

# **Ofcom broadcast bulletin**

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## Introduction

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

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

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

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

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

## Sanctions

### Television Concepts Limited

#### *Look4Love*

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On 24 November 2006, Ofcom published its decision:

to give notice to Television Concepts Limited that Ofcom intends to revoke its licence, 'Look4Love'; however in accordance with Section 238 (2)(c) of the Communications Act 2003 ("the Act"), Ofcom is first required to specify a period in which Television Concepts Limited should take such steps to remedy the contravention or failure, and should only proceed to revocation if it considers that Television Concepts Limited has failed to take those steps within the specified period; and

to impose a financial penalty of £175,000 (payable to HM Paymaster General) on Television Concepts Limited.

The Broadcast Committee of Advertising Practice ("BCAP") monitored samples of the licensee's advertising output on 4 May 2006 and found it to be a serious breach of the BCAP Television Advertising Standards Code, incorporating Rules on the scheduling of television advertisements, ("the Advertising Code"). The breaches recorded were:

- |               |                                    |
|---------------|------------------------------------|
| • Rule 4.2.3  | Treatments unsuitable for children |
| • Rule 5.1    | Misleading advertising             |
| • Rule 5.4.2  | Superimposed text                  |
| • Rule 6.1    | Harm and offence                   |
| • Rule 7.3.1  | Mental harm                        |
| • Rule 7.3.7  | Use of scheduling restrictions     |
| • Rule 11.1.2 | Premium rate services              |

The Advertising Standards Authority ("the ASA") considered the material was "unacceptable", especially with respect to the language, images, and references to young girls. The ASA directed the licensee to suspend the material with immediate effect. The licensee failed to comply with this direction and subsequent instructions to comply from the ASA. This was:

- a breach of its Television Licensable Content Service licence, Condition 17.1: Failure to comply with a direction from the Advertising Standards Authority (ASA) that the offending advertising be removed from the service, despite repeated requests and despite that direction being subsequently reinforced by Ofcom.

The full text of this decision can be found at:  
[http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/look4love.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/look4love.pdf)

## **The Morning Brief**

*Legal TV, 10 March 2006*

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### **Introduction**

Legal TV, a channel which describes itself as “the law firm in your living room”, broadcast a series called *The Morning Brief*, which was sponsored. The series featured guests discussing a variety of issues, usually with a legal basis.

We were contacted by a complainant who claimed that the series was not eligible to be sponsored.

Rule 9.1 of the Broadcasting Code states that news and current affairs programmes on television may not be sponsored. The Code defines a current affairs programme as containing “*explanation and analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy*”.

The complainant did not specify a particular edition of *The Morning Brief* so we requested recordings of three editions from Legal TV. Having viewed the material, we requested Legal TV’s observations on the editions in relation to Rule 9.1, with particular emphasis on the edition of the *Morning Brief* broadcast on 10 March 2006, in which two studio guests discussed at length whether the use of cannabis should be legalised.

### **Response**

Legal TV disputed the complainant’s assertions that this series could not be sponsored. It said that *The Morning Brief* was designed as a chat show discussing all manner of issues and that the legalisation of cannabis formed part of these discussions within the chat show format. It said that the programme did not have the format or design of a current affairs or news programme.

### **Decision**

On the basis of the recordings that Legal TV provided, we considered that *The Morning Brief* was – in principle - a series capable of being sponsored. We noted that subjects covered, which included food hygiene, child custody and changes to pensions legislation, tended to have a consumer focus or to be discussed from a legal perspective, with experts – often lawyers - providing comments and advice to viewers.

However, the edition broadcast on 10 March 2006 included a lengthy and detailed debate about what is considered to be both a politically controversial issue and a matter of public policy, that is, whether cannabis use should be legalised and the associated issues.

There were two studio guests: one was a pro-legalisation campaigner and the other was from a mental health charity urging a major public health campaign. The focus of the discussion was not advice to viewers on the current legal position, but rather whether controlled use of cannabis should be permitted, for example by means of “coffee houses”, and the possible health issues (including alleged benefits) against the background of growing concern within the psychiatric profession regarding the effects of cannabis-usage. The discussions also included Home Office statistics on the increasing use of cannabis by young people.

Cannabis was reclassified from a Class B drug to Class C in 2002, and the Government has this year been considering whether the Class B classification should be reinstated. There has been significant debate for several months, central to which have been arguments and evidence presented by campaigners and health experts.

Broadcasters must consider very carefully whether discussion shows and similar genres are capable of being sponsored – the question of whether such programmes comprise current affairs programmes or news will turn on the specific content concerned.

While we accept that, on the basis of the output we had watched, *The Morning Brief* was not intended to be a current affairs series, the 10 March 2006 edition involved such detailed exploration of the arguments for and against legalisation of cannabis - a controversial issue of public policy – that this edition did fall under the definition of a current affairs programme. Therefore this edition was not eligible for sponsorship.

The specific edition was therefore in breach of Rule 9.1 of the Broadcasting Code.

**Breach – Rule 9.1**

## **Big Brother 7**

*E4, 11 July 2006, 13:16*

*Channel 4, 18 August 2006, 20:00*

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### **Introduction**

#### **E4 Big Brother Live Streaming, 11 July 2006, 13:16**

One of the housemates, Jayne Kitt, referred to herself as a "cunt" in a conversation with another contestant Nikki Grahame. Shortly afterwards she used the word "fuck" as an expression of surprise.

Three viewers felt that the broadcast of this language was unacceptable before the watershed.

#### **Channel 4, Big Brother Finale, 18 August 2006, 20:00**

At approximately 20:45 Nikki Grahame was evicted. A housemate, Aisleyne Horgan-Wallace, expressed her shock at this, saying to Nikki Grahame "you're fucking fantastic, they don't hate you". Shortly afterwards she said "Nikki, you're fucking beautiful". When Nikki Grahame reached the top of the stairs before the *Big Brother* doors opened she became shocked at the waiting crowd's reaction, saying "I'm fucking shitting it", before exiting the house.

Two viewers felt that the broadcast of this language was unacceptable before the watershed.

We wrote to Channel 4 to ask for its comments on these incidents. In doing so, we asked it to bear in mind the following Rules from the Broadcasting Code:

**Rule 1.3:** *Children must also be protected by appropriate scheduling from material that is unsuitable for them.*

**Rule 1.14:** *The most offensive language must not be broadcast before the watershed...*

**Rule 1.16:** *Offensive language must not be broadcast before the watershed...unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed.*

### **Response**

Channel 4 pointed out that since the first series of *Big Brother*, live streaming has been transmitted with a fifteen-minute delay in order to allow essential legal and compliance edits to be made before broadcast.

The volume of compliance edits required was so great that, in its view, it would be impossible to absolutely foolproof the system. Nevertheless, the broadcaster felt that E4 and Channel 4 had an extremely good compliance record in relation to *Big Brother* live streaming to date. Channel 4 however, unreservedly apologised to the complainants for any offence caused.

## **E4 Big Brother Live Streaming, 11 July 2006, 13:16**

A major contributing factor to the broadcast of the language Channel 4 believed, was that it appeared at around the change-over point between incoming and outgoing editors responsible for compliance. This, amongst other elements, such as the layout of the house and the introduction of new, more sensitive microphones, resulted in an unprecedented situation.

As soon as it became apparent that this offensive language had 'escaped' pre-watershed an investigation was launched and the live streaming compliance team notified. It was decided in the immediate short term, until what had happened was properly ascertained, pre-watershed, Jayne Kitt's conversations should be completely obscured by birdsong. Once the investigation was completed it was decided that a new technical system would be installed, and that a team of dedicated "output monitors" be appointed.

There were no repeat incidents of this nature on E4 streaming for the rest of the series. Although the language occurred pre-watershed, there was only a very small proportion of children (1% of the total audience of 138,000 viewers) actually watching the streaming at this time, according to BARB research.

## **Big Brother Finale, 18 August 2006, 20:00**

The broadcaster told us that the Finale was broadcast live, without a delay. In previous series, it had been agreed by the Legal and Compliance department that there would be a five minute delay in pre-watershed shows which featured:

- live links to the *Big Brother* house; and
- the eviction of one or more housemates; and
- where the remaining housemates were particularly problematic in terms of compliance issues such as use of offensive language

This rule was maintained for *Big Brother 7*. It was specifically agreed that any appearance of certain housemates in a normally live, pre-watershed show, would have to be pre-recorded, as the risk of an inadvertent release of the most offensive language was too high. The broadcaster felt, though, that *Big Brother*, which has a significant interactive element should be transmitted live so that viewers could witness their votes and voting results being tallied in real time.

Accordingly, Channel 4 had been happy for the Finale Programme (including the pre-watershed section) to be broadcast live. Key considerations for this decision were:

- Davina McCall's solo live links to the audience had never given rise to a compliance problem in the past and were therefore not considered an issue for pre-watershed broadcast; and
- The remaining housemates did not pose a significant risk in terms of compliance issues such as use of offensive language.

Davina McCall's catchphrase warning "...do not swear", was used to preface every live link to the *Big Brother* house, and the live interviews with the evicted housemates. The housemates themselves received a separate and untelevised briefing, with respect to the use of offensive language pre-watershed, and an instruction sheet setting out these compliance obligations categorically.



Despite these measures, Aisleyne Horgan-Wallace expressed her feelings of shock with the use of strong language. Although, the Channel accepted that this was clearly inappropriate language for broadcast it felt that the words were not used in an aggressive, abusive or intimidating context. Meanwhile, Nikki Grahame, Channel 4 said, reacted in her trademark, over the top way to the news of her eviction. These reactions had not normally included use of the most offensive language. It had therefore taken the decision that she did not pose a substantial compliance risk, if properly briefed, in a live pre-watershed show.

Given the high level of noise from the crowd, the relevant editor had been unable to clearly pick up what both Aisleyne Horgan-Wallace and Nikki Grahame had said. Once it had become clear what had happened, an apology was made.

The broadcaster pointed out that it had received no complaints at all in relation to this incident, despite viewing figures averaging 6.4 million. Although not justifying the use of this language at this time, it believed that this indicated the actual offence caused to viewers of *Big Brother*. There was not a significant proportion of children actually watching. According to research, children made up only 14% of the total audience of 6.4 million viewers.

The broadcaster said that it had undertaken 'a serious review of procedures for any pre-watershed portion of next year's finale show that included live links to the house'. It had decided to record the show with a suitable time delay pre-watershed to enable the most offensive language to be edited out.

## **Decision**

Rule 1.14 of the Broadcasting Code requires that:

*"The most offensive language must not be broadcast before the watershed or when children are particularly likely to be listening"*,

### **E4 Big Brother Live Streaming, 11 July 2006, 13:16**

Live streaming of this nature clearly carries the risk that offensive language will be broadcast before the watershed. However, viewers expect protection from the broadcast of the most offensive language in pre-watershed programming. We recognise that the broadcaster has regularly demonstrated that it is aware of its responsibilities in this respect.

We took into account the new technology, the introduction of a larger number of microphones of greater sensitivity, and the layout of the *Big Brother* house. In light of the context and the significant additional procedures being put in place to reduce the risk, we consider this matter resolved.

### **Big Brother Finale, 18 August 2006, 20:00**

Turning to the *Big Brother* Live Final, we considered the type of programme it was, and the kind of audience it was likely to attract. This was a highly-publicised and major television entertainment event attracting 6.4 million viewers. Significantly, 14% of this audience were children (896000). Regardless of any information provided at the outset, a 20:00 start meant that viewers might have thought it suitable for a family audience. Audience expectations would therefore be different from an audience viewing E4's live streaming, and any post-watershed broadcast of the series on Channel 4.

We took into account the Channel's compliance record bearing in mind the great volume of material broadcast and the considerable protective effort in place. We do not solely rely on numbers of complaints as indicators of level of offence taken. But, we recognise that whilst the programme attracted a large audience, the complaints received were few.

Despite the significant efforts made by the broadcaster to prevent offence, during both an 'awards ceremony' following the conclusion of *Celebrity Big Brother* in January 2006 and the eviction of Craig Coates in *Big Brother 6*, contestants' use of strong swearing went to air unedited pre-watershed. These were reported in Bulletins 62 and 50 respectively.

As in the current case, the broadcast of swearing occurred despite the contestants having been briefed pre-transmission. In the case of *Big Brother 6*, an editor had inadvertently missed two incidents of swearing in the programme, which operated on a five minute delay. At the time, Channel 4 said that the episode, in the final week of *Big Brother 6*, was broadcast live (with a five minute delay) as it involved the eviction of a housemate. On that occasion, Ofcom recognised that extensive procedures had been put in place to try to avoid the broadcast of swearing and that the swearword's inclusion was clearly the result of human error.

We appreciate that the broadcaster took steps to issue an apology to viewers and has seriously reviewed the compliance issues surrounding future broadcasts of the Finale of this series. However, while recognising the lengths that Channel 4 had gone to in complying this series, it is surprising that the decision was taken to broadcast the Finale without a delay, given its pre-watershed start, and the audience it was likely to attract. We were also concerned that the language was broadcast three times, without, apparently, any of the on-site production team noticing.

While we accept that certain housemates may not pose a significant risk of swearing, as Channel 4 itself noted in its submission concerning *Big Brother 6*, the eviction of housemates raises tension and the possibility of extreme reactions.

The swearing in this context was in breach of the Code.

**E4 Live Streaming – Resolved**  
**C4 Finale – In Breach**

## **MTV Dance**

4 August 2006, 19:20

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### **Introduction**

A viewer complained that a segment of programming displayed text messages that contained inflammatory, sectarian comments. The complainant singled out a reference: "all u Fenons (Fenians) out there – die", as being particularly inappropriate. The complainant also noted references to Bobby Sands and the UDA.

### **Response**

MTV accepted that there were certain references in the texts that were sectarian and for which it apologised. The moderator responsible for displaying the texts was unaware of the significance of the messages. The nature of the references was further confused by the fact that they seemed to be mixed in with what appeared to be football references, making them more difficult to identify. Nevertheless, the incident prompted the broadcaster to revise and update its internal training programme for moderators. This, it was felt, would minimise the possibility of any re-occurrence of the problem.

