

Ofcom Broadcast Bulletin

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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

Comment & The Real Deal

Press TV, January 2009, Various dates and times

Introduction

Press TV is an Iranian international news network, which broadcasts in English. Press TV have explained to Ofcom that it receives funding from advertising revenue; Iranian tax-payers; sales from services provided in respect of the technical and engineering industry; and sales from its archives.

The Respect Party MP, George Galloway, presents two sixty minute long programmes on the channel:

- *Comment*, a weekly phone-in programme, starting at 20:30, in which viewers can contribute by telephone, email and SMS text on issues of interest in the news; and
- *The Real Deal*, a weekly current affairs programme, starting at 19:00 that includes interviews in the studio and by telephone.

During January 2009, whilst the Israeli armed forces were present in the Gaza strip, Ofcom received four complaints from viewers about three programmes:

- *Comment* broadcast on 8 January 2009 (“the 8 January *Comment*”);
- *Comment* broadcast on 15 January 2009 (“the 15 January *Comment*”); and
- *The Real Deal* broadcast on 18 January 2009 (“the 18 January *Real Deal*”).

Complainants considered that these programmes were biased against Israel, when dealing with the issue of the Israeli military presence in Gaza. During its investigation, Ofcom also viewed and had concerns about a fourth programme, an edition of *Comment* broadcast on 23 January 2009 (“the 23 January *Comment*”).

These three editions of *Comment* were exclusively devoted to the subject of Gaza. During these programmes, George Galloway interacted with the audience in two ways: he answered telephone calls live; and he read out and commented on emails and SMS texts received from viewers, which were displayed on a Comment Wall in the studio. The emails and texts from viewers also appeared on rolling graphics that were shown on screen during the programmes.

The 18 January *Real Deal* was a current affairs programme, which, in addition to the issue of Gaza, dealt with a number of subjects, but principally: the gas dispute between Russia and the Ukraine; and the proposed new runway at Heathrow airport. The editorial approach taken by the programme was indicated by George Galloway, in his introduction to the programme, when he said:

“Bringing you the news and views you just won’t find in the corporate media”.

In the section of the programme that discussed Gaza George Galloway conducted a live studio interview with the Palestinian author, Ahmed Masoud. In addition, there was a telephone contribution from the American investigative reporter, Jeff Steinberg,

who gave his perspective on alleged US involvement in Israeli Government policy towards Gaza.

Complainants considered that these four programmes (“the Programmes”), variously: failed to put both sides of the argument in relation to the situation in Gaza; constituted Iranian propaganda; and that George Galloway in particular did not conduct a balanced discussion on the issue of Gaza.

Ofcom wrote to Press TV, concerning the Programmes, asking for its comments under Rules 5.11 and 5.12:

- Rule 5.11 – Due impartiality must be preserved on matters of major political and industrial controversy and major matters relating to current public policy by the person making the service in each programme or in clearly linked and timely programmes.
- Rule 5.12 – In dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes. Views and facts must not be misrepresented.

Response

Press TV maintained that all the Programmes complied with the rules on impartiality in Section 5 of the Code, and it highlighted how it had included sufficient alternative views within the Programmes. Examples are set out below.

Comment

Comment is a “phone-in” programme, and according to Press TV “it allows absolutely anyone to openly express their views and opinion” by telephone, email or SMS text. George Galloway encouraged viewers of all opinions to contribute to these programmes. For example, during the 15 January *Comment* he said:

“We want to see your name up here in lights, whether you agree with us or not.”

The broadcaster added that *Comment* should be regarded as a series of clearly linked and timely programmes “as it covers so many subjects, but many issues are debated repeatedly, which gives viewers a number of chances to respond”.

In particular, Press TV maintained that *Comment* is a “personal view” programme, where the identity of the presenter was of paramount importance. In the broadcaster’s opinion, the audience is made aware that *Comment* is “a programme of opinion”. In addition, *Comment* is an hour-long programme “which gives plenty of time for anyone to contribute”. Further, viewers are able to leave telephone voice messages at any time, in between weekly editions of *Comment*, so as to express their opinions to the programme.

Concerning the various statements made by George Galloway against Israeli policy and its activities in Gaza, Press TV made the following points:

- George Galloway was expressing his opinion and many people agreed with him. For example, if viewers disagreed with George Galloway’s stated view that Israel

had committed “*war crimes*”, Press TV said that “we allow people to contribute to the show who believe that Israel has not committed a war crime. However, the number of people who believe the latter is only a small percentage, and therefore the contributions to the show reflect that”;

- similarly, George Galloway expressed his view that Israel was guilty of: “*murder[ing] United Nations employees*”, based on news reports that Israeli airstrikes had caused the deaths of two UN agency employees. Press TV said this had resulted in the suspension of food delivery operations by that agency in Gaza. The broadcaster added that the use of the word “*murder*” in this case was in the context that Israel had been aware of the UN agency operating in Gaza “yet [Israel’s] forces attack the same specified location, not on one occasion, but on several occasions, and ends up killing UN personnel, [which] is an act of murder”. Press TV added that “it would be unreasonable to consider the use of the term “*murder*” as being partial, particularly when the daily context was such that Israel were ignoring calls for reducing its aggression on so many occasions”;
- the broadcaster highlighted an example of an email contribution from one viewer who asked “*Why should Israel not protect itself?*” In response, George Galloway said that Israel’s attack on Gaza was “*a funny way*” of protecting itself by “*slaughtering women and children by the hundreds in just two weeks*”. According to Press TV, this showed that “viewers hear both sides of the account whereby one person has argued the need for Israel to defend itself and the other has questioned the manner in which Israel protects itself when so many civilians get killed”; and
- another email from a viewer said “*Stop disgracing yourself. Israel has millions of enemies. Stop killing our soul, George. Accept the reality. We are being attacked everyday*”. George Galloway replied by encouraging the viewer to ring in so that he could hear her view in more detail.

The Real Deal

Concerning the 18 January *Real Deal*, Press TV made a number of points:

- George Galloway referred to a parliamentary debate in which he participated, and where he was in the clear minority on the issue of Gaza. According to Press TV, this clarified to viewers that the issue of Gaza was “not a one-sided subject, but is one that has different angles and can attract various points of view”;
- in his interview with the Palestinian author, Ahmed Masoud, whose life had been affected by Israel’s actions, according to Press TV it “would have been insensitive for George Galloway to tackle the Israeli line against his guest”;
- the programme included a telephone interview with the investigative reporter, Jeff Steinberg. The latter was invited “to explain to viewers the Israeli perspective”. This interview highlighted Israel’s perspective on Iran, Hezbollah and Hamas and Israel’s “objective to reduce the threat from such organisations, and in particular, to exterminate Hamas”. In this way, the broadcaster said “the viewers [were] therefore given Israel’s perception of the threat and can therefore make up their own minds about how Israel should deal with such a threat”; and
- when George Galloway referred to “*ethnic cleansing*”, Press TV said that he talked about the: “*ethnic cleansing of the Palestinian people from Southern*

Palestine into Gaza". In this way, the viewers understand the use of the term "ethnic cleansing" as the transfer of a people from one area into the next.

Decision

Under the Communications Act 2003, and therefore the Code, due impartiality must be preserved by broadcasters in all major matters of political or industrial policy. In dealing with these major matters broadcasters must include an appropriately wide range of significant views.

When interpreting due impartiality, Ofcom must take into account the broadcaster's and viewers' right to freedom of expression, which includes the right to hold opinions and to receive and impart information and ideas without interference by public authority¹. However, the broadcaster's right to freedom of expression is not absolute. In carrying out its duties, Ofcom must balance the right to freedom of expression on one hand, with the need to preserve "due impartiality" on matters relating to political or industrial controversy or matters relating to current public policy. Therefore, whilst any Ofcom licensee should have the freedom to discuss any controversial subject or include particular points of view in its programming, in doing so broadcasters must always comply with the Code.

Ofcom also recognises that Section Five of the Code, which sets out how due impartiality must be preserved, acts to limit, to some extent, freedom of expression. This is because its application necessarily requires broadcasters to ensure that neither side of a debate relating to matters of political or industrial controversy and matters relating to current public policy is unduly favoured.

The three editions of *Comment* considered in this case dealt almost exclusively with the subject of the Israeli military presence in Gaza. Further, a substantial portion of the 18 January *Real Deal* also dealt with the issue of Israel's presence in Gaza. This is not surprising given that the latter was a major international news story at the time of broadcast. Given the large amount of media and political attention and debate about the Israeli armed forces' activities in the Gaza strip during early 2009, in Ofcom's opinion, the Programmes dealt with a matter of major political controversy and Rules 5.11 and 5.12 were applicable.

In assessing whether due impartiality has been applied, the term "due" is important. Under the Code, it means adequate or appropriate to the subject and nature of the programme. Therefore, "due impartiality" does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures due impartiality is maintained.

In this case, George Galloway (a politician, well-known for his views opposing many policies and positions of the state of Israel), was presenting both a 'phone-in' and 'authored' programme (*Comment*), and a general interview-led current affairs programme (*The Real Deal*). All these broadcasts were clearly branded around the personality and views of George Galloway. Rule 5.9 of the Code makes clear the principle that presenters may express their own views on controversial matters provided alternative viewpoints are adequately represented and due impartiality is maintained.

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

Taking the Programmes as a whole, Ofcom noted that there were some but extremely limited (see below) contributions that could be labelled as being broadly supportive of the actions of the Israeli state in Gaza during January 2009. It should be noted that where a matter of *major* political controversy is being discussed – as here – Rule 5.12 applies and the broadcaster must ensure that “an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes”. This is especially important where a presenter is known to have strongly held views on the subject being discussed in the programme and clearly makes his position clear throughout the programme.

Ofcom separately considered: firstly, the three editions of *Comment*; and second, the 18 January *Real Deal*.

Three editions of *Comment*

Ofcom recognises that the approach to maintaining due impartiality may vary according to the subject, the type of programme and channel, and the likely expectation of the audience. However, broadcasters must ensure that when covering a matter of major political controversy, they include both a wide range of significant views and ensure that these are given due weight. How broadcasters achieve due impartiality is an editorial decision for them.

Since in this case Press TV could not point to any “clearly linked and timely programmes” on its service dealing with the issue of Gaza, the main question for Ofcom was whether “an appropriately wide range of significant views” were included and “given due weight” in the programmes complained of.

This programme consisted of George Galloway alone in a studio talking directly to camera. This was punctuated with telephone calls and emails or SMS text messages leaving George Galloway to respond. In the main, these were one hour programmes with George Galloway talking entirely about his views.

The presenter would take short telephone calls from viewers where generally, the caller was permitted to make a comment which would then be followed by the presenter giving an address to camera on the issue raised. There were also a number of texts and emails, read out by the presenter – which were short, being around a maximum of one or two sentences in length.

Wide range of significant views

The overwhelming majority of the content of the programmes were from a pro-Palestinian point of view and were highly critical of Israeli policy. The presenter spoke from an entirely pro-Palestinian point of view. There was not one telephone call from a pro-Israeli position in any of the programmes and only the most limited and short text or email messages from viewers from a pro-Israeli position.

In the programme, George Galloway variously labelled Israel as committing: “murder”, “apartheid-style occupation”, “murder [of] UN employees”, and a “war crime”.

As previously stated the majority of the programme contained George Galloway speaking directly to camera. He expressed his strong opposition to the actions of the Israeli State in Gaza, and in particular the tactics used by the Israeli military. He

defended the activities of Hamas (which was elected to govern in Gaza), including its tactic of launching rockets against Israeli targets.

Further examples of comments by the presenter in the programmes included:

8 January Comment

“Collectively punishing people is a Nazi tactic.”

The Palestinians were under the *“iron heel of a brutal apartheid-style occupation.”*

“Which other country could murder United Nations employees?”

15 January Comment

“It is a war crime. It is a scandal of the greatest proportions.”

23 January Comment

“We’re discovering the war crimes and the mass graves of Palestine.”

Ofcom recognises that some people may strongly object to such views. However, the Code does not prohibit broadcasters from including such strongly-held views. However, in order to ensure compliance with Rule 5.12, it is not enough for a broadcaster either just to include some limited viewpoints that could be portrayed as representing an alternative (minority) “significant view” on an issue, or to allude to the existence of such views. An “appropriately wide range of significant views” must be included.

Ofcom considered that Press TV had not directed Ofcom to how the broadcaster had ensured there had been an “appropriately wide range of significant [Ofcom’s emphasis] views” included in the editions of *Comment*, or in clearly-linked or timely programmes. As such, the viewpoint of the Israeli state was not adequately represented within any of the editions of *Comment*. In this way, viewers were not adequately furnished with opinions as to how the situation in Gaza during January 2009, and its lead up, was perceived from the viewpoint of Israeli position (official or otherwise).

Due weight

Ofcom also considered whether, within the editions of *Comment*, Press TV had ensured that any expression of a “wide range of significant views” were given “due weight”. In this regard, Ofcom noted that the contributions from what could be broadly labelled as being pro-Israeli, were extremely limited. The presenter, George Galloway, treated such contributions in a different way to the manner in which he treated contributions which could be labelled as being from a pro-Palestinian perspective. Alternative views in these programmes were not debated and/or discussed but dismissed and used as a further opportunity for the presenter to put forward his views. For example:

8 January Comment

Email read out: *“Iran is being very cheeky here George, you must admit this. It uses its local allies very smoothly. Why has the world kept silent?”*

George Galloway: *“That’s a barely literate message, Carl, but if I can attempt to interpret it, let me tell you this: Iran is standing up for the Arab Muslim people in Palestine. If the Arab Muslim leaders were doing as much as Iran is doing to come to the aid of the Palestinian people, they wouldn’t be in the bloody mess that they are in. So save your sneaky little messages. Put them in your pipe and smoke them.”*

And in the same programme:

Email (from a listener in Los Angeles) read out: *“George, why do Hamas use human shields? Israel is to blame? Don’t think so.”*

George Galloway: *“Well again, I don’t know if your name really is Mohsen out there in Los Angeles. I rather doubt that it is. But you know, a million and a half Palestinians are crammed in the tiny space of the Gaza strip – one of the most densely populated places on the earth. There is no need for human shields. There is nowhere for anyone to go. There is no space. They are crammed there, cheek by jowl. The fighters and the people are crammed together. Please don’t fall for this kind of Israeli propaganda, Mohsen – if your name is Mohsen, which I doubt.”*

15 January Comment

Email read out: *“Why is it that all the terrorist organisations in the world have Islamic affiliations?...Don’t you think the world would have been better if not for Islam?”*

George Galloway: *“That’s just about the most ignorant and foolish email I have ever seen in my life. I can’t believe a sentient being like you, with the ability to work a computer could write such rubbish. The real terrorists in the world today are: Israel; the Israeli armed forces; and the United States of America; and the other governments that, either, are supplying them with arms - like the British Government – that are allowing them to carry out this massacre in Gaza, or the Arab regimes that are collaborating with them.”*

23 January Comment

SMS text (from a listener in Africa) read out: *“Do you know that Goliath of old originates from Gaza. This means that it’s the Gazans who are terrorising Israel.”*

George Galloway: *“No it doesn’t and you oughtn’t to take too literal an attitude to the Old Testament, my dear. The ‘David’ in this picture is definitely the Palestinians, and the ‘Goliath’ in this picture is definitely Israel, as anyone with eyes to see – and I know there are some eyeless in Gaza now, and eyeless, it appears, in Africa too.”*

Ofcom considered that within the three editions of *Comment*, there were very few and limited contributions included in the programme that could be portrayed as being pro-Israeli, and in particular contrary to the views being expressed by George Galloway. This meant that within these programmes, a very small proportion of the airtime was given over to points of view that could be seen as critical of the Palestinian position or in favour of the Israeli Government.

Ofcom considered that in dealing with these contributions, the broadcasters failed to give “due weight” to alternative views. Further, the broadcaster failed to engage or debate with such points of view which were contrary to the programme’s own position. Rather, Ofcom considered that George Galloway used such opinions contrary to his own, only as vehicles to punctuate what could be classed as a form of on-going political polemic, delivered by the presenter directly to camera and unchallenged.

Broadcasters are free to include controversial presenters, with particular points of view on certain subjects. Further, when dealing with a matter of major political or industrial controversy or a major matter relating to current public policy, presenters are not required equally to agree or support all viewpoints on an issue. Ofcom recognises that this would be an unacceptable restriction on the broadcaster’s right to freedom of expression. However, the Code requires that when certain “matters of major political controversy” are discussed not only must an “appropriately wide range of significant views” be represented, these views must be given “due weight.” “Due weight” must be judged in light of all the relevant circumstances, which include not only the length and prominence with which the significant view is presented but the tone, manner and the seriousness with which it is treated. Broadcasters must therefore ensure that, as appropriate and necessary, expressions of alternative “significant views” should be presented.

In audience participation programmes, such as *Comment*, where viewers or listeners are encouraged to telephone, email, text or otherwise contribute to the programme, and interview programmes, including a range of contributors, it is not the case that broadcasters have to ensure an equal number of points of view are featured. It also has to be recognised that while broadcasters can encourage callers from different perspectives, it cannot ‘manufacture’ them. However, it is the responsibility of the broadcaster to ensure that due impartiality is maintained. Therefore, in the situation where: a matter of major political or industrial controversy or major matter relating to current public policy is being covered in a programme; a controversial presenter with strongly-held views is setting out his views on that subject within a programme; and that there are few, if any, views being expressed in opposition to the presenter’s view, for example in an audience participation programme such as this, then broadcasters must have systems in place to ensure that due impartiality is maintained. For example, in such cases, if a presenter or broadcaster is aware that they are receiving few audience interventions from an alternative point of view, they could consider: summarising, within the programme, what that alternative point of view is; having available interviewees to express alternative views; or challenging those audience interventions they are receiving, more critically. However, ultimately, how due impartiality is maintained is an editorial matter for the broadcaster.

18 January *Real Deal*

The Real Deal is a current affairs programme, in which George Galloway discusses issues of interest in the news. The style of the programme is principally that of the presenter addressing the camera, with occasional interviews in the studio and by telephone. In the 18 January *Real Deal*, George Galloway conducted: an interview in

the studio with an Ukrainian-born journalist, concerning the gas dispute between Russia and the Ukraine; and an interview by telephone with a Greenpeace representative, concerning a proposed new runway at Heathrow airport. In addition, about a third of the programme was devoted to the issue of the situation in Gaza. In this section of the programme, as well as giving his own views to camera about the situation in Gaza, George Galloway conducted: an interview in the studio with a Palestinian writer, Ahmed Masoud; and an interview by telephone with a journalist, Jeff Steinberg, who was giving his interpretation of the effects of US Government policy on the actions of the Israeli Government.

Ofcom noted that the programme included a number of statements that were critical of the Israeli Government's actions in Gaza. For example, at different times, George Galloway said the following:

"It has been the deliberate policy by the Israelis to try to manage the news and the pictures coming out of their killing zone".

"[Israeli] spokesmen and women, with their Australian, South African, and New York accents, try to convince the world that mass murder is in fact no more than a humane cleaning up operation. It is as if it has been scripted by Lewis Carroll".

"Despite the vast majority of the Israeli people apparently behind the war, most of the rest of the world has seen through the lies. The attack on the United Nations refugee complex, in Gaza on Thursday, was the final proof, if it were needed that this hasn't been any kind of pinpoint attack on so-called Hamas militants, but an indiscriminate blitz on Palestinians, young and old – men, women and children".

George Galloway also talked of the *"ethnic cleansing of the Palestinian people from Southern Palestine into Gaza."*

George Galloway ended this particular programme by saying:

"Once more this programme is dedicated to the brave men, women and children of Palestine. You will overcome, I believe that."

In addition, whilst being interviewed by George Galloway, the Palestinian writer Ahmed Masoud took a similar position to the presenter, for example:

"Israel has been targeting civilians mainly: killing people in mosques; in hospitals; in universities. Again, to me, the way I see it, this is part of the ethnic cleansing that Israel is preparing for. They want to ethnically cleanse Gaza completely."

The broadcaster also had the journalist Jeff Steinberg as a guest on the programme. Ofcom noted Press TV's contention that he was giving the "Israeli perspective" on Israeli Government policy. However, Ofcom considered that his role in the programme was that of a commentator. His viewpoint would therefore be seen as an observer rather than someone putting forward the Israeli position. In fact at times he was actually critical of the actions of the Israeli Government, whilst giving his personal interpretation of the motivations behind US foreign policy and the actions of the Israeli Government. For example, Ofcom noted that during the programme this particular contributor labelled Israel's actions in Gaza as an *"act of outright Nazi-type genocide"*.

Ofcom considered that both Ahmed Masoud and Jeff Steinberg were putting forward viewpoints critical of the Israeli Government's policy in Gaza. In addition, the

programme did not challenge any of the views that were critical of Israeli Government policy, put forward by these two contributors. Further, Ofcom considered that: there were no views included in the programme which could be considered being pro-Israeli; and, Press TV was unable to point Ofcom to any other clearly-linked or timely programmes which contained an “appropriately wide range of significant views” including views which were supportive of Israeli policy. Therefore, Ofcom considered that the viewpoint of the Israeli state was not adequately represented within the 18 January *Real Deal*. In this way, viewers were not adequately furnished with opinions as to how the situation in Gaza during January 2009, and its lead up, was perceived from the viewpoint of an official Israeli position.

Conclusion

It is a requirement in legislation that Ofcom must take particular account of the need to ensure due impartiality is preserved when dealing with major matters of political controversy.

In summary, Ofcom considered that within the Programmes overall, there was not an appropriately wide range of significant views included and that the views that were included that were contrary to the opinion of the presenter, were not given due weight. As a consequence, Ofcom considered the Programmes to have breached Rules 5.11 and 5.12 of the Code.

Ofcom recognises that limits to editorial freedom exist partly to ensure compliance with Section 5 of the Code, and in particular the requirement to ensure due impartiality when dealing with matters of major political or industrial controversy or major matters relating to current public policy. However, Ofcom also recognises that there may be a number of ways that broadcasters can ensure that an appropriately wide range of significant views are included in a programme and given due weight.

In carrying out its duties, Ofcom recognises that there is not, and should not be, any prohibition on broadcasters discussing controversial subjects². The Israeli-Palestinian conflict understandably raises extremely strong views and emotions from all sides. It is right that broadcasters are able to reflect such opinions within its programmes. There must be a place for such programming which gives air to highly opinionated and vocal reaction on issues of such importance. However, in order to comply with the Code, broadcasters must ensure that, when discussing matters of major political or industrial controversy or a major matter relating to current public policy, a real range of significant views are included in a programme. Further, in such cases, when presenting any significant alternative view, it must be given due weight and consideration.

Breach of Rules 5.11 and 5.12

² See Decision of Ofcom’s Content Sanctions Committee concerning Islam Channel Ltd., dated 21 July 2007 (the “Islam Channel Decision”) see http://www.ofcom.org.uk/tv/obb/ocsc_adjud/islamchannel.pdf

In Breach

Radio Asian Fever

Coverage of the European Elections, 10 May 2009, 18:00

Introduction

Radio Asian Fever (also known as *Fever 107.3 FM*) is an Asian community radio station based in Leeds which is owned and operated by Radio Asian Fever Ltd (“the Licensee”). The UK European parliamentary election took place on 4 June 2009 and the official election (or run up) period for this poll commenced on 28 April 2009. On 12 May 2009 Ofcom received a complaint that a political programme broadcast on *Radio Asian Fever* on 10 May 2009 was presented by Radio Asian Fever’s Project Director, who also sits on the Licensee’s board, and featured a local Labour councillor and a Labour candidate for the European parliamentary elections. It was claimed that the presenter and the two Labour representatives all encouraged listeners to vote Labour. The complainant was concerned that the Licensee showed political bias by only featuring a Labour councillor and Labour MEP candidate on the programme during an election period.

On receiving the complaint Ofcom immediately contacted the licensee to ensure that it fully understood its obligation under the impartiality requirements of the Code and, in particular, the rules that apply to broadcasting at the time of an election.

Ofcom subsequently requested comments from the Licensee on how this programme complied with Rule 6.1 (the application of impartiality requirements during the time of elections) and Rule 6.2 (due weight must be given to the coverage of major parties during the election period) of the Code.

Response

The broadcaster responded that some of its staff attended a meeting on 10 May 2009 at Leeds Civic Hall. It continued that, during that meeting, it was claimed that Labour’s second seat in the local European Parliament constituency was under threat, through voter apathy, from the British National Party in the forthcoming elections. *Radio Asian Fever* was asked to help by giving airtime to Mr Maroof Hussein and Cllr Arif Hussein (a Labour candidate for the European parliamentary elections and a local Labour councillor respectively) to encourage listeners to vote for Labour. The Licensee said that if it had refused this request it might have offended many members of the various ethnic communities who were present at the meeting and who listened to its service.

Having agreed to feature Mr Maroof Hussein and Mr Arif Hussein, the Licensee said that it had not realised that the European elections were subject to the same requirements as local and national elections and that it should have referred to the Code before agreeing to feature them. The Licensee continued that *Radio Asian Fever* has in the past always given due weight to the coverage of the major parties whenever it has covered elections and that not doing so on this occasion was due to a “lack of concentration” and poor judgement.

With regard to broadcasting the Licensee’s own opinions on air on a matter of political controversy (for example the presenter, who is on the Board, stated live on air “*vote Labour to keep the BNP out*”), the Licensee apologised and said that the

presenter was guilty of being absent-minded and for getting carried away with the community's concerns and fears. The Licensee sincerely apologised and confirmed that this would not happen again.

The Licensee said that in order to correct its mistake it would give due weight and time to members of the other major parties (i.e. the Liberal Democrats and the Conservatives) which was equal to that which it gave to the Labour Party. It said that it would also broadcast a generic advertisement for the European parliamentary elections urging its listeners to vote for a party of their choice. The Licensee concluded its response to Ofcom by asking it to take into account that it is a small community station operating on a very small budget broadcasting programmes which benefit the local community all year round.

Decision

Rule 6.2 – Due weight to the coverage of political parties in elections

The effect of Section 6 of the Code is to ensure that broadcasters apply the “due impartiality” rules (as set out in Section 5 of the Code) to their coverage of elections. In particular Rule 5.11 states that “due impartiality must be preserved on matters of major political... controversy...by the person providing a service...in each programme or in clearly linked and timely programmes”. Ofcom considers that the European parliamentary election is a major matter of political controversy as defined by the Code.

Ofcom recognises the importance to the right to freedom of expression. This encompasses the broadcasters' right to transmit and the audience's right to receive creative material, information and ideas without interference but subject to restrictions prescribed by law and necessary in a democratic society. This right is enshrined in the European Convention on Human Rights.

However, UK legislation requires broadcasters to preserve due impartiality on major matters of political controversy. This requirement is considered to be particularly important at the time of elections. This means that broadcasters in covering election issues must ensure that, during the election period, due weight is given to all the major parties (and other parties where appropriate). Rule 6.2 states:

“Due weight must be given to the coverage of major parties during the election period. Broadcasters must also consider giving appropriate coverage to other parties and independent candidates with significant views and perspectives.”

On 10 May 2009 programme, the station interviewed both a Labour candidate for the European Elections and a local Labour councillor. In the programme, the interviewees were able to promote the Labour Party and set out its policies for the election. Under the Code, the licensee was under an obligation during the election period to ensure that due impartiality was preserved and other major parties were therefore given an opportunity to participate. How this is achieved is an editorial matter for the broadcaster, for example impartiality can be achieved within a particular programme or over time through a series of programmes.

On receipt of the complaint, the licensee confirmed that it would contact the other major parties to offer them an amount of airtime equivalent to that which it had given to the Labour Party. It also said that it would create a generic advertising campaign for the European election urging its listeners to vote for the party of their choice. On 2

June 2009 Fever FM broadcast an hour-long interview with local Conservative councillor Matthew Loble. It also arranged for an equal amount of time on-air with a local Liberal Democrat councillor. However, due to other commitments, the broadcaster informed us that the Liberal councillor was unable to attend the pre-arranged interview.

We note the efforts the licensee made to comply with the Code. However, at time of elections broadcasters must ensure due impartiality by giving due weight to major parties. In the case of general coverage of the election (as opposed to the specifics of a constituency report) the broadcaster was required to give coverage to the three main parties in the UK. The broadcaster's failure to cover the Liberal Democrat Party's position, in any form, therefore resulted in a breach of the Code.

Breach of Section 6.2 of the Code

Rule 6.1 Due Impartiality at the time of Elections

In the programme transmitted on 10 May 2009, the presenter (alongside his Labour Party guests) clearly endorsed the Labour Party and encouraged listeners to vote Labour.

The presenter of the programme, who is a Director of the Licensee and sits on its board, used his position publicly and personally to endorse a partial political message. For instance, he referred to the European election ballot paper stating *"...on the voting sheet, there's a box where you vote for Labour isn't it...one cross on Labour...just one tick on Labour"*. He also made other direct calls to listeners to vote Labour including *"you're not voting for him [one of the Labour party members present] you are voting for the Labour Party"*, *"just vote for Labour on 4 June"* and *"just tick your box on Labour"*. Towards the end of the programme the presenter stated:

"...it is very, very important that everybody gathers and votes for the Labour Party on 4 June and keeps out the British National Party"

This was all in the context of an 'interview' with two members of the Labour party, the overall effect being a one hour on-air conversation about the reasons to vote Labour in the up-coming election, and how to achieve it.

Ofcom did not therefore consider that the programme was presented with due impartiality. The seriousness of this breach of the Code was compounded by the fact that it occurred in the "election period" just three weeks before the European parliamentary election on 4 June 2009.

While Ofcom welcomed the broadcaster's admission that it made a grave error of judgement in allowing its service to be used in a politically partial way, Ofcom was concerned that a member of the board of the Licensee, who was also the presenter of the programme, exercised poor judgement during an election period which led to a serious and significant breach of the Code. While Ofcom recognises that Radio Asian Fever is a small local station, it is a condition of its licence that it complies with the Code.

Breach of Rule 6.2 – Due weight to the coverage of political parties in elections
Breach of Rule 6.1 – Due Impartiality at the time of Elections

In Breach

CricketAM

Sky Sports 1, 2 August 2008, 09:00

SoccerAM

Sky Sports 1 and Sky One, 13 December 2008 and 3 January 2009, 09:00

Introduction

In April 2009, Ofcom carried out a routine spot check on British Sky Broadcasting Limited's ("Sky") use of premium rate services ("PRS") for competitions and voting in programmes. Ofcom asked Sky if it was using PRS for competitions and voting and, if so, for details of its third-party verification arrangements.

Background to Ofcom PRS spot checks

The treatment by broadcasters of viewers' and listeners' communications with them, gave rise to serious public concern throughout much of 2007. Instances of poor practice, mostly concerning PRS, led to serious breaches of the Code and PhonepayPlus' Code of Practice¹ by some broadcasters.

As a result, on 9 May 2008, after consultation, Ofcom varied TV broadcasters' licences to make them directly responsible for communication with the public where the mechanism of communication features in programmes. The types of communication covered by the licence variation include, but are not limited to, all forms of telephony, email and other internet-based communication and post.

In addition to this broad obligation, the licence variation introduced a requirement for broadcasters to implement a system of third-party verification where PRS is used for competitions or voting schemes in programmes. The condition of the licence requiring third-party verification became an active requirement on 1 August 2008. In its regulatory statement on the issue, Ofcom also made clear that it would conduct a schedule of spot checks on licensees' verification systems². Ofcom has therefore been carrying out spots checks on its licensees to ensure that where necessary, they have third-party verification in place.

