

Ofcom Broadcast Bulletin

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Introduction

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

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

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

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

Standards cases

Notice of Sanction

MTV Networks Europe

Ultimate 50 Videos (TMF), 24 June 2006

Trailer for Totally Jodie Marsh (TMF), 24 July 2007

Belge Chat (MTV France), 24 December 2006

Totally Boyband (MTV UK), 25 September 2006 and 23 October 2006

Never Before Scene (MTV UK), 14 September 2007

Mr Know-it-All (MTV Hits), 22 January 2007

Totally Scott-Lee (MTV Hits), 15 August 2007

Introduction

On 4 June 2008, Ofcom published its decision to impose a statutory sanction on MTV Networks Europe (“MTV Networks”), in respect of four channels owned and operated by MTV Networks, for seriously and repeatedly failing to ensure compliance with the Code. TMF, MTV France, MTV UK and MTV Hits are music video and general entertainment channels (“the Channels”). They were found in breach of the following Code Rules:

- 1.3 (appropriate scheduling to protect children) - TMF, MTV UK and MTV Hits;
- 1.4 (broadcasters must observe the watershed) - TMF and MTV UK;
- 1.14 (most offensive language not to be broadcast before the watershed) - TMF, MTV UK and MTV Hits;
- 2.3 (material that may cause offence must be justified by context) – MTV France, MTV UK and MTV Hits; and
- Condition 11 of the Licence (failure to supply recordings) - MTV France.

Ofcom found the Channels were in breach of these rules due to the following conduct:

- the most offensive language and material was broadcast on TMF, MTV UK and MTV Hits (in some cases repeatedly) before the watershed and this material was not justified by the context of broadcasts that were likely to appeal to children;
- the likely audience would have expected to have been protected from the most offensive language and material in such programming; and
- in the case of MTV France, highly offensive text messages were broadcast in the early hours of the morning, which were not justified by the context, and the broadcaster failed to supply Ofcom on request with a copy of the programme complained about.

For the reasons set out in the adjudication, Ofcom imposed a financial penalty of **£255,000** on MTV Networks (payable to HM Paymaster General).

The full adjudication can be found at:

http://www.ofcom.org.uk/tv/obb/ocsc_adjud/mtv.pdf

In Breach

The Best of Orange Playlist – 2007 Best Guests

TMF, 30 December 2007, 19:30

Introduction

This programme featured interviews with celebrities talking about their lives and experiences and was broadcast at 19:30 on TMF, part of MTV Networks International. Ofcom received a complaint regarding the general content of the programme, including strong language and sexual and drug references, which the complainant considered inappropriate for broadcast before the watershed.

We asked MTV Networks International (responsible for compliance at TMF) for comments under Section One of the Code: Protection of the under-eighteens. In particular, we referred TMF to: Rule 1.10 (the use of illegal drugs); Rule 1.16 (offensive language) and Rule 1.17 (portrayal of sexual behaviour).

Response

MTV Networks replied that the programme was complied prior to transmission and it was decided that the strong language and drug references were to be removed so that the show would be appropriate for transmission after 19:00. The version that was broadcast was not however edited in line with the compliance advice and, in any event, the compliance advice was incomplete because it did not cover some of the more sexually explicit content. MTV Networks apologised and confirmed that the programme should not have aired at a time when children were likely to be watching because some of the content was not appropriate or editorially justified for the time of transmission. MTV Networks has now re-certified the programme so it is suitable for broadcast, but only after 21:00.

Decision

This programme was broadcast at 19:30 on a channel readily available, and of particular appeal, to a young audience. Rule 1.10 stipulates that the use of illegal drugs and the abuse of drugs or alcohol must generally be avoided and in any case not be condoned, encouraged or glamorised in programmes broadcast before the watershed, unless there is editorial justification.

At the beginning of the programme, the presenter, Jayne Middlemiss, describes her celebrity interviewees in revered terms such as “the biggest names in showbiz”, “Hollywood legends” and “rock royalty”. There followed a montage of clips of celebrities talking about their use and enjoyment of illegal drugs. For example, an interview with the actor Danny Dyer included the following:

Middlemiss: *“Were you doing loads of drugs then?”*

Dyer: *“Yes – even on the job we was taking Es, everyone skinning up and that, like it was great - such a rare, rare job”.*

In another interview, the music promoter David Gest states:

“That era was so great because you could get high as a kite and you’d feel like you were utterly in outer space and I loved those days”.