### **Decision**

Rule 2.3 of Ofcom's Broadcasting Code requires:

*"In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context. Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the ground of age, disability, gender, race, religion, beliefs and sexual orientation). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence."*

The text messages were displayed in a banner style running below a music video. They included a mixture of loyalist and republican comments referring to the Ulster Defence Association, a reference to Celtic football prefixed by a republican slogan in Irish meaning: 'our day will come' and a misspelled suggestion that all "Fenons" (Fenians) should die.

Within the context of a music programme, the inclusion of these texts was offensive and potentially inflammatory. We noticed that, on occasions, there was a message displayed below the texts that said: 'Messages do not represent the views of MTV'. However, this does not mean that a broadcaster can abdicate responsibility for broadcasting such material.

While we welcome the steps taken by the broadcaster to initiate an updated training programme for moderators, we nevertheless felt that these messages were not ambiguous and the moderator should have prevented the broadcast of such messages.

### **Breach of Rule 2.3**

## Resolved

### Road Rage School

*UKTV People, 22 July 2006, 15:30 and 19:00*

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#### Introduction

Two viewers complained about unedited swearing (“fucking”) in two different editions of the programme, which they felt was inappropriate when young viewers may be watching.

#### Response

UKTV explained that there was a human error when the data for these programmes was entered into its automated compliance software *On-Air* - the person responsible mistakenly believed the programmes were pre-watershed as they had seen them on a non-UKTV channel in the early evening. They failed to check back against the data on the programme’s transmission and compliance form, which would have shown that the programme acquired by UKTV was restricted to post-watershed broadcast.

To address this, the channel checked all its programmes’ classifications against the actual content recorded in the programmes’ transmission and compliance forms. Furthermore, to ensure that this issue was not widespread across the UKTV network, a similar check was carried out on a month’s schedule on each channel. UKTV also instituted a rule that before a new programme or any old programme which had only ever been shown post-watershed could be inputted into *On-Air*, its classification must be checked against the programme’s transmission and compliance form. The *On-Air* system had also been changed so that it refused to accept any programme scheduled without a confirmed pre- or post-watershed classification.

#### Decision

Rule 1.14 of Ofcom’s Broadcasting Code requires:

“The most offensive language must not be broadcast before the watershed or when children are particularly likely to be listening.”

The unedited swearing was unsuitable in this context – broadcast before the watershed. However we welcome the steps UKTV has taken to amend the operation of the *On-Air* system and ensure the correct classification of programmes. There have been no records of similar occurrences since UKTV were alerted by us to the issue. In these circumstances we consider the matter resolved.

#### Resolved

## **World Cuppa**

*ITV4, 30 June 2006, 22:00*

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### **Introduction**

*World Cuppa* was a live late-evening series on ITV4, and featured discussion about the World Cup.

In the above edition, a clip was shown featuring a Chinese commentator's animated commentary on a goal scored by Italy against Australia. One of the guests then referred to the commentator as "the old tiddlywink"; he then used the phrase "kitchen sink".

We received a complaint from a viewer who considered the language was offensive and racist. He also questioned the absence of an apology within the programme.

### **Response**

ITV said that the series was devised for the young-male orientated audience of ITV4 as a light-hearted and occasionally provocative element of ITV's World Cup coverage. It recognised the potential for unintentionally causing offence and for that reason in particular the series was provided with intensive compliance advice and support both during pre-production and while it was on-air.

ITV said that the guest in question was properly briefed before going on air and the producers had no reason to suspect he would make inappropriate remarks. ITV suggested that it was clear from the studio reaction - nervous laughter and shaking of heads - that what he had said was inappropriate.

ITV said it would have expected and preferred the presenter to have apologised unambiguously immediately, but the production team took the view that it was more important and constructive to get the show rapidly back on track by moving on to avoid provoking more offensive remarks from the guest. The incident was analysed immediately afterwards with the presenter and renewed emphasis was placed on the need for apology in the event of such incidents. The producers also concluded that the guest was unpredictable and would not be invited to appear again on the show; ITV supported this decision.

ITV apologised for the offence caused and said it was confident that valuable lessons were learned from the incident.

### **Decision**

Rule 2.3 of Ofcom's Broadcasting Code states:

**2.3** In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context (see meaning of "context" below). Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation)...

The terms “tiddlywink” and “kitchen sink” are a play on the word “chink”. These derogatory references to the commentator’s race were not justified by the context in which they occurred and were inappropriate. An immediate apology may have served to mitigate the offence caused. However, in view of ITV’s recognition that the language in this live programme was unacceptable, could be seen as racist and the action taken to prevent a recurrence, we consider the matter resolved.

**Resolved**

## **The 60s: The Beatles Decade**

*UKTV History, 12 July 2006, 13:00*

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### **Introduction**

A viewer complained about an interview in which one subject said, as he recalled people's surprise when they encountered Harold Wilson on a train, "Fucking hell, it's Harold Wilson". The complainant felt this was inappropriate for this time of day when young viewers might have been watching.

### **Response**

UKTV explained all its programmes were viewed by a compliance viewer who recommended any edits required for compliance purposes. In this case the language was correctly identified as unacceptable and an edit recommendation passed. Unfortunately the editor to whom this was passed, a temporary replacement at the versioning company, did not properly interpret the instruction, reducing the volume rather than removing it completely. UKTV recognised this was a serious error of judgement and had asked for the editor to be removed from working on any other UKTV programming and that the versioning company conduct further training to ensure such misinterpretation did not happen again.

### **Decision**

Rule 1.14 of Ofcom's Broadcasting Code requires:

"The most offensive language must not be broadcast before the watershed or when children are particularly likely to be listening."

Broadcasters remain responsible for the output of their own channel. The swearing in this programme was unsuitable for the time of broadcast – although we accept that some effort had been made to edit it. Given this, and UKTV's admission of human error and assurances, we consider the matter resolved.

### **Resolved**

## Not in Breach

### The Baby Mind Reader

Five, 19, 26 June, 03, 10 July 2006, 21:00

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#### Introduction

*Baby Mind Reader* was a six part series in which Derek Ogilvie claimed to be able to read the minds of toddlers. The programme claimed that he didn't need to speak to a child, but that all babies had the ability to 'tune in to him' until they learned to talk. In the programmes, the parent/s of hyper-active children would seek Derek Ogilvie's advice. Some of the couples were at risk of splitting up because they found it difficult to control their children.

Derek Ogilvie met with the parent/s and the child. Having spent time with them he interpreted to the parent/s what he believed the child was communicating to him telepathically about their attitudes and home life. He would sometimes communicate this by acting out the toddler's tantrums. He would then offer advice as to how the family's life might be changed and improved in ways which would consequently benefit the toddler. For example, he would suggest introducing regular bedtimes, cutting down on sugary or artificially coloured drinks and providing more fruit and vegetables.

The parent/s gave their opinions on Derek Ogilvie's comments. The parent/s then chose to follow some or all of his advice on how to change home life for the better. At the end of the period the programme reviewed developments with the parent/s and Derek Ogilvie.

Ten viewers complained. In summary, they felt that:

- the programmes were 'in poor taste' and 'exploitative of vulnerable people';
- viewers could be deceived by the alleged psychic powers demonstrated;
- there should have been an entertainment disclaimer before the programmes.

Some of these complainants were concerned:

- for the welfare of the young children involved - suggesting that it was irresponsible 'for words to be put in their mouths'; and/or
- about the 'life-changing advice' given to the mothers of the young children.

These complaints raised issues under the following Rules in Ofcom's Broadcasting Code:

*1.26 Due care must be taken over the physical and emotional welfare and the dignity of people under eighteen who take part or are otherwise involved in programmes. This is irrespective of any consent given by the participant or by a parent, guardian or other person over the age of eighteen in loco parentis.*

*2.6 Demonstrations of exorcism, the occult, the paranormal, divination, or practices related to any of these that purport to be real (as opposed to entertainment) must be treated with due objectivity.*

*(See Rule 1.19 in Section One: Protecting the Under-Eighteens, concerning scheduling restrictions.)*



*2.7 If a demonstration of exorcism, the occult, the paranormal, divination, or practices related to any of these is for entertainment purposes, this must be made clear to viewers and listeners.*

*2.8 Demonstrations of exorcism, the occult, the paranormal, divination, or practices related to any of these (whether such demonstrations purport to be real or are for entertainment purposes) must not contain life-changing advice directed at individuals. Meaning of "life-changing":*

*Life-changing advice includes direct advice for individuals upon which they could reasonably act or rely about health, finance, employment or relationships.*

## **Response**

Five said, in response to Rule 1.26, that none of the young children were filmed alone; they were always in close proximity to their parent(s). The broadcaster also assured us that while filming took place, every effort was taken to ensure that the young children would not be unsettled or upset by the experience. The programmes did not put their physical or emotional welfare at risk; on the contrary, the whole point of the programmes was to establish why they were behaving in a manner which was causing their parents concern and to try to rectify the problem.

The broadcaster explained that a psychiatrist, Dr Gareth Smith, reviewed the cases of all contributors to the series to ensure their suitability for the programme. Each of the parents featured in the programmes was given the option of further counselling from Dr Smith after filming was completed. The whole point of the programmes was to improve the emotional and physical welfare of each of the young children featured. The broadcaster said that each child had benefited from their involvement.

In response to Rule 2.6, Five said that there was no ban on those who claim to have psychic powers from appearing on television. Regarding 'objectivity', Five said that the programme 'tested' Derek Oglivie in the most objective way possible, by seeing if he could improve the lives of the families he claimed he could help. It was made clear that it was Derek Oglivie alone who claimed to be able to "connect" with the young children featured. There was never any suggestion that the programme, the producers or Five believed his claims.

Five said that the commentary was written in such a way as to demonstrate this objectivity and to encourage viewers to question whether Derek Oglivie's conclusions were indeed gained from a "psychic" connection. The narrator repeated many times in each episode that Derek Oglivie's supposed abilities were merely "claimed" by him, describing him as a "self-proclaimed" baby psychic, and making clear that "he says" he can "connect" with the child.

Five went on to say that the nature of the objectivity required in programmes differed according to the nature of the psychic activity and the likely audience. Five noted that a previous research report on psychic matters, issued by the legacy regulators, *Beyond Entertainment* (2001) found that the respondents regarded it acceptable for Five to provide a wider range of programming treatments (than other terrestrial channels) provided it adhered to the observation of the watershed.

In response to Rule 2.7, the broadcaster said that Derek Oglivie's psychic readings purported to be real and the programme reflected this. The methods he used were

not for entertainment purposes. The programme was commissioned by Five's controller of Science who was interested in exploring the experience of families who sought help from Derek Ogilvie. In these circumstances, the broadcaster felt that an announcement that Derek Ogilvie's methods were for entertainment purposes would have been inappropriate and have undermined the point of the series. It would also have undermined the very real and distressing problems faced by the parents in each case.

In response to Rule 2.8, Five said that whilst Derek Ogilvie may have claimed that the method he used to discover problems was by "telepathically connecting" with the young children, the advice he gave was based on facts which he had established were true by asking the child's parents. It was not based on his purported psychic readings. As such, the restrictions on life-changing advice did not apply. Derek Ogilvie was careful to ensure his advice was positive and made common-sense. Remarks in the commentary such as (in episode three): '*...whether Derek read Lily's mind or not, Gemma's positive attitude has produced huge improvements in Lily's behaviour...*' re-enforced the point that it was the changes which the parents themselves had made to their lives which caused their child's situation to improve, not Derek's purported psychic readings.

## Decision

We recognise that some viewers were uncomfortable with the concept of the involvement of young children in a series of this nature. However, as long as programmes comply with the Broadcasting Code, there is no absolute bar on what topics a broadcaster can address. We considered the series in terms of the relevant Rules in the Code below.

Where the physical and emotional welfare and the dignity of people under eighteen is concerned (Rule 1.26), the information provided by the broadcaster was that the cases were reviewed by a psychiatrist before filming and that supportive counseling was offered afterwards. We note that the relationships between the toddlers and their parent/s appeared to have improved by the end of the programmes we viewed. Children were sleeping better, there were positive changes in diet and there was less fractiousness. Overall family life appeared more harmonious. We have no evidence therefore to suggest that the broadcaster did not demonstrate "due care" towards the young participants. The programme was not in breach of this Rule.

In the matter of demonstrations of exorcism, the occult, the paranormal, divination and the need for due objectivity (Rule 2.6), as noted by the broadcaster, the programme's commentary made clear that it was Derek Ogilvie who claimed that he was able to read young children's minds. In fact it is never made clear exactly what this means – apart from the use of such words as 'tune in to babies' minds' and 'telepathy'. This practice was not endorsed by the programme whilst the parent/s did speak of their scepticism on whether Mr Ogilvie really could read children's minds. For example one mother says: '*...if you ask me whether I believe in psychics or not...I would say I don't believe in psychics*'. Later, the same mother says: '*...he just told me what I knew all along...*'

As a hybrid programme, combining life style parenting tips with a purported telepath, the programmes were presented with due objectivity. In our view it was possible for a viewer objectively to ascribe Derek Ogilvie's 'readings' and advice simply to intuition, observational skill and experience with counselling young families. For example, one sequence showed him visiting a house which contained a lot of clutter, and rooms which had remained undecorated for many years. Derek Ogilvie concluded that the

toddler was 'telling' him she was unhappy because the parents would always start something but never finish it. On another occasion, he said a toddler was concerned that the mother of the family was fat. Meanwhile, he was also shown on occasion trying and failing to find anything to say, with which a parent could connect with. The programmes were not in breach of Rule 1.26.

Although what Derek Ogilvie was actually practising was not clear, in respect of Rule 2.7 we accept that the programmes adopted a factual documentary approach to the material presented. Therefore, it was not necessary in this case for the broadcaster to make it clear that it was for entertainment purposes. The programmes were not in breach of this Rule.

The purpose of Rule 2.8 is to protect those, who may interact with a programme, from acting on life changing advice derived from practices such as that demonstrated in the programme. However, it was clear from the evidence presented by Five that the advice given – described in the narration as common sense – was given by Derek Ogilvie after he had independently checked his 'insights' by questioning the parent/s. For example, his suggestion that a single mother had been abused in a previous relationship came after a protracted period of questioning. Once the woman confirmed this, the programme showed him continuing to explore this particular avenue.