In response to Ofcom's spot check in April 2009, Sky informed us that it had uncovered that PRS had been used for competitions/voting in three programmes broadcast on Sky Sports 1 (as detailed below). Sky admitted these uses of PRS had not been subject to third party verification as required by Sky's Television Licensable Content Service (TLCS) licences for the channels Sky Sports 1 and Sky One.

Sky also informed Ofcom that further checks it had conducted as a result of Ofcom's spot check had brought to light the fact that technical problems had occurred with viewer voting in all three instances (detailed further below).

CricketAM is a live cricket-based magazine programme broadcast on Sky Sports 1 on Saturday mornings.

¹ http://www.phonepayplus.org.uk/upload/PhonepayPlus_Code_of_Practice.pdf

² Regulatory Statement Participation TV Part 1: protecting viewers and consumers
<http://www.ofcom.org.uk/consult/condocs/participationtv/statement/>

SoccerAM is a live football-based magazine programme. The series was broadcast simultaneously on Sky Sports 1 and Sky One on Saturday mornings.

CricketAM – 2 August 2008

The episode of *CricketAM* broadcast on 2 August 2008 included a viewer competition called 'Car Park Calypso'. Approximately half-way through the hour and a half programme, viewers were invited via verbal and visual calls to action, to guess how many times players from the guest cricket club Montrose CC would hit the stumps during a 60 second bowl-out which would take place at the end of the programme. The prize was a goody-bag and a signed Middlesex Twenty20 shirt.

Viewers were invited to submit their guess by sending a text message to a PRS SMS shortcode number (there was one number for viewers in the UK and another for viewers in the Republic of Ireland ("ROI")). The texts were charged at 25 pence plus the standard network rate for viewers in the UK, and 35 cents plus the standard the network rate for viewers in the ROI. Viewers could also enter by email.

Viewers were informed that entrants who had guessed correctly would be placed in a draw and the winner would be selected randomly the following Monday (4 August 2008) and announced during the next episode of the programme (9 August 2008). Just before the end of the programme, one of the presenters announced that the lines were closed, after which the 60 second bowl-out began. The players from Montrose CC hit the stumps 10 times during the allotted 60 seconds, so any viewers who had sent a text containing '10' as their answer would go into the prize draw to win the goody-bag and the signed shirt.

Sky told Ofcom that on this occasion, due to a technical fault, competition entries submitted by viewers in the ROI had not been registered.

SoccerAM – 13 December 2008

This programme contained a light-hearted segment called 'SoccerAM Tyne/Wear Dance-Off', during which two dancers - one, a Sunderland supporter nicknamed 'The Mackem Mover' and the other, a Newcastle United supporter nicknamed 'The Geordie Dancer' - took it in turns to dance.

Lines opened at 10:35 and viewers were invited via verbal and visual calls to action, to vote for their favourite dancer by texting his name to a PRS SMS shortcode number (there was one number for viewers in the UK, and another for viewers in the ROI). The texts were charged at 25 pence plus the standard the network rate for viewers in the UK and 35 cents plus the standard the network rate for viewers in the ROI.

At 10:50 viewers were once again invited to vote and the lines closed at 11:00. The winner of the 'dance-off' was announced at 11:23 and awarded the 'Tyne/Wear Dance-Off' trophy.

Sky told Ofcom that on this occasion, due to a technical fault, votes submitted by viewers in the ROI had not been counted.

SoccerAM – 3 January 2009

This programme contained a light-hearted segment called 'SoccerAM Dance-Off 2009', during which 13 members of the *SoccerAM* crew took it in turns to dance for the chance to win the accolade of 'Dance-Off Champion 2009'.

Lines opened at 10:43 and viewers were invited via verbal and visual calls to action to vote for the winner by texting the name of their favourite dancer to a PRS SMS shortcode number (there was one number for viewers in the UK, and another for viewers in the ROI). If viewers did not have a favourite, they could also text "DONT CARE". The texts were charged at 25 pence plus the standard the network rate for viewers in the UK and 35 cents plus the standard the network rate for viewers in the ROI.

At 10:54 viewers were once again invited to vote and the lines closed at 11:25. At 11:31 one of the presenters announced which of the dancers had received the second and third highest number of votes. She then announced which dancer had received the most votes and presented him with the 'Dance-Off 2009' trophy.

Sky told Ofcom that on this occasion, due to human error by a member of Sky's production staff in setting up the software system, votes submitted by viewers in the ROI had not been counted.

In relation to all three programmes, Ofcom asked Sky for its comments with regard to the following Licence Condition:

TLCS Licence Condition 6(A)(3)(b) Requirements for the handling of communications from Viewers:

"Where the Licensee uses a Controlled Premium Rate Service as defined under the PRS Condition in force at the time made under section 120 of the Communications Act 2003 as the method of communication for voting or competitions publicised within programme time, the Licensee shall ensure that its compliance procedures include a system of verification by an appropriate independent third party...";

In relation to the *CricketAM* programme, Ofcom asked Sky for its comments under the following Code Rule:

- Rule 2.11 – "Competitions should be conducted fairly, prizes should be described accurately and rules should be clear and appropriately made known".

In relation to the two *SoccerAM* programmes, Ofcom asked Sky for its comments under the following Code Rule:

- Rule 2.2 – "Factual programmes or items or portrayals of factual matters must not materially mislead the audience".

Response

Sky told Ofcom that it had made the decision that once the licence condition requiring verification of PRS use for competitions and voting in programmes came into force, it would implement an internal policy not to use any PRS services for voting or competitions in programmes.

However, following Ofcom's spot check, Sky discovered that since 1 August 2008 (the date on which verification of PRS use for competitions and voting became an active requirement), PRS had been "mistakenly used" for one viewer competition and two viewer votes (as detailed above). Sky stated that, as it was not its policy to use PRS services for voting and competitions in programmes, it did not have any verification arrangements in place.

The broadcaster said that, in the case of the 'Car Park Calypso' competition broadcast on *CricketAM* on 2 August 2008, there "appears to have been a miscommunication between the Legal Advisors and the production staff at Sky Sports" which meant that production staff had believed that the verification requirement did not become an active requirement until 9 August 2008. Sky had arranged to use a free entry route (email) for the competition broadcast on 9 August 2008, but due to the miscommunication had not arranged to do this for the competition broadcast on 2 August 2008.

In the case of the votes on *SoccerAM* broadcast on 13 December 2008 and 3 January 2009, Sky said that "it was believed that prior to Ofcom's rules [requiring the verification of PRS for competitions and voting in programmes] coming into effect, Sky's policy that it would no longer use PRS for in-programme votes and competitions had been effectively communicated to the business at all levels." It added that "it is therefore highly unfortunate and extremely regrettable that these mistakes occurred."

However, aside from the fact that it had not verified the use of PRS in these three programmes as required under its licence, Sky also found that in all three cases none of the competition entries or votes received from viewers in the ROI were registered in the software system used by the production team.

CricketAM – 2 August 2008 – 'Car Park Calypso' competition

Due to a technical failure by Sky's third party technical services provider, the software system failed to register the entries of five entrants from ROI. However, Sky stated that none of these entrants had guessed the correct answer, so would not, in any case, have been put in the prize draw for a chance to win the prize.

SoccerAM – 13 December 2008 – 'SoccerAM Tyne/Wear Dance-Off'

Due to a technical failure by Sky's third party technical services provider, the software system failed to register 866 valid votes from viewers in ROI. Sky told Ofcom that having obtained from its service provider details of the votes from the ROI, it could confirm that those votes would not have made any material difference to the outcome of the vote.

SoccerAM – 3 January 2009 – 'SoccerAM Dance-Off 2009'

Due to human error by a member of Sky's production staff in setting up the software system, it had failed to register 794 valid votes from viewers in ROI. Sky told Ofcom that having obtained from its service provider details of the votes from the ROI, it could confirm that those votes would not have made any material difference to the outcome of the vote.

The broadcaster added that it had not benefited financially from the texts received from viewers in the ROI because the service provider had failed to report any

revenues from the use of the PRS numbers used for viewers in the ROI on these occasions.

When Sky became aware that these errors had occurred, it told Ofcom that it had taken the following remedial steps:

1. On 22 May 2009, it sent a press release to a number of major news outlets in the UK and ROI acknowledging and apologising for the errors made and highlighting the steps which would be taken.
2. It asked its PRS service provider to contact all the relevant mobile operators in the ROI, to action a refund of all charges attributable to the texts sent from the ROI in relation to the *SoccerAM* votes and *CricketAM* competition.
3. Following the refund of the text charges, Sky also sent the following text messages to each affected viewer to notify them of the refund:
 - For texts received for the Car Park Calypso competition, 2 August 2008 - "CricketAM has refunded you 35c for txt to Calypso on 2/8/08. Entry not counted due to technical fault. Refund on next bill. For info skysports.com/cricketam"
 - For texts received for the *SoccerAM* Tyne/Wear Dance-Off, *SoccerAM*, 13 December 2008 – "SoccerAM has refunded you 35c for txt vote to Dance Off on 13/12/08. Vote not counted due to technical fault. Refund on next bill. www.socceram.com for info"
 - For texts received for the *SoccerAM* Dance-Off 2009, *SoccerAM*, 3 January 2009 – "SoccerAM has refunded you 35c for txt vote to Dance Off on 3/1/09. Vote not counted due to technical fault. Refund on next bill. www.socceram.com for info"

Additionally, in relation to the 'Car Park Calypso' competition broadcast on *CricketAM* on 2 August 2008, Sky contacted the five affected viewers individually to apologise for the error and sent them a *CricketAM* t-shirt as a gesture of goodwill. The broadcaster also published a written apology on the *CricketAM* website, together with the text of its formal press release on the matter.

In relation to the two dance-off competitions broadcast on 13 December 2008 and 3 January 2009, in addition to the actions detailed above, Sky broadcast an on-air apology (in text and voice-over) during *SoccerAM* on 23 May 2009 (the final programme of the series). The broadcaster said that "in order to ensure that the apology was given appropriate prominence within the programme, and viewed by as many affected viewers as possible, the apology aired at around 10:30am, approximately the same time as when the original dance-offs and voting took place. The apology was pre-recorded and did not involve the show's presenters in order to ensure that the matter would be viewed as being taken seriously, and outside the context of the light-hearted and irreverent nature of the programme." In addition to the broadcast apology, Sky published a written apology on the *SoccerAM* website, together with the text of its formal press release on the matter.

Sky said that it had considered that "these actions have gone some way to remedying the errors...by putting entrants in the ROI in the position they would have been in had they not texted the relevant shows. Furthermore, Sky considers that it

has done so in a fully transparent manner in order to bring the matter to the attention of viewers and the wider public, further demonstrating the seriousness with which it views this matter and its commitment to remedying the situation.”

Sky told Ofcom that it continues to operate a policy of not using PRS for votes and competitions and that it had taken immediate action to ensure that these failures are not repeated, including:

- reminding all Sky Sports production staff that Sky’s policy is not to use PRS in programmes;
- reviewing Sky’s arrangements with its service provider to ensure “enhanced audit and review procedures (in respect of the services it continues to provide, principally free text mechanisms)”;
- reviewing the internal procedures by which SMS shortcodes are provided to production staff to introduce an additional compliance process;
- providing further training to the production teams involved in the particular incidents concerned; and
- commencing a review of the editorial compliance structure within Sky Sports to assess whether improvements can be made to the effectiveness of compliance.

Decision

CricketAM – 2 August 2008

Rule 2.11 of the Code states that “Competitions should be conducted fairly, prizes should be described accurately and rules should be clear and appropriately made known”.

Following the broadcaster’s on air invitations to viewers to enter the ‘Car Park Calypso’ competition, those viewers in the ROI who paid a premium rate to enter the competition would have done so on the basis that they would have a fair and equal chance of winning the competition. However, due to the technical fault, ROI viewers’ entries were not registered and therefore those viewers stood no chance of winning the competition, irrespective of whether or not they had the correct answer.

Ofcom acknowledges that:

- the fault was unintentional and occurred due to a technical error;
- the error meant that five viewers’ entries from the ROI were affected;
- the broadcaster has subsequently improved its compliance procedures; and
- the broadcaster took extensive remedial steps (as described above) to mitigate the level of harm caused to viewers.

Nevertheless, the competition was not conducted fairly, in breach of Rule 2.11 of the Code.

SoccerAM – 13 December 2008 and 3 January 2009

Rule 2.2 of the Code states that “Factual programmes or items or portrayals of factual matters must not materially mislead the audience”.

Ofcom found that during the episodes of *SoccerAM* broadcast on 13 December 2008 and 3 January 2009, the votes of viewers from the ROI had not been counted by the software system. Those viewers were materially misled into believing that they could

pay a premium rate to vote to influence the outcome of the dance-off competitions, if they sent a text to the PRS numbers that were displayed on screen and promoted in verbal calls to action.

Ofcom acknowledges that, in both of these cases, the fact that viewer votes from the ROI were not counted, was unintentional and occurred in one case due to human error by a member of Sky's production staff and in the other case, due to a technical error. Ofcom also took into account that Sky has subsequently taken extensive remedial steps to mitigate the level of harm caused to viewers, and has improved its compliance procedures.

However, those 1,660 viewers who paid to vote by PRS during these two programmes did so on the understanding that their votes would be counted and would influence the final outcome. They were therefore materially misled as to their ability to cast votes and potentially influence the outcome of the vote. As a result, material harm in terms of financial loss was also caused to those 1,660 viewers, even though Sky subsequently issued refunds.

Ofcom therefore found both programmes in breach of Rule 2.2 of the Code.

TLCS Licence Condition 6(A)(3)(b)

Ofcom noted that an internal miscommunication about the date on which the verification requirements came into force led to the use of PRS in the 'Car Park Calypso' competition broadcast on *CricketAM* on 2 August 2008. While this was an unfortunate mistake, the fact that PRS was used for a competition in a programme and was not subject to third-party verification, was in breach of TLCS Licence Condition 6(A)(3)(b).

In the case of the PRS votes which were conducted during the episodes of *SoccerAM* broadcast on 13 December 2008 and 3 January 2009, Ofcom noted that despite Sky's internal policy of not using PRS in votes or competitions in programmes, the production staff appeared to be unaware of this policy. Ofcom welcomes the remedial steps which the broadcaster has since taken to improve compliance processes, but the fact that PRS were used for voting in these two programmes and were not subject to third-party verification was in breach of TLCS Licence Condition 6(A)(3)(b).

Ofcom was particularly concerned that the use of the PRS in these three instances only came to Sky's attention as a result of Ofcom's routine spot check, and it is questionable whether the errors that resulted in the breaches in these cases would have come to light at all had it not been for this check.

Throughout 2007 and 2008, whether in sanctions adjudications, published findings, additional guidance and, indeed, via the new licence condition, Ofcom had made it clear to all its licensees that it expected extreme caution to be exercised in the use of PRS in programmes. Ofcom was therefore surprised that, in the case of the 'Car Park Calypso' competition broadcast during *CricketAM* on 2 August 2008, a "miscommunication between the Legal Advisors and the production staff at Sky Sports" about the date on which the new licence condition came into force could have occurred,

It was also a matter of great concern to Ofcom that it appeared that appropriate compliance checks had not been undertaken by Sky at the time of transmission of the episodes of *SoccerAM* on 13 December 2008 and 3 January 2009. Irrespective

of the misunderstanding by production staff, it would appear that no-one responsible for ensuring these programmes' compliance with the Code had noticed that they included the use of PRS, in contravention of Sky's own internal policy.

However, Ofcom noted that in all three instances, the compliance failures were not caused by a deliberate act and the audience was not misled intentionally. Further Ofcom recognises the extensive steps that Sky took once the breaches had been identified.

Nevertheless, the breaches of the Code, and of the Licence Condition, are serious and will be held on record.

Car Park Calypso competition, *CricketAM*, 2 August 2008 – breach of Rule 2.11 and TLCS Licence Condition 6(A)(3)(b)

***SoccerAM* Tyne/Wear Dance-Off, *SoccerAM*, 13 December 2008 - breach of Rule 2.2 and TLCS Licence Condition 6(A)(3)(b)**

***SoccerAM* Dance-Off 2009, *SoccerAM*, 3 January 2009 - breach of Rule 2.2 and TLCS Licence Condition 6(A)(3)(b)**

In Breach

Free-to-view promotion for Playboy TV

'Adult Previews' channel, Virgin Media, 5 May 2009, 22:00

Introduction

The 'Adult Previews' channel is located on the Virgin Media service (Channel 470). The channel is operated and complied by Virgin Media Limited ("Virgin Media"). It is available without any access restrictions and is situated in the 'adult' section of the Virgin Media electronic programme guide ("Virgin EPG"). Its purpose is to promote 'adult-sex' channels with mandatory access restrictions which are available on the Virgin Media service. From 22:00 the channel broadcasts a series of promotional trailers on a loop, each of which lasts around ten minutes.

Ofcom received a complaint about a free-to-view promotional trailer broadcast from 22:00 on 5 May 2009, promoting the 'adult-sex' channel Playboy TV. The complainant said the trailer showed naked women simulating sex, touching themselves and other women. The complainant felt that the sexual material broadcast in the trailer was too strong to be available at 22:00 without mandatory access restrictions.

Ofcom noted that the trailer for Playboy TV included eight separate promotions for programmes of a sexual nature broadcast on this channel. The trailer included frequent, but brief, clips of strong sexual material. These included: shots of naked breasts and female pubic areas; men and women touching each other in a sexual manner, including licking and kissing breasts; women stroking their breasts and buttocks; and cropped shots of real or simulated sex acts. The trailer also contained an example of the most offensive language: *"...do you like it when you get really hard and the girl fucking shoves your cock down her throat?"*

We asked Virgin Media for its comments in relation to Rules 2.1 (generally accepted standards) and 2.3 (material which may cause offence must be justified by the context).

Response

The broadcaster highlighted that the 'Adult Previews' channel broadcasts specific guidance to customers before 22:00 about how they can restrict access to this channel or any other channels containing 'adult' content. Virgin Media said that this information is to protect members of the public should they decide that such content is not of interest to them or if they do not wish to find it on their Virgin Media service.

With regard to whether the material complied with the Code, the broadcaster said that the material was broadcast on a channel listed in the 'adult' section of the Virgin EPG and clearly labelled as "Adult Previews". Therefore, viewers would have been aware of the type of material to expect. It continued that the channel does not air 'adult' promotional material until after 22:00 and the potential audience of the material was likely to be very small due to the unlikely appeal of looped programme trailers. The broadcaster also argued that if a viewer had come across the channel or material unawares, which it said was unlikely, it considered that any offence caused would have been minimal.

Decision

Rule 2.3 makes clear that “in applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context.” “Context” in turn includes a variety of different potential factors such as the editorial content of the programme, the service on which the material is broadcast, the time of broadcast and the effect of the material on viewers who may come across it unawares. In this case Ofcom considered that, given the nature and strength of the material broadcast in this trailer, it had the clear potential to cause offence. Therefore the broadcaster was required to ensure that the material was justified by the context in order to provide adequate protection for viewers.

Ofcom noted the broadcaster’s argument that the material complained of met generally accepted standards because it was broadcast on a channel with the specific and clearly labelled purpose of showing promotional trailers for ‘adult-sex’ channels. Further, the channel was located in the ‘adult’ section of the Virgin EPG and therefore the material would not have exceeded the expectations of the audience. Also it was shown after 22:00. In addition, Ofcom noted that prior to 22:00 the channel provides information to viewers regarding how they can restrict access to the ‘Adult Preview’ channel and the ‘adult-sex’ channels it promotes.

However, with regard to this particular trailer, Ofcom was concerned by the explicit nature of the content and the time of broadcast, given it could be viewed without any access restrictions. The trailer contained frequent shots of naked breasts and female pubic areas, men and women touching each other in a sexual manner and cropped shots of real or simulated sex acts. It also contained most offensive language as well as sexually explicit language. In Ofcom’s view therefore this material had the potential to be highly offensive to viewers, especially ones who came across it unawares, and so was not within audience expectations. Graphic content of this nature, albeit tightly edited, requires a strong justification to be broadcast without access restrictions, particularly if relatively soon after the 21:00 watershed. In this case the strong content was broadcast from 22:00 – only one hour after the watershed.

Ofcom has consistently made clear through previous published decisions that the broadcast of explicit sexual content, such as this, which is freely available and without access restrictions is not justified by context simply by it being shown on a channel: in the ‘adult’ section of an EPG; and whose title makes clear it specialises in broadcasting ‘adult’ content. Furthermore, the provision of information to the viewer about voluntary parental controls which can restrict access to that channel does not provide contextual justification for the broadcast of material of this nature at this time. This is particularly relevant in this case, given that the information provided by the broadcaster was not part of the trailer complained of or the programming broadcast after 22:00. In light of these factors, it was Ofcom’s view that, on balance, the broadcast of this offensive material was not sufficiently justified by the context and was a breach of generally accepted standards. Therefore the material breached Rules 2.1 and 2.3 of the Code.

Breach of Rules 2.1 and 2.3 of the Code

In Breach

Stonecold TV

My Channel, 20 May 2009, 18:30

Introduction

StoneCold TV is a programme of humorous clips intended for an adult audience broadcast on the general entertainment channel, My Channel. This particular episode featured a segment entitled “Bill and Todd’s Drunk Adventure” in which two men called Bill and Ted were shown filming each other engaging in various activities while drunk. In one sequence the two men use an implement which generated an electric shock when they made contact with it. The men’s reactions to the pain of the electric shock were also broadcast. These included the following exclamations: “...*what the fuck?...*”; “...*oh shit...*”; “...*fuckin’ dude...*”; “*motherfucker*”; and “*this bullshit is fuckin’ done!*”. A second sequence showed one of the men ingesting the contents of an ashtray and saying “...*it’s a fucking ashtray...*” and “...*I’m a fucking nutjob...*”

Two viewers complained about the broadcast of this language before the watershed.

Ofcom wrote to My Channel, asking it to comment under Rule 1.14 (the most offensive language must not be broadcast before the watershed). Ofcom also asked the broadcaster to comment on the programme generally in light of Rule 1.3 (inappropriate scheduling).

Response

My Channel stated that a scheduling error had led to the broadcast of the programme in a pre watershed timeslot. It had in fact been allocated a 23.30 timeslot. This was a genuine, human error and the channel apologised for the offence that had been caused to viewers. My Channel also provided Ofcom with details of steps it had taken internally to prevent such an error occurring in the future. These included the separation, in storage, of tapes of programmes suitable for pre-watershed timeslots and tapes of programmes suitable for post-watershed timeslots. In addition an extra check of the suitability of all programmes before broadcast would now be carried out by the channel.

Decision

Rule 1.14 prohibits the broadcast of the most offensive language before the watershed. Ofcom research on offensive language¹ identified that “fuck” and its derivatives were considered by viewers to be very offensive. Rule 1.3 seeks to ensure that children are protected by means of inappropriate scheduling from unsuitable material. In this case Ofcom considered that the programme contained themes that were clearly not suitable for a pre-watershed audience. For instance, the programme contained images of drunken adults behaving in a dangerous manner that could be easily imitable by children.

Ofcom notes that the broadcast of this programme on this occasion occurred as a result of human error. We welcome the steps taken by My Channel as a result of the broadcast to prevent a similar error occurring in the future. However, the broadcast of

¹ “Language and Sexual Imagery in Broadcasting: A Contextual Investigation”, September 2005

such language and with such frequency before the 21:00 watershed is a clear breach of Rule 1.14. Additionally the programme was inappropriately scheduled and resulted in a breach of Rule 1.3.

Breach of Rules 1.3 and 1.14

Resolved

Snoop Dogg's Father Hood

4 Music, 20 April 2009, 19:00

Introduction

Snoop Dogg's Father Hood is an American made television reality show which features rap artist Snoop Dogg and his family going about their daily lives. This particular episode featured several sequences in which offensive language was broadcast. These occurred during conversations between Snoop Dogg and his children and Snoop Dogg and members of his entourage. The sequences were interspersed throughout the programme and included: "...it just pissed me off..."; "...fuck, we gotta go..."; "fucked up"; and "make sure that nigger don't go in my room...". Two viewers complained about the broadcast of this language before the watershed.

Ofcom wrote to Box Television Limited, which owns and operates 4 Music, asking it to comment under Rule 1.14 (the most offensive language must not be broadcast before the watershed).

Response

Box Television stated that this series is acquired from the United States. As Snoop Dogg appeals to a wide range of 4 Music's viewers a decision was taken that only a pre-watershed edited version of the series would be made for broadcast on 4 Music to ensure the programme's suitability for both pre- and post-watershed transmission.

On this occasion, because the programme had been delivered late to the broadcaster, the correctly edited version of the episode had not been locked into the channel's transmission schedule. This meant the unedited version of the programme was requested for transmission. Box Television explained that this was due to human error and apologised for any offence that the error had caused. As soon as the error came to light a full investigation was carried out which resulted in the introduction of additional pre transmission procedural checks. An apology for the broadcast was also aired the following evening and again the following week immediately before the next showing of *Snoop Dogg's Fatherhood*.

Decision

Rule 1.14 prohibits the broadcast of the most offensive language before the watershed. While some of the language complained of would not come within this category, Ofcom research on offensive language¹ identified that "fuck" and its derivatives were considered by viewers to be very offensive. There were two instances of this word in the broadcast.

Ofcom notes that the broadcast of this language on this occasion occurred as a result of human error. Ofcom welcomes the steps taken by Box Television as a result of the broadcast to prevent a similar error occurring in the future. In addition we note that a full apology for the error and for any offence to viewers was broadcast on 4Music on two separate occasions.

¹ "Language and Sexual Imagery in Broadcasting: A Contextual Investigation", September 2005

While we have concerns about the broadcast of this material, in light of the actions taken by the broadcaster and its good compliance record in this area Ofcom considers this matter resolved.

Resolved

Resolved

Trailer for 'Black'

9X, 8 June 2009, approximately 09:50

Introduction

9X is a Hindi language channel operated by INX Media UK Limited ("INX Media"). The channel broadcasts general entertainment programming within the UK.

A viewer complained about the broadcast of a trailer for the programme 'Black', a drama series about the paranormal (which is transmitted on 9X, Monday to Thursday at 22:30). The trailer was transmitted at approximately 09:50. It showed a woman on a bed with her hands tied behind her back. The woman appeared to be possessed, with abnormally large eyes, whitened irises and heavily dilated pupils. She was shown trying to escape and looking intensely into the camera. She was also shown levitating off a bed. The trailer included haunting sound effects, including howling wolves. The complainant said the trailer was very disturbing and was concerned that it was broadcast when his children were watching.

We asked INX Media for its comments in relation to Rule 1.3 of the Code "children must be protected by appropriate scheduling from material that is unsuitable for them."

Response

INX Media acknowledged that the trailer was not appropriate for children and that the scheduling of the trailer at this time was an inadvertent error. INX Media apologised for the error and informed Ofcom that it has taken immediate steps to reschedule the trailer after 21:00 in order to prevent any repeat broadcast.

Decision

Ofcom notes INX Media's acknowledgement that the trailer was inappropriately scheduled and therefore did not comply with the Code. Ofcom also notes the broadcaster's apology and the compliance measures taken in response to this scheduling error.

In view of these actions and taking into account that the broadcaster has previously had a good compliance record, Ofcom considers this matter resolved.

Resolved

Not in Breach

It Pays to Watch

Five, 15 October 2008, 17:30

Introduction

It Pays to Watch is a consumer advice programme presented by Martin Lewis. Martin Lewis is also the owner of a website that provides consumers with information on how to save money. The website includes a search tool called FlightChecker, which enables users to search for cheap flights.

This episode of *It Pays to Watch* included an item on how to obtain low cost flights. The presenter referred to a number of different websites as sources of cheap flight information, including flight checker type services, which he described as a source of finding “*the really dirty cheap flights*”. Shots of the presenter’s FlightChecker service, with the web address visible, were featured on screen.

A viewer objected that the portrayal of the presenter’s service was misleading as the service did not include flights provided by a major budget airline. On the basis that the programme presenter is the owner of the FlightChecker service, the complainant questioned whether the programme was distorted for commercial purposes.

Ofcom asked Five to comment on the complaint with reference to Rule 10.1 of the Code which states: “Broadcasters must maintain the independence of editorial control over programme content”.

Response

By way of background to the programme, Five explained that the *It Pays to Watch* series was commissioned by its Senior Programme Controller and Head of News & Current Affairs. The series is produced by an independent production company, Money Savings Productions Limited. The programme’s executive producer is the chief executive of Money Savings Productions Limited and has produced and executive produced a range of factual programmes for the channel over the past ten years. Five advised that both the executive producer and the programme’s presenter, Martin Lewis, are also directors of Money Saving Productions Limited.

Five stated that the control of the editorial content of the programme rested with the programme’s production team and Five, as commissioner and broadcaster of the programme. Five said that the programme was produced in accordance with its standard general terms of agreement which enabled it to exercise editorial control of the programme content to ensure compliance with the Code. The programme was written and produced by the series producer who was a freelance contractor engaged by the production company.

The programme’s editorial specification was to provide information and advice to viewers on how best to save money in a variety of ways by cutting costs, spending less, budgeting better, and making use of discounts and offers. Five explained that each week the programme tackled a different theme. The content of each programme was chosen by the production team in conjunction with the presenter. Five advised that the presenter, Martin Lewis, is a consumer finance journalist who regularly appears as a finance expert on a number of programmes on different channels. He has also written three books on financial matters. Five said that the

presenter's wealth of experience in this field was invaluable both to the production team in drawing on his knowledge, and also to viewers because it gave the programme credibility.

Five explained that once the topics chosen for inclusion in the programme were agreed, the programme's producer wrote the first draft of the programme's running order and script. This was done independently of the presenter. Each item was independently researched and reviewed by a member of the production team. The script was circulated to the programme's executive producer for review, to Five's commissioning editor for approval, and to Five's legal and compliance team for review. Further rounds of review and approval of the script and running order took place prior to recording of each episode.

Five stated that the programme in question was recorded on the day of transmission. A member of Five's programming team was present at each recording, together with a lawyer from its legal and compliance team. Each item in the programme was carefully reviewed to ensure the programme's editorial integrity and compliance with the Code.

Five said that the main theme of the programme in question was how to obtain the best deal on a bargain break. During an item on flights the presenter noted that the internet was a "powerhouse" for finding cheap flights. The presenter advised viewers that there were a lot of cheap flight websites but that viewers needed to understand that the key to saving money was using the "*right type for the right purpose*". The presenter then outlined the various types of websites available.

The first, the "screen-scraper", the presenter described as perfect for viewers who knew exactly where and when they wanted to go. The presenter gave his "top picks" for this type of site as Kayak.co.uk and Travelsupermarket.com. Images from both sites were displayed on screen.

The presenter then advised viewers who wanted "*the really dirty cheap flights*" to use "a flight checker". He explained that such sites work by finding available flights to match the user's desired date and price criteria. The presenter advised viewers that they could find details of "*the*" flight checker on the programme's website. The presenter also referred to another website, Skyscanner, that had some of the same functionality. Again, images from both sites were displayed on screen.

Five advised that, later in the programme, the presenter advised viewers that the "*start point for anything*" was comparison websites and named seven such sites.