In another clip, another interviewee states:

“I loved getting stoned by myself and listening to my stereo. I remember I would just get really baked and open my window and sit on the windowsill...”

Although at one point the presenter makes a brief reference to “worrying tales of excess”, the celebrities’ comments endorsing drug use are not challenged, giving the impression that the use of such substances is unproblematic. Overall, Ofcom therefore considered that by presenting the celebrity interviewees as highly aspirational figures, talking in these terms, the programme appeared to condone (and in some cases glamorise) the use of illegal drugs in breach of Rule 1.10 of the Code.

Ofcom noted that the most offensive language (‘fuck’, ‘fucking’) was ‘bleeped’. However, the programme included the frequent use of other offensive language such as ‘dick’, ‘shit’ and ‘cock’. This was not justified by the context and transmitted in a programme at 19:30. Rule 1.16 states that the frequent use of offensive language must be avoided before the watershed. In Ofcom’s view, despite the masking of the most offensive language, the use of other offensive language was so frequent as to be in breach of Rule 1.16 of the Code.

Rule 1.17 is intended to protect under eighteens from explicit representation of, or discussion about, sexual behaviour unless it is editorially justified. This programme contained several instances of graphic sexual discussion, for example David Gest asked if he could use the word ‘cunnilingus’ and then gave a description of how he had performed it. There was also a conversation about penis size and the age and way in which one interviewee started “wanking”. Ofcom considers that this material was inappropriate for the time of broadcast when children were likely to be watching and that it was not justified editorially. Rule 1.17 of the Code has therefore also been breached.

Breach of Rules 1.10, 1.16 and 1.17

NOTE: This breach finding was recorded by Ofcom on 4 March 2008. In reaching its decision to impose a statutory sanction on MTV Networks Europe, which is summarised above, the Content Sanctions Committee (“the Committee”) took into account this finding. Publication of this finding was therefore postponed until after the MTV Networks Europe sanctions adjudication was made public on 4 June 2008. In that adjudication the Committee underlined that, should further breaches of the Code occur which warrant consideration of a sanction, the Committee will regard them with the utmost seriousness.

Ocean FM

Monday 14 January to Wednesday 16 January 2008 (inclusive)

Introduction

Ofcom has a statutory duty to ensure “a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests”. In local commercial radio, we secure this by the use of Formats. Each station’s Format includes a description of the output which each licensee is required to provide, based on the promises they made in their application to win the licence. Ofcom judges licence applications against four statutory criteria: the applicant’s ability to maintain the service, the extent to which the proposals broaden choice, the extent to which they cater for a variety of tastes and interests and evidence of demand or support.

Formats may be varied over time only with the approval of Ofcom, which judges such requests against a set of statutory criteria.

Formats are often defined in terms of particular musical genres (such as Adult Contemporary) and/or demographic groups (such as 15-24 year olds). The aim is not for Ofcom to define the nation’s musical tastes but to ensure that, in any particular market, the range of services available should cover different musical genres and different demographic groups, so catering for a variety of tastes and interests.

The level of detail in Formats has recently been reduced, following Ofcom’s Future of Radio consultation, but in simplifying Formats the aim has been to retain diversity of output, without micro-managing output. Compliance with Formats is ensured by sample content checks and the maintenance of an online public file for each station.

In the South Hampshire area, six local commercial stations are available, each with a distinct Format. The new, simplified Formats are as follows:

OCEAN FM (South Hampshire) – owned by GCap Media

A locally oriented, mainly current adult contemporary music and information station for 25–44 year-olds in the South Hampshire area.

POWER FM (South Hampshire) – owned by GCap Media

A locally oriented young contemporary, chart music and information station primarily for 15-24 year-olds in the South Hampshire area.

GOLD (South Hampshire) – owned by GCap Media

A classic pop hits station, with local information, targeted primarily at 35-54 year-olds in the South Hampshire area.

ORIGINAL 106 (Solent Region) – owned by CanWest

Adult Alternative radio – a credible mix of adult-orientated music, with particular appeal for 40-59 year-olds, with 24 hour local news. *(Note: Original’s Format includes further detail as the station is less than two years old and, in line with Ofcom policy, its Format has not yet been simplified)*

WAVE 105 (Solent Region) – owned by Bauer Radio

A locally oriented music and information station for over 30s in the Solent and adjacent area, playing a spread of adult contemporary and soft adult contemporary hits, and treating speech as an important ingredient.

107.8 RADIO HAMPSHIRE (Southampton) – owned by Town & Country Broadcasting

A Southampton centred service of local news, views, information and entertainment mixed with mainstream hits from the last 4 decades.