From this perspective the subsequent advice he gave any parent/s was very much what would be expected from any counsellor or social worker called upon to give advice to a single mother who was having difficulty with child rearing. For example, at one point Derek Ogilvie says to a woman that her child would not sleep properly until she has dealt with all the adult relationship issues she needed to deal with. This could be seen by viewers to be common sense advice regarding how a child will pick up on the anxieties of their parents and be disturbed by them. Other advice included recommendations for parents to create rotas as to who would bath the children and who would do the washing. Some parents were told to stop shouting at the toddlers. Others were persuaded to feed their children less sweets and spend quality time playing with them.

Taking all the above into account, therefore, and on balance, the programmes were not in breach of this Rule.

### **Not in Breach**

## Fairness and Privacy Cases

### Not Upheld

#### Complaint by Mr Michael Gore

*Rock School 2*, Channel 4, 5 and 12 February 2006

Summary: Ofcom has not upheld this complaint by Mr Michael Gore of unwarranted infringement of privacy.

This edition of *Rock School* featured a band tour coach. Mr Gore was the driver of the coach and images of him taken from outside the coach were included in the programme as broadcast.

Mr Gore complained that his privacy was unwarrantably infringed in both the making of the programme and in the programme as broadcast because: the programme makers filmed and broadcast images of him despite his refusal to sign a release form and his request not to be filmed; and, the programme makers knowingly accepted a forged release form from his employers for his participation in the programme.

Ofcom found as follows:

- a) The filming of Mr Gore did not infringe his privacy. The footage captured by the programme makers was not of a personal or private nature and the actions of the programme makers in capturing the footage did not materially disturb or interfere with Mr Gore's right to a private life.

The broadcast of footage showing Mr Gore driving the tour coach did not infringe his privacy. Ofcom found Mr Gore was not readily identifiable from the footage and the footage did not reveal particularly personal or private information about him.

- b) Having found that Mr Gore's privacy was not infringed in either the making of the programme or in the programme as broadcast, Ofcom was not required to establish whether appropriate consent had been obtained by the programme makers. This is because Ofcom found that in the circumstances of this case, consent from Mr Gore was not required for either the filming of him or the broadcast of images of him.

#### Introduction

*Rock School 2* was a six part, reality programme. The programme followed former *Kiss* band member Gene Simmons, in his attempts to create a rock band ("the band") from a group of school pupils.

Episode Three of this series was broadcast on 12 February 2006. During this episode the band embarked on a three day tour of the Midlands. While on tour the band lived and travelled in a coach and footage of the coach's interior and exterior was shown in the programme.

Footage of the tour coach was also included in Episode Two, broadcast on 5 February 2006. This episode showed the coach as part of a preview to Episode Three.

Mr Michael Gore was the driver of the coach featured in the programmes.

Mr Gore complained his privacy was unwarrantably infringed in both the making of the programme and in the programme as broadcast.

## **The Complaint**

### **Mr Gore's case**

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

- a) The programme makers filmed and broadcast footage of Mr Gore despite his request that they stop filming him and his refusal to sign a release form.
- b) The programme makers knowingly accepted a forged release form from Mr Gore's company.

### **Channel 4's case**

In summary, Channel 4 responded to the complaint as follows:

- a) Channel 4 said that Mr Gore's employers were contacted and asked if they would be able to provide a tour coach and a driver for the programme. It was made clear to the company that there was a possibility that both the vehicle and the driver may appear in the final programme. Channel 4 said the company were comfortable with this as they felt it would be good PR for the company.

During filming, Mr Gore opened up his cab so that the cameraman stationed on board the coach could film the motorway through the front window. Mr Gore told the cameraman that he did not wish to be filmed. The cameraman abided by this request and only filmed Mr Gore's hands, which the complainant seemed happy about. Channel 4 noted that this footage was not used in the programme as broadcast. Channel 4 said it was not clear to this cameraman that Mr Gore wanted him to communicate his request not to be filmed to any other members of the production team or the second cameraman who was in another vehicle. As the complainant did not tell anyone else in the production team or the second camera team that he did not wish to be filmed, some shots of Mr Gore were taken through the tinted window of the coach by the second camera team. The purpose of this filming was not to specifically feature him but to gain footage of the coach's journey. Channel 4 said that Mr Gore was aware that this filming was taking place because the director asked him to slow down the coach whilst they were filming. It would have been very clear to Mr Gore that any shot of the coach taken from outside may be likely to include him as well, and yet, Channel 4 said, at this point Mr Gore did not indicate to the second camera team that he did not wish to be filmed.

Channel 4 explained that while on tour, the Production Manager had an altercation with the complainant about an overnight stay at a service station. During this altercation, Mr Gore stated that he did not wish to be filmed and tore up his release form saying he would not sign it. The Production Manager said that this was the first time Mr Gore had expressed this wish to her or any other member of the production team (with the exception of the cameraman on Mr Gore's coach).

Thereafter, the Production Manager ensured that Mr Gore was not filmed and care was taken by both camera teams to film the road and not Mr Gore. The Production Manager and Mr Gore did not speak again during the remainder of the filming period. Channel 4 said the Production Manager did not feel comfortable approaching Mr Gore in person about the release form and she sent the release form to his company instead. Mr Gore's employer asked the Production Manager if someone else could sign the form on Mr Gore's behalf. The Production Manager checked with her legal department and advised that the form would need to be signed by Mr Gore in person. This advice was then confirmed via email. Channel 4 provided Ofcom with an email from the Production Manager to Mr Gore's employer explaining that they required Mr Gore to sign a release form.

Mr Gore was only incidentally included in the shots that were editorially necessary in telling the story of the tour. The complainant's appearance in both the trailer for the programme and the programme itself was very fleeting. Mr Gore's appearance in the trail amounted to 3 seconds of footage. In the programme as broadcast, Mr Gore was shown in five extremely fleeting shots, again taken from the outside of the coach, through tinted glass with a total screen time of less than 10 seconds. Channel 4 said they did not believe the fleeting glimpses of Mr Gore that appeared in the programme, infringed his privacy in any way.

- b) Both Channel 4 and the programme makers categorically stated that they had no reason to believe Mr Gore's signature had been forged until he telephoned Channel 4 following the broadcast of the trailer. Once it was realised there was a possibility that the form was forged the programme was checked by two experienced members of Channel 4's legal and compliance team. After checking the programme, it was decided that Mr Gore was barely identifiable and would not be recognised to anyone who did not know him well. Channel 4 were very concerned over the allegation of forgery and offered Mr Gore any assistance they were able to give in order to investigate the matter. However, it was felt that as Mr Gore was not easily identifiable from the shots of the coach it was acceptable to use them within the programme as their use would not infringe Mr Gore's privacy.

### **Mr Gore's comments in response to Channel 4's statement**

In summary Mr Gore responded to Channel 4's statement as follows:

- a) Mr Gore said that when he was first given the release form to sign, he asked about a performance fee. After being told that performance fees no longer exist, Mr Gore recalled that he told the Production Manager that he was not to be filmed under any circumstances.

As regards the filming on board the coach, Mr Gore stated that he specifically told the cameraman in question that he could not film any part of him. In response to the broadcaster's suggestion that the windows of the coach were tinted, Mr Gore said that his compartment did not have tinted windows.

Mr Gore maintained that he was identifiable in the programme as broadcast as he was told by people that they saw him on the programme.

Mr Gore said his argument with the Production Manager arose because he was not willing to risk the safety of the coach or its occupants.

- b) In relation to the signed release form, Mr Gore said that he found it difficult to believe the programme makers did not wish to contact him directly to confirm that he had

signed the release form himself, given that they explained to his employer how important it was that he sign the release form and stipulated that no one else may sign on his behalf.

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

Channel 4 responded to Mr Gore's comments as follows:

- a) Channel 4 said the Production Manager maintained that at no point, during her conversation with Mr Gore about a performance fee, did he state that he did not wish to be filmed.

In relation to the filming on board the coach, Channel 4 said the cameraman in question disputes that Mr Gore asked him not to film his hands. Channel 4 said the windows of the coach were sufficiently tinted so that it was not easy to identify Mr Gore. Further the shots of him that were included taken outside of the coach, as it was moving, were so brief as to render him virtually unidentifiable.

- b) Channel 4 said the Production Manager acknowledged that she had the mobile number of the complainant, but she did not feel comfortable approaching him personally given their previous altercation. Instead the Production Manager took the reasonable step of approaching Mr Gore through his employer. The Production Manager had no reason to suspect that the form had not been signed by the complainant in person as specifically requested.

#### **Decision**

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

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

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

Mr Gore complained that the programme makers filmed and broadcast images of him without his consent, despite his request that they not film him and his refusal to sign a release form. In addition, Mr Gore complained that the programme makers knowingly accepted a forged release form from his company. Mr Gore believed that by not gaining appropriate consent to broadcast images of him, his privacy was unwarrantably infringed.

From Mr Gore's written submissions it was clear to Ofcom that he believed that by not signing the programme maker's release form he was, in effect, preventing the programme makers from being able to broadcast images of him. Further, Mr Gore believed that the programme makers' decision to film images of him, after being told that he did not wish for this to happen therefore infringed his privacy.

Before outlining Ofcom's findings in respect of Mr Gore's complaint, it is important to explain in the light of Mr Gore's understanding, as set out above, how Ofcom approached its decision.

Ofcom acknowledged that it was standard industry practice for programme makers to request that participants featured in a programme sign a release form for their contribution (sometimes even when the contribution is very minor). The consent given in a release form may commonly refer to the filming, broadcast and distribution of images, and any copyright considerations that may be relevant. However it is important to note that an infringement of privacy will not automatically result from images of an individual appearing in a programme without their consent. Also of relevance in this case was Mr Gore's request not to be filmed. The Ofcom Broadcasting Code says, (as a practice to be followed), that where an individual requests for filming to stop, or requests that they should not be filmed, then the programme maker should normally be required to stop filming. However this would *only* be the case if the filming was infringing the person's privacy. If the filming was not infringing the person's privacy, then the programme maker may be entitled to continue filming. Programme makers should always be alert to the fact that their actions may infringe the privacy of a contributor. However, a person's wish that a particular image or piece of information should not be revealed does not necessarily render the image or information 'private' or mean that a programme maker should be prevented from legitimately recording and subsequently broadcasting it.

Therefore, in reaching a decision about Mr Gore's complaint Ofcom was firstly required to assess both the nature of the filming, and the images broadcast in the programme, to establish whether they were capable of infringing Mr Gore's privacy. Secondly, *if* Ofcom concluded that the filming and subsequent broadcast was capable of infringing Mr Gore's privacy, then Ofcom would seek to determine whether appropriate consent had been obtained by the programme makers or whether the infringement was warranted.

- a) Ofcom considered both the filming of the images (i.e. in the making of the programme) and the broadcast of the images (i.e. in the programme as broadcast).

Ofcom was informed of two occasions when Mr Gore was filmed: footage taken inside the coach of Mr Gore's hands; and footage taken from outside the coach of Mr Gore driving.

#### Footage of Mr Gore from inside the tour coach

In relation to the filming of Mr Gore's hands, Ofcom noted that Mr Gore believed the filming infringed his privacy because it was against his express wish not to be filmed. Channel 4 stated that the filming on this occasion was with Mr Gore's consent.

Ofcom is not a fact finding tribunal, and was unable to determine, on the evidence before it, whether the filming of Mr Gore's hands had been with his consent or not. However, after considering the nature of the filming, Ofcom took the view that the filming did not result in an infringement of Mr Gore's privacy - even in the absence of consent from Mr Gore. From the information provided by both parties, it appeared to



Ofcom that the images captured by the programme makers were not images in respect of which Mr Gore would have a reasonable expectation of privacy. They were not of an inherently private nature and could not, for example, be considered sensitive or embarrassing. Mr Gore was simply driving the coach with his hands placed on the steering wheel away from his body. Further, there was no indication given by Mr Gore in his written statements that the cameraman, while filming his hands, attempted to intrude upon his actions or his person in a manner that would have amounted to an infringement of his privacy. In the circumstances, Ofcom was not persuaded that the manner in which this filming took place, in the making of the programme, infringed Mr Gore's privacy.

Further, Ofcom noted that the footage of Mr Gore's hands on the steering wheel were not transmitted. Therefore there was no infringement on privacy in the broadcast of the programme with regard to this footage.

#### Footage of Mr Gore from outside of the tour coach

Ofcom next considered the footage of Mr Gore driving the coach filmed from the exterior of the coach. Channel 4 explained that this footage of Mr Gore was filmed using a second camera team:

*"...some shots of the complainant were taken through the tinted window of the coach journey. The complainant was aware that this filming was taking place because the director asked him to slow down the coach whilst they were filming in order to get better shots."*

Mr Gore advised Ofcom that *"I did slow down to 50 mph on the last day and this is when I was filmed"*. However, Mr Gore also explained that he had already made it clear to the programme makers that he did not wish to be filmed.

Unlike the shots of Mr Gore's hands, this footage was used in the programme as broadcast.

As noted above, Ofcom considered that Mr Gore's actions while being filmed (driving the tour coach), were not of an inherently private nature and could not, for example, be considered particularly sensitive, personal or embarrassing. In addition, Ofcom noted that the activity took place in, and was filmed from, a public place (the motorway). It was also noted by Ofcom that Mr Gore was aware that the camera crew was present. While Ofcom acknowledged that Mr Gore may not have been aware that he was included in the shot, it did not consider that the actions of the programme makers could be described as surreptitious or covert. In the circumstances, it appeared to Ofcom that the images captured by the programme makers were not images in respect of which Mr Gore would have a reasonable expectation of privacy. There was also no evidence to suggest that the actions of the cameraman while filming from outside the coach intruded upon Mr Gore's actions or his person in a manner that would have amounted to an infringement of his privacy. In the circumstances, Ofcom found there was no infringement of privacy in the making of the programme with respect to the filming of Mr Gore driving the coach.

Ofcom finally assessed the images of the coach as they appeared in the programme as broadcast. Ofcom identified three shots of the coach that showed part of the driver's physical form. One showed the driver's arm, while the other two (upon close scrutiny) showed that the driver was male and wore dark sunglasses. In Ofcom's opinion, any finer details about the driver's appearance were not identifiable. Ofcom considered that Mr Gore, as the driver of the coach, would only have been

identifiable to either someone who knew him very well, or someone who knew that he was the driver of the coach featured in the programme. Ofcom also noted that the only information that the programme revealed about Mr Gore in the programme, was his profession – a coach driver. Ofcom considered that this information was not of an inherently private nature and in Ofcom's view it was most likely that those able to identify Mr Gore were already aware of this fact. Ofcom found that the programme as broadcast did not infringe Mr Gore's privacy as he would only have been identifiable to a relatively small group of viewers, and the information disclosed was, in any event, not of a private or personal nature.