Five said that while it is true that the FlightChecker service is part of a website operated by the presenter, no commission is paid by any of the airlines searched by the service. Therefore, if any viewers used the service as a result of watching the programme, neither the presenter nor the website would have benefitted from the booking. Five said that the decision to feature the site was based on its unique functionality and its ability to help viewers find some of the cheapest flights available. The only site to offer similar (albeit more limited) function was also mentioned in the programme. In addition, the website address for the service was not given in the programme to avoid promoting the presenter's website. Direct website addresses were given for all other websites mentioned in the programme.

In summary, Five re-iterated that the editorial control of the programme remained with the channel and the production company. The presenter's experience and

knowledge of consumer issues was an essential ingredient to the success of the programme, but the programme was not distorted for any commercial purpose.

Decision

Ofcom noted Five's grounds for including the reference to the FlightChecker service and its assurances that the channel exercised editorial control over the series and that the programme was not distorted for commercial purposes.

We viewed the programme, as well as the other seven programmes in the series, to assess whether they appeared to be distorted for commercial purposes. Overall, we found no evidence to suggest that the presenter's other commercial activities had distorted the programme content.

We did not identify references to the programme presenter's website in any of the other programmes in the series. We also found that, on balance, the prominence given to the presenter's FlightChecker service in this episode was not significantly greater than references given to other third party sites throughout the series. Importantly, we considered the reference to the service within the programme was justified given the nature of the discussion (i.e. how to obtain cheap flights).

While we were satisfied that there was no evidence to suggest that Five failed to maintain editorial control over the programme, we recognise that the presenter's ownership of the FlightChecker service could lead viewers to question the motivation behind the reference and the editorial independence of the review. One of the Principles underpinning Section Ten of the Code is that programmes should not be distorted for commercial purposes. Even where no actual distortion has occurred, a programme that *appears* to be distorted for commercial purposes is likely to draw the editorial integrity of that programme into question.

The case highlights the potential issues that can arise when a reporter reviewing products and services has a relationship with those products or services (in this case the presenter, who was also a director of the production company, was the owner of the service reviewed). In Ofcom's view, audiences have a high expectation of the editorial integrity of consumer advice programmes, and therefore we advise all broadcasters to exercise extreme caution when commissioning and complying such programmes to ensure editorial integrity is not undermined.

Not in Breach of Rule 10.1

Fairness and Privacy cases

Not Upheld

Complaint by The Viscount Monckton of Brenchley

Earth: The Climate Wars, BBC2, 14 September 2008

Summary: Ofcom has not upheld this complaint of unfair treatment made by The Viscount Monckton of Brenchley.

The BBC broadcast a three-part series looking at the history of the global warming debate and the arguments for and against the existence and extent of the threat posed by climate change. In the second part of the series the presenter, Dr Iain Stewart, attended the 2008 International Conference on Climate Change, which was described in the programme as “a gathering of the world’s most vocal global warming sceptics”. At this conference, Dr Stewart referred to and discussed with participants in the programme the “hockey stick graph”. This graph was the result of research by Dr Michael Mann. It indicated that there had not been a “Medieval warm period” and that, therefore, climate change sceptics who believed there had been such a period and that temperatures today were “nothing special”, were wrong.

One of the people interviewed at the conference was The Viscount Monckton of Brenchley. He complained to Ofcom that he was treated unfairly in the broadcast of the programme.

Ofcom concluded that the programme makers did not provide Lord Monckton with sufficient information about the likely nature and purpose of the programme when securing consent for his participation. However, Ofcom found no grounds to uphold his complaint of unfair treatment in the programme as broadcast because it found that footage of his interview was not unfairly edited and he was not portrayed unfairly in the broadcast programme.

Introduction

On 14 September 2008 the second part of BBC2’s three-part series entitled *Earth: The Climate Wars* was broadcast. The series looked at the history of the global warming debate and the arguments for and against the existence and extent of the threat posed by climate change. In the second part of the series, the presenter, Dr Iain Stewart, a geologist at the University of Plymouth, referred to the apparent global consensus on climate change at the Earth Summit in Rio de Janeiro in 1992. He said that that consensus later began to break up, with some politicians, businessmen and scientists arguing that there was no climate crisis after all. While looking at the history of the debate, Dr Stewart referred to the “hockey stick graph”. This graph was the result of research by a scientist, Dr Michael Mann, and it indicated that there had not been a “Medieval warm period”. This suggested that the climate change sceptics, who argued that there had been a Medieval warm period and that temperatures today were “*nothing special*”, were wrong. The programme included contributions from people on both sides of the debate, some of whom were interviewed at the 2008 International Conference on Climate Change in New York. One of the climate change sceptics interviewed at the conference was the Viscount Monckton of Brenchley.

Lord Monckton complained to Ofcom that he was treated unfairly in the programme as broadcast.

The Complaint

Lord Monckton’s case

In summary, Lord Monckton complained that he was treated unfairly in that:

- a) He did not give informed consent for his participation in the programme.

By way of background, Lord Monckton said that he was not given any warning that the programme would be a “political polemic”, rather than a genuine presentation of the opinions of those who doubted the extent of the human contribution to climatic warming.

- b) Footage of an interview with him was unfairly edited and, as a result, his views were misrepresented. He had given detailed reasons for the point of view that was broadcast, but none of his reasons were broadcast. The footage used omitted all references he had made in interview to specific, scientific details of criticisms he made of the hockey stick graph and included only his general comments.
- c) He was portrayed unfairly in that his views were portrayed as amounting to “vitriol” and as lacking in scientific basis.

The BBC’s case

By way of background, the BBC said that Lord Monckton’s interview was recorded at the 2008 International Conference on Climate Change, at which the keynote speaker said:

“So...global warming is real and the second warming in the 20th century people have something to do with it alright? Now get over it ok...”

The BBC said that this comment lent weight to Ofcom’s conclusion in a previous case¹, in which it said:

“...the scientific theory of man-made global warming was not a matter of political or industrial controversy or a matter relating to current public policy.”

The BBC said that a matter could only cease to be a “*matter of political or industrial controversy*” when the consensus among scientific experts and, consequently, the policy makers who rely on them, was so strong that they stopped disputing amongst themselves. In such circumstances, the only remaining questions were political, namely what was the appropriate response of governments to the scientific facts. The BBC said that such political issues formed no part of the programme, which examined the criticisms of climate science made over the years by those who, in the words of the programme “*have passionately argued there is no climate crisis*”. The programme showed how those criticisms served to strengthen the underlying science and, in doing so, it reported the views of the sceptics, in the fairest manner possible, by using their own words.

- a) In response to Lord Monckton’s complaint that he did not give informed consent for his interview, the BBC said that members of the press with appropriate accreditation from the conference organisers were able to approach speakers and other attendees for interviews during breaks in the proceedings. Lord Monckton was listed in the conference programme as a speaker and he took part in a panel. The BBC said that there was no advance contact between Lord Monckton and the programme makers, but that, given the nature of the conference, it was inconceivable that a panellist approached by a camera crew would expect to be asked to discuss anything other than climate change, and from a perspective of scepticism of the current scientific consensus.

¹ Professor Carl Wunsch’s complaint against *The Great Global Warming Swindle*, Ofcom Broadcast Bulletin 114, 21 July 2008

The BBC said that Dr Stewart had introduced himself to Lord Monckton and others at the conference by saying that he was making a programme about climate change and wished to carry out an interview. Dr Stewart recorded around 32 minutes of material with Lord Monckton. The BBC argued that it was clear from Lord Monckton's answer to the first question that he immediately grasped the nature of the interview, as he attacked the BBC's previous coverage of climate change.

The BBC said that the content of the interview demonstrated that Lord Monckton was clearly, appropriately and fully aware that he was giving the BBC an interview about climate change. He made strong criticisms of the BBC's previous coverage, including discussing BBC policy statements on the matter. The BBC suggested that this indicated that he must have seen, heard and considered a great deal of its output and that the nature of the interview itself indicated that he had a very clear idea of the planned programme.

The transcript of the interview also showed that when asked by the producer at the end of the interview to sign a release form Lord Monckton agreed to do so. The BBC said that there was therefore no doubt that, at the conclusion of the interview, Lord Monckton was satisfied that he had made the points he wished to make and was content to sign a consent form. The BBC said that the form was a standard one, which Lord Monckton signed without amending it or adding to it. The BBC said that, in the context of an interview conducted without prior correspondence or discussion, it was clear from the content of the interview that Lord Monckton had all necessary information before he signed the form.

In response to Lord Monckton's suggestion that his informed consent would have required him to be told that the planned programme would be a "*prejudiced and one-sided hatchet job*" and a "*political polemic*", the BBC said that it would not describe one of its science documentaries using such subjective and inaccurate terms. The programme looked at climate change, from the perspective of the history of the scientific arguments over it and "stuck to the facts".

- b) The BBC next responded to Lord Monckton's complaint that footage of his interview was unfairly edited, resulting in his views being misrepresented.

The BBC said that Lord Monckton asserted in his interview with Dr Stewart that some of the relevant science was flawed and did so using the strongest terms. The BBC said the interview included a discussion of the hockey stick graph. Part of this was used in a long section of the programme that discussed scientific attempts to build a picture of global temperatures extending hundreds of years into the past. The BBC said that Professor Mann's paper was published more than ten years ago and, as the programme pointed out, "*provokes strong reactions today*". The BBC said that, when talking about Professor Mann's paper, Lord Monckton chose to deploy a very strong term, "*deliberately bent*" twice, went on to describe the scientific journal "Nature" as "*unspeakably silly on this subject*" and described the work of the scientists concerned as "*fraud*" and "*a very simple fraud*". The BBC said that Lord Monckton did not use the language of rational scientific debate, but made polemical points, attacking the integrity both of the scientists who did the research and the editors of "Nature". The use of this kind of language, which was fairly described in the programme as "*strong reactions*", raised the entirely legitimate question as to why climate change sceptics choose to conduct the debate in this way. The BBC said that that was a separate issue from the question as to whether the sceptics' arguments were valid.

The BBC said that a fundamental point about the hockey stick was that it was no longer new science. The programme's narrator referred to it as follows:

"But whilst the sceptics were busy attacking Mann, other researchers were doing their own science, hunting for more proxies, and using different methods to work out past temperatures. Soon Michael Mann's graph was joined by many others all reconstructing the past thousand years of temperature. The question was would they back up Michael Mann, or would they prove him wrong."

Dr Stewart then said:

"You know it might look confusing but this graph as a really clear message. The red line is Michael Mann's original Hockey Stick graph; it's very flat with hardly any Medieval warm period. The other lines are the reconstructions that have been done since. Now there's a big spread, in other words scientists disagree about a lot of the temperatures in here, that's not really surprising because working out the temperatures for the past few 100 years is a really difficult task that largely depends on what indications you use. But the crucial part is over here. This is 1,000 AD, now some of the reconstructions show temperatures a little warmer than Mann's curve. Some of them also show going into much colder conditions at the end of the Medieval warm period. What that probably means is that Michael Mann underestimated some of the variation in the past 1,000 years. In other words the Hockey Stick is a little bit too straight. But it depends on the reconstruction you use. What these lines all agree on though is one thing. There's no evidence of any period in the past 1,000 years that is as warm as the second half of the 20th century. In other words the end of the 20th century really is unprecedented."

The BBC said that this sequence set out the scientific response to Professor Mann's work: other scientists went out and found new ways of estimating temperatures over the last thousand years, and those methods led to broadly similar conclusions. This was very different to accusing Professor Mann of fraud or of deliberately distorting his data. If Professor Mann's hockey stick graph, which presented the evidence he gathered to support his hypothesis, was wrong, new science and different methods would have reached different conclusions. The fact that more than a dozen new reconstructions were consistent, within estimated uncertainties, was the strongest possible indication that the hockey stick graph was correct.

The BBC said that it had a long record of science programme making, in which it had a proper bias towards arguments that were backed by peer reviewed academic publications. The BBC said that Lord Monckton had no scientific qualifications, no record of peer-reviewed scientific publication and had never held a scientific appointment in any academic institution. However, as he took an active part in the debate over climate change, producing numerous articles, writing and presenting a film and attending conferences, he was accurately and therefore fairly described as a campaigner. It would not have been accurate to describe him as a scientist. The BBC said that this had a bearing on Lord Monckton's complaint that his scientific arguments were unfairly left out. In the section of the full interview which included discussion of the hockey stick, Lord Monckton simply asserted that the "Wegmann report" and "McKittrick's work" demonstrated that the hockey stick graph was inaccurate. He went on to discuss this some more, using the term "fraud" five times. The BBC said that there was a technical point about the statistical method in the interview, when Lord Monckton said "they substituted random numbers ... which were not the raw data", but that this was both unexplained and well beyond the comprehension of the lay audience. The BBC said that, other than that, there was no science in this part of the interview and that Lord Monckton had, therefore, not in fact make any "scientific criticisms" that could be excluded.

The BBC also said that terms such as *“fiddling it”*, *“deliberate falsifications of data”*, *“bend the result”*, *“fraud”*, and *“deliberately bent”*, which peppered Lord Monckton’s answers, were all strong accusations, striking at the integrity of the scientists, not the integrity of the science and were “campaigning talk”. The BBC said that, in the circumstances and bearing in mind the whole of the interview, it was appropriate and not unfair to use Lord Monckton’s arguments as illustrations of the campaigning style adopted by what the programme described as *“climate change sceptics”*.

As regards Lord Monckton’s complaint that his views were misrepresented, the BBC said that his views on the hockey stick were quite clear and that there was no ambiguity to his comments on it as they appeared in the programme.

The BBC said that in his only other appearance, Lord Monckton preferred to advance his cause by criticising the scientists, rather than the science, accusing them of simply suppressing inconvenient data. The BBC said that his method of argument was so remote from the normal process of scientific discussion that Dr Stewart asked him to explain. When interviewing Lord Monckton, Dr Stewart responded to the accusation that the hockey stick was *“deliberately bent”* by suggesting *“so it’s fraud”*, a term Lord Monckton later adopted. The BBC said that Lord Monckton went a good deal further than that elsewhere in his interview, so a long section was included. The BBC said that, as a result of the inclusion of this section of the interview, Lord Monckton’s views were conveyed solely in his words and about which viewers were left in no doubt.

- c) The BBC next responded to the complaint that Lord Monckton’s views were portrayed as amounting to vitriol and lacking in scientific basis.

The BBC said that, as set out in its response under head b) above, Lord Monckton used numerous strong terms in his interview. The word *“vitriol”* was specifically applied both to one of his remarks and to remarks made by two others sceptics. With reference to Lord Monckton, the word referred to his statement *“this was clearly, and I’m going to say it bluntly, deliberately bent”*. As this remark was directed at Professor Mann’s hockey stick graph, the BBC said that the programme makers asked Professor Mann (during preparation of the submission to Ofcom) what he made of this statement by Lord Monckton. Professor Mann’s response was as follows:

“This is a false accusation lawyerly worded to hint at impropriety or misconduct, but just ambiguous enough to avoid being legally actionable.”

The BBC said that, in the circumstances, to describe the statements of the climate change sceptics as *“vitriol”* was no more than fair comment.

The BBC said that Lord Monckton appeared to regard Dr Stewart’s conclusion, *“To me such attacks are a sure sign that the scientific battle is over”*, as unfair. The BBC said that the use of the word *“attacks”*, in the plural, demonstrated that the comment did not refer exclusively to Lord Monckton’s points. The BBC said that, as set out in the response to head b) of the complaint, the hockey stick graph, which was the main focus of the attacks, was no longer new science and was criticised in terms that went well beyond normal scientific discourse. The BBC said that the fact that Lord Monckton chose to concentrate in his interview on old science, rather than the new material published subsequently, indicated that he was more concerned with polemical argument than with the accuracy of the scientific picture. The BBC said that, in these circumstances, the use of the word *“vitriol”* was no more than fair comment, made by an expert.

Lord Monckton’s comments in response to the BBC’s statement

- a) In response to the BBC's comments regarding informed consent, Lord Monckton said that in a previous decision in relation to *The Great Global Warming Swindle* Ofcom had found that, even though the programme makers had written to the participants informing them what kind of programme was being made, interviewed them and obtained release forms, they were at fault for not making it clear that they were going to take a polemical line. Lord Monckton said that he had no idea that the programme makers were going to cut out all of his scientific criticisms of the hockey stick graph, leaving only his conclusion, which, while bluntly expressed, was justified by the large quantity of science that the BBC omitted.
- b) In response to the BBC's comments about the language used by Lord Monckton in his interview, Lord Monckton said that much of his interview was not polemical but was scientific and the science justified the strong language he used. Lord Monckton said that all of the rational science he deployed in his interview was ignored by the presenter at the time and edited out, leaving only the strong language, which would have made more sense if the scientific context had not been "ripped away".

The BBC's response to Lord Monckton's comments

- a) In relation to informed consent, the BBC said that the programme was not polemical. Although sceptics such as Lord Monckton used strong language, this was not used by the programme, which was a careful and appropriately balanced documentary.

The BBC reiterated that there was no contact between Lord Monckton and the programme makers before he was approached for interview at the conference. Furthermore, Lord Monckton appeared in a sequence that began "*This is a gathering of the world's most vocal global warming sceptics...*", so that viewers were made aware of Lord Monckton's broad views before hearing them.

- b) The BBC said that there had been a scientific debate about the statistical method used in the original hockey stick graph, but that there was no evidence of fraud on the part of the original hockey stick authors, and that to allege that there was was polemical, not scientific.

Decision

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

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

Lord Monckton'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, a recording and transcript of the full interview with Lord Monckton, a transcript of the programme and written submissions from each party.

- a) Ofcom first considered the complaint that Lord Monckton did not give informed consent for his participation in the programme.

In considering this part of the complaint Ofcom took account of Practice 7.3 of the Ofcom Broadcasting Code (“the Code”). Practice 7.3 states that where a person is invited to make a contribution to a programme, they should normally be told about the nature and purpose of the programme and what kind of contribution they are expected to make.

As set out above, potential contributors to a programme should be given sufficient information about the programme’s nature and purpose to enable them to make an informed decision about whether or not to take part. In assessing whether a contributor has given informed consent, Ofcom will look at information that was provided to the contributor prior to the recording of the contribution, untransmitted footage and the programme itself.

In Ofcom’s view an approach to participants at a conference, without prior communication, is usual practice in relation to newsgathering. In relation to a documentary, potential participants should where possible and practicable be provided with an explanation in advance of the nature and purpose the programme and their proposed contribution to it. Ofcom noted that Lord Monckton’s first contact with the programme makers was at the conference itself. There had been no written or other communication with Lord Monckton prior to Dr Stewart’s approach to him at the conference. It was not incumbent on the programme makers to contact Lord Monckton prior to attending the conference, provided he was given sufficient information at the conference itself about the programme. In considering what information Lord Monckton was given about the programme, and in the absence of any written material about the nature of the proposed programme, Ofcom relied primarily on the programme itself and the full interview Lord Monckton gave to Dr Stewart in considering whether he gave informed consent for his participation.

Ofcom noted that the recording of the full interview began with Dr Stewart saying to Lord Monckton:

“You must know me. So what’s this all about then. Tell us what’s happening here.”

Lord Monckton replied:

“What is happening here is that 500 scientists and statesmen have come together to examine whether the scare about climate which is being so sedulously fostered by the BBC should be given any more regard than it is and our conclusion I think it is very clear that we don’t think that there is a problem with the climate and the correct policy response to a non problem is to do nothing and get on with the real problem.”

Dr Stewart and Lord Monckton then went on to discuss the conference and climate science generally. Ofcom considered that, given the nature of the conference, namely a gathering of “global warming sceptics”, it was likely that Lord Monckton would have been aware that he would be interviewed in his capacity as one of those sceptics. However, in Ofcom’s view, insufficient information was provided to Lord Monckton about the nature and purpose of the specific programme he was being interviewed for. Nor in Ofcom’s view was it sufficient for the BBC to rely on the critical views Lord Monckton expressed about previous BBC coverage of scientific matters, and his presence at a conference of sceptics, in assuming he would appreciate what the programme would be about.

Ofcom noted that the programme looked at the history of the climate change debate and included the views of Lord Monckton and other sceptics against that backdrop. The programme concluded with Dr Stewart saying of the view expressed by Lord Monckton that there had been fraud in relation to climate change data:

“To me such attacks are a sure sign that the scientific battle is over. And sure enough perhaps the most surprising thing at the sceptics conference is what I heard at the keynote speech...For years climatologist Pat Michaels has been one of the most vocal sceptics. And yet today he’s in surprising agreement with the advocates of global warming...He accepts the globe is warming but the truly astonishing thing is he also accepts that we are partly to blame.”

Dr Stewart then said:

“I’ve heard things I really didn’t expect climate sceptics to say, they say global warming’s happening, temperatures are going up...and that humans are somehow implicated in some degree. That’s amazing. I mean those issues it looks like are behind us.”

In Ofcom’s view this conclusion had the clear effect of suggesting that Lord Monckton and others who shared his views were out on a limb in continuing to maintain their position on global warming. While it was clear from the full interview that Lord Monckton and Dr Stewart disagreed on the issues, in Ofcom’s view there was nothing in the interview that would have alerted Lord Monckton to the likely position the programme would take in relation to him and his fellow sceptics. In any case, the necessary information to enable a contributor to give informed consent should normally be given prior to an interview, not during the course of it. In these circumstances, Lord Monckton was not in a position to give informed consent for his participation in the programme.

Ofcom noted that Lord Monckton signed a consent form at the end of the interview, but this gave no information about the nature and purpose of the programme or his proposed contribution to it. In Ofcom’s view, having viewed the full interview, it was clear that Lord Monckton considered this to be a formality. Ofcom did not consider that the fact he signed the form meant that Lord Monckton gave informed consent for his participation in the programme. While the signed form might suggest that he felt he had made his points, it did not indicate that he was aware of how his interview would be used in the programme.

Taking all the information and circumstances into account, Ofcom considered that the programme makers had not provided Lord Monckton with sufficient information about the likely nature and purpose of the programme when securing consent for his participation. In Ofcom’s view insufficient steps were taken by the programme makers to enable them to justifiably treat any consent that was provided by Lord Monckton as ‘informed consent’.

Having reached this view, Ofcom then went on to consider whether the lack of informed consent had led to unfairness to Lord Monckton in the programme as broadcast under heads (b) and (c) below.

- b) Ofcom next considered Lord Monckton’s complaint that footage of an interview with him was unfairly edited and that, as a result, his views were misrepresented.

In considering this part of the complaint Ofcom took account of Practices 7.6 and 7.9 of the Code. Practice 7.6 states that when a programme is edited, contributions should be represented fairly. Practice 7.9 states that broadcasters must take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

Ofcom noted that Lord Monckton first appeared in the opening section of the programme, when he was shown pointing to Dr Mann's graph and saying *"This was deliberately bent"*.

Later in the programme, there was footage of Dr Mann, who said in the programme:

"I never expected the sort of attacks that we were subjected to when I began this work".

Lord Monckton was then shown saying:

"This was clearly – and I'm going to say it bluntly – deliberately bent".

Ofcom then noted the following extract from the closing section of the programme, in which Lord Monckton put forward his views about the hockey stick graph in his own words:

Dr Stewart: *"... there are still sceptics who maintain that the science isn't settled, and they explain away the mass of scientific opinion by claiming that the whole "global warming" theory is a fraud."*

Lord Monckton: *"When you get the National Climate Data Centre – er – withholding the locations of its temperature stations the moment one or two of them were found to be in urban heat-island areas, you find the hockey-stick data suppressed, hidden, not released until two years of bullying eventually made the authors part with a sort of messy version of it, then – ah – one immediately smells a rat, doesn't one? I mean, it's not – it's quite simple: if you can see serial, erm, deliberate falsifications of data, withholding of data, manipulation of data, these are simple matters to track. The great thing about all frauds is, however complex they look to the outsider, once you understand them they're always simple."*

Dr Stewart: *"Fraud's a big word to use in science, and you've said it's littered with it. But equally, there's lots of times when scientists have made a genuine attempt to do an analysis and then someone comes along and says, No, you've missed out this ..."*

Lord Monckton: *"No, that's known as falsification, that's a proper, proper process. If, on the other hand, you find that all those departures from, from the line of accuracy are in one direction and one direction only, then you know that somebody is fiddling it. It's absolutely clear: it works every time."*

Dr Stewart: *"That's a demoralizing view of science. I just don't see it."*

Lord Monckton: *"No, it's not a demoralizing view of science: it's a view of that – of those scientists who are trying to bend the result."*

In considering Lord Monckton's complaint, Ofcom viewed untransmitted footage of a wide-ranging interview with him. During this interview, Lord Monckton gave a great deal of information about his views on global warming and the scientific data discussed in the programme. It is important to note that the editing of a programme is an editorial matter for a broadcaster. However, in editing an interview, broadcasters must ensure that the programme as broadcast does not result in unfairness to an individual or organisation.

Ofcom considered whether, in the context of a programme that included contributions from a large number of people setting out their views on global warming, Lord Monckton's position was fairly represented. In Ofcom's view, in using the lengthy extract from the interview towards the end of the programme, the programme makers conveyed the key points of Lord Monckton's views on the hockey stick graph, in his own words. Ofcom considered that the programme makers selected for inclusion in the programme some of the interview extracts in which Lord Monckton expressed his views most powerfully. However given that Lord Monckton used the words such as "fraud" and "bent" a number of times in his interview, it was not unreasonable for the programme to use those sections of his interview.

In these circumstances, Ofcom found that Lord Monckton's interview was not unfairly edited.

- c) Ofcom next considered Lord Monckton's complaint that he was unfairly portrayed in that his views were portrayed as vitriol and lacking in scientific basis.

In considering this part of the complaint Ofcom took account of Practice 7.9 of the Code, as referred to under decision head b) above.

Ofcom considered that, as set out under decision head b) above, Lord Monckton expressed his views in strong terms in his interview with Dr Stewart and Ofcom found that his interview was not edited unfairly. Ofcom noted that at the beginning of the programme, Dr Stewart said:

"It was a debate in which hard science was mixed with vitriol and personal abuse."

This was followed by Lord Monckton referring to Dr Mann's graph as "*deliberately bent*". However Ofcom also noted that there were criticisms of the hockey stick graph throughout the programme, by Lord Monckton and by others. In Ofcom's view it was clear that the reference to "*vitriol and personal abuse*" was not directed just at Lord Monckton. Furthermore, given the language used by Lord Monckton, it was not unreasonable for Dr Stewart to characterise the views he expressed as being "vitriolic".

As set out at decision head b) above, Ofcom took the view that, as a result of the inclusion of an extract from his interview, Lord Monckton was able to express his reasons for his position. He did so in strong terms and it was not unfair for the programme makers to include these strongly expressed views in the programme. Ofcom therefore found that Lord Monckton was not portrayed unfairly in this respect.

Accordingly Ofcom has not upheld Lord Monckton's complaint of unfair treatment in the broadcast of the programme.

Not Upheld

Complaint by Professor Timothy Ball

Earth: The Climate Wars, BBC2, 14 September 2008

Summary: Ofcom has not upheld this complaint of unfair treatment made by Professor Timothy Ball.

The BBC broadcast a three-part series looking at the history of the global warming debate and the arguments for and against the existence and extent of the threat posed by climate change. In the second part of the series the presenter, Dr Iain Stewart, attended the 2008 International Conference on Climate Change, which was described in the programme as “a gathering of the world’s most vocal global warming sceptics”. At this conference, Dr Stewart referred to and discussed with participants in the programme the “hockey stick graph”. This graph was the result of research by Dr Michael Mann. It indicated that there had not been a “Medieval warm period” and that, therefore, climate change sceptics who believed there had been such a period and that temperatures today were “nothing special”, were wrong.

One of the people interviewed at the conference was Professor Timothy Ball. He complained to Ofcom that he was treated unfairly in the broadcast of the programme.

Ofcom concluded that the programme makers did not provide Professor Ball with sufficient information about the likely nature and purpose of the programme when securing consent for his participation. However, Ofcom found no grounds to uphold his complaint of unfair treatment in the programme as broadcast because it found that footage of his interview was not unfairly edited, he was not misrepresented in the broadcast programme and no allegation was made about him to which he should have been offered an opportunity to respond.

Introduction

On 14 September 2008 the second part of BBC2’s three-part series entitled *Earth: The Climate Wars* was broadcast. The series looked at the history of the global warming debate and the arguments for and against the existence and extent of the threat posed by climate change. In the second part of the series, the presenter, Dr Iain Stewart, a geologist at the University of Plymouth, referred to the apparent global consensus on climate change at the Earth Summit in Rio de Janeiro in 1992. He said that that consensus later began to break up, with some politicians, businessmen and scientists arguing that there was no climate crisis after all. While looking at the history of the debate, Dr Stewart referred to the “hockey stick graph”. This graph was the result of research by a scientist, Dr Michael Mann, and it indicated that there had not been a “Medieval warm period”. This suggested that the climate change sceptics, who argued that there had been a Medieval warm period and that temperatures today were “*nothing special*”, were wrong. The programme included contributions from people on both sides of the debate, some of whom were interviewed at the 2008 International Conference on Climate Change in New York. One of the climate change sceptics interviewed at the conference was Professor Timothy Ball.

Professor Ball complained to Ofcom that he was treated unfairly in the programme as broadcast.

The Complaint

Professor Ball's case

In summary, Professor Ball complained that he was treated unfairly in that:

- a) He did not give informed consent for his participation in the programme, as he was not informed of the actual intent of the programme. Professor Ball said that, as a result of silence on the part of the programme makers, he was led to believe that the aim of the programme was to report on the views of conference participants. He was not informed that the interview material would be used to denigrate those who tried, in his view, to pursue the scientific truth. He believed, and was not dissuaded from the belief, that the interview would provide a full and fair airing of his views on the subject of climate change. He was exploited by being led to believe that his views on an important subject would be presented in a fair and balanced way. He would not have agreed to the interview if he had understood the programme makers' intentions.
- b) Footage of two interviews with him was unfairly edited and, as a result, his views were misrepresented. In particular:
 - i) He gave one interview of between 30 and 60 minutes and another of around two hours. However, only three quotations from the interview footage were included in the programme. These did not represent his knowledge or views on the subject of climate change. The use of two phrases out of context resulted in a cynical parody that belittled his professional knowledge and ability.
 - ii) He was portrayed unfairly in that the quotation from his interview used was quoted out of context and was provocative. As a result it appeared that he was making serious charges. These needed to be supported by the evidence he gave in his interviews.

He was not given an opportunity to respond to the portrayal of him in the programme as dismissing Dr Mann and those who believed that there was a global warming crisis as being "fraudulent".

The BBC's case

By way of background, the BBC said that Professor Ball's interview was recorded at the 2008 International Conference on Climate Change, at which the keynote speaker said:

"So...global warming is real and the second warming in the 20th century people have something to do with it alright? Now get over it ok..."

The BBC said that this comment lent weight to Ofcom's conclusion in a previous case¹, in which it said:

"...the scientific theory of man-made global warming was not a matter of political or industrial controversy or a matter relating to current public policy".

