generally Accepted Standards | 2 |
| The Ascent of Money | 08/12/2008 | Channel 4 | Inaccuracy/Misleading | 1 |
| The Best of Top Gear | 27/01/2009 | Dave | Offensive Language | 1 |
| The Best of Top Gear | 02/02/2009 | BBC2 | Generally Accepted Standards | 1 |
| The Big Fat Quiz of the Year | 28/12/2008 | Channel 4 | Sex/Nudity | 9 |
| The Big Fat Quiz of the Year | 28/12/2008 | Channel 4 | Generally Accepted Standards | 2 |
| The Cheryl Cole Factor | 10/12/2008 | Five | Generally Accepted Standards | 1 |
| The Jeremy Kyle Show | 30/11/2007 | ITV1 | Generally Accepted Standards | 1 |
| The Mummy | 10/01/2009 | ITV2 | U18 - Coverage of Sexual / other offences | 1 |
| The One Show | 22/01/2009 | BBC1 | Generally Accepted Standards | 1 |
| The Paul O'Grady Show | 15/12/2008 | Channel 4 | Sex/Nudity | 1 |
| The Politics Show | 25/01/2009 | BBC1 | Commercial References | 1 |
| The Simpsons | 17/12/2008 | Channel 4 | Violence | 1 |
| The Sunday Supplement | 07/12/2008 | Sky Sports 1 | Generally Accepted Standards | 4 |
| The Undercover Princes | 20/01/2009 | BBC Three | Inaccuracy/Misleading | 1 |
| The Weakest Link | 19/01/2009 | BBC1 | Generally Accepted Standards | 1 |
| The Wright Stuff | 09/12/2008 | Five | Generally Accepted Standards | 6 |
| The X Factor - The Result | 13/12/2008 | ITV1 | Sex/Nudity | 1 |
| This Week | 11/12/2008 | BBC1 | Generally Accepted Standards | 1 |
| Three Men and a Baby | 22/01/2009 | Sky Drama | Offensive Language | 1 |
| Today | 15/01/2009 | BBC Radio 4 | Generally Accepted Standards | 1 |
| Top Gear | 07/12/2008 | BBC2 | Offensive Language | 1 |
| Top Gear | 14/12/2008 | BBC2 | Generally Accepted Standards | 1 |
| Trisha Goddard | 15/12/2008 | Five | Sex/Nudity | 1 |
| Trisha Goddard | 21/01/2009 | Five | Generally Accepted Standards | 1 |
| TV's Greatest Christmas Moments | 06/12/2008 | Gold | Offensive Language | 1 |
| Unsigned Act | 25/01/2009 | Channel 4 | Use of Premium Rate Numbers | 1 |
| Verminators (Trailer) | 02/01/2009 | Virgin 1 | Animal Welfare | 3 |
| Verminators (Trailer) | 21/01/2009 | Virgin 1 | Generally Accepted Standards | 1 |
| Westwood Hot 100 | 23/01/2009 | Kiss | Sex/Nudity | 1 |
| Woman's Hour | 26/01/2009 | BBC Radio 4 | Religious Offence | 1 |
| Zoo Vet at Large | 06/12/2008 | Sky Three | Inaccuracy/Misleading | 1 |