Ofcom concluded that neither the making of the programme nor the programme as broadcast resulted in an infringement of Mr Gore's privacy.

- b) Mr Gore complained that the programme makers knowingly accepted a forged copy of his release form. Mr Gore believed that by not gaining appropriate consent to broadcast images of him, his privacy was unwarrantably infringed.

If either the making of a programme or its broadcast would infringe the privacy of a person or organisation, consent should be obtained, unless the infringement of privacy was warranted.

As noted above, Ofcom found that Mr Gore's privacy was not infringed in either the making of the programme or in the programme as broadcast. Given this finding, Ofcom was not required to establish whether appropriate consent had been obtained by the programme makers. This was because Ofcom found that, in the circumstances of this case, consent from Mr Gore was not required for either the filming of him or the broadcast of images including him.

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

## **Complaint by Aloma Henriquez**

*Chavez: Inside the Coup, BBC2, 16 October 2003*

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

Aloma Henriquez complained that she was treated unfairly and that her privacy was unwarrantably infringed in the making and the broadcast of this programme. The documentary followed the unsuccessful attempt to overthrow the Venezuelan President, Hugo Chavez, in April 2002. The complainant, Ms Henriquez, was filmed when she attended a neighbourhood meeting in Caracas in June 2002, two months after the coup. The meeting was to discuss security in the light of fears of attacks on the middle class population of Caracas following the events surrounding the coup. A guest, Alvaro Mora, spoke about his Community Active Defence Plan. A programme maker filmed the meeting and conducted interviews with some of the residents. Ms Henriquez was interviewed and footage of her was included in the programme.

Ofcom's Executive Fairness Group originally considered Ms Henriquez's complaint and found that the complaint should not be upheld. The complainant requested a review. In accordance with Ofcom's published procedures, the Fairness Committee, Ofcom's most senior decision making body, reconsidered the complaint in its entirety.

Following its reconsideration, Ofcom's findings are as follows:

- Ms Henriquez was aware that she was being filmed and gave her views and opinions freely. Whilst Ofcom could not resolve the question as to whether or not Ms Henriquez was aware that the filming was for a documentary, Ofcom was not satisfied that Ms Henriquez was misled about the purpose of the filming, namely that it was about President Chavez and the political situation in Venezuela. Furthermore, despite the slight change in focus of the programme in the editing process, President Chavez and the political situation in Venezuela remained the subject of the programme.
- The use of footage of the meeting, so that it appeared sequentially in the programme before the coup when in fact it took place afterwards, was likely to have misled viewers as to the true chronology of events. This sequence did show a date caption, but this was unlikely of itself to have corrected any confusion, as the voiceover which introduced the footage suggested misleadingly that the meeting was happening contemporaneously with earlier events. However, although it was not possible to establish to what extent, if any, Ms Henriquez's political views would have been materially different before the coup, Ofcom noted that her comment in the programme was a general one about the background to the unrest in Venezuela. This was equally as valid in a general documentary about President Chavez and the political situation in Venezuela as in one that was closely examining the specific events leading up to the coup and the coup itself. In the circumstances, therefore, Ofcom considered that the misleading chronology of events did not cause her to be unfairly depicted and did not result in her being misrepresented. She did not appear to be a conspirator, but one of a group of concerned citizens considering their personal safety and self-defence.

- Following Alvaro Mora's introduction to the meeting, and given the fact that the programme maker was filming openly, there could not be a reasonable expectation of privacy at the meeting. There was evidence of a general consensus amongst those present to allow the filming to take place and Ms Henriquez had agreed to be interviewed and was aware that she was being filmed.
- Ms Henriquez was not misled about the purpose of the filming. There was evidence of a general consensus amongst those present, including Ms Henriquez, to allow the filmed footage to be broadcast.

## **Introduction**

This documentary followed the unsuccessful attempt to overthrow the Venezuelan President, Hugo Chavez, in April 2002. The complainant, Ms Henriquez was filmed when she attended a neighbourhood meeting in Caracas in June 2002, two months after the coup. The meeting was to discuss security in the light of fears of attacks on the middle class population of Caracas following the events surrounding the coup. A guest, Alvaro Mora, spoke about his Community Active Defence Plan. A programme maker filmed the meeting and conducted interviews with some of the residents. Ms Henriquez was interviewed and footage of her was included in the programme.

Ms Henriquez said in the programme:

"These people don't know what sacrifice and hard work is. That's why they don't value them. They want us out of our own country. But we won't leave it to people with no values or education. People who haven't struggled. We've struggled and we're not giving up what we've got. "

Ms Henriquez complained that she was treated unfairly in the broadcast of the programme and that her privacy was unwarrantably infringed in the making and the broadcast of the programme.

## **Complaint**

### **Ms Henriquez' case**

#### Fairness

In summary, Ms Henriquez complained that she was treated unfairly in that:

- a) Ms Henriquez thought she was being interviewed by a news reporter. She did not authorise the programme maker to use her comments in a documentary about the political, economic and social situation of Venezuela.
- b) As someone living in a democratic country, she felt she could talk to a news reporter and dissent politically, but her image was used to give the false impression that she was some kind of "conspirator" who was supporting a coup against the president.

#### Privacy

- c) In summary, Ms Henriquez complained of an unwarranted infringement of privacy in the making of the programme. She complained that the programme maker attended a neighbourhood meeting without permission, said she was there for BBC news and never mentioned that she was making a film or a documentary.

- d) In summary, Ms Henriquez complained of an unwarranted infringement of privacy in the broadcast programme. She complained that she appeared in the documentary without her consent and having been misled about the purpose of the filming.

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

#### Fairness

In response, the BBC said, in summary:

- a) The programme makers set out to make a programme about President Chavez and were in the presidential palace when the coup took place in April 2002. During the editing process, they decided that the programme should concentrate on the events leading up to the coup and the coup itself. The programme maker obtained a release form from Mr Mora, the organiser of the neighbourhood meeting. It was clear from email correspondence that the programme maker did not mislead him about her identity or the purpose of the filming, namely for a documentary about the political situation in Venezuela. She arrived at the meeting with Mr Mora and when everyone had gathered he introduced her. She explained that she was an independent programme maker filming a documentary about the political situation in Venezuela since President Chavez's election. She said she would need the verbal agreement of all present before turning on the camera. No one present raised any objections to her filming. In a letter of complaint dated 6 July 2003 to RTE (who commissioned the film), Ms Henriques said that Mr Mora introduced the programme maker at the start of the meeting as a BBC London journalist who was interested in filming the meeting. The programme maker did not have any BBC business cards and did not present herself as a BBC news reporter.
- b) Ms Henriquez's contribution was a general illustration of feeling among those opposed to the Chavez government and was not linked with the coup. She made her statement expressing her opposition to President Chavez in the knowledge that she was being filmed and her comments might be broadcast.

#### Privacy

- c) In summary, the BBC responded to the complaint of unwarranted infringement of privacy in the making of the programme by saying that the programme maker attended the meeting with Mr Mora and that no one raised any objections to her filming. She had made it clear to Mr Mora that she was making a documentary and explained this to the people present at the meeting. Ms Henriquez was not misled about the purpose of the filming.
- d) In summary, the BBC responded to the complaint of unwarranted infringement of privacy in the broadcast by saying that Ms Henriquez was aware that she was being filmed and that her comments might be broadcast.

### **Ms Henriquez's response**

- a) The programme maker did not address the meeting herself. Mr Mora told the meeting that the programme maker was from the BBC and that the interviews would be broadcast two weeks later in a BBC newscast. Mr Mora did not tell the audience that she was making a documentary about the political situation in Venezuela, even if he was aware of this himself. The programme maker was not invited by the residents to the meeting and Mr Mora had no authority over the group. The programme maker did

show Ms Henriquez a BBC business card. The change in the focus of the programme resulted in unfairness, as she had not consented to this.

- b) The chronology, as set out in the programme, resulted in unfairness. The neighbourhood meeting took place in June 2002, after the coup, following which there was no security force to protect the people and there were rumours of looting and attacks by members of the Bolivarian Circles, supporters of President Chavez. Many people attended lectures in security like that attended by Ms Henriquez. Prior to 11 April 2002 this was not the case, as there was no indication that the members of Bolivarian Circles had firearms and would use them to “kill innocent marchers”. Ms Henriquez made her statement as a result of her fears of what had happened during the coup of 11 April 2002 and after. The BBC’s statement that what she said was “not linked to the coup” was inaccurate, as the images and situation portrayed in the programme led viewers to believe wrongly that this was a preparation for the coup by middle class opponents of President Chavez. Immediately before the footage of the meeting, the programme showed a small food store and then referred to “other views on Chavez’s democracy” being held on the “prosperous side of town”, accompanied by shots of a luxurious house. This editing of the scene and its inclusion out of sequence could have led viewers to believe that the “prosperous people” referred to in the script, including Ms Henriquez, were coup plotters. As a result of the negative portrayal of her, Ms Henriquez had been recognised on the streets of Caracas and insulted many times.

### **The BBC’s response**

- a) Ms Henriquez was properly informed about the purpose of the filming. Although the programme maker understood Mr Mora to be the organiser of the meeting, Ms Henriquez and the others present at the meeting were informed about her visit. Despite the dispute between Mr Mora and the complainant about what he said at the meeting, the BBC stood by their statement that Mr Mora had explained the programme maker’s presence and the purpose of the filming. Although Ms Henriquez said she did not give permission for filming, it was clear from the programme that she spoke freely and willingly to the programme maker.
- b) The sequence showing the neighbourhood meeting was filmed in June 2002, two months after the coup. In the programme the meeting, clearly captioned with the date, was shown before the sequences showing the coup. This was done to give the audience, prior to showing the events of the coup, an understanding of the deep economic and ideological divisions in Venezuelan society and an insight into the fears of other sections of Venezuela’s middle classes vis-à-vis other socio economic groups. The views expressed at the meeting were representative of many of those who opposed the Chavez government in the weeks leading up to the events of 11 April 2002. The programme makers considered that there were fears, fuelled by the media, among the middle class of violence by the working class and Bolivarian Circles, supporters of President Chavez, before April 2002. It was not misleading, given that the sequence was dated, to include it where it was in the film.

### **Decision**

Ofcom’s statutory duties include the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public and all other persons from unfair treatment and unwarranted infringements of privacy in programmes included in such services. Where there appears to have been unfairness in the making of a 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 these standards are applied in a manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard, in all cases, to principles that require regulatory activities to be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.

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

Ofcom's Executive Fairness Group originally considered Ms Henriquez's complaint and found that the complaint should not be upheld. The complainant requested a review. In accordance with Ofcom's published procedures, the case was referred to the Fairness Committee, Ofcom's most senior decision making body, for reconsideration. The Committee carefully considered all the submissions by the complainant and the BBC and the responses to further questions put to the complainant prior to the decision of the Executive Fairness Group. Ofcom's decision is set out below, by reference to each of the heads of Ms Henriquez's complaint.

Ofcom concluded that:

#### Fairness

- a) Ms Henriquez complained that the footage of her was included in the documentary without her authorisation.

Ofcom took into account all the submissions of both parties, including witness statements of other residents at the meeting which had been submitted by Ms Henriquez and other complainants. Ofcom noted that there were conflicts between statements made at different times by complainants about this programme and between Ms Henriquez's complaint and the information provided by the BBC as to whether the meeting was informed that the filming was for a documentary or for a news item.

Ofcom's remit is to consider and adjudicate on complaints of unfair treatment and unwarranted infringement of privacy. It is not a fact-finding tribunal and as such is not required to resolve conflicting evidence as to the nature or accuracy of particular accounts of events where it feels it is unable to do so. However, in this case Ofcom considered it was clear from the footage of her in the programme that Ms Henriquez was aware that she was being filmed. She did not dispute that she gave her views and opinions freely to the programme maker.

As regards whether she was aware that the filming was for a documentary, Ofcom noted from the evidence in the submissions the differing recollections of residents who had been at the meeting as to whether they were told the filming was for a documentary. Ofcom noted, for example, that one of the other complainants had said in a letter to RTE television (included in the BBC's submissions) that Mr Mora introduced the programme maker to the meeting saying she wanted to compile some shots for a documentary. It was also clear from an email sent to Mr Mora by the

programme maker prior to the filming at the meeting that she had described herself to him as “an independent documentary maker”.

Whatever their understanding as to the type of programme that was being made, Ofcom considered that it was sufficiently clear from the interviews given by residents in the programme itself that they were at least aware that the filming was about President Chavez and the political situation in Venezuela.

Taking these factors into account, Ofcom was not satisfied that Ms Henriquez was misled about the purpose of the filming. Furthermore, the change in focus of the programme in the editing process was slight (the subject of the programme was still President Chavez and the political situation in Venezuela) and therefore did not alter the fundamental nature and purpose of the programme and, consequently, did not affect Mrs Henriquez’s consent to participate.

Ofcom found no unfairness in this respect.

- b) The complainant felt that her contribution was edited in such a way as to give the false impression that she was a “conspirator” who was supporting a coup against President Chavez.

Ofcom noted the context within which the footage of the meeting was included in the programme and that, in the programme’s account of events, it appeared chronologically before the coup when in fact the meeting actually took place some months afterwards. This sequence in the programme was likely to have misled viewers as to the true chronology of events, suggesting that the meeting took place in the build up to the coup. Although the meeting was correctly date captioned, this was unlikely of itself to have corrected any confusion since the voiceover that introduced the footage of the neighbourhood meeting stated that “somewhat other views on Chavez democracy could be heard on the prosperous side of town”. Ofcom considered that this was misleading as it suggested, despite the date caption to the contrary, that the meeting was happening contemporaneously with earlier events leading up to the coup. It was therefore likely to have added to confusion on the part of viewers.

However, in considering whether the positioning of the footage was likely to give viewers an unfair impression of Ms Henriquez, Ofcom considered the nature of her comment that was included in the programme. Ofcom noted that her comment was a general one about the background to the unrest in Venezuela, which was equally valid in a general documentary about President Chavez and the political situation in Venezuela as in one that was closely examining the specific events leading up to the coup and the coup itself. Ofcom further noted that Ms Henriquez did not dispute what she said to the programme maker, nor was there any evidence that her views at the time of the meeting were different from her views before the coup.