The BBC said that a matter could only cease to be a "matter of political or industrial controversy" when the consensus among scientific experts and, consequently, the policy

¹ Professor Carl Wunsch's complaint against *The Great Global Warming Swindle*, Ofcom Broadcast Bulletin 114, 21 July 2008

makers who rely on them, was so strong that they stopped disputing amongst themselves. In such circumstances, the only remaining questions were political, namely what was the appropriate response of governments to the scientific facts. The BBC said that such political issues formed no part of the programme, which examined the criticisms of climate science made over the years by those who, in the words of the programme *“have passionately argued there is no climate crisis”*. The programme showed how those criticisms served to strengthen the underlying science and, in doing so, it reported the views of the sceptics, in the fairest manner possible, by using their own words.

a) In response to Professor Ball’s complaint that he did not give informed consent for his interview, the BBC said that Professor Ball appeared in the menu sequence at the beginning of the programme and in a relatively short sequence which examined one side-issue to the debate over climate change. The programme, and the series as a whole, was about the history of the scientific debate over climate change. The question this sequence was designed to address was why those who criticise what Ofcom described² as the “overwhelming body of scientific evidence [which] now clearly indicates that climate change is a serious and urgent issue” did so in such unscientific terms.

The BBC said that Professor Ball’s interview was carried out at the International Conference on Climate Change in New York in March 2008, at which he was listed in the programme as a speaker. Members of the press with appropriate accreditation from the conference organisers were able to approach speakers and other attendees for interviews during breaks in the proceedings. There was no advance contact between Professor Ball, or any of the dozen or so other individuals interviewed at the conference, and the programme makers. The BBC said that, given the nature of the conference, it was inconceivable that a panellist approached by a camera crew would expect to be asked to discuss anything other than climate change, and from a perspective of scepticism of the current scientific consensus.

The BBC said that Dr Stewart had introduced himself to all the potential interviewees in near identical terms, saying he was making a programme about climate change and wished to carry out an interview. Around 27 minutes of interview footage was recorded with Professor Ball. The BBC said that very little of the interview was devoted to the hockey stick graph. The BBC also said that the following exchange indicated how well aware Professor Ball was of how television interviews worked:

Professor Ball: *“I’ll give you another example, in my own research we were doing a study about the-the impact of hydro dams in northern Canada on the flora and fauna. In one area there was a woodland caribou, er herd of woodland caribou, oh, the long shot.”*

Dr Stewart: *“The long shot, you’ll be smaller now.”*

Professor Ball: *“And then you got to do the over the shoulder so you can put words in my mouth...I played this game before, you want this on tape because this is a good story.”*

And after the conclusion of the interview, there was the following exchange:

Dr Stewart: *“Thank you. Nice talk.”*

² In its adjudication on Professor Carl Wunsch’s complaint against *The Great Global Warming Swindle*, Ofcom Broadcast Bulletin 114, 21 July 2008

Professor Ball: *“Thanks for your programmes, by the way, I really enjoyed them.”*

Dr Stewart *“You do?”*

The BBC said that it was clear from the above and from the rest of the material in the recorded interview that Professor Ball was, firstly, familiar with Dr Stewart’s previous programmes, some of which dealt with climate change, and, secondly, well aware of the mechanics of television. The BBC said that when Dr Stewart expressed his position on carbon dioxide, this represented the “conventional” view and was, unsurprisingly, challenged by Professor Ball. The BBC said that Professor Ball was clearly a well informed participant in television programmes, and was left in no doubt, by Dr Stewart’s questions, that his views would not be left unchallenged.

The BBC said that a second interview with Professor Ball was conducted by the producer the following day. This interview was not for the programme, but for a different version, made as a conventional voice-over documentary, for commercial sale, so it was not used in the programme. However, this interview began with the producer explaining the identical purpose of both the programmes:

“What we’re doing is the science of climate change, we’re looking at it from a historical angle, so we’re interested in, you know, how the different strands of thought developed.”

The BBC said that this was an accurate description of the programme and that there was not, as alleged by Professor Ball, “silence on the part of the programme makers”.

In response to the complaint that Professor Ball was “never told that the interview material was part of a planned programme denigrating those who try to pursue scientific truth”, the BBC said that this demonstrated that Professor Ball believed that scientific truth was identical to his personal views. The BBC said that there was no personal attack on any individual who appeared in the programme and that the programme broadcast the actual words used by scientists and made fair comment on them.

- b) The BBC next responded to Professor Ball’s complaint that footage of his interviews was unfairly edited, resulting in his views being misrepresented.
 - i) & ii) The BBC responded together to the two sub-heads of this complaint, namely that Professor Ball gave two lengthy interviews, but that only three quotations were included and did not represent his knowledge or views on the subject of climate change and that the quotation included was used out of context and was provocative.

The BBC said that it was always the case that substantive interviews were edited for use in documentaries and that the duration of the original interview was not material to fairness. The BBC said that Professor Ball’s clearly very broad “*knowledge or views*” on climate change could not be contained in the kind of interview extract normally used in science documentaries such as this.

Furthermore, the BBC said that the quotation from Professor Ball used in the programme was not only the substantive part of his answer to a specific question, but he was immediately given the opportunity to reconsider it, as was clear from the following exchange:

Dr Stewart: *“Right and what about - what about this? This is the...”*

Professor Ball: *“The hockey stick.”*

- Dr Stewart: *“The iconic symbol of global warming. Is that fraud or is that muddled or is that disingenuous?”*
- Professor Ball: *“I - I would say-the way I would respond to that is if it's fraud they should be in jail. If it - if it was incompetence they should be fired.”*
- Dr Stewart: *“Doesn't give them much leeway.”*
- Professor Ball: *“No well I mean it's the same things. You've got a politician. You know, if you knew something was going on and didn't do about it-anything about, you're culpable right. If you didn't know you're culpable cos...”*

The BBC said that this demonstrated that Professor Ball's statements were not made provocative by being taken out of context. The BBC said that Professor Ball made certain remarks, in response to a question, and they were broadcast and that his contribution was not edited unfairly.

- d) The BBC next responded to the complaint that Professor Ball was not given an opportunity to respond to the portrayal of him in the programme as dismissing Dr Mann and those who believed there was a global warming crisis as being “fraudulent”.

The BBC said that no allegation of “wrongdoing or incompetence” was made in relation to Professor Ball or his work. His comments were included to demonstrate the language climate change sceptics, even those with firm groundings in parts of the relevant science, adopted when talking about the issue. The BBC said that as there was no direct criticism of Professor Ball, there was no reason to include any further contribution from him.

Professor Ball's comments in response to the BBC's statement

- c) In response to the BBC's comments regarding informed consent, Professor Ball said that, although he liked Dr Stewart's programmes on geology, and said so in his interview, the same did not apply to his work on climate. Professor Ball said that a major part of his willingness to speak to Dr Stewart had been because, as a lifelong advocate and practitioner of educating the public about science, Professor Ball thought that Dr Stewart was “finally presenting the other side of the story”. Professor Ball said he had also participated because he was delighted that the BBC was providing coverage to a very significant event in the exposition of climate science. Professor Ball said that, in fact, the programme was biased, sarcastic and cynical about the scientific method and with serious inaccuracies. Professor Ball said that he signed a consent form because he assumed it was for a programme about the conference. The title, “The History of Climate Change”, led him to understand that the programme would report on the conference, which was the first world event devoted to presenting the scientific challenge to the hypothesis that human CO₂ was causing climate change. The conference was a very significant event in the history of climate change and Professor Ball said that he did not realise that Dr Stewart would use the venue knowing that those who correctly challenged the hypothesis would be gathered in one place.
- d) In response to the BBC's comments about the editing of the interview he gave, Professor Ball said he was giving his personal views, as that was what the programme makers wanted. He said that he spoke at length in his interview about his personal history in climatology, but that none of this was included in the broadcast programme. Professor Ball said that only a few quotations from his interview were used and that this was done so as to ridicule him.

The BBC's response to Professor Ball's comments

- a) In relation to informed consent, the BBC said that the programme makers accepted that Professor Ball was an expert in his field and that Dr Stewart's interview with him was conducted as one scientist talking to another. The BBC said, however, that Professor Ball had confused the two interviews, as the untransmitted footage of the interview shown in the programme showed that he made no mention of his "personal history in climatology".

The BBC said that it appeared from his comments that Professor Ball had assumed that Dr Stewart was sceptical of anthropogenic global warming, but that he had no basis for making that assumption before the interview and the interview itself gave him no grounds from making the assumption subsequently.

The BBC said that it did not accept that a conference at which fewer than 30% of the speakers had the necessary scientific qualifications could be characterised, as Professor Ball had, as the "first world event devoted to presenting the scientific challenge to the hypothesis that human CO₂ was causing climate change". In these circumstances, the BBC said that it was entirely appropriate and not unfair to Professor Ball to portray the conference as a gathering of confirmed climate change sceptics.

- b) The BBC did not accept that Professor Ball's interview was used only to ridicule him and argued that the comments included in the programme reflected his considered view on Dr Mann's work.

Decision

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

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

Professor Ball'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, a recording of the two full interviews with Professor Ball, a transcript of the programme and written submissions from each party.

- a) Ofcom first considered the complaint that Professor Ball did not give informed consent for his participation in the programme.

In considering this part of the complaint Ofcom took account of Practice 7.3 of the Ofcom Broadcasting Code ("the Code"). Practice 7.3 states that where a person is invited to make a contribution to a programme, they should normally be told about the nature and purpose of the programme and what kind of contribution they are expected to make.

As set out above, potential contributors to a programme should be given sufficient information about the programme's nature and purpose to enable them to make an

informed decision about whether or not to take part. In assessing whether a contributor has given informed consent, Ofcom will look at information that was provided to the contributor prior to the recording of the contribution, untransmitted footage and the programme itself.

In Ofcom's view an approach to participants at a conference, without prior communication, is usual practice in relation to newsgathering. In relation to a documentary, potential participants should where possible and practicable be provided with an explanation in advance of the nature and purpose the programme and their proposed contribution to it. Ofcom noted that Professor Ball's first contact with the programme makers was at the conference itself. There had been no written or other communication with Professor Ball prior to Dr Stewart's approach to him at the conference. It was not incumbent on the programme makers to contact Professor Ball prior to attending the conference, provided he was given sufficient information at the conference itself about the programme. In considering what information Professor Ball was given about the programme, and in the absence of any written material about the nature of the proposed programme, Ofcom relied primarily on the programme itself and the full interview Professor Ball gave to Dr Stewart in considering whether he gave informed consent for his participation.

Ofcom noted that in the interview used for the programme Dr Stewart and Professor Ball discussed climate science at length. Ofcom considered that, given the nature of the conference, namely a gathering of "global warming sceptics", it was likely that Professor Ball would have been aware that he would be interviewed in his capacity as one of those sceptics. However, in Ofcom's view, insufficient information was provided to Professor Ball about the nature and purpose of the specific programme he was being interviewed for. Nor in Ofcom's view was it sufficient for the BBC to rely on Professor Ball's awareness of other programmes made by Dr Stewart or on his understanding of television generally in assuming he would appreciate what the programme would be about.

Ofcom noted that the programme looked at the history of the climate change debate and included the views of Professor Ball and other sceptics against that backdrop. The programme concluded with Dr Stewart saying of the view expressed by Professor Ball that there had been fraud in relation to climate change data:

"To me such attacks are a sure sign that the scientific battle is over. And sure enough perhaps the most surprising thing at the sceptics conference is what I heard at the keynote speech...For years climatologist Pat Michaels has been one of the most vocal sceptics. And yet today he's in surprising agreement with the advocates of global warming...He accepts the globe is warming but the truly astonishing thing is he also accepts that we are partly to blame."

Dr Stewart then said:

"I've heard things I really didn't expect climate sceptics to say, they say global warming's happening, temperatures are going up...and that humans are somehow implicated in some degree. That's amazing. I mean those issues it looks like are behind us."

In Ofcom's view this conclusion had the clear effect of suggesting that Professor Ball and others who shared his views were out on a limb in continuing to maintain their position on global warming. While it was clear from the full interview that Professor Ball and Dr Stewart disagreed on the issues, in Ofcom's view there was nothing in the interview that would have alerted Professor Ball to the likely position the programme would take in

relation to him and his fellow sceptics. In any case, the necessary information to enable a contributor to give informed consent should normally be given prior to an interview, not during the course of it. In these circumstances, Professor Ball was not in a position to give informed consent for his participation in the programme.

Ofcom noted that Professor Ball signed a consent form at the end of the interview, but this gave no information about the nature and purpose of the programme or his proposed contribution to it. Ofcom did not consider that the fact he signed the form meant that Professor Ball gave informed consent for his participation in the programme. While the signed form might suggest that he felt he had made his points, but it did not provide evidence that he was aware of how his interview would be used in the programme.

Taking all the information and circumstances into account, Ofcom considered that the programme makers had not provided Professor Ball with sufficient information about the likely nature and purpose of the programme when securing consent for his participation. In Ofcom's view insufficient steps were taken by the programme makers to enable them to justifiably treat any consent that was provided by Professor Ball as 'informed consent'.

Having reached this view, Ofcom then went on to consider whether the lack of informed consent had led to unfairness to Professor Ball in the programme as broadcast under heads (b) and (c) below.

- b) Ofcom next considered Professor Ball's complaint that footage of an interview with him was unfairly edited and that, as a result, his views were misrepresented.

In considering this part of the complaint Ofcom took account of Practices 7.6 and 7.9 of the Code. Practice 7.6 states that when a programme is edited, contributions should be represented fairly. Practice 7.9 states that broadcasters must take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

Ofcom noted that in the opening section of the programme, the presenter said:

"...they are the climate change sceptics, and they've turned "global warming" into the most hotly-debated issue that science has ever seen. It was a debate in which hard science was mixed with vitriol and personal abuse on both sides."

Professor Ball was then shown saying to the presenter:

"If it's fraud, they should be in jail."

Later in the programme, Dr Mann, the lead author of papers published in *Nature*, the scientific journal, in which the hockey stick graph was first shown, said in the programme:

"I never expected the sort of attacks that we were subjected to when I began this work."

Comments were included from a number of the climate change sceptics at the 2008 conference and the presenter said:

"...the enmity that's been directed at Michael Mann is something else. Some even accused him of the ultimate scientific crime – fraud."

Professor Ball was then shown saying:

“If it’s fraud, they should be in jail. If it was incompetence, they should be fired.”

In considering Professor Ball’s complaint, Ofcom viewed untransmitted footage of two wide-ranging interviews with him. During these interviews, Professor Ball gave a great deal of information about his views on global warming. It is important to note that the editing of a programme is an editorial matter for a broadcaster and that it is not incumbent on programme makers to use a large amount of material recorded in a lengthy interview. However, in editing an interview, broadcasters must ensure that the programme as broadcast does not result in unfairness to an individual or organisation.

Ofcom considered whether, in the context of a programme that included contributions from a large number of people setting out their views on global warming, Professor Ball’s position was fairly represented. In Ofcom’s view, Professor Ball’s contribution was used as a “vox pop” comment about the hockey stick graph, which illustrated the prevailing view at the conference. In Ofcom’s view, the programme makers conveyed, albeit briefly, the view expressed by Professor Ball that if there was fraud involved, the perpetrators should be in jail. The programme also included his view that if incompetence was the issue, then those responsible should be fired. In these circumstances, Ofcom considered that it was clear, even in the context of a brief vox pop, that Professor Ball was posing the question as to whether there was fraud involved, rather than making an accusation of fraud. Given that Professor Ball referred to the possibility of fraud, it was not unreasonable for the programme to use this section of his interview.

Ofcom noted that Professor Ball was not informed that his contribution would be used for a vox pop comment, but at the time of the interview, it is likely that the programme makers did not know how they would use each interview in the programme. Furthermore, Professor Ball was not given any assurance that his interview would be included at length in the programme.

Taking all the above factors into account, Ofcom found that Professor Ball’s interview was not unfairly edited.

- c) Ofcom next considered Professor Ball’s complaint that he was not given an appropriate and timely opportunity to respond to the portrayal of him in the programme as dismissing Dr Mann and those who believed there was a global warming crisis as being “*fraudulent*”.

In considering this part of the complaint Ofcom took 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.

As set out under decision head b) above, Ofcom noted that Professor Ball’s interview was used by way of a vox pop comment. It was clear from the programme that he was one of a number of climate change sceptics at the conference who expressed their views on the hockey stick graph. Ofcom did not consider that the inclusion of Professor Ball’s comment resulted in any allegation being made about him to which he was entitled to an opportunity to respond.

Ofcom therefore found no unfairness to him in this respect.

Accordingly Ofcom has not upheld Professor Ball's complaint of unfair treatment in the broadcast of the programme.

Not Upheld

Complaint by the community of Middlesbrough and by Middlesbrough Council made on their behalf by the Mayor of Middlesbrough, Mr Ray Mallon

Location, Location, Location: Best and Worst Live, Channel 4, 17 October 2007

Summary: Ofcom has not upheld this complaint of unfair treatment by the community of Middlesbrough and by Middlesbrough Council made on their behalf by the Mayor of Middlesbrough, Mr Ray Mallon.

The programme looked at the 20 “worst” and 20 “best” places to live in the UK. Middlesbrough was identified as the “worst” place to live, whilst Edinburgh was identified as the “best”. Middlesbrough was described in the programme as having “critical health levels” and “more than twice the UK average” of robbery, burglary, sexual assault, violent crimes and car theft.

Mr Mallon complained that the community of Middlesbrough was unfairly portrayed in the programme and that Middlesbrough Council was unfairly not given an opportunity to respond or contribute to the programme.

In summary Ofcom found the following:

- Ofcom found that the community of Middlesbrough had been portrayed fairly in the programme. It considered that it was reasonable for the programme makers to have relied upon expert statistical analysis, which had been carried out using sources that could be regarded as reasonably reliable and had compared like with like across 434 local authorities. Ofcom found that no unfairness had resulted to either the community of Middlesbrough or Middlesbrough Council from the selection of the criteria for determining the “best” and “worst” places to live (crime, education, employment, environment, lifestyle and health). These criteria were made clear to viewers and Ofcom considered that the results of the statistical analysis were fairly presented in the programme.
- Ofcom considered that it was not unfair to the community of Middlesbrough for the programme to have included details about smoking, drug misuse and physical exercise in the area, or to have included images of obese people. One of the criteria examined during the statistical analysis was health and it was reasonable for the programme makers to use these details, which were illustrative of “critical health levels” in the area.
- Ofcom considered that no unfairness to the community of Middlesbrough had resulted from the inclusion in the programme of images of the Port Clarence Docks in Stockton-on-Tees, derelict buildings in South Bank, Redcar and footage filmed in 2006 of Grange Road, Middlesbrough. The images were illustrative of the central theme that Middlesbrough had been ranked as the “worst” place to live in the UK by the statistical analysis and Ofcom did not consider that their inclusion would have materially altered viewers’ perception of Middlesbrough.
- Ofcom considered that it was not unfair to the community of Middlesbrough to refer to binge drinking in the Middlesbrough section of the programme, or to include an image of a drinks can being stamped into the ground. It was reasonable to illustrate the results of the statistical analysis using details such as those in relation to binge drinking, which was linked to several of the criteria examined (e.g. health, crime and environment).

- Ofcom found that it was not unfair to Middlesbrough Council for the programme makers not to have offered it an opportunity to contribute to the programme. No allegations were made about the Council in the programme and the Council's responsibilities for the areas examined in the statistical analysis were not exclusive since other agencies, national and local, shared in these responsibilities.

Introduction

On 17 October 2007, Channel 4 broadcast a special edition of *Location, Location, Location* entitled "Best and Worst Live". In the programme, the presenters, Kirstie Allsop and Phil Spencer, revealed the results of the "best" and "worst" places to live in the UK. Middlesbrough was identified as the "worst" place to live, whilst Edinburgh was revealed as the "best".

In the programme, Kirstie Allsop described Middlesbrough as having:

"Critical health levels, double the English average of drug abuse, 8% more smokers than the English average and over a quarter of the inhabitants admitted to binge drinking."

Phil Spencer said that:

"90% of the residents never exercise and few eat healthily...robbery, burglary, sexual assault, violent crimes and car theft, are all more than twice the UK average."

The programme included footage of various street and city scapes with the caption, "Middlesbrough". The section about Middlesbrough concluded with a live interview with a selection of residents, who made a number of comments in defence of Middlesbrough.

With regard to Middlesbrough Council, the programme included the following exchange between the two presenters:

Phil Spencer: *"But the Council has been tackling their problems head on and have installed the first ever talking CCTV."*

Kirstie Allsop: *"It's had a positive effect on street side drinking and fighting."*

Ofcom received a complaint from Mr Ray Mallon, the directly elected Mayor of Middlesbrough. He complained that the community of Middlesbrough and Middlesbrough Council were treated unfairly in the programme as broadcast.

The Complaint

The community of Middlesbrough and Middlesbrough Council's case

In summary, Mr Mallon complained that the community of Middlesbrough was treated unfairly in the programme as broadcast, in that:

- a) The community of Middlesbrough was portrayed in a negative and unfair way, in that statistics used in the programme were unfairly referred to and consequently the presenter's comments "*officially and statistically the very worst place to live in Britain in 2007 is Middlesbrough*" and "*yes it's official, the worst place to live in the UK is Middlesbrough*" were unfair. Mr Mallon identified the following instances where the statistics were unfair:

- (i) The statistics used in the programme were not up to date and did not pertain to 2007. For example the crime data was for the year ending March 2006, the carbon emissions 2003 and suicides from 1998.
 - (ii) The use of smoking, drug use and physical exercise data in the Middlesbrough section of the programme was unfair and gratuitous as none of these were factors used to determine “best” or “worst” place. Furthermore, the statistics were presented inaccurately. For example, the programme incorrectly stated that 90% of the residents never exercised when in reality the statistic was that 90% of the adult population did not exercise more than five times a week for more than 30 minutes at a time.
 - (iii) The programme incorrectly stated that the crime average in Middlesbrough was twice the UK’s average.
 - (iv) The programme unfairly stated that the burglary rate for Middlesbrough was 9 per day by including “other burglaries” that were not private homes in their statistic. The burglary rate for private homes was actually 3.8 per day.
- b) The programme makers unfairly edited the programme in that:
- (i) The programme used images that were captioned “Middlesbrough” but in reality were not images of Middlesbrough. For example, the opening scene showed a ship at a wharf with an industrial background but this was an image from Stockton-on-Tees, not Middlesbrough.
 - (ii) Some of the footage and images used in the programme of Middlesbrough were taken in 2006 and it was unfair to use them in a programme broadcast in 2007. For example, Grange Road, Middlesbrough had been regenerated since the footage was recorded in 2006 and was now a grass-lined footpath.
 - (iii) The image of a drink can being stamped into the ground in the Middlesbrough section of the programme was staged to fit the negative image of Middlesbrough that the programme portrayed. Furthermore, it was gratuitous and unfair as binge drinking was not a criteria for determining “worst” and “best” place.
 - (iv) The images of obese people in the Middlesbrough footage should not have been included as obesity was not a factor used to determine “best” or “worst” place and, as such, the scenes were misleading and unfair.
- c) The programme treated Edinburgh (“the best”) and Middlesbrough (“the worst”) differently, and portrayed Middlesbrough in an unfairly negative way, in contrast to the solely positive captions and commentary used in relation to Edinburgh. The programme did not provide a balance of positive and negative aspects and the inclusion of the live audience at the conclusion of the segment did not provide any such balance.
- d) The presenters were not objective in choosing the criteria for the selection of “best” and “worst” places.

In summary, Mr Mallon complained that Middlesbrough Council was treated unfairly in the programme as broadcast, in that:

- e) It was not given an opportunity to respond or contribute to the programme, despite approaching the programme makers. By way of background to this complaint, Mr Mallon

said that the programme makers refused to provide him with the statistics and research used in the programme.

- f) The presenters were not objective in choosing the criteria for the selection of “best” and “worst” places.

Channel 4’s case

By way of introduction to its response to the specific complaints, Channel 4 said that the programme had aimed to present a definitive guide to the best and worst places to live and buy in the UK’s “fickle property market”. Channel 4 said that similar editions of *Location, Location, Location* had been broadcast annually in 2005 and 2006 and that Ofcom had not upheld a similar complaint from Nottingham City Council in relation to the 2005 programme. It did not believe that the programme had in any way been unfair to either Middlesbrough Council or the community of Middlesbrough and invited Ofcom to dismiss the complaint.

- a) In response to the complaint that the community of Middlesbrough was portrayed in a negative and unfair way in the programme, in that statistics were unfairly referred to, Channel 4 said that the methodology for arriving at the statistics used in the programme had been set out in the programme.

Channel 4 stated that the programme had been researched throughout the spring and summer of 2007. The aim had been to measure each of the UK’s 434 local authorities on exactly the same criteria: crime, education, employment, environment, lifestyle and health. These categories had been selected as they were held to reflect the topics commonly considered by people when they were evaluating where they would like to live and measured the quality, rather than the cost, of living in each area.

Channel 4 stated that, for each of the six criteria, the most up-to-date statistics available for comparison across the whole of the UK had been gathered by the research team within the programme makers’ property department. They had used official sources, including the Home Office for crime, the NHS for health and The Office for National Statistics. Channel 4 said that whilst more up-to-date figures for some criteria might have been available from some local or regional authorities, it was deemed essential that, as in previous years, only figures that could be fairly compared across the whole of the UK were used, in order to compare like with like.

Channel 4 said that the figures gathered had then been analysed by an expert independent consultant statistician. The same source methodology that had been used in previous years was followed and a relative value was applied to each category so that each one had the same ability to affect the overall rankings. Channel 4 said that this had been achieved in 2007, as in previous years, by engaging independent survey specialists to determine which categories were most important to home owners/ buyers. These specialists had asked 1,000 randomly selected adults drawn from across the UK, as a sample representative of the UK population as a whole, to rank the importance of the six criteria when they were looking at buying a house in an area. The survey had confirmed that Crime was the most important criterion, followed by Environment, Lifestyle, Health, Education and Employment.

Channel 4 said that once the expert statistician had this information, he had been able to apply a weighting to each category and produce the definitive ranking. It said that this was a common method for analysing data, which was also used by Government.

Channel 4 submitted that, as Ofcom had held previously, it was not Ofcom’s role to determine the adequacy of the statistics used in a programme such as *Location,*

Location, Location: Best and Worst Live, but to consider whether the broadcaster took reasonable steps to ensure that the material facts it used concerning Middlesbrough, or indeed any other place, were fairly presented in the programme.

Channel 4 stated that the programme makers had used expert statisticians and statistical sources which could be regarded as reasonably reliable. It said that the programme had made clear that it was assessing local authorities in the UK against a set of clearly defined criteria. Channel 4 said that, in the circumstances, it would argue that it had taken reasonable steps to ensure that the material facts it presented about Middlesbrough did not result in unfairness to the community of Middlesbrough.

- (i) In response to the complaint that the statistics used in the programme were not up-to-date and did not pertain to 2007, Channel 4 said that the data that had been gathered and analysed for the programme had been the most recent data available at the time of the research (May/June 2007) for comparison across all 434 of the UK's local authority areas. One of the presenters stated at the start of the programme that the data used was "*the most up-to-date official data available across the UK.*" Channel 4 said that, whilst more up-to-date material in relation to individual areas might have been available from individual local or regional authorities, it had been essential to compare like with like and use the most up-to-date material that was available for each comparison across the whole of the UK.

Channel 4 said that it was correct that the crime data used for the purposes of the programme's comparison was for 2006. When the data had been collected, the most recent data that had been available for Scotland related to 2005/2006. Data for 2006/2007 in Scotland had not been published until September 2007, by which time the statistical analysis for the programme had been completed.

Channel 4 stated that it was not correct that the carbon emissions data used in the programme was for 2003. It said that the data that had been used was for 2004 and had been sourced directly from DEFRA. It said that the data was the most up-to-date data available at the time of research and that the next set of data had not been available until 20 November 2007, by which time the programme had already been transmitted.

Channel 4 said that it was not correct that the suicide data used was for 1998; the data used had been for the period 1998 to 2004 and had been sourced from the Office of National Statistics and the Northern Ireland Statistics and Research Agency. It said that it was the most up-to-date data available from both sources at the time of research and that the next available data, dating to 2006, had not become available until 25 January 2008, by which time the programme had already been transmitted.

- (ii) In response to the complaint that the use of smoking, drug misuse and physical exercise data in the Middlesbrough section of the programme was unfair, Channel 4 said that whilst statistics for alcohol consumption, smoking and drug misuse had not formed part of the statistical analysis that the programme makers carried out, life expectancy had, as part of the health category. Channel 4 stated that the link between alcohol consumption, smoking, drug misuse and life expectancy was well established. It said that the 2007 NHS Health Profile for Middlesbrough stated that rates of early death from heart disease, stroke or cancer were higher than average in Middlesbrough, that 34% of adults in the area smoked and that, on average, smoking alone killed over 300 people each year in Middlesbrough.

Channel 4 stated that a voiced over reference in the programme to "*90% of the residents never exercis[ing]*" was based on the 2007 NHS Health Profile, which

stated that the local value in Middlesbrough for “Physically Active Adults” (persons over 16 participating in moderate intensity sport and active recreation on 20 or more days in the previous 4 weeks based on respondents to the Sports England Active People Survey) was 9.5%. It said that the average local value for England was 11.6% and the NHS Health Summary had noted that Middlesbrough was “significantly worse” than England’s average in this respect. Channel 4 said that, whilst it had not been entirely accurate to state that 90% of Middlesbrough “residents” never exercised and that “adults” would have been a better term to have used, it was of the view that it was valid to highlight that a significant proportion of the population as a whole did not take what the NHS considered to be regular exercise. Channel 4 stated that footage of adults had been shown at this point in the programme and submitted that the audience would have taken the statistic to relate to the adult population. It said that whilst physical activity had not formed part of the statistical analysis, the details had been used to flesh out some of the issues behind the basic statistics. This was an editorial device used throughout the programme to give a fuller picture of each area.

- (iii) In response to the complaint that the programme had stated incorrectly that the crime average in Middlesbrough was twice the UK’s average, Channel 4 said that the programme had, in fact, stated that “*Robbery, burglary, sexual assault, violent crimes and car theft are all more than twice the UK’s average.*” It said that the average figures in Middlesbrough for violent crimes, robbery, burglary and theft of a vehicle were more than twice the average figures across the UK as a whole. Channel 4 stated that for sexual assault, Middlesbrough’s figure was exactly twice the UK average, but that it did not believe this slight deviation from “*more than*” was materially misleading or unfair to the community of Middlesbrough. This was because it did not consider that it was likely to have affected viewers’ understanding of the severity of this crime in Middlesbrough.
 - (iv) In response to the complaint that the programme had stated unfairly that the burglary rate for Middlesbrough was 9 per day, Channel 4 stated that the most up-to-date comparable data across the UK that was available at the time of research had been used. It said that, according to a Home Office website, there had been 3,329 burglaries in Middlesbrough between April 2005 and March 2006. After dividing by 365, this gave a figure of 9.12 burglaries per day. Channel 4 said that it was satisfied that the comment made in the programme was accurate and not unfair to the community of Middlesbrough. It said that it was not unfair to include burglaries to businesses as well as private homes in the statistics as this was relevant to the level of crime experienced in an area and, in addition, the same statistic had been gathered from all local authorities.
- b) (i) In response to the complaint that the programme was unfairly edited in that the programme used images that were captioned “Middlesbrough” but in reality were not images of Middlesbrough, Channel 4 said that the complaints about six specific images were a small proportion of the 20 general view shots used within the section of the programme about Middlesbrough.

Channel 4 said that one of the images about which Mr Mallon had complained was a view from Middlesbrough of the Port Clarence Docks. It did not consider that there had been any unfairness to the community if Middlesbrough in using this image. It said the image did not materially affect the perception of Middlesbrough as the view from a place was part of the residents’ amenity. It said that, in any event, similar footage could have been shown of the docks within Middlesbrough.

Channel 4 stated that two of the images about which Mr Mallon had complained were images recorded in South Bank, Redcar. It said that the call sheet for the tapes from which these images had been taken had been marked “not to be used for Middlesbrough!” and had been used in error. However, it said that the images themselves were of derelict properties that were of a type that could be found in any large town or city. Therefore, it did not consider that the community of Middlesbrough had been treated unfairly as the images were “illustrative of the general urban decay that can be found in any place that has statistical results similar to Middlesbrough.”

- (ii) In response to the complaint that some of the footage and images of Middlesbrough used in the programme had been taken in 2006, Channel 4 said that footage of repair works to Grange Road had been filmed in 2006. It said that whilst the specific works that had been shown had, in all likelihood, been completed by the time of transmission, it presumed that Middlesbrough had not been entirely free of such works. It said the footage was illustrative of urban living and argued that its inclusion was neither material nor unfair, given the results of the statistical analysis.
- (iii) In response to the complaint that an image of a drinks can being stamped into the ground was staged, Channel 4 submitted that the brief sequence had been a legitimate editorial metaphor to highlight Middlesbrough’s problems with binge drinking. It did not believe its inclusion in the programme had been misleading or unfair.

In response to the complaint that the inclusion of the image was unfair because binge drinking was not a criterion for determining “worst” and “best” places, Channel 4 said that the 2007 NHS Health Profile for the area stated: “estimates suggest that about 27% of adults binge drink. The rate of people admitted to hospital for alcohol specific conditions is also higher than average.” The Profile went on to state that 26.5% of the adult population of Middlesbrough binge drank compared to an English average of 18.2%. Channel 4 said that, as health was one of the criteria used, it did not accept that it was unfair to the community of Middlesbrough to state in the programme “*over a quarter of adults admit to binge drinking.*” It said that it was well reported and understood that binge drinking had a deleterious effect on public health and, in addition, binge drinking was connected to crime and environment, which were also criteria for inclusion in the programme.

- (iv) In response to the complaint that images of obese people in the Middlesbrough section should not have been included, Channel 4 said that, given the statistics regarding lack of adult exercise and binge drinking, and given that health was a criterion employed in the programme, the use of these images was a justified editorial decision and neither misleading nor unfair.
- c) In response to the complaint that the programme treated Edinburgh (“the best”) and Middlesbrough (“the worst”) differently, Channel 4 said that Middlesbrough had been ranked at the bottom of its survey and Edinburgh at the top. It said that clearly there had to be differences between the two and the programme’s editorial purpose had been to highlight salient aspects of the survey. Channel 4 stated that the programme’s editorial purpose had also included providing balance and perspective on the statistics and to include first-hand experiences of people who actually lived in the areas highlighted.

Channel 4 said that the presenters’ commentary during the Middlesbrough section had referred to Middlesbrough Council “*tackling their problems head on*” and that they had “*installed the first ever talking CCTV*”, which had “*had a positive effect on street side drinking and fighting*”. One of the presenters also referred to “*a whopping 500 million pounds being invested into [a] vast new development*” on the water front at Middlehaven.

The programme also featured a presenter talking to Middlesbrough residents, all of whom had spoken positively about the area. Channel 4 stated that in total more than half of the Middlesbrough section of the programme was positive about the people and the area.

Channel 4 stated that the Edinburgh studio audience that was interviewed had included negative comments about the area from residents, specifically about the cold climate and the high cost of housing.

- d) In response to the complaint that the community of Middlesbrough was treated unfairly in that the presenters had not been objective in choosing the criteria for selecting the “best” and “worst” places, Channel 4 said that the criteria had not been determined by the programme’s presenters. Channel 4 submitted that this had been made clear to viewers at the beginning of the programme, when Kirstie Allsop stated: *“But please remember it’s not personal and it’s all based on statistics.”* Channel 4 reiterated that the categories used in 2007 were broadly similar to those used for previous editions of the programme in 2005 and 2006. It said that they reflected the topics commonly considered by people when they were evaluating where they would like to live and that they measured the quality, rather than the cost, of living in each area. Channel 4 said that the only alteration for 2007 had been the inclusion, for the first time of statistics relating to health (life expectancy, teenage pregnancy, infant mortality and suicide rates).

Channel 4 stated that health statistics had been included because it and the production team had wanted the survey for 2007 to be more comprehensive. More comparative data had been available for health matters than there had been for the previous surveys and because of this, and a growing concern for people’s health, Channel 4 had decided to create this new category. The independent survey carried out on behalf of the programme makers had confirmed that the inclusion of health statistics was clearly an important factor that was considered by house buyers when evaluating an area for a potential new home. It said that the independent survey had indicated that health was more important than education or employment. It said that like all other categories considered, the data had been analysed across all 434 Local Authorities and was the most up-to-date data available in the public domain for comparison across the whole of the UK.

- e) In response to the complaint that Middlesbrough Council was treated unfairly in that it was not given an opportunity to respond or contribute to the programme, Channel 4 said that it had been decided early on in the production process that it would be more relevant for residents to comment on their own areas, than for the programme to be a forum for politicians to defend their areas. It said that, in addition to the vox pop interviews with residents of various areas featured throughout the programme, there had been studio interviews with residents of both Middlesbrough and Edinburgh. Viewers were invited to comment through the internet or by text message throughout the programme. Channel 4 stated that no council representatives from any of the featured areas had been invited to contribute.

Channel 4 submitted that there was no requirement to approach Middlesbrough Council for comment because no significant allegations were made about it. It said that many of the criteria and much of the data collected involved matters such as health, environment and crime, in which the Council had only limited involvement, if any. Channel 4 said that the people of Middlesbrough were affected by the statistics and it was appropriate to have sought their views. It considered that the editorial decision that had been taken was correct. Whilst there were many programmes in relation to which politicians might wish to be consulted, that did not mean that they had an entitlement to be consulted. Channel 4

said that the programme had presented data that was publicly available in a more digestible form to viewers. It had not criticised Middlesbrough Council for any of the data.

Channel 4 said that it had been entitled to decline Mr Mallon's request for the data and methodology used to determine Middlesbrough's ranking. It had relied on the well-established and legitimate exemption for journalistic and other programme-making material from disclosure under the Freedom of Information Act 2000. In addition, it said that it did not hold a copy of the raw statistical data, which was retained by the programme makers. In relation to the methodology, Channel 4 reiterated that the programme had included an on-screen graphic referring viewers to Channel 4's website where a breakdown of the methodology was set out and that all of the data analysed for the programme had been obtained from publicly available sources.

- f) In response to the complaint that Middlesbrough Council was treated unfairly in that the presenters had not been objective in choosing the criteria for the selection of "best" and "worst" places, Channel 4 said that, as outlined at d) above, the presenters had not chosen the criteria.

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.

The complaint by the community of Middlesbrough and Middlesbrough Council made on their behalf by the Mayor of Middlesbrough, Mr Ray Mallon was considered by Ofcom's Executive Fairness Group. In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast and both parties' written submissions.

Throughout its consideration of the complaint, Ofcom took account of Rule 7.1 of the Code, which provides that broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes.

Ofcom first considered the complaint that the community of Middlesbrough was treated unfairly in that:

- a) It was portrayed in a negative and unfair way, in that statistics used in the programme were unfairly referred to.

In considering this head of the complaint, Ofcom took account of Practice 7.9 of the Code, which provides that broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

Ofcom noted that the programme's presenters made a number of comments about Middlesbrough, including that: *"the very worst place to live in Britain in 2007 is [Middlesbrough]", "yes, it's official, the worst place to live in the UK is Middlesbrough", "health levels [are] critical", "over a third of people [in Middlesbrough smoke]", "over a quarter of the inhabitants admit to regular binge drinking", "90% of the residents never exercise, and few eat healthily", "folk round here arrive at the pearly gates at a much younger age than the UK average", "robbery, burglary, sexual assault, violent crimes and car theft are all more than twice the UK's average", "Middlesbrough scores badly on nearly every front".* On the basis of these comments, and the footage included in the programme as broadcast, Ofcom concluded that Middlesbrough had been portrayed in a negative way in the programme as broadcast.

Ofcom then considered whether or not the negative portrayal of Middlesbrough in the programme resulted in any unfairness to the community of Middlesbrough.

Ofcom noted that, in its response to the complaint, Channel 4 had stated that the programme makers had used expert statisticians and statistical sources that could be regarded as reasonably reliable (such as the Home Office for crime, the NHS for health and The Office for National Statistics). Whilst more up-to-date figures for some criteria might have been available from some local or regional authorities, the programme makers had deemed it essential that only figures that could be fairly compared across the whole of the UK were used, in order to compare like with like.

Ofcom also noted that the presenters made clear, within the first ten minutes of the programme, that the list of "best" and "worst" places to live in the UK had been arrived at by:

"gather[ing] the most up-to-date official data across the UK on the six key things that matter most to people when they're considering buying in an area. Crime, lifestyle, health, employment, environment and education... We then commission an independent survey that ranks these six things in order of importance to you... We look at all 434 UK Local Authorities and everything is measured in the same way against the same criteria."

In light of the above, in Ofcom's view the programme makers took reasonable steps to ensure that Middlesbrough was not portrayed unfairly and that material facts in relation to Middlesbrough were not presented, disregarded or omitted in a way that was unfair to the community of Middlesbrough.

Ofcom then went on to consider the instances identified by Mr Mallon where he believed the statistics were unfair:

- (i) The statistics used in the programme were not up-to-date and did not pertain to 2007.

Ofcom noted that, whilst the crime data was for the year ending March 2006, the carbon emissions data was for 2004 and suicides data for the period 1998 to 2004, the statistics on which the rankings in the programme were based were the most up-to-date statistics that could be compared, like-for-like, across all 434 Local Authorities at the time of research. Ofcom also noted that this was reflected in the programme by one of the presenters: *"We look at all 434 Local Authorities and everything is measured in the same way against the same criteria."* Therefore, Ofcom considered that the programme makers had taken reasonable steps to ensure that material facts

were not presented, disregarded or omitted in a way that was unfair to the community of Middlesbrough.

- (ii) The use of smoking, drug use and physical exercise data in the Middlesbrough section of the programme was unfair.

Ofcom noted that one of the criteria examined in the programme was health and that, in its response to the complaint, Channel 4 had explained that life expectancy had formed part of the statistical analysis carried out by the programme makers in relation to this category. Ofcom also noted that the programme had used details to flesh out some of the issues behind the basic statistics throughout the programme. Finally, Ofcom noted Channel 4's explanation that the link between smoking, drug misuse and life expectancy was well-established.

Given these connections, Ofcom considered that it was reasonable for the programme makers to have illustrated the results of the statistical analysis using details such as those in relation to smoking, drug misuse and physical exercise in the section of the programme in relation to Middlesbrough. Ofcom did not consider that the inclusion of these details in the programme as broadcast resulted in any unfairness to the community of Middlesbrough.

In relation to the reference in the programme to 90% of Middlesbrough's residents never exercising, Ofcom noted that the NHS Health Profile for the area for 2007 stated that 9.5% of the adult population in Middlesbrough were persons over 16 participating in moderate intensity sport and active recreation on 20 or more days in the previous four weeks, based on respondents to the Sports England Active People Survey. Furthermore, that the average local value for England was 11.6% of the adult population.

Ofcom considered that the NHS Health Profile for the Middlesbrough area for 2007 did not support the programme's claim that 90% of Middlesbrough's residents never exercised. However, Ofcom did not consider that the inclusion of this claim in the programme resulted in any unfairness to the community of Middlesbrough. In Ofcom's view, it was valid for the programme to have highlighted that a significant proportion of the population of Middlesbrough as a whole did not take what the NHS considered to be regular exercise, in light of the other material that supported the programme's overall claim that Middlesbrough's residents had considerable health problems.

- (iii) The programme had stated incorrectly that the crime average in Middlesbrough was twice the UK's average.

Ofcom noted that the programme had stated that "*Robbery, burglary, sexual assault, violent crimes and car theft are all more than twice the UK's average.*" It also noted the broadcaster's explanation that the average figures in Middlesbrough for violent crimes, robbery, burglary and theft of a vehicle were all more than twice the average figures across the UK as a whole and that, for sexual assault, Middlesbrough's figure was exactly twice the UK average.

Ofcom considered that the programme did not present the statistics in relation to robbery, burglary, sexual assault, violent crimes and car theft in a way that was unfair to the community of Middlesbrough. Whilst it noted that the average figures for sexual assault were exactly twice, rather than "*more than twice*" the UK's average, it did not consider that viewers' understanding of crime in Middlesbrough was likely to

have been adversely affected, given the context of the statements in relation to other serious crimes.

- (iv) The programme had stated unfairly that the burglary rate for Middlesbrough was nine per day.

Ofcom noted Channel 4's response to the complaint, which set out that the burglary rate for Middlesbrough had been derived from figures available on a Home Office website, and that burglaries to businesses, as well as private homes, had been included in the statistics as it was relevant to the level of crime experienced in an area. Furthermore, that the same statistic had been gathered in relation to all local authorities.

Ofcom was of the view that it was not unfair to the community of Middlesbrough for the programme to have stated that the burglary rate for Middlesbrough was nine per day, in light of the fact that burglaries to businesses, as well as private homes, were relevant to the level of crime experienced in an area. Ofcom also noted again that like had been compared with like across all 434 local authorities.

In conclusion in relation to Head a) of the complaint, Ofcom did not consider that the community of Middlesbrough was portrayed unfairly in the programme as broadcast, or that the statistics used in the programme were unfairly referred to. In Ofcom's view, the programme makers took reasonable steps to ensure that material facts in relation to Middlesbrough were not presented, disregarded or omitted in a way that was unfair to the community of Middlesbrough. Accordingly, it did not uphold this head of the complaint.

Ofcom next considered the complaint that the community of Middlesbrough was treated unfairly in that:

- b) The programme makers unfairly edited the programme:

In considering this head of the complaint, Ofcom again took account of Practice 7.9 of the Code, as outlined in its Decision in relation to Head a) of the complaint above. Ofcom considered each of the sub-heads of Head b) of the complaint in turn.

- (i) The programme used images that were captioned "Middlesbrough" but in reality were not images of Middlesbrough.

Ofcom noted that one of the images used to illustrate the Middlesbrough section of the programme was not of Middlesbrough, but of the Port Clarence Docks in Stockton-on-Tees. Ofcom also noted Channel 4's explanation that the image was a view from Middlesbrough, that a view was part of Middlesbrough residents' amenity and that similar images of the docks in Middlesbrough could have been used.

Ofcom noted that two further images, of derelict buildings, were images recorded in South Bank, Redcar, not Middlesbrough. It noted Channel 4's admission that the images had been taken from tapes which were marked "not to be used for Middlesbrough", but that it had argued that the images were of derelict properties that were of a type that could be found in any large town or city and were "illustrative of the general urban decay that [could] be found in any place that [had] statistical results similar to Middlesbrough."

Ofcom was of the view that no unfairness to the community of Middlesbrough had resulted from the inclusion in the programme of the images of the Port Clarence

Docks or derelict buildings in South Bank, Redcar. As noted above, the programme was based on analysis carried out by expert statisticians, using statistical sources that could be regarded as reasonably reliable, and this analysis had ranked Middlesbrough as the “worst” place to live in the UK. In Ofcom’s view, the images were illustrative of this central theme and the inclusion of these images would not have materially altered viewers’ perception of Middlesbrough.

- (ii) Some of the footage and images of Middlesbrough used in the programme were taken in 2006 and it was unfair to use them in a programme broadcast in 2007.

Ofcom noted that the footage of Grange Road, Middlesbrough, which was used in the programme had been filmed in 2006. Ofcom also noted Channel 4’s explanation that, whilst the specific works shown had, in all likelihood, been completed by the time of transmission of the programme, the footage was illustrative of urban living and neither material, nor unfair, given the results of the statistical analysis.

Ofcom considered that no unfairness to the community of Middlesbrough had resulted from the inclusion of the footage of Grange Road, Middlesbrough in the programme because it did not consider that this footage would have materially altered viewers’ perception of Middlesbrough. Again, the images were simply illustrative of the wider theme and, again, the programme was based on analysis carried out by expert statisticians, using statistical sources that could be regarded as reasonably reliable, and this analysis had ranked Middlesbrough as the “worst” place to live in the UK.

- (iii) The image of a drinks can being stamped into the ground in the Middlesbrough section of the programme was staged to fit the negative image of Middlesbrough that the programme portrayed, and was also unfair because binge drinking was not a criterion for determining the rankings.

Ofcom noted Channel 4’s submission that the image of a drinks can was a legitimate editorial metaphor to highlight Middlesbrough’s problems with binge drinking. It also noted Channel 4’s explanation that the 2007 NHS Health Profile for Middlesbrough stated: “estimates suggest that about 27% of adults binge drink” and that the English average was 18.2%. Furthermore, that health, crime and environment were some of the criteria examined in the statistical analysis and it was well-reported and understood that binge drinking had a deleterious effect on public health and, in addition, was connected to crime and environment.

Ofcom did not consider that any unfairness to the community of Middlesbrough had resulted from the inclusion of an image of a drinks can being stamped into the ground in the Middlesbrough section of the programme, or from the accompanying commentary on binge drinking. Ofcom considered that it was reasonable for the programme makers to have illustrated the results of the statistical analysis using details such as those in relation to binge drinking, which were linked to several of the criteria examined during the statistical analysis that formed the basis for the programme, and that the image of a drinks can being stamped into the ground was a simple visual illustration of binge drinking.

- (iv) The images of obese people in the Middlesbrough section of the programme should not have been included as obesity was not one of the criteria used to determine the rankings.

Ofcom noted Channel 4’s explanation that the inclusion of these images was a justified editorial decision because health was one of the criteria examined during the

statistical analysis, and because it related to the statistics regarding lack of adult exercise and binge drinking in the Middlesbrough area.

Ofcom was of the view that no unfairness to the community of Middlesbrough had resulted from the inclusion of these images. In Ofcom's view, they were illustrative of the wider health problems in Middlesbrough, as set out in the 2007 NHS Health Profile for Middlesbrough, and Ofcom did not consider that these images would have materially altered viewers' perception of Middlesbrough, given the results of the statistical analysis.

In conclusion in relation to Head b) of the complaint, Ofcom did not consider that the programme was edited in a way that was unfair to the community of Middlesbrough, in that it was of the view that the inclusion in the programme of the images about which the community of Middlesbrough had complained did not result in any unfair portrayal of Middlesbrough. Ofcom considered that the programme makers took reasonable steps to ensure that material facts in relation to Middlesbrough were not presented, disregarded or omitted in a way that was unfair to the community of Middlesbrough. Therefore, it did not uphold this head of the complaint.

Ofcom went on to consider the complaint that the community of Middlesbrough was treated unfairly in that:

- c) Edinburgh and Middlesbrough were treated differently in the programme, and Middlesbrough was portrayed in an unfairly negative way, in contrast to Edinburgh.

In considering this head of the complaint, Ofcom again took account of Practice 7.9 of the Code, as outlined in its Decision in relation to Head a) of the complaint above.

Ofcom noted that the programme-makers' analysis had ranked Middlesbrough at the bottom and Edinburgh at the top. Ofcom also noted Channel 4's explanation that the programme's editorial purpose had been to highlight salient aspects of the survey, to provide balance and perspective on the statistics and to include first-hand experiences of people who actually lived in the areas highlighted. Ofcom also noted that a number of positive comments about Middlesbrough had been made by the presenters in the programme, and by local residents who were interviewed live. These included that:

- *"...the Council has been tackling their problems head on and have installed the first ever talking CCTV. It's had a positive effect on street side drinking and fighting";*
- *"Down on the waterfront at Middle Haven the tide is turning with a whopping 500 million pounds being invested into this vast new development";*
- *"The best news about the worst place in the UK is that for the two hundred thousand national average you'll pick up a prize pad";*
- *"I think Middlesbrough is a town that is definitely moving somewhere and there's a lot of money being put into regeneration";* and
- *"...it's a fantastic town. But the most important thing is the people, they're friendly people and they're generous people, and the statistics don't represent the character of the town or does the video tape. This is a great place to live and work."*

Finally, Ofcom noted that some negative comments about Edinburgh had been included in the programme, specifically about the cold climate and the high cost of housing.

Ofcom did not consider that the portrayal of Middlesbrough in the programme resulted in any unfairness to the community of Middlesbrough. The premise of the programme was to rank areas in the UK as the “best” and “worst” places to live in the UK. The rankings were based on statistical analysis carried out by expert statisticians, using the most up-to-date data that could be compared across all 434 local authority areas. As set out in Ofcom’s Decision in relation to Head a) above, Ofcom was of the view that it was reasonable for the programme makers to rely on the results of the statistical analysis. Ofcom also noted that the programme had included a range of views in relation to Middlesbrough and, indeed, in relation to other towns or areas ranked in the top 20 “best” or “worst” places to live shown in the programme. Ofcom considered that a reasonable viewer would have understood that there were positive and negative aspects to all the places shown in the programme. Therefore, Ofcom found no unfairness to the community of Middlesbrough in relation to Head c) and, accordingly, it did not uphold this head of the complaint.

Ofcom next considered the complaint that the community of Middlesbrough was treated unfairly in that:

- d) The presenters had not been objective in choosing the criteria for selecting the “best” and “worst” places.

In considering this head of the complaint, Ofcom again took account of Practice 7.9 of the Code, as outlined in its Decision in relation to Head a) of the complaint above.

Ofcom noted Channel 4’s response to the complaint, which set out that the criteria had not been determined by the programme’s presenters. It noted that the criteria had been selected as they were held to reflect the topics commonly considered by people when they were evaluating where they would like to live and measured the quality, rather than the cost, of living in each area.

Ofcom was of the view that no unfairness to the community of Middlesbrough had resulted from the selection of the criteria for determining the “best” and “worst” places to live. It noted again that the programme had explained that the rankings in the programme were determined through statistical analysis carried out by expert statisticians and an independent survey carried out on the programme makers’ behalf. All 434 local authority areas examined during the statistical analysis had been treated in the same way for the purposes of compiling the rankings. Accordingly, Ofcom found no unfairness to the community of Middlesbrough in relation to Head d) and, therefore, it did not uphold this head of the complaint.

Ofcom went on to consider the complaint that Middlesbrough Council was treated unfairly in that:

- e) Middlesbrough Council was not given an opportunity to respond or contribute to the programme.

In considering this head of the complaint, Ofcom took account of Practice 7.9 of the Code, which provides that broadcasters should take reasonable care to satisfy themselves that anyone whose omission could be unfair to an individual or organisation has been offered an opportunity to contribute, and Practice 7.11 of the Code, which sets out 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.

As set out in Ofcom's Decision in relation to Head a) of the complaint above, Ofcom concluded that Middlesbrough, as an area, was portrayed in a negative way in the programme, but that this did not result in any unfairness to the community of Middlesbrough. Ofcom noted that, whilst significant criticisms of Middlesbrough, as an area, were made in the programme, no significant allegations were made about Middlesbrough Council. In addition, Ofcom noted that Middlesbrough Council's responsibilities for the areas examined in the statistical analysis that formed the basis for the programme (crime, education, employment, environment, lifestyle and health) were not exclusive since other agencies, national and local, shared in these responsibilities.

Ofcom was satisfied that Channel 4 had taken reasonable care to satisfy itself that anyone whose omission could be unfair to an individual or organization had been offered an opportunity to contribute to the programme. In the circumstances, Ofcom did not consider that it was incumbent on the programme makers to offer Middlesbrough Council an opportunity to contribute to the programme, since no allegations were made about Middlesbrough Council.

In conclusion, Ofcom found no unfairness to Middlesbrough Council in relation to Head e) and did not uphold this head of the complaint.

Finally, Ofcom considered the complaint that Middlesbrough Council was treated unfairly in that:

- f) The presenters had not been objective in choosing the criteria for selecting the "best" and "worst" places.

In considering this head of the complaint, Ofcom again took account of Practice 7.9 of the Code, as outlined in its Decision in relation to Head a) of the complaint above.

For the same reasons as those set out under Ofcom's Decision in relation to heads e) and d) of the complaint above, Ofcom did not consider that any unfairness to Middlesbrough Council had resulted from the selection of the criteria for determining the "best" and "worst" places to live. Therefore, Ofcom found no unfairness to Middlesbrough Council in relation to Head f) and did not uphold this head of the complaint.

Accordingly, Ofcom has not upheld the complaint made by the community of Middlesbrough and Middlesbrough Council of unfair treatment in the programme as broadcast.

Not Upheld

Complaint by Booker Limited

Mischief: Britain's Really Disgusting Foods, BBC3, 14 August 2008

Summary: Ofcom has not upheld this complaint of unfair treatment and unwarranted infringement of privacy made by Booker Limited (“Booker”).

This programme examined the quality of some foods sold in UK shops and the presenter set out to find “Britain’s most disgusting food”. Food wholesaler, Booker Limited (“Booker”), was one of the companies referred to in the programme.

Booker complained that it was treated unfairly in the programme as broadcast and that its privacy was infringed in both the making and the broadcast of the programme.

In summary Ofcom found the following:

- Booker was not singled out for criticism. It was reasonable for the programme to explain that some of the products featured in the programme had been purchased from Booker and it was made clear that Booker was not the manufacturer of these products. The language used in relation to the company was in keeping with the overall tone of the programme and did not result in unfairness to the complainant.
- Relevant information provided to the programme makers by Booker was fairly reflected in the programme.
- There was no contribution in the programme from Booker for which informed consent was required.
- There was no surreptitious filming at Booker’s premises; no need for consent for filming to be obtained; the approaches to the company did not amount to doorstepping and did not infringe the company’s privacy.
- The inclusion of footage filmed at one of Booker’s premises, and the manner in which the programme makers ceased filming when requested to do so, did not amount to an infringement of the company’s privacy in the programme.

Introduction

On 14 August 2008, BBC3 broadcast *Britain’s Really Disgusting Foods*, the first episode in the third series of *Mischief* documentaries. In this episode, the presenter examined the quality of some foods sold in UK shops. In his quest to find “*Britain’s most disgusting food*” he looked at the ingredients of various products. Food wholesaler, Booker Limited (“Booker”), was identified in the programme as stocking “SK Bronze Chicken”, which the programme said contained a significant percentage of water, and “McKechnie Jess Bangers with Beef”, which the programme said contained only a small percentage of beef. During the programme a number of references were made to Booker and the alleged poor quality of some of the products it stocked.

The programme included footage of the presenter buying a box of chicken breasts in a Booker store and approaching Booker staff for interview on two occasions. The programme also included two statements from Booker about the products featured.

The programme explained that celebrity chef Gordon Ramsay had written the introduction to Booker’s Range and Price Guide (“the Guide”). The programme showed the presenter approaching Mr Ramsay at The Good Food Show and asking him to sign a copy of the

Guide. Subsequently the presenter was shown awarding the signed copy of the Guide to a representative from McKechnie Jess and referring to it as "*the Booker prize*".

The presenter spoke to various food professionals, medical experts and marketing professionals about his findings and used their advice to develop his own "*disgusting*" food. He made two Pies, using Booker own-brand pastry. The presenter then tried to market his products, which he named "*Mr Riley's Pies*", to food retailers.

Booker complained that it was treated unfairly in the programme as broadcast and that its privacy was infringed in both the making and the broadcast of the programme.

The Complaint

Booker's case

In summary, Booker complained that it was unfairly treated in the programme as broadcast in that:

- a) The company was unfairly singled out for criticism, despite all the products discussed, except the Booker own-brand pastry, being commonly available at other UK retailers and catering suppliers.

In particular, Booker said that:

- i) It had no particular association with McKechnie Jess Bangers with Beef or SK Bronze Chicken, both of which were made by third parties and stocked at other UK retailers.
 - ii) The programme associated Booker with the products under criticism, by including footage taken outside its premises and of a Booker lorry on the motorway.
 - iii) The programme further associated Booker with the products under criticism by using celebrity chef Gordon Ramsay's connection with the Guide as a pretext for mentioning Booker. The programme connected Booker with the McKechnie Jess Bangers with Beef by awarding the manufacturer with "*the Booker prize*".
 - iv) The programme used sensational language in connection with Booker, for example referring to a Booker product as "*the most disgusting thing you've ever eaten*".
- b) Information provided to the programme makers by Booker before the broadcast of the programme was omitted, in particular:
 - i) The company's statement that the products featured only made up a very small proportion of the company's sales and were the cheapest that the company stocked and the statement that Booker sold many award-winning quality products and was making progress with improving the sourcing and composition of its foods.
 - ii) Booker's statement that it adhered to all applicable laws and industry guidelines and was not found to have breached any such standards.
 - iii) Booker's statement that it only stocked the McKechnie Jess Bangers with Beef in 19 of its 172 branches and that it was removed from the product list in 2007.
 - c) The programme unfairly portrayed Booker by incorrectly stating that its Chef's Larder Pastry contained hydrogenated fat. In particular, Booker said:
 - i) The company was not given an appropriate and timely opportunity to respond to this allegation in the programme.
 - ii) The programme incorrectly claimed that hydrogenated fat was removed from Booker pastry as a result of the programme.

By way of background, Booker said that it had informed the programme makers that hydrogenated fats had been removed from Booker pastry in January 2007 in a letter dated 25 March 2008.

- d) Booker did not give informed consent to participate in the programme. In particular, Booker said that:
 - i) Booker staff were interviewed at the Wellingborough headquarters on 7 February 2008 and at the St Pancras branch in January 2008 without consent and without receiving prior notice about the intention to film or information about the nature of the broadcast.
 - ii) When filming took place at the Wellingborough headquarters, the programme makers deceived Booker staff about their identity by purporting to be representatives of a meat supplier, Riley Pies. This was not warranted.

In summary, Booker complained that its privacy was unwarrantably infringed in the making of the programme in that:

- e) The programme makers filmed surreptitiously and without permission at the Wellingborough and St Pancras Booker premises, which was not warranted.
- f) The programme makers continued filming at the Wellingborough and St Pancras Booker premises despite the requests that they should stop. Booker said that the cameraman continued filming surreptitiously at the St Pancras branch after being asked to stop by dropping the camera from his shoulder to the ground to give the impression that he was no longer filming.
- g) The programme makers doorstepped the Booker premises at St Pancras and Wellingborough without previously requesting an interview.

In summary, Booker complained that its privacy was unwarrantably infringed in the broadcast of the programme in that:

- h) The programme makers broadcast footage of Booker premises without requesting or obtaining consent.

By way of background, Booker said that, in the case of the footage of the St Pancras branch, Booker was not made aware that BBC filming had taken place until the broadcast of the programme.

The BBC's case

The BBC said that *Mischief* was a regular programme on BBC3 that investigated topical issues, in a mischievous and irreverent manner. The series was designed to appeal to a younger audience and was therefore produced and edited in a quirky, less traditional style. The BBC said that the series did, however, tackle serious subjects with a genuine impact on the public. The BBC said that the programme's investigation was a legitimate one that was in the public interest, revealed the true content of what goes into the food we eat, and raised awareness that products may not always be what they seem.