Ofcom concluded therefore that Ms Henriquez’s views were not materially misrepresented and her interview was not used in a way that was unfair to her. Ofcom did not consider that she appeared to be a conspirator, but one of a group of concerned citizens considering their personal safety and self-defence.

Ofcom found no unfairness in this respect.



### Privacy

- c) Ms Henriquez complained that she was filmed without her consent. Ofcom noted that the meeting was a private one and therefore that Ms Henriquez had a reasonable expectation of privacy in advance of attending it. However, on attending the meeting the residents were informed by Mr Mora in his introduction that filming would take place. There was also evidence in the submissions showing there was a general consensus amongst those present to allow the filming to take place. Further, the filming took place openly and, by her own admission (in her statement to Ofcom), Ms Henriquez agreed to be interviewed. She was aware that she was being filmed and gave her views freely. In these circumstances, there was no infringement of Ms Henriquez's privacy in the making of the programme.
  
- d) Ms Henriquez also complained that footage of her was broadcast without her consent. As set out under a) above, Ofcom did not consider that Ms Henriquez was misled about the purpose of the filming. Ofcom took the view that there was evidence of a general consensus amongst those present to allow the filmed footage to be broadcast and that Ms Henriquez was party to that consensus. There was therefore no infringement of her privacy in the broadcast.

Accordingly, the complaint of unfair treatment and unwarranted infringement of privacy was not upheld.

## **Complaint by Marisol Ayala**

*Chavez: Inside the Coup, BBC2, 16 October 2003*

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

Marisol Ayala complained that she was treated unfairly and that her privacy was unwarrantably infringed in the making and the broadcast of this programme. The documentary followed the unsuccessful attempt to overthrow the Venezuelan President, Hugo Chavez, in April 2002. The complainant, Mrs Ayala, was filmed when she attended a neighbourhood meeting in Caracas in June 2002, two months after the coup. The meeting was to discuss security in the light of fears of attacks on the middle class population of Caracas following the events surrounding the coup. A guest, Alvaro Mora, spoke about his Community Active Defence Plan. A programme maker filmed the meeting and conducted interviews with some of the residents. Mrs Ayala was not interviewed but footage of her was included in the programme.

Ofcom's Executive Fairness Group originally considered Mrs Ayala's complaint and found that the complaint should not be upheld. The complainant requested a review. In accordance with Ofcom's published procedures, the Fairness Committee, Ofcom's most senior decision making body, reconsidered the complaint in its entirety.

Following its reconsideration, Ofcom's findings are as follows:

- The programme maker was introduced to the residents at the beginning of the meeting and Mrs Ayala's submissions confirmed that she was aware that filming was taking place. In the circumstances there was no requirement for the programme maker to obtain her specific consent. Ofcom was unable to reconcile the conflicting accounts of the film maker and Mrs Ayala as to whether she voiced any objection to being filmed but given where she was sitting at the meeting (next to the speaker) Ofcom took the view that she ought reasonably to have known that some footage of her would be filmed. It would have been open to her to reposition herself elsewhere in the room. In the circumstances, it was reasonable for the programme maker to have obtained and used footage in which Mrs Ayala appeared. As regards the purpose of the filming, Ofcom noted that there was a conflict between Mrs Ayala and the BBC as to whether she was told the filming was for a news item or a documentary. Notwithstanding the apparent contradiction here, Ofcom was not satisfied that Mrs Ayala was misled about the purpose of the filming, namely that it was about President Chavez and the political situation in Venezuela.
- The juxtaposition of the footage of the venue for the meeting with the preceding footage of the other side of town was unlikely to have adversely affected viewers' impressions of the meeting in general and of Mrs Ayala in particular. Whilst it was obviously the intention of the programme makers to provide a contrast between the two sides of the city, the programme did not suggest the meeting was taking place in a mansion and did not dwell on the venue for the meeting, nor was there any commentary to suggest that the surroundings were luxurious. They did not obviously appear to be so from the footage. The use of the footage of the meeting, so that it appeared sequentially in the programme before the coup when in fact it took place afterwards, was likely to have misled viewers as to the true chronology of events. The date caption was unlikely of itself to have corrected any confusion, given that the voiceover which introduced the footage suggested misleadingly that the meeting was happening contemporaneously with earlier

events. However, Mrs Ayala was not interviewed for the programme, so beyond the fact of her presence at the neighbourhood meeting, there was no indication of her own personal views or how these might have been different at the time of the meeting from before the coup. Furthermore, her position next to the speaker gave the impression that she was involved in arranging and facilitating the meeting in some sense but did not suggest that she was giving instruction in the use of firearms. The misleading chronology of events did not therefore cause her to be unfairly depicted and did not result in her being misrepresented.

- Evidence in the submissions suggested that the programme maker had spoken privately to Mrs Ayala before the meeting and that the programme maker had subsequently been introduced to all the residents at the meeting. The filming took place openly and Mrs Ayala remained sitting in a prominent place where she was likely to be caught on film. There was no reasonable expectation of privacy at the meeting and there was no infringement of Mrs Ayala's privacy in the making of the programme.
- Mrs Ayala was not misled about the purpose of the filming and there was evidence of a general consensus amongst those present to allow the filmed footage to be broadcast. In the absence of convincing evidence to the contrary, Mrs Ayala was party to that consensus. It was reasonable for the programme maker to consider that Mrs Ayala did not object to being filmed.

## **Introduction**

This documentary followed the unsuccessful attempt to overthrow the Venezuelan President, Hugo Chavez, in April 2002. The complainant, Mrs Ayala, was filmed when she attended a neighbourhood meeting in Caracas in June 2002, two months after the coup. The meeting was to discuss security in the light of fears of attacks on the middle class population of Caracas following the events surrounding the coup. A guest, Alvaro Mora, spoke about his Community Active Defence Plan. A programme maker filmed the meeting and conducted interviews with some of the residents. Mrs Ayala was not interviewed but footage of her was included in the programme.

Mrs Ayala complained that she was treated unfairly in the broadcast of the programme and that her privacy was unwarrantably infringed in the making and the broadcast of the programme.

## **Complaint**

### **Mrs Ayala' case**

#### Fairness

In summary, Mrs Ayala complained that she was treated unfairly in that:

- a) She attended a private neighbourhood meeting, held in a private place. She clearly stated to the programme maker that she did not want to be filmed. She did not sign any release form, and footage of her was included in the programme without her permission. The programme maker told her that the footage would be used for a BBC newscast and Mrs Ayala was not aware that the event was being filmed for a documentary in favour of President Chavez's regime.

- b) An unfair impression was given in the programme that the meeting was taking place in a luxurious mansion, when in fact it took place in the meeting room of a residential building. The programme was also edited so as to make it appear that the meeting took place before the events of April 2002 (the unsuccessful coup), when in fact it took place in June 2002, following the coup, in which many Venezuelans died. The false impression was given that Mrs Ayala was teaching people how to shoot firearms, as she was sitting beside Mr Mora, who was explaining basic information about general security.

#### Privacy

- c) In summary, Mrs Ayala complained of an unwarranted infringement of privacy in the making of the programme. She complained that the programme maker attended the meeting without permission and said that she was filming for BBC news. The meeting took place in a private room in the residents' building. Mrs Ayala did not give her permission to be filmed and stated clearly that she did not wish to be filmed. Despite this, she was filmed.
- d) In summary, Mrs Ayala complained of an unwarranted infringement of privacy in the broadcast programme. She complained that she appeared in the documentary without her consent and having been misled about the purpose of the filming.

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

#### Fairness

In response, the BBC said, in summary:

- a) The programme makers set out to make a programme about President Chavez and were in the presidential palace when the coup took place in April 2002. During the editing process, they decided that the programme should concentrate on the events leading up to the coup and the coup itself. The programme maker obtained a release form from Mr Mora, the organiser of the neighbourhood meeting. It was clear from email correspondence that the programme maker did not mislead him about her identity nor about the purpose of the filming, namely for a documentary about the political situation in Venezuela. She accompanied Mr Mora to the meeting and was first introduced to Mrs Ayala before the other residents arrived. The programme maker spoke personally with Mrs Ayala and explained that she hoped to film the meeting and explained why she was making the film. At no point did Mrs Ayala make it known to her that she did not wish to be filmed. When everyone had gathered for the meeting, Mr Mora introduced the programme maker. She explained that she was an independent documentary maker filming a documentary about the political situation in Venezuela since President Chavez's election. She said she would need the verbal agreement of all present before turning on the camera. No one present raised any objections to her filming. In a letter of complaint dated July 2003 to RTE (who commissioned the film), Mrs Ayala said that the programme maker had referred to taking shots for a "documentary".
- b) The footage simply showed the meeting, which took place in a large meeting room. The venue was not portrayed as "luxurious". As regards the chronology, the meeting was filmed in June 2002, two months after the coup. In the programme the meeting, captioned with the date, was shown before the sequences dealing with the coup. This was done to give the audience, prior to showing the events of the coup, an understanding of the deep economic and ideological divisions in Venezuelan society and an insight into the fears of sections of Venezuela's middle classes vis-à-vis other

socio-economic groups. Similar views to those expressed at the meeting were being expressed prior to the coup and it was not misleading, given that the sequence was dated, to include it where it was in the film. Mrs Ayala was shown in the programme sitting next to Mr Mora and listening to him as he addressed the meeting. The programme did not suggest in any way that she was, by association, teaching people how to use firearms.

### Privacy

- c) In summary, the BBC responded to the complaint of unwarranted infringement of privacy in the making of the programme by saying that Mrs Ayala did not inform the programme maker that she did not wish to be filmed.
- d) In summary, the BBC responded to the complaint of unwarranted infringement of privacy in the broadcast by saying that Mrs Ayala did not inform the programme maker that she did not wish footage of her to be broadcast.

### **Mrs Ayala's response**

- a) Mrs Ayala, who was the organiser of the meeting, told the programme maker that she did not give permission for the meeting to be filmed and that she did not want to appear in the film. Mr Mora told the meeting that the programme maker was from the BBC and that she was making a newscast for the BBC. Mr Mora did not tell the audience that the meeting was being filmed for a documentary about the political situation in Venezuela. The shots of Mrs Ayala were made without her knowledge: in all the shots included in the programme she was looking to the side or at the computer. The change in the focus of the programme resulted in unfairness, as she had not consented to this.
- b) The chronology, as set out in the programme, resulted in unfairness. The neighbourhood meeting took place in June 2002, after the coup, following which there was no security force to protect the people and there were rumours of looting and attacks by members of the Bolivarian Circles, supporters of President Chavez. Many people took lectures in security like that attended by Mrs Ayala. Prior to 11 April 2002 this was not the case, as there was no indication that the members of Bolivarian Circles had firearms and would use them to "kill innocent marchers". Therefore the BBC's argument that there was a "similar view" before and after April 2002 was not correct. Immediately before the footage of the meeting, the programme showed a small food store and then referred to "other views on Chavez's democracy" being heard on the "prosperous side of town", accompanied by shots of a luxurious house. This would have led viewers to think that Mrs Ayala and the people at the meeting were rich and prosperous. The footage of Mr Mora was framed in such a way that Mrs Ayala appeared to be in the same group as people who were teaching about the use of firearms.

### **The BBC's response**

- a) Mrs Ayala was properly informed about the purpose of the filming. She was sitting beside Mr Mora and knew that the meeting was being filmed. She did not tell the programme maker that she did not wish to be filmed.
- b) The neighbourhood meeting was clearly captioned "26 June 2002". The sequence was included because the views expressed were representative of many of those who opposed the Chavez government in the weeks leading up to the events of 11

April 2002. The programme makers considered that there were fears, fuelled by the media, among the middle class opposition of violence by the working class and Bolivarian Circles before April 2002.

## **Decision**

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public and all other persons from unfair treatment and unwarranted infringements of privacy in programmes included in such services. Where there appears to have been unfairness in the making of a 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 these standards are applied in a manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard, in all cases, to principles that require regulatory activities to be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.

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

Ofcom's Executive Fairness Group originally considered Mrs Ayala's complaint and found that the complaint should not be upheld. The complainant requested a review. In accordance with Ofcom's published procedures, the case was referred to the Fairness Committee, Ofcom's most senior decision making body, for reconsideration. The Committee carefully considered all the submissions by the complainant and the BBC and the responses to further questions put to the complainant prior to the decision of the Executive Fairness Group. Ofcom's decision is set out below, by reference to each of the heads of Mrs Ayala's complaint.

Ofcom concluded that:

### Fairness

- a) Mrs Ayala complained that the footage of her was included in the programme without her authorisation and that she was told the filming was for a news item not a documentary.

Ofcom noted from the submissions that the programme maker was introduced to the residents at the beginning of the meeting. It also noted that the filming took place openly and that Mrs Ayala herself confirmed she was aware that filming was taking place and referred to seeing a camera and tripod. In the circumstances, therefore, there was no requirement for the programme maker to obtain her specific consent.

Ofcom took into account Mrs Ayala's statement that she told the programme maker that she did not wish to be filmed. However, Ofcom was also aware that the programme producer was clear that Mrs Ayala did not refuse to be filmed. Ofcom was unable to reconcile these differing accounts. Whilst Ofcom's remit is to consider and adjudicate on complaints of unfair treatment and unwarranted infringement of privacy, it is not a fact-finding tribunal and as such is not required to resolve conflicts

of evidence as to the nature or accuracy of particular accounts of events where it feels it is unable to do so. However, in this case Ofcom considered it significant that Mrs Ayala was sitting in a prominent place at the meeting, next to the speaker, and took the view that she ought reasonably to have appreciated that it was likely she would be filmed. This being the case, it would have been open to her to leave the meeting or reposition herself elsewhere in the room away from the speaker, but she remained where she was. Lastly, Ofcom noted that her appearance in the film was incidental and within the context of the general filming of the meeting.

As regards the purpose of the filming, Ofcom noted from the interviews given by other residents in the programme that they were aware that it was about President Chavez and the political situation in Venezuela. In Mrs Ayala's case, the submissions provided evidence that the programme maker had spoken privately with her before the meeting.