The BBC responded to the complaint of unfair treatment as follows:

- a) The BBC first responded to the complaint that Booker was unfairly singled out for criticism in the programme.

The BBC said that, as well as Booker, a number of other well known high street companies were featured extensively in the programme and many other stores and restaurants were identified as selling food containing ingredients with no nutritional value. The programme carried out a more detailed analysis of some products made by specific, named manufacturers that most closely met its criteria for “*disgusting food*”, including SK Bronze Chicken, McKechnie Jess Bangers with Beef and Skittles Crazy Sours.

The BBC said that many of the products investigated, such as McKechnie Jess Bangers with Beef and SK Bronze Chicken, were on sale in Booker and were bought by the programme makers from Booker stores. As Booker was by far the largest wholesaler in the UK, with more than twice as many depots as any of its competitors, it was reasonable to feature the company in the programme’s investigation.

The BBC responded to the sub-headings of this head of complaint as follows:

- i) & ii) The BBC responded first to the complaints that Booker had no particular association with McKechnie Jess Bangers with Beef or SK Bronze Chicken and that the programme associated Booker with the products under criticism, by including footage taken outside its premises and of a Booker lorry on the motorway.

The BBC said that the programme makers visited a wide range of food stores in their search for Britain’s “*most disgusting food*”, including supermarkets, butchers and street markets in London and Birmingham, and wholesale cash and carry stores, including various branches of Booker, Makro, Costco and Bestway in London. Booker turned out to be the only supplier where the programme makers were able to buy both the meat product with the lowest meat content, McKechnie Jess Bangers with Beef (5% meat), and the chicken with the highest level of added water, SK Bronze Chicken (40% water).

The BBC said that as one of the aims of the programme was to highlight products which were widely available but which the public was unlikely to be aware of the true nature of the ingredients used, it was reasonable to explain that the products in question had been purchased from Booker and to include illustrative footage of Booker stores and a Booker lorry.

Furthermore, the BBC said that the programme fairly represented the range of products on sale in Booker by explaining that “*most of what they sell is really good quality*”.

- iii) The BBC next responded to the complaint that the programme further associated Booker with the products under criticism by using Gordon Ramsay’s connection with the Guide as a pretext for mentioning Booker and that the programme connected Booker with the McKechnie Jess Bangers with Beef by awarding the manufacturer with “*the Booker prize*”.

The BBC said that the programme makers only became aware of Gordon Ramsay’s connection with Booker after reading a copy of the Guide, which included an article in which the chef said he had been working with Booker and recommended a series of recipes made entirely from ingredients available in its stores. The BBC said that, having established that Gordon Ramsay publicly endorsed products on sale in Booker, it was legitimate to ask if he was aware of the ingredients used in some of the wholesaler’s products.

The BBC said that the reference to *“the Booker prize”* awarded to McKechnie Jess’s Bangers with Beef was an obvious, tongue-in-cheek reference to the well-known literary prize, which is co-sponsored by Booker. The BBC said that viewers would have recognised this and regarded the comment as a light-hearted, amusing one, in keeping with the tone of the programme.

- iv) The BBC responded to the complaint that the programme used sensational language in connection with Booker, for example referring to a Booker product as *“the most disgusting thing you’ve ever eaten”*.

The BBC said that the programme used a variety of terms to describe the search for Britain’s *“most disgusting food”* and the products under investigation, all of which were in keeping with the tone of a programme aimed at a young adult audience. However, such descriptions were used throughout the programme in relation to a wide range of manufacturers and retailers and viewers would not have regarded the descriptions as solely referring to Booker.

- b) The BBC next responded to the complaint that information provided to the programme makers by Booker before the broadcast of the programme was omitted.

The BBC responded to the sub-headings of this head of complaint as follows:

- i) The BBC first responded to the complaint that Booker’s statement that the products featured only made up a very small proportion of the company’s sales, were the cheapest that the company stocked, that Booker sold many award-winning quality products and was making progress with improving the sourcing and composition of its foods was not included.

The BBC said that Booker sent the BBC a statement for broadcast on 4 April 2008. The BBC said that the programme included, in both verbal and written form, Booker’s comment that McKechnie Jess Bangers with Beef made up only 0.0003% of sales. The programme also included in full Booker’s comments about its efforts to raise food standards. The BBC said that the statement provided did not refer to any other product or to the cost of such products. Furthermore, the BBC said that the fact that Booker had won awards was not relevant to an investigation into the UK’s *“most disgusting food”* but that, in any event, the programme had acknowledged that Booker offered a wide range of products and said *“most of what they sell is really good quality”*.

- ii) The BBC responded to the complaint that Booker’s statement that it adhered to all applicable laws and industry guidelines and was not found to have breached any such standards was omitted.

The BBC said that the programme repeatedly made it clear to viewers that all of the products featured in the programme met the legal requirements of the Food Standards Agency and that it was explained that all the products under investigation were *“legally on sale in Britain”*. The programme makers even had the chicken containing 40% water checked by a trading standards officer, who confirmed it was legal. In these circumstances, viewers would have been aware that no allegation of illegality or wrongdoing was being made against any of the manufacturers, restaurants or retailers included in the programme.

- iii) In response to the complaint that the programme omitted Booker’s statement that it only stocked the McKechnie Jess Bangers with Beef in 19 of its 172 branches and that it was removed from the product list in 2007, the BBC said that the programme

included Booker's statement that McKechnie Jess Bangers with Beef were "delisted" in the winter of 2007. The programme also contained the comment supplied by Booker in its statement for broadcast that the product "*had previously been stocked in a few Booker branches due to customer requests*".

- c) The BBC next responded to the complaint that the programme unfairly portrayed Booker by incorrectly stating that its Chef's larder pastry contained hydrogenated fat.
- i) & ii) The BBC responded to the complaint that the company was not given an appropriate and timely opportunity to respond to the allegation in the programme that the pastry contained hydrogenated fats and that the programme incorrectly claimed that hydrogenated fat was removed from Booker pastry as a result of the programme.

The BBC said that the programme makers used packets of the pastry, bought in two separate branches of Booker in December 2007, in the production of *Mr Riley's Pies*. The packets were clearly labelled as containing hydrogenated vegetable oil, which has a high calorie content, no nutritional value and contains trans fats, believed to be as harmful to health as saturated fat.

The BBC said that Booker was informed that the programme makers had used the pastry in a letter of 20 March 2008. In its response on 25 March 2008, Booker said "we took hydrogenated fat out of our Chefs Larder Pastry in January 2007". The BBC said that this information proved to be misleading, as the programme-makers visited a Booker store on 17 April 2008 and purchased a packet of the same pastry, which still contained hydrogenated fat. The BBC said that, while Booker may have withdrawn hydrogenated fat from this brand of pastry in January 2007, the reality was that packets containing the ingredient were still on sale more than 15 months later.

The BBC said that at the end of the programme, the presenter explained that "*since the making of this film, hydrogenated fat has been removed from KFC Zinger burger, Subway bread rolls and Booker pastry*". This had not been intended to give the impression that the removal of hydrogenated fat was as a direct result of the programme's investigation, but merely to inform viewers that changes had been made to products previously highlighted in the film and to reflect fairly the changes being made by some companies to improve food quality.

- d) The BBC responded to the complaint that Booker did not give informed consent to participate in the programme.

The BBC responded to the sub-headings of this head of complaint as follows:

- i) The BBC first responded to the complaint that Booker staff were interviewed at the Wellingborough headquarters on 7 February 2008 and at the St Pancras branch in January 2008 without consent and without receiving prior notice about the intention to film or information about the nature of the broadcast.

The BBC said that the programme-makers first contacted Booker's PR Manager by email on 17 December 2007 to explain the nature of the programme and request an interview. The request was repeated in a follow-up telephone call to the Booker press office on 2 January 2008 and a further email on 8 January 2008. The presenter telephoned Booker again on 4 February to repeat the request for an interview. He also gave details of Mr Riley's Pies and his hope that wholesalers, such as Booker, would stock them.

The BBC said that it was clear from correspondence that Booker was kept informed of the content of the programme and of those aspects that referred directly or indirectly to Booker. In these circumstances Booker was provided with sufficient information about the nature and purpose of the programme to enable the company to make an informed decision about its contribution.

- ii) In response to the complaint that, when filming took place at the Wellingborough headquarters, the programme makers deceived Booker staff about their identity by purporting to be representatives of a meat supplier, the BBC said that none of the material filmed at Booker's headquarters in Wellingborough was included in the programme and so there could not have been any unfairness to Booker in this respect.

The BBC responded to the complaint of unwarranted infringement of privacy in the making of the programme as follows:

- e) The BBC responded to the complaint that the programme makers filmed surreptitiously and without permission at Booker's premises at Wellingborough and St Pancras Booker and that this was unwarranted.

The BBC said that in both cases the programme makers were in a public place and it would have been apparent to all those present that filming, using two professional cameras, was taking place. The BBC said that no permission was requested to film but that Booker and its representatives did not have a legitimate expectation of privacy in either location. The filming at Wellingborough took place outside the main entrance of the company's headquarters and the filming at St Pancras took place in a car park. The BBC said that in each case the programme makers were in an area that was freely accessible to members of the general public, in view of passers-by, and neither was an area of particular privacy or sensitivity.

- f) The BBC next responded to the complaint that the programme makers continued filming at the Wellingborough and St Pancras premises despite the requests that they should stop. Booker said that the cameraman continued filming surreptitiously at the St Pancras branch after being asked to stop by dropping the camera from his shoulder to the ground to give the impression that he was no longer filming.

The BBC said that the programme makers complied with the request to stop filming at Wellingborough and left the area when asked to do so. The BBC said that the Booker representative who spoke to the programme makers at St Pancras did not ask them to stop filming, but that the programme makers did move from the Booker car park when requested to do so. The BBC said that no filming took place at St Pancras in the manner described by Booker.

- g) The BBC responded to the complaint that the programme makers doorstepped the Booker premises at St Pancras and Wellingborough without previously requesting an interview.

The BBC said that, as set out in its response to head d) i) above, the programme makers made a series of requests for an interview with a representative from Booker. The BBC said that no attempt was made to record an interview with any Booker employee at either St Pancras or Wellingborough. At St Pancras, the programme makers filmed a stunt to illustrate the amount of water in SK Bronze Chicken. As the programme showed, a Booker employee approached the BBC camera crew and asked them not to film.

The BBC said that, at Wellingborough, the programme makers were offering passers-by a taste of one of Mr Riley's Pies and when approached by a Booker employee explained that they wanted someone from the company to come and look at the Pies with a view to stocking them. Booker's commercial director came out to speak to the presenter, in the knowledge that a camera crew was present. He asked the BBC to leave once he had established that they did not have permission to film.

The BBC responded to the complaint of unwarranted infringement of privacy in the broadcast of the programme as follows:

- h) The BBC responded to the complaint that the programme makers broadcast footage of Booker premises without requesting or obtaining consent.

The BBC said that all the footage of Booker stores was filmed in areas which were freely accessible to members of the public and that the filming was neither surreptitious nor invasive in nature. The BBC said that none of the material broadcast showed any activity where those involved might have believed they had a legitimate expectation of privacy or were in an area of particular sensitivity or privacy.

Booker's comments

In response to the BBC's statement, Booker said that the tone of the BBC's response did not reflect the nature of the broadcast, since, while the BBC portrayed the series as being a light-hearted, amusing series aimed at a niche audience on BBC3, the programme was later broadcast on BBC1 after the 10pm news as a serious documentary for a mass viewing audience.

The BBC's comments

The BBC said that it considered that even viewers unfamiliar with the *Mischief* series would have realised from the format, tone and content of the programme that this was an investigation into a serious issue conducted in an informal and irreverent manner and that this was clearly signposted by the title of 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.

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.

Booker's complaint was considered by Ofcom's Executive Fairness Group. In reaching its decision, the Committee 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 and recordings of untransmitted footage.

- a) Ofcom first considered the complaint that Booker was unfairly singled out for criticism, despite all the products discussed, except the Booker own-brand pastry, being commonly available at other UK retailers and catering suppliers.

In considering this part of the complaint Ofcom took account of Practice 7.9 of the Code, which states that broadcasters must take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

Ofcom noted that the presenter first referred to Booker as follows:

“Yes, you thought you’d ordered just chicken, but these breasts are pumped up with a gloopy cocktail of chemicals, salt and water. I picked these beauties up at Booker, Britain’s biggest cash n’ carry selling to corner shops, canteens and caterers. Of course, most of what they sell is really good quality but I’m not going to hold that against them because they also sell some of my favourite crap.”

Booker and some products available from its stores were mentioned a number of times throughout the programme, including the following references by the presenter:

“Since shopping for some of my crap at Booker Cash and Carry...”

“If you fancy some hydrogenated fat, made by pumping hydrogen through vegetable oil, I recommend amongst others KFC zinger burger or you can buy some pastry from Booker and make some delicious pies like I’m going to. Increases risk of coronary heart disease. Contains no nutritional value.”

Ofcom also noted that a number of other well-known companies were referred to in relation to the products criticised in the programme. For example the programme included the following commentary:

“If you’re a fan of connective tissue, some of the places you can find it are Morrison’s pork garlic and mushroom pate, or Tesco’s thick pork and beef sausages.”

“If you fancy some hydrogenated fat, made by pumping hydrogen through vegetable oil, I recommend amongst others KFC zinger burger.”

“It’s not all bad news at ASDA for the crap connoisseur. You can still find a little connective tissue and hydrogenated fat if you look carefully, and even Mr Riley’s Pies have more fruit and less sugar than ASDA’s value Apple Pies.”

There were also references in the programme to a large number of other well-known products which came under criticism, for example Skittles, Revels, Irn Bru. In these circumstances, Ofcom did not consider that Booker was singled out for criticism in the programme.

Ofcom then considered the four particular issues raised under this head in turn.

- i) Ofcom first considered Booker’s point that the company had no particular association with the McKechnie Jess Bangers with Beef product or SK Bronze Chicken, both of which it said were made by third parties and stocked at other UK retailers.

Ofcom noted that Booker was biggest wholesaler in the UK and that the programme makers found both the McKechnie Jess Bangers with Beef and the SK Bronze Chicken at Booker stores. Ofcom also noted that the programme did not suggest or imply that the SK Bronze Chicken was a product made by Booker. In Ofcom’s view it was reasonable for the programme to refer to the fact that the chicken was purchased in a Booker store. Furthermore, Ofcom noted that the programme

included information provided in a letter from Booker to the programme makers dated 12 February 2008, in which it explained the water content of the chicken as follows:

“...the relatively high water content in the SK Bronze chicken product helps to retain succulence and the product is clearly labelled.”

As regards the McKechnie Jess Bangers with Beef, Ofcom noted that the presenter was shown in the programme visiting McKechnie Jess, the makers of the bangers. When introducing himself to the manager at McKechnie Jess, the presenter said:

“Basically, we’ve come up from Royal Berkshire, up to McKechnie Jess, because we’ve been inspired by your Bangers with Beef recipe...”

In Ofcom’s view it would therefore have been entirely clear to viewers that, although the bangers were available in Booker stores, they were made by McKechnie Jess.

Ofcom therefore took the view that, although it was clear that both the SK Bronze Chicken and the McKechnie Jess Bangers with Beef were available from Booker shops, the programme did not suggest that the company made either of the products.

- ii) Ofcom then considered the complaint that the programme associated Booker with the products under criticism by including footage taken outside its premises and of a Booker lorry on the motorway. As set out above, Ofcom did not consider that Booker was singled out for criticism.

As regards footage of Booker’s premises, given Ofcom’s finding that it was legitimate to refer to Booker in the programme, Ofcom also found that it was not unfair for brief footage of Booker’s premises to be included in the programme for illustrative purposes. See also the findings at decision heads e), f) and h) below regarding the filming and broadcast of footage of Booker premises.

Ofcom noted that, during the segment of the programme in which the presenter was marketing his own pies, he was shown travelling on a motorway and passing a Booker lorry. The footage of the lorry included in the programme was very brief and incidental. No commentary referred to the lorry. In these circumstances and given Ofcom’s finding that it was not unfair for Booker to be included in the programme, Ofcom took the view that there was no unfairness to Booker as a result of inclusion of the fleeting shot of the lorry for illustrative purposes.

- iii) Ofcom noted that Booker considered that it was further associated with the products under criticism as a result of the use of Gordon Ramsay’s connection with the Guide as a pretext for mentioning Booker.

As set out above, Ofcom took the view that it was reasonable for the programme to refer to Booker products in the programme and that it was clear that Booker did not make the SK Bronze Chicken or the McKechnie Jess Bangers with Beef. As regards the Guide, Ofcom took the view that, given that Gordon Ramsay said in the Guide that he had been working with Booker and given that he included recipes using Booker products, there clearly was a relationship between the celebrity chef and Booker. Ofcom considered that it was not unreasonable for the programme to refer to this association. Ofcom noted that the programme did not suggest a specific association with the products featured in the programme and Mr Ramsay.

In Ofcom’s view the presentation of *“the Booker prize”* to the manufacturer of the McKechnie Jess Bangers with Beef on the grounds that the bangers were *“the worst*

food we could find at Booker” was clearly a light-hearted play on the “Booker Prize” award and was in keeping with the general tone of the programme. Furthermore, as set out above, Ofcom considered that it was clear that the bangers were not made by Booker. In Ofcom’s view this stunt did not result in any unfairness to Booker.

- iv) Booker complained also that the programme used sensational language in connection with Booker, for example referring to a Booker product as “*the most disgusting thing you’ve ever eaten*”.

Ofcom considered that the language used in the programme, such as references to the “*nastiest, most minging food legally on sale in Britain*”, “*crappy cuisine*”, “*disgusting*” products and “*a work of crap genius*”, was in keeping with the general tone of the programme and that similar language and tone was used in relation to other companies referred to in the programme. Ofcom did not consider that the language used in relation to Booker was excessively sensational or that the company was singled out.

In these circumstances, Ofcom found that Booker was not treated unfairly in these respects.

- b) Ofcom next considered the complaint that information provided to the programme makers by Booker before the broadcast of the programme was omitted.

In considering this part of the complaint Ofcom took account of Practice 7.9 (as set out in full, above) and Practice 7.11. Practice 7.11 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 noted that Booker and the BBC were in correspondence prior to the broadcast and that Booker’s statement for broadcast said:

“The Bangers with Beef product, made by McKechnie Jess, was delisted in the winter of 2007 as part of a wider range review. It is widely available in the UK catering and retail trades and had previously been stocked in a few Booker branches due to customer requests. It accounted for 0.0003% of Booker sales.

Booker has won many awards for the quality of its food and is recognised by the Food Standards Agency for its work on food and food labelling. In the past year we have removed hydrogenated fats from over 80 products and have reduced salt levels in over 100 own brand products.

We continue to work with Government, suppliers and customers to raised food standards in the UK.”

Ofcom considered the issues raised under this head of complaint.

- i) Ofcom considered the complaint that Booker’s statement that the products featured in the programme made up a very small proportion of the company’s sales and were the cheapest that the company stocked and the statement that Booker sold many award-winning quality products and was making progress with improving the sourcing and composition of its foods were not included in the programme.

Ofcom noted that towards the end of the programme, when the presenter was trying to market his own pies, he read out all of the statement set out above, except for the first sentence of the second paragraph, referring to awards and Food Standards

Agency recognition. Therefore, in relation to this head of complaint, the programme did cover those points which the complainant believed had been omitted.

- ii) Booker also complained that its statement that it adhered to all applicable laws and industry guidelines and was not found to have breached any such standards was omitted.

Ofcom noted that the statement for broadcast provided by Booker to the programme makers did not specifically refer to compliance with legislation and relevant guidelines. However, Ofcom considered that it was made clear throughout the programme that the products being looked at were legally on sale in Britain and that the SK Bronze chicken had been checked by a trading standard officer who confirmed that it was legal. In these circumstances, Ofcom considered that viewers would have understood that Booker was not alleged to be breaking any laws or other relevant guidelines. It was not incumbent on the programme makers to use the statement provided in full, as long as no unfairness resulted to Booker. In Ofcom's view the omission of the sentence referring to awards and Food Standards Agency recognition did not relate directly to the criticisms made of Booker products nor did it directly address compliance with legislation and relevant guidelines. It was therefore not unfair for the programme makers not to include it.

- iii) Booker also complained that its statement that it only stocked the McKechnie Jess Bangers with Beef in 19 of its 172 branches and that it was removed from the product list in 2007 was omitted. Ofcom noted that the statement provided for broadcast did not specify that the Bangers with Beef were only available in 19 out of 172 branches. In any event, in Ofcom's view and as set out in decision head a) above, it would have been clear to viewers that the Bangers with Beef was not a Booker product and therefore viewers would not have expected the programme to include a response from Booker on this point. Furthermore, the statement that the product had been delisted was included in the programme. Taking all the above into account, Ofcom considered that Booker's position regarding the Bangers with Beef was fairly reflected in the programme.

Ofcom therefore found no unfairness to Booker in relation to the information the company provided for the programme.

- c) Ofcom considered Booker's complaint that it was portrayed unfairly as the programme incorrectly stated that its Chef's Larder Pastry contained hydrogenated fat.

In considering this part of the complaint Ofcom took account of Practice 7.9 (see above) and Practice 7.11 (see above).

Ofcom considered the two issues raised under this head of complaint.

- i) Ofcom first considered the complaint that the company was not given an appropriate and timely opportunity to respond to the allegation in the programme that its Chef's Larder Pastry contained hydrogenated fats. Ofcom noted that Booker said that it had informed the programme makers that hydrogenated fats had been removed from Booker pastry in January 2007 in a letter dated 25 March 2008.

Ofcom noted that the presenter said in relation to the pastry:

"If you fancy some hydrogenated fat, made by pumping hydrogen through vegetable oil... you can buy some pastry from Booker and make some delicious

pies like I'm going to. Increases risk of coronary heart disease. Contains no nutritional value."

As set out under decision head b) above, Ofcom's Code provides 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. However, in Ofcom's view the reference to hydrogenated fat in the Chef's larder pastry was a statement of fact, namely that the pastry contained hydrogenated fats, and not an allegation to which Booker should have been given an opportunity to respond.

In any event, Ofcom noted that Booker was informed by the programme makers in a letter dated 20 March 2008 that the presenter had used the pastry to make Mr Riley's Pies and that the company's response to the programme's point about hydrogenated fat was included in the programme, as follows and as set out under decision head b) above, when the presenter quoted Booker's statement:

"In the past year we have removed hydrogenated fats from over 80 products and have reduced salt levels in over 100 own brand products".

Although Booker informed the programme makers that hydrogenated fats had been removed from the pastry in January 2007, Ofcom noted that the programme makers were able to buy the pastry with hydrogenated fats in April 2008. In these circumstances, Ofcom considered that it was legitimate for the programme to refer to the use of such pastry in the making of *Mr Riley's Pies*.

- ii) Booker also complained that the programme incorrectly claimed that hydrogenated fat was removed from Booker pastry as a result of the programme. Ofcom noted that the presenter said in this respect:

"Since the making of this film hydrogenated fat has been removed from KFC zinger burger, Subway bread rolls and Booker pastry."

In Ofcom's view this did not amount to either a statement or an implication that the programme was responsible for hydrogenated fat being removed from the pastry, but the programme simply provided an update on the situation.

Ofcom therefore found no unfairness to Booker in relation to the company's statement regarding hydrogenated fats in the pastry or regarding the removal of hydrogenated fats from the pastry.

- d) Ofcom next considered the complaint that Booker did not give its informed consent to participate in the programme.

In considering this part of the complaint the Committee took account of Practice 7.3 of the Ofcom Broadcasting Code ("the Code"). Practice 7.3 states that where a person is invited to make a contribution to a programme, they should normally be told about the nature and purpose of the programme and what kind of contribution they are expected to make.

Ofcom considered two points raised by Booker in this respect.

- i) Booker complained that staff were interviewed at the Wellingborough headquarters on 7 February 2008 and at the St Pancras branch in January 2008 without consent

and without receiving prior notice about the intention to film or information about the nature of the broadcast.

In respect of the footage filmed outside Booker's headquarters in Wellingborough, in which the presenter was filmed trying to market Mr Riley's Pies to members of Booker's staff, Ofcom noted that none of this appeared in the programme as broadcast. As Ofcom has no remit in relation to alleged unfair treatment in the making of a programme, this filming raised no issues of unfairness in the broadcast programme.

As regards the footage filmed outside Booker's premises at St Pancras, Ofcom noted that the programme makers first tried to contact Booker on 17 December 2007 but that, due to staff absence, Booker was not aware of the approaches when the programme makers attended the premises at St Pancras and Wellingborough.

However, in considering whether informed consent was required for the filming at St Pancras, Ofcom noted that the programme makers filmed a stunt in which the presenter wore a rubber suit which was filled with water, in order to demonstrate the programme's point about the water content in SK Bronze Chicken. Ofcom noted that the filming took place outside the premises, in a car park to which the public had access, and that the presenter was the focus of the filming. He was approached by a member of Booker's staff, who asked if he had permission to film and then asked him to move to another area to film. Footage of this conversation was included in the programme. In Ofcom's view this was not a contribution for which Booker's consent was required as their contribution was not being sought.

- ii) Booker also complained that when filming took place at the Wellingborough headquarters, the programme makers deceived Booker staff about their identity by purporting to be representatives of a meat supplier, Riley Pies. This was not warranted.

As set out in decision head d) i) above, none of the footage filmed at Wellingborough appeared in the programme as broadcast and therefore this filming raised no issues of unfairness in the broadcast programme.

- e) Ofcom considered the complaint that the programme makers unwarrantably infringed Booker's privacy in the making of the programme in that they filmed surreptitiously and without permission at Booker's Wellingborough and St Pancras premises and that this was not warranted.

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? This is in accordance with Rule 8.1 of the Code, which states that any infringement of privacy in programmes or in connection with obtaining material included in programmes, must be warranted.

In considering this part of the complaint the Committee also took account of Practices 8.5 and 8.13 of the Code. Practice 8.5 states that any infringement of privacy in the making of a programme should be with the person's consent or be otherwise warranted. Practice 8.13 surreptitious filming should only be used where it is warranted.

In considering whether Booker's privacy was infringed in the making of the programme, Ofcom considered first whether the company had a legitimate expectation of privacy in

the circumstances that its premises were filmed. Ofcom looked first at the complaint that the filming was carried out surreptitiously. Ofcom viewed untransmitted footage filmed at both premises and took the view that it was apparent that the programme makers were filming openly on both occasions. Ofcom also noted the BBC's statement that on each occasion the programme makers were using professional filming equipment. In these circumstances, Ofcom takes the view that the filming was not surreptitious at either site.

Ofcom next considered the complaint that the filming was carried out without consent. Ofcom noted that on each occasion the filming was carried out in areas to which the public had access. At St Pancras the filming was carried out in a car park to which members of the public had access and at Wellingborough the filming took place outside the main entrance to the company's headquarters. This again was an area to which the public had access. Ofcom also considered what was filmed on each occasion. At St Pancras, the presenter was filmed wearing a rubber suit that was filled with water, to demonstrate the programme's point about the water content in the SK Bronze Chicken. At one point he was approached by a member of Booker's staff, who asked him and the camera crew to move, which they did. At Wellingborough, the presenter was filmed outside the company's headquarters offering Mr Riley's Pies to people passing. On each occasion it was the presenter who was the focus of the filming, with Booker premises being the backdrop. No private or sensitive activity or information for which Booker's consent would have been required was filmed.

Taking into consideration all of the factors above, it is Ofcom's view that Booker did not have a legitimate expectation of privacy in relation to the filming at its premises at Wellingborough and St Pancras. Having found no legitimate expectation of privacy, Ofcom found that Booker's privacy was not infringed in the making of the programme in this respect. It was not therefore necessary for Ofcom to further consider whether any infringement of privacy was warranted.

- f) Ofcom next considered the complaint that the programme makers unwarrantably infringed Booker's privacy by continuing to film at the Wellingborough and St Pancras Booker premises despite the requests that they should stop. Booker said that the cameraman continued filming surreptitiously at the St Pancras branch after being asked to stop by dropping the camera from his shoulder to the ground to give the impression that he was no longer filming.

In considering this part of the complaint the Committee took account of Practice 8.7 of the Code, which states that if an individual or organisation's privacy is being infringed, and they ask that filming, recording or live broadcast be stopped, the broadcaster should do so, unless it is warranted to continue.

In considering whether Booker's privacy was unwarrantably infringed in the making of the programme, Ofcom considered first whether the company had a legitimate expectation of privacy in the circumstances that its premises were filmed.

As set out under decision head e) above, Ofcom found that Booker had no legitimate expectation of privacy in relation to the filming of footage at Wellingborough and St Pancras. Notwithstanding this, Ofcom considered whether the programme makers were asked to stop filming in circumstances where continuing to do so may have infringed Booker's privacy.

Ofcom noted that it was clear from the untransmitted footage that when the programme makers were at Wellingborough, trying to market Mr Riley's Pies, a member of staff asked them three times to stop filming. They did not do so immediately but began packing their equipment away. However, in Ofcom's view, the brief continued filming was

still in a public place and did not relate to any private activity. In these circumstances, Ofcom considered that Booker did not have a legitimate expectation of privacy in relation to the continued filming at Wellingborough.

As regards the filming at St Pancras, Ofcom noted that the programme makers were asked if they had permission to film. They said they did not and were informed they needed permission and asked to move. It was clear from the untransmitted footage that the programme makers complied with his request. Although they continued to film near to the original site, it was apparent from the untransmitted footage that they did so openly and that the area was accessible to the public. In these circumstances, Ofcom considered that Booker did not have a legitimate expectation of privacy in relation to the continued filming at St Pancras.

Having found no legitimate expectation of privacy, Ofcom found that Booker's privacy was not infringed in the making of the programme in this respect. It was not therefore necessary for Ofcom to further consider whether any infringement of privacy was warranted.

- g) Ofcom next considered the complaint that the programme makers doorstepped the Booker premises at St Pancras and Wellingborough without previously requesting an interview.

In considering this part of the complaint the Committee took account of Practice 8.5 of the Code, as set out above at decision head e) above, and of Practice 8.11. Practice 8.11 states that doorstepping for factual programmes should not take place unless a request for an interview has been refused or it has not been possible to request an interview, or there is good reason to believe that an investigation will be frustrated if the subject is approached openly, and it is warranted to doorstep. The Code defines doorstepping as "...the filming or recording of an interview or attempted interview with someone, or announcing that a call is being filmed or recorded for broadcast purposes, without any prior warning".

In considering whether Booker's privacy was unwarrantably infringed in the making of the programme, Ofcom considered first whether the company had a legitimate expectation of privacy in the circumstances that its premises were approached. In Ofcom's view, on neither occasion when the programme makers filmed at Booker premises did their actions amount to doorstepping. At Wellingborough, the programme makers set up a stall near to the public entrance of the Booker headquarters to market Mr Riley's Pies and engaged in conversation with members of staff about the product. At St Pancras, the presenter took part in a stunt in the car park of a Booker store. During this filming, he had a conversation with a member of Booker's staff, in which he was asked to film at a different location.

Taking into account Ofcom's findings at decision heads e) and f) that the filming was carried out openly and that no private activity was filmed, Ofcom did not consider that the approaches made to staff at St Pancras and Wellingborough amounted to doorstepping or gave rise to any expectation of privacy.