As regards whether she was aware that the filming was for a documentary, Ofcom noted that there was a conflict between Mrs Ayala and the BBC as to whether she was told the filming was for a news item or a documentary. As mentioned above, Ofcom is not a fact-finding tribunal, but the submissions appeared to provide evidence that Mrs Ayala had contradicted herself on this point since whilst she said in her complaint to Ofcom that she was not aware that the filming was for a documentary, material submitted by the BBC included a statement she had made in support of a letter of complaint to RTE television in which she said that Mr Mora introduced the programme maker to the meeting saying that she wanted to compile some shots for a documentary. In support of this Ofcom noted from an email sent to Mr Mora by the programme maker prior to the filming at the meeting that she had described herself to him as "an independent documentary maker".

Notwithstanding the contradiction in the evidence about Mrs Ayala's understanding of the type of programme that was being made, Ofcom was not satisfied that she was misled about the purpose of the filming, namely that it was about President Chavez and the political situation in Venezuela. Furthermore, the change in focus of the programme in the editing process was slight (the subject of the programme was still President Chavez and the political situation in Venezuela) and therefore did not alter the fundamental nature and purpose of the programme and, consequently, did not affect Mrs Ayala's apparent consent (taking into account her presence and position at the meeting whilst filming was taking place) to participate.

Ofcom found no unfairness in this respect.

- b) The complainant felt that her contribution was unfairly edited and gave an unfair impression of her.

Ofcom considered the juxtaposition of footage of the venue for the meeting with the preceding footage of the other side of town. Whilst it was obviously the intention of the programme makers to provide a contrast between the two sides of the city, Ofcom noted that the film simply showed the room within the context of showing the meeting that took place in it. The film did not comment on the venue itself nor did there appear to be anything particularly remarkable about the room that was likely to have lead viewers to think the meeting was being held in luxurious surroundings. Ofcom concluded that the venue for the meeting was not depicted as luxurious and that the juxtaposition of the footage was unlikely to have adversely affected viewers' impressions of the meeting in general and of Mrs Ayala in particular.

Ofcom noted the context within which the footage of the meeting was included in the programme and that, in the programme's account of events, it appeared chronologically before the coup, when in fact the meeting actually took place some months afterwards. This sequence was likely to have misled viewers as to the true chronology of events, suggesting that the meeting took place in the build up to the coup. Although the meeting was correctly date captioned, this was unlikely of itself to have corrected any confusion, since the voiceover that introduced the footage of the neighbourhood meeting stated that "somewhat other views on Chavez democracy could be heard on the prosperous side of town". Ofcom considered that this was misleading as it suggested, despite the date caption to the contrary, that the meeting was happening contemporaneously with earlier events leading up to the coup. It was therefore likely to have added to confusion on the part of viewers.

However, in considering whether the positioning of the footage was likely to give viewers an unfair impression of Mrs Ayala, Ofcom considered the nature of her appearance in the programme. Ofcom noted that Mrs Ayala was not interviewed for the programme, so beyond the fact of her presence at the neighbourhood meeting, there was no indication of her own personal views nor how these might have been different at the time of the meeting from before the coup. Furthermore, her position next to the speaker gave the impression that she was involved in arranging and facilitating the meeting in some sense but did not suggest that she was giving instruction on the use of firearms. Having viewed the programme, Ofcom took the view that it was clear that she was listening to Mr Mora and not giving instruction. Ofcom therefore considered that the misleading chronology of events did not cause her to be unfairly depicted and did not result in her being misrepresented.

Ofcom found no unfairness in this respect.

#### Privacy

- c) Mrs Ayala complained that she was filmed without her consent. Ofcom noted that the meeting was a private one and therefore that Mrs Ayala had a reasonable expectation of privacy in advance of learning about the programme maker's presence and her intention to film at the meeting. However, there was not only evidence that the programme maker might have spoken privately to her before the meeting but also that the programme maker was introduced to the residents at the beginning of the meeting when it was explained that filming would take place. Further, the filming took place openly and Mrs Ayala remained sitting in a prominent place where she was likely to be caught on film. In these circumstances there was no infringement of Mrs Ayala's privacy in the making of the programme. Having concluded that there was no infringement, it was not necessary to consider the question of a public interest justification for the filming.
- d) Mrs Ayala also complained that footage of her was broadcast without her consent. As set out under a) above, Ofcom did not consider that Mrs Ayala was misled about the purpose of the filming. Ofcom also took the view that there was evidence of a general consensus amongst those present to allow the filmed footage to be broadcast and that, in the absence of convincing evidence to the contrary, Mrs Ayala was party to that consensus and it was reasonable for the programme maker to consider that she did not object to footage of her being included in the programme. There was therefore no infringement of her privacy in the broadcast. Having concluded that there was no infringement, it was not necessary to consider the question of a public interest justification for the broadcast.



Accordingly, the complaint of unfair treatment and unwarranted infringement of privacy was not upheld.

## **Complaint by Adriana Vigilanza**

*Chavez: Inside the Coup, BBC2, 16 October 2003*

Summary: Ofcom has not upheld this complaint of unfair treatment.

Adriana Vigilanza complained that she was treated unfairly in this documentary, which followed the unsuccessful attempt to overthrow the Venezuelan President, Hugo Chavez, in April 2002. The programme included an extract of an interview with the complainant, Ms Vigilanza, when she attended a protest demonstration against President Chavez. The footage was originally filmed for another programme, *The Two Day Coup*, about the political situation in Venezuela at the time.

Ofcom's Executive Fairness Group considered Ms Vigilanza's original complaint in December 2005 and found that the complaint should not be upheld. The complainant requested a review. The Fairness Committee, Ofcom's most senior decision making body, reconsidered the complaint in its entirety.

Following its reconsideration, Ofcom's findings are as follows:

- The footage of Ms Vigilanza's interview, originally filmed for another programme, *The Two Day Coup*, was not used inappropriately, nor was she treated unfairly. The original programme; the programme complained of; and Ms Vigilanza's contributions to each, did not differ materially. In the circumstances, the BBC was not obliged to obtain her consent to use the footage in this programme.
- The juxtaposition of material as a result of including footage of the events of 11 April 2002 before footage of a demonstration in February 2002 was likely to have misled viewers as to the true sequence of events. Viewers were likely to have understood from the context within which the brief clip of Ms Vigilanza was included that she was expressing concerns about the economic situation, rather than voicing her immediate reaction to the demonstration being broken up by gunfire. Despite this, however, its inclusion in the programme was not unfair to Ms Vigilanza because her comments - which some viewers may have thought were about the economic situation - were nonetheless consistent with the views she expressed at greater length, (about her perspective, as an opponent of President Chavez, on the economic and political situation as well as the coup itself), in *The Two Day Coup*.

### **Introduction**

This documentary followed the unsuccessful attempt to overthrow the Venezuelan President, Hugo Chavez, in April 2002. The programme included a brief extract of an interview with the complainant, Ms Vigilanza, that was filmed when she attended a protest demonstration against President Chavez and his regime. The footage was originally filmed for another programme, *The Two Day Coup*, about the political situation in Venezuela at the time.

Ms Vigilanza said in the programme:

"He [President Chavez] wants us to become a Cuba. He wants us to become a Cuba there is no doubt about it."

Ms Vigilanza complained that she was treated unfairly in the broadcast of the programme and that her privacy was unwarrantably infringed in the making and the broadcast of the programme.

## Complaint

### Ms Vigilanza's case

In summary, Ms Vigilanza complained that she was treated unfairly in that:

- a) She appeared in the programme without her consent. On 11 April 2002 she took part in a peaceful demonstration about President Chavez's "abusive behaviour". As the demonstration approached the presidential palace, the protesters were dispersed by gunfire. On making her way back from the palace, Ms Vigilanza was stopped by someone who said she was a BBC reporter and asked for her views about the events she had just witnessed. She made some strong comments about President Chavez, borne out of the frustration and fear caused by the gunfire. Although later on she was willing and agreed to be interviewed further, this was for a different programme (a documentary called *The Two Day Coup*), the content of which she discussed with the reporter and in relation to which she signed a release. She had not however given her permission for footage to be included in *Chavez: Inside the Coup*.
- b) The footage of her was used out of context and was unfairly edited. She took part in a peaceful protest against President Chavez, which led up to the events of 11 to 14 April 2002. The footage of her was filmed on 11 April 2002, when she was returning from the peaceful protest after it had been dissolved by gunfire. In the programme, the footage was juxtaposed with footage of another protest against President Chavez, which took place earlier, in February 2002, and was a response to the announcement of the government's plans to change the senior personnel in the state-run oil company. In addition, this footage of her was juxtaposed with film of a group of "elegant" women dressed in black, who were involved in another march in February 2002, in memory of people who had died and were associated with the political opposition. Although she was responding in the interview to the events on 11 April 2002, the use of the footage to suggest her interview was filmed before that date resulted in her being stereotyped as a "yuppie", concerned only with a loss of prosperity, rather than with living in a country where people were tortured or even killed. In fact she was a middle class University professor, who was not well paid and who was committed to her country's prosperity, not just her own. The reasons for the protest were not given in the programme, which made it look as though she was "angry and paranoid" about President Chavez *before* the protest had started on 11 April and before the shooting began that day. Further, the most important part of what she said when interviewed on 11 April 2002, namely "People are being killed" was omitted from the programme (although it was included in *The Two Day Coup*). The juxtaposition of the footage and the editing of what she said both resulted in unfairness to her.

### The BBC's case

In response, the BBC said, in summary:

- a) The programme makers had set out to make a programme about President Chavez and were in the presidential palace when the coup took place in April 2002. It was decided during the editing process that the programme should concentrate on the events leading up to the coup and the coup itself. The programme makers acquired the clip of Ms Vigilanza as library material from the BBC, the footage having been shot for another film about Venezuela, *The Two Day Coup*.

- b) The sequence including Ms Vigilanza was used as part of the background to the lead up to the coup, when numerous anti-Chavez demonstrations took place in Caracas. Whatever the circumstances in which Ms Vigilanza's contribution was recorded, the sentiments and views she expressed were representative of those expressed in the anti-Chavez demonstrations in the preceding weeks. It was not unfair to her to use the footage in a context that did not in any way alter the sense or significance of what she said. Ms Vigilanza's views of President Chavez in the weeks leading up to 11 April 2002 were unlikely to have been very different from those she expressed on that day. Viewers were likely to have understood that her comment was meant to convey her fear that President Chavez was planning to become like Fidel Castro, turning Venezuela into an isolated communist dictatorship, with loss of political as well as economic freedom. The way the clip was used did not misrepresent Ms Vigilanza's views.

### Decision

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public and all other persons from unfair treatment and unwarranted infringements of privacy in programmes included in such services. Where there appears to have been unfairness in the making of a 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 these standards are applied in a manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard, in all cases, to principles that require regulatory activities to be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.

Ofcom's Executive Fairness Group originally considered Ms Vigilanza's complaint and found that the complaint should not be upheld. The complainant requested a review. In accordance with Ofcom's published procedures, the case was referred to the Fairness Committee, Ofcom's most senior decision making body, for reconsideration. The Committee carefully considered all the submissions by the complainant and the BBC and, to assist it in reaching its decision on this complaint, the Committee viewed the recording of *The Two Day Coup* as well as the programme complained of. Ofcom's decision is set out below, by reference to each of the heads of Ms Vigilanza's complaint.

Ofcom concluded that:

- a) In considering Ms Vigilanza's concern that the footage of her was included in the programme without her consent, Ofcom regretted that neither party provided it with a copy of the release she signed for *The Two Day Coup*. However, it took the view that the programme makers were entitled to use the footage of Ms Vigilanza from the BBC's library without seeking her specific consent for its use in *Chavez: Inside the Coup*, subject to their obligation to use it appropriately and in a way that did not cause unfairness to her. Ofcom noted that her appearance was a brief one, in which she was shown expressing a general opinion on the political situation at the time. Ofcom considered that the nature of the two programmes was not materially different (both documentaries being about President Chavez and the Venezuelan political and social upheavals) and her contributions to each did not differ materially (except that she featured more prominently in *The Two Day Coup*). In the circumstances, therefore, Ofcom considered that the use in this programme of the footage originally recorded for *The Two Day Coup* was not such that the BBC would have been

required to seek new consent from Ms Vigilanza to re-use the footage of her at the demonstration on 11 April that was used in this programme.

Ofcom found no unfairness in this respect.

- b) The complainant felt that her contribution was juxtaposed and edited in such a way as to cause unfairness to her. Ofcom considered that the inclusion of the footage of the events of 11 April 2002 before footage of a demonstration in February 2002 was likely to have misled viewers as to the true sequence of events. This clip was used in the programme in the context of examining the political and economic situation in Venezuela in the run up to the coup (rather than in its true context – the use of gunfire and shooting to break up of a demonstration which formed part of the events in April 2002). Whether or not Ms Vigilanza's views of the economic situation in Venezuela would have been materially different before the events of April 2002 could not be established as there was no evidence one way or the other. However, Ofcom considered it was clear that Ms Vigilanza was reacting angrily to the specific events taking place at the time she was filmed, although the context within which the clip appeared suggested that she was expressing fear and concern about the economic situation in the country rather than an immediate reaction to the demonstration being broken up by gunfire. In order to determine whether the likely misunderstanding of viewers created unfairness to Ms Vigilanza it was necessary, therefore, for Ofcom to consider the nature and context of what she had said in *The Two Day Coup*, in which she had been filmed discussing her perspective on the economic and political situation in Venezuela, as an opponent of President Chavez, as well as the events immediately surrounding the coup. In this context, Ofcom considered that the inclusion of the footage in *Chavez: Inside the Coup* was not unfair to Ms Vigilanza because her comments, if misunderstood as referring to the economic situation in Venezuela, were nonetheless consistent with some of the views she expressed at greater length in *The Two Day Coup*.

Ofcom found no unfairness in this respect.

Accordingly, the complaint of unfair treatment was not upheld.

## **Complaint by Fiorella Morales**

*Chavez: Inside the Coup, BBC2, 16 October 2003*

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

Mrs Fiorella Morales complained that she was treated unfairly and that her privacy was unwarrantably infringed in the making and the broadcast of this programme. The documentary followed the unsuccessful attempt to overthrow the Venezuelan President, Hugo Chavez, in April 2002. Mrs Morales was filmed when she attended a neighbourhood meeting in Caracas in June 2002, two months after the coup. At the meeting to discuss security in the light of fears of attacks on the middle class population of Caracas following the events surrounding the coup, a guest, Alvaro Mora spoke about his Community Active Defence Plan. A programme maker filmed the meeting and conducted interviews with some of the residents. Mrs Morales was interviewed and footage of her was included in the programme.