Having found no legitimate expectation of privacy, Ofcom found that Booker's privacy was not infringed in the making of the programme in this respect. It was not therefore necessary for Ofcom to further consider whether any infringement of privacy was warranted.

- h) The programme makers broadcast footage of Booker premises without requesting or obtaining consent.

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

In considering whether Booker's privacy was unwarrantably infringed in the broadcast of the programme, Ofcom considered first whether the company had a legitimate expectation of privacy.

Ofcom first noted that none of the footage filmed outside Booker's headquarters in Wellingborough appeared in the programme as broadcast and therefore this raised no issues or infringement of privacy in the broadcast.

As regards the inclusion in the programme of footage filmed at St Pancras, Ofcom considered first whether Booker had a legitimate expectation of privacy in relation to broadcast of this footage. As set out under decision head e) above, the footage was filmed openly in a location to which the public had access and did not relate to any private activity on the part of Booker or members of its staff. In these circumstances, Ofcom found that Booker did not have a legitimate expectation of privacy in relation to the footage included in the programme of its St Pancras premises.

Having found no legitimate expectation of privacy, Ofcom found that Booker's privacy was not infringed in the broadcast in this respect. It was not therefore necessary for Ofcom to further consider whether any infringement of privacy was warranted.

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

Not Upheld

Complaint by Mr Terry Barnes

Bobski the Builder, Channel 4, 16 October 2008

Summary: Ofcom has not upheld this complaint of unfair treatment and unwarranted infringement of privacy made by Mr Barnes.

On 16 October 2008, Channel 4 broadcast a documentary entitled “Bobski the Builder”. The programme featured the work of two builders and the progress of jobs they had each secured to build a single storey extension. The programme included footage of the two builders, the problems they encountered and the client’s comments about the progress of the work and the finished jobs.

Mr Barnes complained that he was treated unfairly in the programme as broadcast in that he was misled about the nature and format of the programme and that his appearance and contribution was portrayed in an unfair way. He also complained that the broadcast of his contact details unwarrantably infringed his privacy.

In summary Ofcom found the following:

- Ofcom concluded that the programme makers did not provide Mr Barnes with sufficient information about the likely nature and purpose of the programme when securing consent for his participation. However, Ofcom found no grounds to uphold his complaint of unfair treatment in the programme as broadcast because:
 - He was not treated unfairly with regard to his opportunity to respond to criticisms made of his work in the broadcast programme.
 - He was not unfairly portrayed in the programme.
 - Mr Barnes’s privacy was not infringed in the broadcast of the programme as he was actively filmed for a programme about builders in the knowledge that his contact details would have been seen on his protective wear, an advertising board and his quote.

Introduction

On 16 October 2008 Channel 4 broadcast a fly-on-the wall programme entitled *Bobski the Builder*. The opening commentary said that in “property obsessed Britain” houses were our most valued possession and that, if a move was unaffordable the best alternative was to build an extension. The programme went on to say that, as an alternative to employing a “trustworthy British builder”, increasing numbers of builders who could carry out this type of work were available from Eastern Europe, in particular Poland. The programme introduced Mr Terry Barnes, a British builder whose family had been in the business for four generations. It also introduced a former chocolate salesman from Poland called Jarek, who wanted to make a better life for himself in England as a builder.

The programme sought to examine how the two builders would handle similar jobs constructing a ground floor house extension and how they would compare for cost, speed and quality. The two builders were shown pitching for jobs and Mr Barnes was portrayed as more successful than the Polish builder who eventually secured a contract but at a much lower cost than that quoted by Mr Barnes. The programme showed the progress made by

the two different builders, including some of the problems encountered along the way. The programme also included comments from the two house owners who had employed the builders.

Mr Barnes complained that he was treated unfairly and that his privacy was unwarrantably infringed in the programme as broadcast.

The Complaint

In summary, Mr Barnes complained that he was treated unfairly in that:

- a) He was misled as to the nature and format of the programme which he understood was to be an anthropological study of the building trade from the perspective of a family of traditional bricklayers. The programme was in fact a comparison between his work and that of a migrant worker. By way of background, he said that, when he was approached by the programme makers to participate in the programme, he specifically said that he did not want to be involved if he was going to be compared with tradespersons from other countries because of the likely bias against him. He was assured this would not be the case.
- b) He was not given an appropriate opportunity to respond to negative comments made by his client who gave the impression that his house was left in a derelict state after Mr Barnes had finished the work.
- c) He was unfairly portrayed in that:
 - i) He was portrayed as being slow and lazy when work on the extension project was delayed for reasons beyond his control, not as a result of his negligence. By way of background Mr Barnes said that the agreed work ran over time because of required permissions and payments connected to other authorities, to continue with the necessary work.
 - ii) He was portrayed as being money grabbing and abusive to his client. The significant extra costs that arose were due to the unforeseen discovery of electricity power cables and the steps needed to remedy this, the costs of which were not covered within the original budget.

In summary, Mr Barnes complained that his privacy was unwarrantably infringed in the programme as broadcast in that:

- d) His name, address and contact details were broadcast. He did not consent to personal details being disclosed. This disclosure had resulted in a series of abusive telephone calls being received by him.

Channel 4's statement in response

By way of background Channel 4 said there had been detailed discussions as to the content of the release forms to ensure that contributors were treated fairly. Mr Barnes signed a contributor release form on 4 January 2008 for a contribution including actuality and interviews. That form contained a description of the programme which said:

“Builders is a film about the world of building at a time of change. It explores from the builders’ point of view what it’s like to work in construction in 2007: the practices, the pressures and a shift within the culture of people in the industry. It will do this by following particular domestic repair and renovation jobs over a period of 4 – 6 weeks

in New Year 2008, telling the story of the builders' experiences as the jobs progress; of how they live and go about their work."

- a) With regard to Mr Barnes's complaint that he was misled as to the nature and format of the programme, Channel 4 said:

At the very outset Mr Barnes was informed that he was not the only builder and that the programme makers were considering other builders in both London and Manchester. At no point during the research and recruitment process did the programme makers say or give the impression that the programme would be about one family of British builders or that it would not involve other builders, whether migrant workers or otherwise.

Channel 4 said that Mr Barnes was initially considered by the programme makers as someone who was expert enough to comment on the builds that were filmed, rather than as a participant in the building projects, because of his extensive experience in the industry. Ultimately however, an architect fulfilled this role.

Channel 4 referred to the description in the release form referring to a "shift within the culture of people in the industry" and that "builders" was referred to in the plural. This indicated that Mr Barnes was not the only builder that might be featured in the programme and Channel 4 said the programme makers never intimated that he would be. No question was raised by Mr Barnes as to whether the other builder might not be British.

Channel 4 categorically denied that Mr Barnes was told that this was not going to be a project comparing British tradesmen with migrant workers. It referred again to the programme description in the consent form which said it was an exploration from the builders' point of view of present day construction on domestic jobs. It said each build had its own story and the two builders were not asked to comment on each other's work. Their experiences were contrasted in the programme and it was up to the audience to compare their experiences. There was no suggestion that this was an exact like for like comparison although there were points of comparison which could be made. The stories of each build were told by the builders involved with comment and reaction from the clients and others involved in the process. The builders had genuine clients and similar jobs requiring similar skills and the programme took a builders' eye view of the events as they unfolded. There was no bias towards the Polish builder.

In conclusion, Channel 4 said no biased comparison was made with the other builder. The criticism of Mr Barnes's work came from his client not from any comparison. Mr Barnes freely participated in the filming and interviews having signed the consent form. He was seen on camera stating that the work was completed and was of a high standard and his client was shown as dissatisfied with the work (as also happened in the other build). Therefore, Channel 4 said the issue of comparison had no bearing on fairness to Mr Barnes.

- b) With regard to Mr Barnes's complaint that he was not given an appropriate opportunity to respond to negative comments made by his client, Channel 4 said:

Mr Barnes was afforded the opportunity to respond to his client's comments after building work was completed. The programme fairly reflected the respective positions of builder and client, even though subsequent inspections by the council revealed that further works were required to get approval of the work. The programme as broadcast did not leave any negative observations unanswered. Mr Barnes considered he had carried out the contract well and the audience was left with that impression.

- c) (i) With reference to Mr Barnes complaint that he was unfairly portrayed as being slow and lazy when work on the extension was delayed for reasons beyond his control, Channel 4 said:

Mr Barnes ending early on the first day of filming was fairly reflected in the programme as he was said to be easing his apprentices into the work, not because of any laziness on his part. The delays to the work because of problems in securing permissions from the electricity and water authorities were explained in the programme. The client was shown as being unhappy with the progress but Mr Barnes was given an opportunity to respond by explaining the difficulties in the unexpected discovery of underground cables, and the complications involved in moving a manhole and the dispute with the water board in this regard. This explained that the delays were beyond his control. The programme set out what permissions Mr Barnes was waiting for and showed Mr Barnes's view of the job as unlucky in light of the extra burden of having to deal with additional authorities. It did not state that these delays were Mr Barnes's fault but it did fairly reflect the client's unhappiness and scepticism about the reasons he was being given for the delays.

Essentially the programme adopted a neutral stance. There was nothing in the programme's narration of events that supported the complaint that Mr Barnes was portrayed as slow and lazy: the build was portrayed accurately as slow but the reasons for delay were shown. The water board told the programme makers that they were waiting for further information from Mr Barnes before permissions could be granted regarding the placing of the manhole. Mr Barnes' position was that he was waiting for his client or the water board to take action. Therefore the statement in the programme "Terry is now in dispute with the water board about moving a manhole and it's a stalemate" fairly reflected the situation and did not indicate that Mr Barnes was lazy, slow or negligent.

- c) (ii) With regard to Mr Barnes's complaint that he was portrayed as money grabbing and abusive to his client, Channel 4 said:

The programme gave the background as to why an additional payment was needed. The telephone call that Mr Barnes made to his client regarding the significant unforeseen costs was broadcast. The purpose and context of the call was made very clear within the programme and was clearly connected to the discovery of the electricity cable and the steel that was needed to remedy the problem. The edited phone call was a fair representation of the actual telephone conversation. Given what was broadcast, Channel 4 did not agree that the programme showed Mr Barnes as being abusive to his client. No voices were raised, there was no abuse in the call and Mr Barnes was shown as being amiable. By way of background Channel 4 pointed out that part of a phone conversation from another call was edited into the version of the conversation that was broadcast and was spoken by the client:

"Shit, this is turning into a nightmare of a job, isn't it?"

This was used to cover a shot of the quotation that was being discussed. Channel 4 regretted that the additional line was edited in from another conversation but stated that the sense of the paragraph was not altered in any way. There was nothing in the use of the question which was unfair to Mr Barnes as it accurately reflected his client's perception of the job.

- d) In respect of Mr Barnes complaint that his privacy was unwarrantably infringed in the broadcast of the programme in that his contact details were broadcast, Channel 4 said:

Mr Barnes participated in filming, and his business details including telephone number were filmed on the quote given to his client. Furthermore, that on the back of his safety jacket and on a board outside the build, his details were also displayed. Mr Barnes knew the board, documents and jacket were being filmed, and as the board was displayed to the public, in Channel 4's view, the details could not be said to be private. Therefore Mr Barnes's privacy had not been infringed.

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.

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

- a) The Committee first considered the complaint that Mr Barnes was not told the programme was to be a comparison between his work and that of a migrant builder.

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

Potential contributors to a programme should be given sufficient information about the programme's nature and purpose, for them to be able to make an informed decision about whether or not to take part. Ofcom therefore examined all the information before it which appeared to inform the basis on which Mr Barnes had consented to take part in the programme. In doing so it assessed whether or not he was made aware that there would be other builders featured and that he might be compared to them, whether migrant workers or not.

Specifically Ofcom had regard to the wording of the release form that Mr Barnes signed, which stated that:

"Builders is a film about the world of building at a time of change. It explores from the builders' point of view what it's like to work in construction in 2007: the practices, the

pressures and a shift within the culture of people in the industry. It will do this by following particular domestic repair and renovation jobs over a period of 4 – 6 weeks in New Year 2008, telling the story of the builders' experiences as the jobs progress; of how they live and go about their work."

Ofcom noted that the wording of the release form made clear that the programme would examine "builders" (in the plural) and that it also referred to a "shift within the culture of people in the industry".

In reaching its decision Ofcom then assessed the nature and purpose of the programme, as set out in the programme itself. Ofcom noted that the introduction to the programme clearly indicated that it was comparing the work of one builder with another. It said:

"For years the trusty British builder had a monopoly on home improvements. Terry Barnes is one such builder. His family have been in the building trade for four generations and he's been laying bricks since he was 11.....but in the last five years, the cosy cartel of the British builder is being swamped by a rising tide from the east.....so what would happen if Terry's British team and Jarek's Polish team each took on a similar job?.....Who would be cheaper, faster, better?"

In Ofcom's view this introduction set the scene for a programme that would compare Mr Barnes's work and that of another builder, further confirmed by the commentary:

"This is a tale of two builders, one Brit, one Pole and of two jobs from start to finish. How will they compare for cost, speed and quality?"

Ofcom also noted that the programme cross referred the two builds in several parts of the programme. For example, a comparison was made between the quotes given for the two jobs when the narrator said:

"Jarek's trying to build his extension for only £12,800, almost £4,000 less than Terry and in almost half the time",

and later:

"(the client) has now paid Terry nearly £13,000 that's more than the entire cost of Jarek's extension. Jarek's contract gave him no money up front at all. He's getting paid in weekly instalments which aren't enough to cover materials and wages."

In Ofcom's view, the wording on the release form made clear that more than one builder would be featured in the programme and that builders from other cultures who had increasingly been working within the building industry may also be featured.

In these circumstances, Ofcom considered that Mr Barnes could reasonably be expected to have understood that his building job might be compared with others that were to be included in the programme. However, in Ofcom's view it was not made sufficiently clear that the principle purpose of the intended programme was to compare Mr Barnes's work directly with that of a migrant worker with a specific focus on the relative costs, speed and quality of the jobs.

Ofcom also noted the change to the programme's working title from Builders, which is what Mr Barnes understood it to be, to *Bobski the Builder*. This information was passed to Mr Barnes only two days before the programme was broadcast when he was told that the programme makers had followed another similar job and that the programme was to tell the different stories of the two builds as they unfolded.

Taking all the information and circumstances into account, Ofcom considered that the programme makers had not provided Mr Barnes with sufficient information about the likely nature and purpose of the programme when securing consent for his participation. In Ofcom's view insufficient steps were taken by the programme makers to enable them to justifiably treat any consent that was provided by Mr Barnes as 'informed consent'.

Having reached this view, Ofcom then went on to consider whether the lack of informed consent had led to unfairness to Mr Barnes in the programme as broadcast under heads (b) and (c) below.

- b) Ofcom next considered Mr Barnes's complaint that he was not given an appropriate opportunity to respond to negative comments made by his client in the programme as broadcast.

Ofcom considered whether the broadcaster's actions were consistent with its obligation to avoid unjust or unfair treatment of individuals in programmes as set out in Rule 7.1 of the Code. In particular, Ofcom considered Practice 7.11, which states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

Ofcom considered whether Mr Barnes was afforded an opportunity to redress any criticisms broadcast in the programme by his client and whether this was given in a timely and appropriate way.

Ofcom noted that the end of the programme featured narration and comments from all parties involved in the programme about how they felt the builds had gone. Mr Barnes' client was seen criticising some aspects of the work on his extension both directly to camera and in the presence of Mr Barnes who then had an opportunity to respond. Later, the client spoke directly to the programme makers criticising the work of his British builder and the quality of work provided. He said:

" Emotionally I would employ a British builder. It's because I'm British myself and I would like to see the money stay within the country but intellectually, looking at the quality of work that he's given me, I would never, ever use a British builder, not even to change the washers on my sink."

Mr Barnes was then seen giving his opinion of the work when he said:

"I'm proud of it, I'm happy. We've got all the evidence to say it's all been done correctly and all that game. Finally seeing the end of the job for everybody, so everyone can move on."

When criticisms are made either Mr Barnes was present and he responded to the client or Mr Barnes's response was adequately sought and included in the programme. In the circumstances, it is Ofcom's view that this was a timely and appropriate opportunity to respond in the programme as broadcast and Mr Barnes was not treated unfairly in this respect. Ofcom has not upheld this head of complaint.

- c) Ofcom then went on to consider whether Mr Barnes was unfairly portrayed as being slow and lazy, and money grabbing and abusive to his client.

In considering this head of complaint Ofcom took account of Practice 7.6 which states that when a programme is edited, contributions should be presented fairly. It is important

to note that the editing of a programme is an editorial matter for a broadcaster. However, broadcasters must ensure that the programme as broadcast does not result in unfairness to an individual or organisation.

Ofcom noted that the programme included Mr Barnes's comments about the early finish of his team in the first week "till they settle in" and this was made in a light hearted manner. In its view, this would not have reflected badly on Mr Barnes in the viewers' eyes as it was made clear that it was his workers he was letting off early in their first week. The programme also included comments about delays to Mr Barnes's build because of complications arising from the water and electricity authorities having to become involved. With regard to comments about this, it was made clear that the delay was for reasons beyond Mr Barnes's control. In Ofcom's view, the programme fairly reflected the frustrations of both parties in not being able to continue with the work. The narrator said:

"In the first three weeks Terry's spent only seven days on site and now the build's at a standstill. He's waiting for a decision from the council about a maze of pipes in the foundations."

The programme later revealed that one of these contained a live electricity cable and that there was also a dispute with the water authority which had also added to delays. In Ofcom's view, the programme made clear the reasons for delay on the build; Mr Barnes was not portrayed as slow and lazy because the delays were due to complications beyond his control.

Ofcom then considered if the programme fairly reflected the situation regarding monies to be paid for work to be done. It noted that because of unforeseen complications, it was necessary for a steel girder to be purchased and installed, resulting in further unforeseen cost to the client. However, the programme made clear Mr Barnes had to ask for further money from his client because of the complication with the electricity cable. Ofcom concluded that the telephone conversation Mr Barnes had with his client was fairly edited and reflected the situation, that is, Mr Barnes knew the additional cost would come as a shock to his client but he would try his best to reclaim the extra costs in other ways:

"We'll get you forward, don't worry. I'll do everything in my power to get it, yeah? And I'll show you where it's going on paper, no problem."

Ofcom therefore concluded that Mr Barnes was not portrayed unfairly in respect of asking for money or dealing with his client.

In conclusion and taking into account all the factors detailed above Ofcom did not consider that Mr Barnes was unfairly portrayed as slow, lazy, money grabbing or abusive in the programme as broadcast and it has not upheld this head of complaint.

- d) Ofcom then considered Mr Barnes's complaint that his privacy was infringed in the broadcast of the programme in that his name, address and contact details were shown, without his consent.

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? This is in accordance with Rule 8.1 of the Code which states:

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

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

In considering whether the broadcast of the programme infringed Mr Barnes’ privacy, Ofcom considered whether he had a legitimate expectation of privacy in relation to the footage that was broadcast.

The programme included footage of Mr Barnes at work wearing his high visibility jacket and protective helmet for his company, both of which contained his company and contact details. Also an advertising board was left at the property and the programme included a shot of headed paper which contained details of Mr Barnes’s building quote.

Ofcom noted (as detailed above at head a)) that Mr Barnes had not given his informed consent to be filmed for the broadcast of a programme that compared him to that of another builder. However, it did note that he consented to be filmed for a programme about builders in general and that he would have been aware therefore that any obvious advertising of his business and contact details would have been included in the footage. Given that Mr Barnes was willing to be filmed in such an open way in circumstances where he had chosen to wear protective clothing with his details on it, placed an advertising board on public view and had his building quote filmed in connection with the programme, it is Ofcom’s view that his legitimate expectation of privacy was diminished. For these reasons Ofcom found there was no unwarranted infringement of Mr Barnes’s privacy in the programme as broadcast and it was not necessary to further consider whether any infringement of privacy was warranted.

Accordingly, Ofcom has not upheld Mr Barnes’ complaint of unfair treatment and unwarranted infringement of privacy in the broadcast of the programme.

Not Upheld

Complaint by Mr Billy Johnston

Road Wars, Sky One, 16 June 2008 and Sky Two, 17 June 2008

Summary: Ofcom has not upheld Mr Johnston's complaint of unwarranted infringement of privacy in the making and broadcast of the programme.

This programme (broadcast on 16 June 2008 and repeated the following day) featured the arrest of Mr Billy Johnston who was intoxicated and trying to gain entry to a flat that he had mistaken for his own. The first broadcast gave Mr Johnson's full name, showed footage of him (including his face), and disclosed the number of the property he lived in. The programme explained that Mr Johnson was given a fixed penalty notice for damage to the flat's door. In the repeat of the programme references to the number of Mr Johnston's property were removed.

Mr Johnston complained to Ofcom that his privacy had been unwarrantably infringement in the making and broadcast of the programme, and the repeat broadcast, in that his arrest was filmed without his consent, his name and the first line of his address were disclosed and his face was not disguised in any way.

In summary, Ofcom found the following:

- Ofcom's considered that Mr Johnston did not have a legitimate expectation of privacy in circumstances where he was filmed while committing an offence (for which he was subsequently fined), and where his actions were not of a particularly sensitive or private nature. Ofcom therefore found that there was no infringement of privacy in the making of the programme.
- Ofcom's considered that the programme did not reveal any distinguishing information that would have made where Mr Johnson lived identifiable to viewers. Ofcom also considered that although Mr Johnston was not charged with criminal damage, he was given a fixed penalty notice by the police as a result of his actions, which he did not contest. Ofcom therefore found that Mr Johnston had no legitimate expectation of privacy in relation to the programme as broadcast.

Introduction

On 16 June 2008, Sky One broadcast an edition of its documentary series *Road Wars*, which followed Thames Valley police officers dealing with a variety of real life incidents. This edition of the series featured the arrest of Mr Billy Johnston who was intoxicated and trying to gain entry to a flat that he had mistaken for his own. He was arrested on suspicion of causing criminal damage to the door. Clear footage of Mr Johnston's face was shown in the programme. The police were shown handcuffing Mr Johnston and searching his wallet for identification and his address. The following exchange took place between two of the police officers:

Police officer 1: "*Basement Flat 5*, [inaudible]

Police officer 2: *He's got the wrong door, ain't he.*
Police officer 1: *Close but no cigar. About 10 or 11 doors down."*

Later during this part of the programme, one of the police officers explained to Mr Johnston that he had been trying to get into the wrong flat:

Police officer: *"The one you've been kicking at is not your house is it?*
Mr Johnston: *Well, which house is that?*
Police officer: *It's 25. You live at number 5. So you're at the wrong one, aint ya?*
Mr Johnston: *...I, ah right, I live at number 5.*
Police officer: *Yeah. That's number 25. All right."*

At the end of the programme, the programme's commentary identified the arrested man as "*Billy Johnston*" and stated that he was given an £80 fixed penalty notice the next day after spending the night in the police station cells "*to sleep off his session*".

The programme was repeated on 17 June 2008 on Sky Two, however the police officer's reference to "*Basement flat 5 [inaudible]*" was edited out. All other parts of the programme remained unchanged.

Mr Johnston complained to Ofcom that his privacy had been unwarrantably infringed in the making and the broadcast of the programme and the repeat broadcast of it.

The Complaint

Mr Johnston's case

In summary, Mr Johnston complained that his privacy had been unwarrantably infringed in the making of the programme (including the repeat broadcast) in that:

a) The programme makers had filmed his arrest without his consent.

In summary, Mr Johnston complained that his privacy was unwarrantably infringed in both broadcasts of the programme in that:

b) His full name and the first line of his address were disclosed and his face was not obscured or disguised in any way.

Mr Johnston said that on the night he was arrested he was not aware of any filming as he was intoxicated. He said that he had not given consent for his personal details to be included in the programme (including the repeat broadcast). Mr Johnston said the broadcasts had put his personal safety at risk because he works as a mental health nurse and that people he comes into contact with professionally would now know where he lived.

BSkyB's case

In summary, BSkyB responded to the complaint of unwarranted infringement of privacy in the making of the programme (including the repeat broadcast) as follows:

- a) BSkyB said that Mr Johnston did not have a legitimate expectation of privacy in relation to his arrest. BSkyB said that Mr Johnston's actions were committed in a public place or at least in public view (to the extent that Mr Johnston may have been arrested on private land), and were not of a private nature as he was filmed attempting to break into a house on a public street.

BSkyB said, further, that Mr Johnston had committed acts in public which warranted him being arrested by the police and these acts were not of a nature which entitled Mr Johnston to a reasonable expectation of privacy.

BSkyB said that the film crew were clearly visible to Mr Johnston at the time of filming. The filming had not been conducted surreptitiously and there was no suggestion that the programme makers concealed the fact that they were filming Mr Johnston. BSkyB noted Mr Johnston's claim that he was intoxicated at the time of his arrest, and claimed not to have been aware of the filming. However BSkyB responded that acts committed in a public place while intoxicated did not afford a greater expectation of privacy, merely because the intoxication resulted in a lack of awareness at the time of filming.

BSkyB said that if Ofcom decided that Mr Johnston had a legitimate expectation of privacy, and that the filming constituted an infringement of that privacy, it would argue that the filming of Mr Johnston's arrest was warranted because the series followed police officers attending real life incidents as and when they occurred and that in these circumstances it was not possible to obtain prior consent for filming. In addition, BSkyB said that there was a clear public interest in portraying the work of the police and in filming the real life situations they faced, and a public benefit in portraying the damage and distress which can result from excessive alcohol consumption as was the case with Mr Johnston. Accordingly, BSkyB said that the public interest outweighed any right to privacy that Mr Johnston might have had.

In summary, BSkyB responded to the complaint of unwarranted infringement of privacy in both broadcasts of the programme as follows:

- b) BSkyB's said that Mr Johnston did not have a legitimate expectation of privacy in relation to the broadcast of the first part of his address. BSkyB said that it had not infringed any legitimate expectation of privacy in relation to Mr Johnston's address because his address could not be discerned from the programme as only the first part of his address was audible in the first broadcast of the programme. BSkyB said it edited out the reference to "*Basement Flat 5 [inaudible]*" in subsequent broadcasts of the programme (including the repeat on 17 June 2008). BSkyB explained that this decision followed correspondence with Mr Johnston who said that another element of his address (the word "*Lawn*") was audible as well as the flat number. BSkyB

said it edited out the full reference even though it considered that no further part of Mr Johnston's address was audible in the first broadcast. In addition, BSkyB said that the reference to "*Basement Flat 5*" was non-descript, since it did not identify the street name or otherwise indicate the location of Mr Johnston's home. Other than identifying "*Basement flat 5 [inaudible]*" or "*number 5*", no other part of Mr Johnston's address was audible in either broadcast of the programme. BSkyB said that it did not consider that footage of Mr Johnston's arrest contained any particularly distinguishing features which would result in the street in which he lived being identifiable by any viewer.

BSkyB said that if Mr Johnston did have a legitimate expectation of privacy in relation to the broadcast of the first part of his address in the programme broadcast on 17 June 2008, and if this was infringed, then it would argue that the infringement was warranted (see below for reasons).

In relation to the inclusion of the reference to Mr Johnston's name and footage of his face without it being obscured, BSkyB said that Mr Johnston did not have a legitimate expectation of privacy in relation to this, for the same reasons that Mr Johnston did not have a legitimate expectation of privacy in relation to the making of the programme (see BSkyB's case in head a) above). BSkyB said that the incident in which Mr Johnston was filmed took place in public, he was committing a criminal offence for which he was later given a fixed penalty notice, the filming was not surreptitious in any way, and Mr Johnston would have been aware of the presence of the camera crew at the time, irrespective of any subsequent recollection of the events in question.

BSkyB said that if Mr Johnston did have a reasonable expectation of privacy and if this was infringed, then it would argue that the disclosure of Mr Johnston's full name and the inclusion of his face unobscured and undisguised was warranted by the same public interest considerations relevant to the making of the programme. BSkyB argued that the series depicted real life events and attempted to capture the pace and atmosphere of these events. Given the nature of the programmes, BSkyB said that any infringement of privacy must be balanced against maintaining the integrity of this genre of programming.

BSkyB said that it took its duties as a broadcaster seriously, and had procedures in place with the production companies it used to ensure compliance with all relevant codes. BSkyB said that unless there were concerns over individual incidents, it did not, as a matter of course, pixelate the face of or edit out the identity of the subjects found to have committed illegal acts.

Decision

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

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

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

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

Ofcom's recognises that the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about the unwarranted infringement of privacy, Ofcom will therefore, where necessary, address itself to two distinct questions: First, has there been an infringement of privacy? Second, if so, was it warranted? (Rule 8.1 of the Code).

- a) Ofcom first considered Mr Johnston's complaint that his privacy was unwarrantably infringed in the making of the programme (including the repeat) in that he was filmed without his consent.

In considering whether the making of the programme infringed the complainant's privacy, Ofcom first considered whether Mr Johnston had a legitimate expectation of privacy in the circumstances in which he was filmed.

Ofcom watched a recording of both broadcasts and made the following observations. It appeared to Ofcom that the filming took place both on a public street and in the doorway of a basement flat to which the public had access. Although this doorway may have been private property, it was clearly visible from the public street and publicly accessible. Ofcom recognised that, given Mr Johnston's intoxicated state, he may not have been aware that he was being filmed, but it was satisfied that he had been filmed openly and that the programme makers had not concealed the fact that they were filming him.

Ofcom next considered the nature of the actions recorded by the programme makers. As discussed above Ofcom noted that Mr Johnston had been in a public place at the time of filming and that his actions would have been in clear view of members of the public on the street. In Ofcom's view, although Mr Johnston was intoxicated at the time of being filmed, his actions while in this state were not private or sensitive in nature. Ofcom also noted that the programme makers had filmed Mr Johnston attempting to gain access to a property that he had mistaken for his own, apparently causing damage to the door and subsequently being arrested by the police as a consequence of his actions.

Taking into consideration all of the factors above, it is Ofcom's view that Mr Johnston did not have a legitimate expectation of privacy in circumstances where he was filmed while committing an offence (for which he was subsequently fined), and where his actions were not of a particularly sensitive or private nature. Ofcom therefore found that there was no infringement of

privacy in relation to the footage filmed of his arrest and that it was not necessary for Ofcom to further consider whether any infringement of privacy was warranted.

- b) Ofcom considered Mr Johnston's complaint that his privacy was unwarrantably infringed in the broadcasts of the programme in that his full name and the first line of his address were disclosed and that his face was not obscured or disguised in any way.

In considering whether or not there had been any infringement of privacy, Ofcom was first required to consider whether Mr Johnston had a legitimate expectation of privacy in relation to the footage that was broadcast.

Ofcom first addressed the complaint in relation to Mr Johnston's address. Ofcom watched the programme broadcast on 16 June 2008, and noted the following exchange between two of the police officers:

Police officer 1: "*Basement Flat 5, [inaudible]*
Police officer 2: *He's got the wrong door, ain't he?*
Police officer 1: *Close but no cigar. About 10 or 11 doors down.*"

Ofcom also noted that further into the programme, one of the police officers explained to Mr Johnston that he had been trying to get into the wrong flat:

Police officer: "*The one you've been kicking at is not your house is it?*
Mr Johnston: *Well, which house is that?*
Police officer: *It's 25. You live at number 5. So you're at the wrong one, aint ya?*
Mr Johnston: *...I, ah right, I live at number 5.*
Police officer: *Yeah. That's number 25. All right.*"

Ofcom noted that, after correspondence between the programme makers and Mr Johnston after the first broadcast of the programme on 16 June 2008, the programme makers edited out the reference to "*Basement Flat 5 [inaudible]*" altogether, although they argued that no further element of his address was identifiable in this section.