Ofcom's Executive Fairness Group originally considered Mrs Morales' complaint and found that the complaint should not be upheld. The complainant requested a review. In accordance with Ofcom's published procedures, the Fairness Committee, Ofcom's most senior decision making body, reconsidered the complaint in its entirety.

Following its reconsideration, Ofcom's findings are as follows:

- Mrs Morales was aware that she was being filmed and gave her views and opinions freely. Whilst Ofcom could not resolve the question as to whether or not Mrs Morales was aware that the filming was for a documentary, Ofcom was not satisfied that Mrs Morales was misled about the purpose of the filming, namely that it was about President Chavez and the political situation in Venezuela. Furthermore, despite the slight change in focus of the programme in the editing process, President Chavez and the political situation in Venezuela remained the subject of the programme.
- The use of footage of the meeting, so that it appeared sequentially in the programme before the coup when in fact it took place afterwards, was likely to have misled viewers as to the true chronology of events. This sequence did have a date caption but this was unlikely of itself to have prevented potential confusion, given that the voiceover which introduced the footage suggested misleadingly that the meeting was happening contemporaneously with earlier events. However, although it was not possible to establish to what extent, if any, Mrs Morales' political views would have been materially different before the coup, Ofcom noted that her comment in the programme was a general and timeless one. The opinion she expressed of President Chavez and his regime was equally as valid in a general documentary about President Chavez and the political situation in Venezuela as in one that was closely examining the specific events leading up to the coup and the coup itself. In the circumstances, therefore, Ofcom considered that the misleading chronology of events did not cause her to be unfairly depicted and nor did it result in her being misrepresented. The programme did not dwell on the venue for the meeting nor suggest that the surroundings were luxurious. They did not appear to be so from the footage shown.

- Following Alvaro Mora's introduction to the meeting, and given the fact that the programme maker was filming openly, there could be no reasonable expectation of privacy at the meeting. There was evidence of a general consensus amongst those present to allow the filming to take place and that Mrs Morales agreed to be interviewed and was aware that she was being filmed.
- Mrs Morales was not misled about the purpose of the filming. There was evidence of a general consensus amongst those present, including Mrs Morales, to allow the filmed footage to be broadcast.

## **Introduction**

This documentary followed the unsuccessful attempt to overthrow the Venezuelan President, Hugo Chavez, in April 2002. The complainant, Mrs Morales, was filmed when she attended a neighbourhood meeting in Caracas in June 2002, two months after the coup. The meeting was to discuss security in the light of fears of attacks on the middle class population of Caracas following the events surrounding the coup. A guest, Alvaro Mora, spoke about his Community Active Defence Plan. A programme maker filmed the meeting and conducted interviews with some of the residents. Mrs Morales was interviewed and footage of her was included in the programme.

Mrs Morales said in the programme:

"This so called revolution is out of date. It's just an excuse for him [President Chavez] to impose communism and totalitarianism [in the whole of Latin America], but he will fail."

Mrs Morales complained that she was treated unfairly in the broadcast of the programme and that her privacy was unwarrantably infringed in the making and the broadcast of the programme.

## **Complaint**

### **Mrs Morales' case**

#### Fairness

In summary, Mrs Morales complained that she was treated unfairly in that:

- a) She attended a private neighbourhood meeting, held in a private place. The programme maker told her that the footage filmed of the meeting would be used for a newscast on the BBC and Mrs Morales was not aware that the event was being filmed for a documentary in favour of President Chavez. She did not sign any release form and footage of her was included in the programme without her permission.
- b) An unfair impression was given in the programme that the meeting was taking place in a luxurious mansion, when in fact it took place in the meeting room of a residential building. The programme was also edited so as to make it appear that the meeting took place before the events of April 2002 (the unsuccessful coup), when in fact it took place in June 2002, following the coup, during which many Venezuelans died. The objective of the meeting was distorted. Only a small part of what Mrs Morales said was used in the programme. Her interview was used out of context as she was told she was being interviewed, for a newscast, not for a documentary in favour of President Chavez.

### Privacy

- c) In summary, Mrs Morales complained of an unwarranted infringement of privacy in the making of the programme. She complained that the programme maker attended the meeting which took place in a private room in the residents' building, without permission and said that she was filming for a news programme. She filmed Mrs Morales without her having signed a release form.
- d) In summary, Mrs Morales complained of an unwarranted infringement of privacy in the broadcast programme. She complained that she appeared in the documentary without her consent and without having signed any release.

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

#### Fairness

In response, the BBC said, in summary:

- a) The programme makers set out to make a programme about President Chavez and were in the presidential palace when the coup took place in April 2002. During the editing process, they decided that the programme should concentrate on the events leading up to the coup and the coup itself. The programme maker obtained a release form from Mr Mora, the organiser of the neighbourhood meeting. It was clear from email correspondence that the programme maker did not mislead him about her identity or the purpose of the filming, namely for a documentary about the political situation in Venezuela. She arrived at the meeting with Mr Mora and when everyone had gathered he introduced her. She explained that she was an independent programme maker filming a documentary about the political situation in Venezuela since President Chavez's election. She said she would need the verbal agreement of all present before turning on the camera. No one present raised any objections to her filming. In a letter of complaint dated 7 July 2003 to RTE (who commissioned the film), Mrs Morales said that Mr Mora asked permission for the programme maker "to film as she was studying the issue of security in Venezuela and how people were organising".
- b) The sequence showing the neighbourhood meeting was filmed in June 2002, two months after the coup. In the programme the meeting, captioned with the date was shown before the sequences showing the coup. This was done to give the audience, prior to showing the events of the coup, an understanding of the deep economic and ideological divisions in Venezuelan society and an insight into the fears of other sections of Venezuela's middle classes vis-à-vis other socio economic groups. Similar views to those expressed at the meeting were being expressed prior to the coup. It was not misleading, given that the sequence was dated, to include it where it was in the film. The meeting was not portrayed as taking place in a luxurious mansion, but simply appeared to be held in a large meeting room.

#### Privacy

- c) In summary, the BBC responded to the complaint of unwarranted infringement of privacy in the making of the programme by saying that the programme maker attended the meeting with Mr Mora and that no one raised any objections to her filming. She had made it clear to Mr Mora that she was making a documentary and she explained this to the people present at the meeting. Mrs Morales was not misled about the purpose of the filming.



- d) In summary, the BBC responded to the complaint of unwarranted infringement of privacy in the broadcast by saying that Mrs Morales did not make it known to the programme maker that she did not wish to be filmed or included in the programme.

#### **Mrs Morales's response**

- a) The programme maker did not address the meeting herself. Mr Mora told the meeting that the programme maker was from the BBC and that she was making a news item for the BBC. Mr Mora did not tell the audience that she was making a documentary about the political situation in Venezuela, even if he was aware of this himself. The programme maker was not invited by the residents to the meeting and Mr Mora had no authority over the group. The change in the focus of the programme resulted in unfairness, as she had not consented to this.
- b) The chronology, as set out in the programme, resulted in unfairness. The neighbourhood meeting took place in June 2002, after the coup, following which there was no security force to protect the people and there were rumours of looting and attacks by members of the Bolivarian Circles, supporters of President Chavez. Many people took lectures in security like that attended by Mrs Morales. Prior to 11 April 2002 this was not the case, as there was no indication that the members of Bolivarian Circles had firearms and would use them to "kill innocent marchers". Therefore the BBC's argument that there was a "similar view" before and after April 2002 was not correct. Immediately before the footage of the meeting, the programme showed a small food store and then referred to "other views on Chavez's democracy" being heard on the "prosperous side of town", accompanied by shots of a luxurious house. This would have led viewers to think that Mrs Morales and the people at the meeting were rich and prosperous.

#### **The BBC's response**

- a) Mrs Morales was properly informed about the purpose of the filming. Although the programme maker understood Mr Mora to be the organiser of the meeting, Mrs Morales and the others present at the meeting were properly informed about her visit. Despite the dispute between Mr Mora and the complainant about what he said at the meeting, the BBC stood by their statement that Mr Mora explained the programme maker's presence and the purpose of the filming. Although Mrs Morales said she did not give permission for filming, it was clear from the programme that she spoke freely and willingly to the programme maker.
- b) The neighbourhood meeting was clearly captioned "26 June 2002". The sequence was included because the views expressed were representative of many of those who opposed the Chavez government in the weeks leading up to the events of 11 April 2002. The programme makers considered that there were fears, fuelled by the media, among the middle class opposition of violence by the working class and Bolivarian Circles, supporters of President Chavez, before April 2002.

#### **Decision**

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public and all other persons from unfair treatment and unwarranted infringements of privacy in programmes included in such services. Where there appears to have been

unfairness in the making of a 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 these standards are applied in a manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard, in all cases, to principles that require regulatory activities to be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.

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

Ofcom's Executive Fairness Group originally considered Mrs Morales' complaint and found that the complaint should not be upheld. The complainant requested a review. In accordance with Ofcom's published procedures, the case was referred to the Fairness Committee, Ofcom's most senior decision making body, for reconsideration. The Committee carefully considered all the submissions by the complainant and the BBC, including witness statements submitted by Mrs Morales two years after the original broadcast, and the responses to further questions put to the complainant prior to the decision of the Executive Fairness Group. Ofcom's decision is set out below, by reference to each of the heads of Mrs Morales's complaint.

Ofcom concluded that:

### Fairness

- a) Mrs Morales complained that the footage of her was included in the documentary without her permission.

Ofcom took into account all the submissions of both parties, including witness statements of other residents at the meeting which had been submitted by Mrs Morales and other complainants. Ofcom noted that there were conflicts both between statements made at different times by complainants about this programme and between Mrs Morales's complaint and the information provided by the BBC as to whether the meeting was informed that the filming was for a documentary or for a news item.

Ofcom's remit is to consider and adjudicate on complaints of unfair treatment and unwarranted infringement of privacy. It is not a fact-finding tribunal and as such is not required to resolve conflicts of evidence as to the nature or accuracy of particular accounts of events where it feels it is unable to do so. However, in this case Ofcom considered that it was clear from the footage of her in the programme that Mrs Morales was aware that she was being filmed. She did not dispute that she gave her views and opinions freely to the programme maker.

As regards whether she was aware that the filming was for a documentary, rather than a news item, Ofcom noted from the evidence in the submissions the differing recollections of residents who had been at the meeting as to whether they were told the filming was for a documentary. Ofcom noted, for example, that one of the other complainants had said in a letter to RTE

television (included in the BBC's submissions) that Mr Mora introduced the programme maker to the meeting saying that she wanted to compile some shots for a documentary. It was also clear from an email sent to Mr Mora by the programme maker prior to the filming at the meeting that she had described herself to him as "an independent documentary maker".

Whatever their understanding as to the type of programme that was being made, Ofcom considered that it was sufficiently clear from the interviews given by residents in the programme itself that they were at least aware that the filming was about President Chavez and the political situation in Venezuela.

Taking these factors into account, Ofcom was not satisfied that Mrs Morales was misled about the purpose of the filming. Furthermore, the change in focus of the programme in the editing process was slight (the subject of the programme was still President Chavez and the political situation in Venezuela) and therefore did not alter the fundamental nature and purpose of the programme and, consequently, did not affect Mrs Morales' consent to participate.

Ofcom found no unfairness in this respect.

- b) The complainant felt that her contribution was unfairly edited. Ofcom noted the context within which the footage of the meeting was included in the programme and that, in the programme's account of events, it appeared chronologically before the coup when in fact the meeting actually took place some months afterwards. This sequence in the programme was likely to have misled viewers as to the true chronology of events, suggesting that the meeting took place in the build up to the coup. Although the meeting was correctly date captioned, this was unlikely of itself to have corrected any confusion, since the voiceover that introduced the footage of the neighbourhood meeting stated that "somewhat other views on Chavez democracy could be heard on the prosperous side of town". Ofcom considered that this was misleading as it suggested, despite the date caption to the contrary, that the meeting was happening contemporaneously with earlier events leading up to the coup. It was therefore likely to have added to confusion on the part of viewers.

However, in considering whether the positioning of the footage was likely to give viewers an unfair impression of Ms Morales, Ofcom considered the nature of her comment that was included in the programme. Ofcom noted that her comment was a general and timeless one about the background to the unrest in Venezuela, which was equally valid in a general documentary about President Chavez and the political situation in Venezuela as in one that was closely examining the specific events leading up to the coup and the coup itself. Ofcom further noted that Mrs Morales did not dispute what she said to the programme maker, nor was there any evidence that her views at the time of the meeting were different from her views before the coup.

Ofcom concluded therefore that Mrs Morales' views were not materially misrepresented and her interview was not used in a way that was unfair to her.

Ofcom considered the juxtaposition of footage of the venue for the meeting with the preceding footage of the other side of town. Whilst it was obviously

the intention of the programme makers to provide a contrast between the two sides of the city, Ofcom noted that the film simply showed the room within the context of showing the meeting that took place in it. The film did not comment on the venue itself, nor did there appear to be anything particularly remarkable about the room that was likely to have lead viewers to think the meeting was being held in luxurious surroundings. Ofcom concluded that the venue for the meeting was not depicted as luxurious and that the juxtaposition of the footage was unlikely to have adversely affected viewers' impressions of the meeting in general and of Mrs Morales in particular.

Ofcom found no unfairness in this respect.

#### Privacy

- c) Mrs Morales complained that she was filmed without her consent. Ofcom noted that the meeting was a private one and therefore that Mrs Morales had a reasonable expectation of privacy in advance of attending it. However, on attending the meeting the residents were informed by Mr Mora in his introduction that filming would take place. There was also evidence in the submissions showing there was a general consensus amongst those present to allow the filming to take place. Further, the filming took place openly and by her own admission (in her statement to Ofcom) Mrs Morales agreed to be interviewed. She was aware that she was being filmed and gave her views freely. In these circumstances, there was no infringement of Mrs Morales's privacy in the making of the programme.
- d) Mrs Morales also complained that footage of her was broadcast without her consent. As set out under a) above, Ofcom did not consider that Mrs Morales was misled about the purpose of the filming. Ofcom also took the view that there was evidence of a general consensus amongst those present to allow the filmed footage to be broadcast, and that Mrs Morales was party to that consensus. There was therefore no infringement of her privacy in the broadcast.

Accordingly, the complaint of unfair treatment and unwarranted infringement of privacy was not upheld.

## Other Programmes Not in Breach/Out of Remit

25 October 2006 – 7 November 2006

Programme	BROADCASTER	Transmission Date	Categories	
30 Minutes	C4	01/09/2006	Other	1
30 Minutes: The Polish Invasion	C4	18/08/2006	Due Impartiality/Bias	1
50 Worst Decisions of All Time	SKY THREE	12/10/2006	Religious Offence	1
Aag	AAG	14/08/2006	Crime (incite/encourage)	1
Adult Channels	N/A	Var	Sex/Nudity	1
All Star Talent Show	FIVE	06/10/2006	Generally Accepted Standards	1
Amount of Advertising	VAR	Var	Advertising	4
Ant and Dec's Saturday Night Takeaway	ITV1	16/09/2006	Sponsorship	1
Asbo Fever	SKY ONE	08/10/2006	Crime (incite/encourage)	1
Auction	MANSFIELD 103.2	19/10/2006	Other	1
B4U Music Promo	B4U	-	Sex/Nudity	1
Babestar TV	LOOK4LOVE TV	-	Inaccuracy/Misleading	1
Banged Up Abroad	FIVE	02/10/2006	Crime (payment)	1
BBC Breakfast	BBC1	01/11/2006	Violence	1
BBC Look East	BBC1	30/08/2006	Other	1
BBC Parliament	BBC PARLIAMENT	-	Format	1
BBC Radio Ulster	BBC RADIO ULSTER	31/07/2006	Crime (incite/encourage)	1
Big Brother 7	C4	21/08/2006	Substance Abuse	1
Big Brother's Big Mouth	E4	04/08/2006	Violence	145
Big Brother's Big Mouth	C4	05/08/2006	Violence	21
Big Brother's Little Brother	E4	24/05/2006	Generally Accepted Standards	1
Bodysong	C4	15/10/2006	Sex/Nudity	1
Bon Voyage	ITV1	25/10/2006	Animal Welfare	2
BRFM 87.7 (RSL)	BRFM 87.7 (RSL)	09/09/2006	Substance Abuse	1
BRMB 96.4	BRMB 96.4	-	Other	1
Bush and Troy show	GWRFM	11/07/2006	Other	1
Carling Cup Highlights	ITV1	25/10/2006	Sponsorship	1
Casualty	BBC1	28/10/2006	Generally Accepted Standards	1
Ceefax	BBC	-	Other	1
Celebrity Sex Tapes Unwound	C4	24/10/2006	Sex/Nudity	3
Central News (West)	ITV1	19/10/2006	Generally Accepted Standards	1
Champions League	ITV1	-	Sponsorship	1
Champions League Live	ITV1	31/10/2006	Due Impartiality/Bias	11
Channel 4 News	C4	26/09/2006	Offensive Language	1
Channel 4 News	C4	21/10/2006	Inaccuracy/Misleading	1
Channel 4 News	C4	28/10/2006	Inaccuracy/Misleading	1
Chris Moyles Show	RADIO 1	-	Information/Warnings	1
COI Climate Challenge promo	C4	12/10/2006	Inaccuracy/Misleading	1
Coronation Street	ITV1	09/10/2006	Violence	1
Coronation Street	ITV1	-	Generally Accepted Standards	1
Cricket	SKY SPORTS 1	17/10/2006	Generally Accepted Standards	1

Crimewatch	BBC1	01/11/2006	Generally Accepted Standards	3
Desperate Housewives	C4	18/01/2006	Advertising	1
Digital On-screen Graphics	ALL	-	Other	1
Doctors	BBC1	23/10/2006	Sex/Nudity	1
Early Doors Breakfast Show	THE SAINT 107.8FM	25/10/2006	Crime (incite/encourage)	2
Eastenders	BBC1	16/10/2006	Generally Accepted Standards	1
Emmerdale	ITV1	03/10/2006	Religious Offence	1
Emmerdale	ITV1	31/10/2006	Sex/Nudity	3
Emmerdale Family Album	ITV1	08/10/2006	Offensive Language	1
Escape to the Country	UKTV STYLE	20/08/2006		1
F1: Brazilian Grand Prix Live	ITV1	22/10/2006	Scheduling	1
F1: Brazilian Grand Prix Live	ITV1	22/10/2006	Due Impartiality/Bias	1
Fifth Gear	FIVE	16/10/2006	Crime (incite/encourage)	1
Five Live	BBC RADIO 5 LIVE	21/09/2006	Crime (incite/encourage)	1
Five News	FIVE	12/10/2006	Generally Accepted Standards	1
Friday Night With Jonathan Ross	BBC1	27/10/2006	Generally Accepted Standards	7
Funny Cuts	E4	07/07/2006	Crime (incite/encourage)	1
George Galloway	TALKSPORT	04/06/2006	Religious Offence	1
George Michael I'm Your Man	ITV1	31/10/2006	Substance Abuse	1
Girls Aloud: Off The Record	C4	08/10/2006	Offensive Language	1
Grim Adventures of Bill & Mandy	CARTOON NETWORK	06/10/2006	Violence	1
Hitler's Holocaust	C4	14/10/2006	Advertising	1
Home and Away	FIVE	26/10/2006	Religious Offence	1
Imagine	BBC1	24/10/2006	Animal Welfare	1
Interactive Services	DISNEY CHANNEL	-		1
It's Me Or The Dog	C4	17/10/2006	Generally Accepted Standards	1
ITV News	ITV1	11/09/2006	Generally Accepted Standards	1
ITV News	ITV1	20/10/2006	Generally Accepted Standards	1
Jagger and Woody	NORTHANTS 96.6FM	04/10/2006	Commercial References	1
James & Ali's Blanks	INVICTA FM	06/10/2006	Sex/Nudity	1
James Whale	TALKSPORT	04/10/2006	Generally Accepted Standards	1
James Whale Show	TALKSPORT	29/08/2006	Generally Accepted Standards	1
James Whale Show	TALKSPORT	04/09/2006	Generally Accepted Standards	1
Jamie's Return to School Dinners	C4	09/10/2006	Generally Accepted Standards	1
John Turner	BBC RADIO BRISTOL	29/09/2006	Religious Offence	1
Just A Minute	BBC RADIO 4	24/07/2006	Generally Accepted Standards	1
Kiss 100 FM Breakfast	KISS 100 FM	12/06/2006	Generally Accepted Standards	1
Ladette To Lady	ITV1	19/10/2006	Animal Welfare	1
Lady Chatterley's Lover	BBC RADIO 4	30/09/2006	Sex/Nudity	1
Lead Balloon	BBC4	06/10/2006	Generally Accepted	1

			Standards	
London Masturbation Marathon	C4	-	Sex/Nudity	1
Loose Women	ITV1	13/10/2006	Offensive Language	1
Loose Women	ITV1	-	Sex/Nudity	1
Lost	C4	-	Other	1
Mad About You	ABC 1	24/10/2005	Advertising	1
Medium	BBC1	06/09/2005	Exorcism/Occult/Paranormal	1
Mega Flood: Perfect Disaster	FIVE	15/08/2006	Inaccuracy/Misleading	1
Men in White	C4	08/10/2006	Dangerous Behaviour	1
Meridian News	ITV1	20/04/2006	Due Impartiality/Bias	1
Michael Schumacher: Driven to Win	ITV1	23/10/2006	Scheduling	1
Midsomer Murder	ITV1	26/10/2006	Generally Accepted Standards	1
Midsomer Murders	ITV1	-	Scheduling	1
NASCAR	RANGERS TV	-	Other	1
NCIS	FIVE	21/10/2006	Undue Prominence	1
News	VIRGIN RADIO	27/10/2006	Generally Accepted Standards	1
Newsbeat	BBC RADIO 1	17/10/2006	Violence	1
Newsnight	BBC2	04/07/2006	Crime (incite/encourage)	1
Not Going Out	BBC1	20/10/2006	Generally Accepted Standards	1
Oldboy	FILM4	06/10/2006	Animal Welfare	1
Panjab Radio	PANJAB_RADIO	16/07/2006	Religious Offence	7
Panorama	BBC1	30/07/2006	Generally Accepted Standards	4
Panorama	BBC1	30/08/2006	Generally Accepted Standards	1
Paris Hilton music video	TMF	13/10/2006	Sex/Nudity	1
Parkinson	ITV1	28/10/2006	Generally Accepted Standards	1
Parkinson's Sunday Supplement	BBC RADIO 2	29/10/2006	Offensive Language	1
Prime Suspect - The Final Act	ITV1	15/10/2006	Religious Offence	5
Quiz Call	FIVE	07/10/2006	Competitions	1
Radio Awaz	RADIO AWAZ	-	Other	1
Radio Ramadan	RADIO RAMADAN 87.7FM	02/10/2006	Crime (incite/encourage)	1
Rappin' at the Royal	C4	13/10/2006	Violence	1
Richard and Judy	C4	01/09/2006	Due Impartiality/Bias	1
Robin Hood	BBC1	21/10/2006	Violence	1
Scott Mills	BBC RADIO 1	-	Commercial References	1
Scottie McClue's MEGA Phone-in	96.3 QFM	05/07/2006	Generally Accepted Standards	2
Scottie McClue's MEGA Phone-in	96.3 QFM	19/07/2006	Generally Accepted Standards	1
Scottie McClue's MEGA Phone-in	96.3 QFM	23/07/2006	Generally Accepted Standards	1
Shaun Keaveny	XFM	12/10/2006	Dangerous Behaviour	1
Sky News	SKY NEWS	02/08/2006	Due Impartiality/Bias	1
Sky News	SKY NEWS	21/09/2006	Generally Accepted Standards	1
Songs Of Praise	BBC1	15/10/2006	Religious Offence	1
Spooks	BBC1	23/10/2006	Generally Accepted Standards	3
Stargate SG-1	SKY ONE	18/10/2006	Other	1

Starkey's Last Word	MORE4	16/10/2006	Due Impartiality/Bias	1
Stupid	BBC1	22/09/2006	Sex/Nudity	1
Subtitles	SKY ONE	30/08/2006	Subtitles	1
Sunday AM	BBC1	05/11/2006	Due Impartiality/Bias	1
Tarrant on TV	ITV1	19/10/2006	Religious Offence	1
Test the Nation	BBC1	02/09/2006	Other	3
The All Star Talent Show	FIVE	-	Competitions	1
The Amazing Mrs Pritchard	BBC1	24/10/2006	Offensive Language	1
The Best and Worst Place to Live in the UK: 2006	C4	26/10/2006	Inaccuracy/Misleading	5
The Bill	ITV1	12/10/2006	Sex/Nudity	1
The Champions	ITV4	21/09/2006	Sponsorship	1
The Chris Moyles Show	BBC RADIO 1	03/07/2006	Offensive Language	1
The Chris Moyles Show	BBC RADIO 1	-	Sex/Nudity	1
The Dispatches Debate: Muslims and Free Speech	C4	23/10/2006	Inaccuracy/Misleading	4
The Fridge	INVICTA FM	05/09/2006	Offensive Language	1
The Haunted Airman	BBC1	29/10/2006	Scheduling	1
The Match	SKY ONE	03/10/2006	Competitions	3
The Mint	ITV1	11/09/2006	Competitions	1
The Mint	ITV	31/10/2006	Competitions	1
The Moral Maze	BBC RADIO 4	04/02/2006	Religious Offence	1
The Moral Maze	BBC RADIO 4	12/07/2006	Generally Accepted Standards	1
The Music Download	TMF	05/10/2006	Offensive Language	1
The National TV Awards	ITV	01/11/2006	Generally Accepted Standards	1
The New Paul O'Grady Show	C4	26/10/2006	Generally Accepted Standards	1
The Political Slot	C4	25/10/2006	Inaccuracy/Misleading	1
The Price is Right	ITV1	23/10/2006	Crime (incite/encourage)	1
The Real Blue Nuns	C4	16/10/2006	Generally Accepted Standards	1
The Secret Policeman's Ball	C4	31/10/2006	Offensive Language	1
The Sharon Osbourne Show	ITV1	10/10/2006	Sex/Nudity	1
The Sharon Osbourne Show	ITV1	11/10/2006	Sex/Nudity	1
The Sharon Osbourne Show	ITV1	12/10/2006	Sex/Nudity	1
The Sharon Osbourne Show	ITV1	18/10/2006	Sex/Nudity	1
The South Bank Show	ITV1	15/10/2006	Commercial References	1
The State Within	BBC1	02/11/2006	Sex/Nudity	5
The Sunday Edition	ITV1	22/10/2006	Offensive Language	1
The Weakest Link	BBC2	28/09/2006	Other	1
The Wright Stuff	FIVE	17/07/2006	Due Impartiality/Bias	1
The X Factor	ITV1	14/10/2006	Inaccuracy/Misleading	1
The X Factor	ITV1	28/10/2006	Advertising	1
This Morning	ITV1	15/03/2006	Other	1
This Morning	ITV1	12/10/2006	Generally Accepted Standards	2
Today	BBC RADIO 4	28/10/2006	Offensive Language	1
Tonight with Trevor McDonald	ITV1	-	Inaccuracy/Misleading	1
Tonight With Trevor McDonald: Boy Racers	ITV1	13/10/2006	Inaccuracy/Misleading	2
Tonight With Trevor McDonald: Midwife Crisis	ITV1	23/10/2006	Generally Accepted Standards	1



Torchwood	BBC3	22/10/2006	Generally Accepted Standards	6
Torchwood	BBC2	25/10/2006	Sex/Nudity	3
TV3	TV3	-	Sex/Nudity	1
Tyne Tees Regional News	ITV1	21/08/2006	Generally Accepted Standards	5
Vincent	ITV1	16/10/2006	Generally Accepted Standards	1
Vincent	ITV1	23/10/2006	Religious Offence	1
Wankathon	C4	-	Generally Accepted Standards	1
Who Wants To Be A Millionaire?	ITV1	09/09/2006	Generally Accepted Standards	1
Wide Sargasso Sea	BBC1	22/10/2006	Sex/Nudity	1
Wife Swap	C4	16/10/2006	U18's in Programmes	1
Wife Swap	E4	21/10/2006	Substance Abuse	1
Wire In The Blood	ITV1	04/10/2006	Generally Accepted Standards	2
Wire In The Blood	ITV1	04/10/2006	Generally Accepted Standards	1
Woman's Hour	BBC RADIO 1	-	Other	1