Ofcom noted that the "*[inaudible]*" part of this section of the programme was said by Mr Johnston to be the word "*Lawn*" and that this formed part of his address. Ofcom was satisfied after watching the programme that this word was indistinct. In Ofcom's opinion viewers were unlikely to have recognised the word "*Lawn*". Ofcom also noted that the footage of Mr Johnston's arrest did not reveal any distinguishing features that would have made the street or area where he lived identifiable to viewers. Ofcom therefore found that in view of all the circumstances Mr Johnston had no legitimate expectation of privacy in relation to the references made to his address.

Ofcom next turned to the complaint concerning the broadcast of footage of Mr Johnston's face and reference to his full name. Ofcom viewed all the footage of

Mr Johnston and also took note that at the end of the programme, the commentary stated:

“For his beered up battering rampage of the cat flap, Billy Johnston was left to sleep off his session in a cell, before being given an 80 quid fixed penalty notice in the morning.”

Ofcom acknowledged that Mr Johnston was identified in that his face was visible throughout the footage and his full name was given in both broadcasts. However, Ofcom also noted that Mr Johnston’s actions took place in a place accessible to the public (namely a doorway of a basement flat overlooked by a public street) and in public view.

Ofcom further noted that although Mr Johnston was not charged with criminal damage (the offence for which he was initially arrested), he was given a fixed penalty notice by the police as a result of his actions, which he did not contest. In light of all the circumstances, Ofcom found that he did not have a legitimate expectation of privacy in relation to the broadcast of the footage of his face, nor the disclosure of his full name.

Having found that Mr Johnston did not have a legitimate expectation of privacy in relation to his address, name or footage of his face, Ofcom found there was no infringement of Mr Johnston’s privacy in either broadcast. It was not therefore necessary for Ofcom to consider whether any infringement of privacy was warranted.

Accordingly, Ofcom has not upheld Mr Johnston’s complaint of unwarranted infringement of privacy in either the making or the broadcast of the programme (or its subsequent repeat).

Not Upheld

Complaint by Mr Jason Smith made on his behalf by Mr Trevor Jones

The Ferret, ITV Wales, 19 November 2008

Summary: Ofcom has not upheld this complaint of unfair treatment and unwarranted infringement of privacy made by Mr Trevor Jones on behalf of Mr Jason Smith.

The programme featured a complaint by Mr Madden about building work undertaken for him by Mr Smith. He complained that Mr Smith had been paid for the work in full but left it unfinished and that the work Mr Smith had undertaken was sub-standard and dangerous. Mr Jones complained on Mr Smith's behalf that the programme gave a one-sided account as Mr Smith had not been given an opportunity to respond to the allegations and that Mr Smith's privacy was unwarrantably infringed by the broadcast of his home and mobile telephone numbers without his consent.

In summary Ofcom found the following:

- Mr Smith had been given an appropriate and timely opportunity to respond to the allegations and that his responses had been fairly represented in the programme.
- Mr Smith did not have a legitimate expectation of privacy in relation to his home and mobile telephone numbers as, by including them in his Yellow Pages advertisement, he had voluntarily placed them in the public domain.

Introduction

On 19 November 2008, ITV Wales broadcast an episode of *The Ferret*, a consumer affairs programme. The episode featured a complaint made by former jockey, Mr Peter Madden, about building work undertaken at his home by local tradesman, Mr Jason Smith, and was introduced as follows:

"How top jockey Peter took a nasty fall with a local builder."

In the programme, Mr Madden said that the work undertaken by Mr Smith was of poor quality (in one case, potentially deadly); and that after Mr Smith received the final payment and when quality issues were raised with him, Mr Smith walked off the job. The presenter said that it cost Mr Madden £10,000 to have work re-done and finished and that he wanted the money back from Mr Smith.

At the end of the programme Mr Madden said:

"I'm absolutely gutted, I feel like I've been mugged. Really this man has run away with my money. He's left my house in a total state and its cost me a lot of money to get things done right. From now on if I have any work done, I'll pay by cheque to make sure that it can be accounted for."

Mr Smith did not participate in the programme, however photographs taken of him beside his van appeared in the programme on three occasions and his advertisement from the Yellow Pages, showing his home and mobile telephone numbers, also appeared in the programme. The presenter summarised three points made on Mr Smith's behalf by his solicitors in disputing each of Mr Madden's complaints.

Mr Trevor Jones complained on behalf of his son-in-law, Mr Smith, that he was treated unfairly in the programme and that his privacy was unwarrantably infringed in the broadcast of the programme.

The Complaint

Mr Jones' case

In summary, Mr Jones complained that Mr Smith was treated unfairly in the programme as broadcast in that:

- a) The programme was completely one-sided as it did not outline the full facts. In particular, the programme only showed Mr Peter Madden, it took his word and no attempt was made to find out the true facts from Mr Smith's solicitors.

By way of background, Mr Jones said that ITV was made fully aware that the dispute was an involved one and was in the hands of solicitors. The programme makers were advised by Mr Smith's solicitors not to proceed with the programme. In the circumstances, ITV should never have contemplated broadcasting the programme without further contact with Mr Smith or his solicitors.

In summary, Mr Jones complained that Mr Smith's privacy was unwarrantably infringed in the programme as broadcast in that:

- b) His home and mobile telephone numbers were broadcast without his consent.

The Broadcaster's case

- a) ITV Broadcasting Limited ("ITV"), responsible for the compliance of the programme on behalf of the ITV Network, first responded to the complaint of unfair treatment in the programme as broadcast.

The programme was completely one-sided

ITV said it did not accept the programme was one-sided and maintained both Mr Madden's and Mr Smith's views on the dispute were reflected in the programme. It pointed out that Mr Smith was invited to take part in the programme in order to respond to Mr Madden's complaint but that he did not take up the offer and instead chose to respond via his solicitors. ITV considered that the relevant part of the response was reflected fairly in the programme.

The programme did not outline full facts

ITV said that the programme included a fair description of the key issues in the dispute in terms of the work that Mr Madden had requested be undertaken, the work that he said was undertaken and the standard to which that work was carried out. It included references to the payment arrangements for the work, and to each party's explanation for the dispute that subsequently arose. ITV noted that although Mr Smith claimed the programme did not outline the full facts, he had failed to mention any additional facts that he felt were omitted unfairly.

The programme only showed Peter Madden

ITV agreed that the programme included an interview with Mr Madden and not with Mr Smith, but explained that this was solely because Mr Smith did not take up the offer to participate in an interview. ITV said that there was no unfairness in including Mr Madden's interview in the absence of an interview with Mr Smith, given that the

response provided by Mr Smith's solicitors on his behalf was reflected fairly in the programme.

The programme took Mr Madden's word

ITV said that the programme presented a duly impartial account of the dispute between Mr Madden and Mr Smith. In addition to Mr Madden's contribution, account was also taken of: the building survey carried out by chartered surveyors at Mr Madden's request dated 24 October 2007; the witness statements of two of Mr Madden's acquaintances stating that they had witnessed cash being handed by Mr Madden to Mr Smith; a report by a third party builder who gave details of some of the defective work; and the letter received from Mr Smith's solicitors, dated 29 October 2008, written in response to ITV's letter of 28 October 2008.

The programme made no attempt to find out the true facts from Mr Smith's solicitors

ITV said that clearly there was a dispute over the true facts in the case. ITV wrote to Mr Smith on 28 October 2008 outlining the assertions made by Mr Madden and informing him of the evidence provided by Mr Madden. ITV offered him the opportunity of an interview for inclusion in the programme. Mr Smith's solicitors, to whom the letter was copied, replied on his behalf the following day, stating that the dispute was:

"... a fundamental dispute between the parties as to how much money had been paid to Mr Smith .. he only received £3000 and it was the lack of money being paid by Mr Madden to Mr Smith which led to Mr Smith leaving the job as Mr Madden by not paying the monies... [was] in breach of contract."

ITV said it represented this statement fairly in the programme.

- b) ITV next responded to the complaint of unwarranted infringement of privacy in the programme as broadcast.

ITV said that Mr Smith's home and mobile phone numbers were included in the programme in a still shot of his business advertisement in the Yellow Pages. The advertisement – in a large box rather than the standard single line – listed the services offered by Mr Smith and gave two telephone numbers, one of which was a mobile number. Neither was described as Mr Smith's home number and, ITV considered it was entirely reasonable to suppose that they were Mr Smith's business numbers. ITV said that the editorial context of their inclusion was a report about a dispute concerning Mr Smith's business from one of his customers.

ITV said that, given that Mr Smith chose to advertise his telephone numbers in a business advertisement designed to attract the public's attention, it did not consider that he had any reasonable expectation of privacy in relation to those numbers. However, if Ofcom was of the view that he did have such an expectation, ITV considered that the brief visual reference to them in the programme was warranted, given the public interest in the difficulties Mr Madden said he encountered in dealing with Mr Smith's business.

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.

Mr Jones' complaint was considered by Ofcom's Executive Fairness Group. In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast and both parties' written submissions (which included supporting material).

- a) Ofcom first considered the complaint that the programme was completely one-sided as it did not outline the full facts. In particular, the programme only showed Mr Peter Madden, it took his word and no attempt was made to find out the true facts from Mr Smith's solicitors.

Ofcom considered whether the programme makers' actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals, as set out in Rule 7.1 of the Ofcom Broadcasting Code (the "Code"). 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; and Practice 7.13 which states that where it is appropriate to represent the views of a person who is not participating in the programme, this must be done in a fair manner.

Ofcom also took account Practice 7.9 of the Code which states that before broadcasting factual programmes, including programmes examining past events, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual.

Ofcom noted that the programme makers intended to make serious allegations against Mr Smith in the programme, namely that he had been paid the full amount for the work and left it unfinished and that his work was sub-standard and dangerous. It was therefore, in fairness to Mr Smith, incumbent upon the programme makers to give him an appropriate and timely opportunity to respond to the allegations.

Ofcom noted that the programme makers wrote to Mr Smith on 28 October 2008 (with a copy to his solicitors) informing him of their intention to broadcast a programme about Mr Madden's complaints.

The programme makers' letter referred to:

- the nature of the work to be undertaken by Mr Smith;
- how much money Mr Madden claimed he had paid and that Mr Smith had left the job without completing the work;
- witness statements from two people who saw Mr Madden pay Mr Smith £6,500;
- Mr Madden claiming over £10,000 from Mr Smith for putting work right and undertaking work that was not done by Mr Smith;

- a surveyor's report referring to Mr Smith's work as "totally sub-standard and good building practice has not been followed";
- a building control report referring to "defective work"; and
- a written note from another builder describing faults that needed rectifying and a lintel as "extremely dangerous".

The letter concluded with an invitation to Mr Smith to be interviewed about the issues or alternatively to provide a statement.

In Ofcom's view, the programme makers' letter constituted an appropriate and timely opportunity to Mr Smith to respond to the allegations. On receipt, Mr Smith would have known precisely what allegations Mr Madden intended to make and, while the letter did not indicate the intended first broadcast date, it did request a response "at the earliest opportunity" and "as soon as possible". Further, the time between the letter being sent (28 October 2008) and the date of broadcast (19 November 2008) allowed a reasonable amount of time for Mr Smith or his solicitors to respond.

Ofcom noted that Mr Smith's solicitors replied on Mr Smith's behalf by letter dated 29 October 2008 stating:

- there was a fundamental disagreement over how much money had been paid. Mr Smith only received £3,000 and, as a result of being underpaid, left the job. By not paying Mr Smith, it was Mr Madden who was in breach of contract;
- receipted invoices provided by Mr Smith were not evidence he had been paid, they had been provided so Mr Madden could claim funds;
- the surveyor's report was not accepted by Mr Smith and the Building Regulation Inspector periodically checked Mr Smith's work and had no complaints;
- the witness statements were not accepted. Mr Smith maintained he did not receive monies on 24 August or any monies other than £3,000; and
- the only way to resolve the dispute was in court and it was not a situation that could be decided by a television programme and trial by television was inappropriate.

It appeared to Ofcom that Mr Smith's solicitors considered that their letter had informed the programme makers the matter was complex, was in the hands of solicitors and that the programme makers should not proceed with the programme. Having been told not to proceed by Mr Smith's solicitors, it appeared that Mr Smith believed the programme makers should not have gone ahead, at least not without giving him notice and/or reverting to him for comment.

It appeared to Ofcom that the programme makers, on the other hand, considered that as the solicitors' letter addressed each allegation set out in their letter of 28 October 2008, Mr Smith had declined the invitation to be interviewed and his solicitors had submitted a statement on his behalf for broadcast.

In Ofcom's view, on the information before it, it was not unreasonable for the programme makers to have proceeded on the basis that the solicitors had provided a statement for broadcast. In the circumstances, Ofcom concluded that Mr Smith was given an appropriate and timely opportunity to respond to the allegations.

Ofcom next considered the key allegations made about Mr Smith in the programme and whether his solicitors' responses to them were represented fairly.

Ofcom noted that the key allegations made against Mr Smith in the programme were:

- that he had been paid the full amount for the work in front of witnesses but had left the job unfinished; and
- that his work had been sub-standard and dangerous.

Having considered the solicitors' responses to ITV's allegations, Ofcom looked at how they were reflected in the programme.

Ofcom observed that the programme included Mr Smith's solicitors' response to the allegation that Mr Smith had been paid in full in front of witnesses, but left the work unfinished:

"Mr Smith's solicitor said this was a fundamental dispute between two parties over how much money had actually been paid. Mr Smith, he said, had received just £3,000 from Mr Madden and it was this lack of money which led to the work being left. Mr Smith would argue, he said, that Mr Madden was in breach of contract."

Ofcom also noted that Mr Smith's solicitors' response to the allegation about sub-standard and dangerous work was included in the programme:

"The solicitor also said ... that a Buildings Regulation Inspector who visited the house whilst work was being carried out had no complaints."

and

"The solicitor told us that Mr Smith did not accept a surveyor's report obtained by Mr Madden which stated that the quality of work at the house was sub-standard. He said that if Mr Madden wanted to take the case to court, Mr Smith would contest it."

In Ofcom's view, these comments fairly reflected the responses to the key allegations made about Mr Smith in the programme. They included the pertinent points made in the solicitors' letters to the programme makers.

In light of the above, Ofcom found that that Mr Smith was given an appropriate and timely opportunity to respond to the allegations made against him in the programme and that his response to the allegations was represented fairly.

Ofcom next considered whether the programme makers had taken reasonable care to satisfy themselves that material facts were not presented, disregarded or omitted in a way that was unfair to Mr Smith.

Ofcom noted that the case against Mr Smith relied on a number of pieces of information and not simply the views of Mr Madden. These included a building control report and reports of a surveyor and a builder. In addition, Ofcom noted that all the allegations included in the programme were put to Mr Smith prior to broadcast, that Mr Smith's solicitors had responded to each allegation and that the responses had been represented fairly in the programme. While Mr Madden was given an opportunity in the programme to respond to the solicitors' responses, no significant new allegations were made. Ofcom was satisfied that the programme makers had taken reasonable care to satisfy themselves that material facts were not presented, disregarded or omitted in a way that was unfair to Mr Smith.

In these circumstances, Ofcom did not find any unfairness to Mr Smith and has accordingly not upheld this part of the complaint.

Ofcom next considered the complaint that Mr Smith's privacy was unwarrantably infringed in the programme as broadcast in that:

- b) His home and mobile telephone numbers were broadcast without his consent. 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? This is in accordance with Rule 8.1 of the Code which states:

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

Ofcom also considered the definition in the Code of "legitimate expectation of privacy" which states:

"Legitimate expectations of privacy will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye. There may be circumstances where people can reasonably expect privacy even in a public place. Some activities and conditions may be of such a private nature that filming or recording, even in a public place, could involve an infringement of privacy. People under investigation or in the public eye, and their immediate family and friends, retain the right to a private life, although private behaviour can raise issues of legitimate public interest."

Ofcom noted that Mr Smith's home and mobile telephone numbers were broadcast when a Yellow Pages advertisement for his business was shown briefly on screen. Ofcom also noted ITV's submission that as Mr Smith chose to advertise his telephone numbers in a business advertisement designed to attract the public's attention to those numbers, it did not consider he had a legitimate expectation of privacy in relation to those numbers.

Taking into consideration the factors above, and the fact that Mr Smith had voluntarily placed the telephone numbers in the public domain in his Yellow Pages advertisement, it was Ofcom's view that Mr Smith did not have a legitimate expectation of privacy in respect of these telephone numbers. Given this, Ofcom therefore found that Mr Smith's privacy was not infringed in the programme as broadcast, and it was not necessary for Ofcom to further consider whether any infringement of privacy was warranted.

Accordingly Ofcom has not upheld the complaint of unfair treatment or unwarranted infringement of privacy in the broadcast of the programme.

Other Programmes Not in Breach/Resolved

Up to 28 July 2009

| Programme | Transmission Date | Channel | Category | Number of Complaints |
|--------------------------------------|-------------------|----------------------|------------------------------|----------------------|
| 8 Out of 10 Cats | 17/07/2009 | Channel 4 | Generally Accepted Standards | 1 |
| 8 Out of 10 Cats | 24/07/2009 | Channel 4 | Sex/Nudity | 1 |
| A Touch of Frost | 18/07/2009 | ITV1 | Advertising | 1 |
| A Touch of Frost (Sky EPG info) | 25/07/2009 | ITV1 | Inaccuracy/Misleading | 1 |
| Advertising Scheduling | n/a | Channel 4 | Advertising | 1 |
| Afternoon Report | 25/06/2009 | Sky Sports News | Generally Accepted Standards | 1 |
| Ainars Slesers Advert | 19/05/2009 | First Baltic Channel | Elections/Referendums | 1 |
| Airline USA | 15/07/2009 | ITV2 | Crime (incite/encourage) | 1 |
| Alan Carr: Chatty Man | 18/07/2009 | Channel 4 | Generally Accepted Standards | 1 |
| Alan Carr: Chatty Man | 19/07/2009 | Channel 4 | Generally Accepted Standards | 1 |
| An Inconvenient Truth | 04/04/2009 | Channel 4 | Other | 1 |
| Animals Do The Funniest Things | 04/07/2009 | ITV1 | Animal Welfare | 1 |
| Ayurvedic Remedies | 26/05/2009 | Sunrise TV | Use of Premium Rate Numbers | 1 |
| Baggage | 14/07/2009 | BBC Radio 4 | Offensive Language | 1 |
| Bang Babes | 26/03/2009 | Tease Me | Sex/Nudity | 1 |
| BBC News | 16/07/2009 | BBC1 | Commercial References | 1 |
| BET Awards: Jackson Tribute Show | 12/07/2009 | Channel 4 | Generally Accepted Standards | 4 |
| Big Brother 10 | 02/07/2009 | Channel 4 | Generally Accepted Standards | 89 |
| Big Brother 10 | 03/07/2009 | Channel 4 | Generally Accepted Standards | 5 |
| Big Brother 10 | 04/07/2009 | Channel 4 | Violence | 1 |
| Big Brother 10 | 05/07/2009 | Channel 4 | Dangerous Behaviour | 2 |
| Big Brother 10 | 07/07/2009 | Channel 4 | Generally Accepted Standards | 1 |
| Big Brother 10 | 10/07/2009 | Channel 4 | Generally Accepted Standards | 1 |
| Big Brother 10 | 16/07/2009 | Channel 4 | Dangerous Behaviour | 1 |
| Big Brother 10 | 17/07/2009 | Channel 4 | Generally Accepted Standards | 1 |
| Big Brother 10 | 17/07/2009 | Channel 4 | Inaccuracy/Misleading | 1 |
| Big Brother 10 | 20/07/2009 | Channel 4 | Generally Accepted Standards | 13 |
| Big Brother 10 | 21/07/2009 | Channel 4 | Generally Accepted Standards | 86 |
| Big Brother 10 | 23/07/2009 | Channel 4 | Violence | 1 |
| Big Brother 10 | 26/07/2009 | Channel 4 | Generally Accepted Standards | 1 |
| Big Brothers Big Mouth | 10/07/2009 | E4 | Generally Accepted Standards | 6 |
| Big Brother's Big Mouth | 17/07/2009 | E4 | Religious Offence | 3 |
| Black Eyed Peas 'I've Got a Feeling' | n/a | Various | Dangerous Behaviour | 1 |
| BMIbaby.com sponsorship of ITV | n/a | ITV1 | Generally Accepted Standards | 1 |

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|-------------------------------------|------------|------------------|------------------------------|----|
| Weather | | | | |
| Breakfast | 14/07/2009 | BBC1 | Generally Accepted Standards | 1 |
| Breakfast Show | 24/06/2009 | Pennine FM 107.9 | Generally Accepted Standards | 1 |
| Capital Breakfast | 10/07/2009 | Capital Radio | Generally Accepted Standards | 1 |
| Channel 4 News | 14/07/2009 | Channel 4 | Due Impartiality/Bias | 1 |
| Channel 4 News | 17/07/2009 | Channel 4 | Violence | 1 |
| Chiro | 12/07/2009 | five | Dangerous Behaviour | 1 |
| Come Dine with Me | 10/07/2009 | Channel 4 | Sex/Nudity | 1 |
| Competition | | Kiss 100 | Competitions | 1 |
| Coronation Street | 06/07/2009 | ITV1 | Inaccuracy/Misleading | 31 |
| Coronation Street | 20/07/2009 | ITV1 | Generally Accepted Standards | 2 |
| Coronation Street | 24/07/2009 | ITV1 | Generally Accepted Standards | 1 |
| Deal or No Deal | 16/07/2009 | Channel 4 | Generally Accepted Standards | 1 |
| Deal or No Deal | 16/07/2009 | More4 | Generally Accepted Standards | 1 |
| Deal or No Deal | 17/07/2009 | Channel 4 | Offensive Language | 1 |
| Derren Brown: Trick or Treat | 16/07/2009 | Channel 4 | Generally Accepted Standards | 3 |
| Dispatches: Undercover Debt | 20/07/2009 | Channel 4 | Offensive Language | 3 |
| Doc Martin | 26/06/2009 | ITV1 | Sex/Nudity | 1 |
| Dustbin Baby | 04/05/2009 | CBBC | Violence | 1 |
| EastEnders | 16/07/2009 | BBC 1 | Generally Accepted Standards | 1 |
| EastEnders | 21/07/2009 | BBC 1 | U18's in Programmes | 1 |
| Elite Days | 28/05/2009 | Elite TV | Sex/Nudity | 1 |
| Embarrassing Teenage Bodies | 22/07/2009 | Channel 4 | Sex/Nudity | 1 |
| Freefall | 14/07/2009 | BBC 2 | Sex/Nudity | 2 |
| GMTV | 08/07/2009 | ITV1 | Competitions | 1 |
| GMTV | 16/07/2009 | ITV1 | Use of Premium Rate Numbers | 1 |
| GMTV | 21/07/2009 | ITV1 | Sex/Nudity | 1 |
| GMTV | 23/07/2009 | ITV1 London | Generally Accepted Standards | 1 |
| GMTV / LK Today | 14/07/2009 | ITV1 | Crime (incite/encourage) | 1 |
| Grand Designs | 21/07/2009 | More4 | Offensive Language | 1 |
| Hollyoaks | 17/07/2009 | Channel 4 | Violence | 1 |
| Hollyoaks | 20/07/2009 | Channel 4 | Generally Accepted Standards | 1 |
| How Not to Live Your Life | 13/07/2009 | BBC2 | Generally Accepted Standards | 1 |
| Hywel & Jamie's Drivetime Adventure | 28/05/2009 | Rock FM | Generally Accepted Standards | 1 |
| Ian Wright | 06/07/2009 | Talksport | Religious Offence | 1 |
| Imagine | 30/06/2009 | BBC1 | Other | 1 |
| ITV News | 17/07/2009 | ITV1 | Inaccuracy/Misleading | 1 |
| Jackass: Number Two | 20/07/2009 | Channel 4 | Generally Accepted Standards | 1 |

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| Jeyes sponsorship of The Bill | n/a | ITV1 | Dangerous Behaviour | 1 |
| Jo Russell | 13/07/2009 | Absolute Radio | Crime (incite/encourage) | 2 |
| Kanye West "Stronger" | 23/06/2009 | Kiss 100 | Other | 1 |
| Ken Livingstone | 08/07/2009 | LBC 97.3FM | Due Impartiality/Bias | 1 |
| Kiss 100 | 20/07/2009 | Kiss 100 | Offensive Language | 1 |
| Live at Five With Jeremy Thompson | 15/07/2009 | Sky News | Religious Offence | 1 |
| Living with Michael Jackson: A Tonight Special | 16/07/2009 | ITV1 | Inaccuracy/Misleading | 1 |
| Loose Women | 24/07/2009 | ITV1 London | Sex/Nudity | 1 |
| Mad TV | 18/06/2009 | ZTV (Sweden) | Generally Accepted Standards | 1 |
| Mock the Week | 16/07/2009 | BBC2 | Offensive Language | 1 |
| MTV Movie Awards 2009 | 19/07/2009 | TMF | Generally Accepted Standards | 1 |
| News | 02/07/2009 | BBC1 | Generally Accepted Standards | 1 |
| Paul Foster Breakfast Show | 08/07/2009 | Viking FM | Generally Accepted Standards | 1 |
| Pick of the Week | 19/07/2009 | BBC Radio 4 | Generally Accepted Standards | 1 |
| Qualam Kabeela | 19/06/2009 | KBC | Commercial References | 1 |
| Quiz Call | 18/07/2009 | Five | Offensive Language | 1 |
| Rony's Forum | 14/07/2009 | BBC Radio Sheffield | Sex/Nudity | 1 |
| Shooting Lily Allen | 11/07/2009 | Channel 4 | Generally Accepted Standards | 1 |
| Sky News | 09/06/2009 | Sky News | Due Impartiality/Bias | 1 |
| Sky News | 23/07/2009 | Sky News | Dangerous Behaviour | 1 |
| Sky News Tonight | 16/07/2009 | Sky News | Generally Accepted Standards | 1 |
| Smart | 23/07/2009 | BBC1 | Dangerous Behaviour | 1 |
| Spongebob Squarepants | 13/06/2009 | Nick Replay | Offensive Language | 1 |
| Superbad | 16/07/2009 | Sky Movies Comedy | Generally Accepted Standards | 1 |
| T4 on The Beach | 26/07/2009 | Channel 4 | Generally Accepted Standards | 1 |
| Tease Me | 04/03/2009 | Tease Me | Sex/Nudity | 1 |
| Tease Me / Paul Raymond TV | 09/06/2009 | Tease Me / Paul Raymond TV | Sex/Nudity | 1 |
| The Big Questions | 12/07/2009 | BBC1 | Crime (incite/encourage) | 1 |
| The Bill | 16/07/2009 | ITV1 | Violence | 1 |
| The Grandparent Diaries | 16/07/2009 | BBC4 | U18's in Programmes | 1 |
| The Home Show | 23/07/2009 | Channel 4 | Offensive Language | 2 |
| The Home Show | 23/07/2009 | Channel 4 | Other | 1 |
| The Inbetweeners | 14/07/2009 | Channel 4 | Generally Accepted Standards | 1 |
| The Jeremy Kyle Show | 22/07/2009 | ITV1 | Generally Accepted Standards | 1 |

| | | London | | |
|---|------------|-----------------|------------------------------|---|
| The Life and Times of Tim (Trailer) | 22/07/2009 | Virgin1 | Sex/Nudity | 1 |
| The Now Show | 17/07/2009 | BBC Radio 4 | Religious Offence | 1 |
| The Rat Pack | 23/07/2009 | BBC 1 | Animal Welfare | 2 |
| The Secret Caribbean with Trevor McDonald | 05/07/2009 | ITV1 | Due Impartiality/Bias | 1 |
| The Secret Caribbean with Trevor McDonald | 12/07/2009 | ITV1 | Due Impartiality/Bias | 1 |
| The Simpsons | 13/07/2009 | Channel 4 | Offensive Language | 1 |
| The Street | 13/12/2007 | BBC1 | Offensive Language | 1 |
| The Street | 13/07/2009 | BBC1 | Offensive Language | 1 |
| The Weakest Link | 14/07/2009 | BBC 1 | Generally Accepted Standards | 2 |
| The Weakest Link | 22/07/2009 | BBC 1 | Generally Accepted Standards | 1 |
| The Weakest Link | 23/07/2009 | BBC 1 | Generally Accepted Standards | 1 |
| The Wright Stuff | 11/06/2009 | Five | Animal Welfare | 1 |
| This Morning | 16/07/2009 | ITV1 | Sex/Nudity | 1 |
| This Morning | 17/07/2009 | ITV1 | Generally Accepted Standards | 1 |
| TNT Show | 18/06/2009 | Channel 4 | Generally Accepted Standards | 2 |
| TNT Show | 02/07/2009 | Channel 4 | Generally Accepted Standards | 2 |
| TNT Show | 09/07/2009 | Channel 4 | Generally Accepted Standards | 1 |
| TNT Show | 16/07/2009 | Channel 4 | Generally Accepted Standards | 1 |
| Tony Horne in the Morning | 26/06/2009 | Metro Radio | Generally Accepted Standards | 1 |
| Toolan in the Morning | 11/05/2009 | Key 103 | Competitions | 1 |
| Top Gear | 21/06/2009 | BBC2 | Generally Accepted Standards | 1 |
| Top Gear | 05/07/2009 | BBC 2 | Generally Accepted Standards | 1 |
| Top Gear | 19/07/2009 | BBC 2 | Crime (incite/encourage) | 1 |
| Top Gear | 19/07/2009 | BBC 2 | Offensive Language | 1 |
| Top Gear | 19/07/2009 | BBC 2 | Sex/Nudity | 1 |
| Top Gear | 26/07/2009 | BBC 2 | Offensive Language | 1 |
| Top Gear | 27/07/2009 | BBC 2 | Offensive Language | 1 |
| Torchwood: Children Of Earth | 06/07/2009 | BBC 1 | Generally Accepted Standards | 1 |
| Torchwood: Children Of Earth | 10/07/2009 | BBC 1 | Generally Accepted Standards | 8 |
| Total Emergency | 22/07/2009 | ITV1 | Scheduling | 1 |
| UTV Live Tonight | 07/07/2009 | UTV | Inaccuracy/Misleading | 1 |
| Versailles: The Dream of a King | 18/07/2009 | BBC2 | Sex/Nudity | 2 |
| Vibe FM 105.3 | 20/03/2009 | Vibe FM 105.3 | Offensive Language | 1 |
| Wake Up to Wogan | 23/07/2009 | BBC Radio 2 | Generally Accepted Standards | 1 |
| Warriors | 21/07/2009 | History Channel | Inaccuracy/Misleading | 1 |
| What's in Your Mouth? Tonight | 16/02/2009 | ITV1 | Due Impartiality/Bias | 4 |

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| Wimbledon 2009 | n/a | BBC3 & BBC1 | Generally Accepted Standards | 1 |
| Wordplay | 15/07/2009 | Five | Competitions | 1 |
| You Have Been Watching | 14/07/2009 | Channel 4 | Generally Accepted Standards | 4 |