THE QUAY (Portsmouth) – owned by The Local Radio Company

A full local service radio station for the greater Portsmouth area with a focus on listeners aged 25-54 with broad music and a strong commitment to local news.

The previous more detailed Format for Ocean FM stated that the station should play “predominantly (up to 70%) current Adult Contemporary tracks ... from the previous twelve months”.

During October 2007, Ofcom monitored and sampled three days output of Ocean FM's. Ofcom concluded that the station was not operating within the parameters of its agreed Format. In particular it was found that only 9.5% of the music was drawn from the past 12 months, and we also noted that there were a high number of classic and alternative/modern rock tracks being aired. Older music and rock music are already provided by other stations in the area and so Ocean's move away from its Format had the result of diminishing choice for listeners in the area.

Therefore, in November 2007, Ofcom issued Ocean FM a 'Yellow Card' as a formal warning and required it to broadcast material within its Format.

Ofcom's Content Sampling Report

(<http://www.ofcom.org.uk/radio/ifi/contentssampling/ocean.pdf>) stated that we would monitor the station again, and that the Yellow Card would be lifted if we were subsequently satisfied that the issues identified in the Report had been addressed.

Between 14-16 January 2008, Ofcom carried out a second three-day monitoring of Ocean FM's output. Despite some significant changes made to the station's output to address the issues raised by the Content Sampling Report, Ofcom considered that Ocean FM was still operating outside of its Format; its music output was still too old in its choice of tracks, and too rock-oriented to fulfil the spirit of a station licensed as an Adult Contemporary service.

Response

GCap said that the issuing of a Yellow card against Ocean FM in November 2007 had been regarded as a highly serious matter by the radio station, and that significant changes were made to Ocean FM's music scheduling policy as a result. It was therefore extremely disappointed that, despite the implementation of these changes, Ocean FM was (in Ofcom's view) still – in the January 2008 sampling period – operating outside the parameters required by the station's Format.

Reviewing the same 72 hours of output, that Ofcom had sampled, Ocean FM said that the failure to deliver a satisfactory proportion of songs from the past twelve months was the result of the station's automation system, and some presenters, dropping a number of songs which had been scheduled to play out. Ocean FM's

management says it has now reconfigured the automation software so that the timing issues which were experienced previously should not happen again.

Decision

In its January 2008 sampling, Ofcom noted that Ocean FM was now playing a considerably higher proportion of current tracks than during the previous sampling period in October 2007. However, while there had been an improvement in January 2008, the three days of monitored output revealed that tracks from the past twelve months still accounted for less than half of the station's music output. We could not, therefore, take the view that Ocean FM was providing the listener with "predominately" current tracks, as the Format required.

We also noted that Ocean FM was continuing to play a significant number of rock tracks that could not be considered Adult Contemporary. Such rock tracks included Muse/*Starlight*; Arctic Monkeys/*Fluorescent Adolescent*; Foo Fighters/*Long Road To Ruin*; Killers/*Read My Mind*; The Who/*Squeezebox*; The Jam/*That's Entertainment*. The overall effect was to continue to give the station an older-leaning, rock-oriented feel which we consider remained at odds with Ocean FM's core Format promise and so reduced the overall choice available to listeners in South Hampshire.

In this context, it is worth noting that on 7 February 2008 we wrote to all licensees regarding the simplification of their Formats. In that letter, we stated the following:

While the new style Formats do not include quotas – for example requiring a given percentage of music from a certain era – we will apply a 'common sense' approach to enforcing them should there be any disputes. If, for instance, a station's Format requires it to be 'mainly classic pop', we would not accept that 51% classic pop and 49% heavy metal was a sensible interpretation of the Format's spirit.

When interpreting "mainly" with regard to current tracks, Ofcom believes this demand indicates that a listener should hear a current track more often than not when they switch on general (i.e. non-specialist) programming. In this context we do not believe that a bare majority (say 51% current tracks) would be sufficient, and we would expect a significantly higher proportion than this for a station to be operating within the overall spirit of the Format. However, we do not believe it would be right to put figures on this, as every case will differ.

Similarly what constitutes "current" is also open to interpretation, but only in relation to the overall character of the particular service concerned. For example, Ofcom does not propose to say that, for every type of commercial radio station, current tracks must be less than a year old. But, equally, Ofcom would not expect the "current" component of a station's music policy to include a large proportion of tracks that were more than a year old.

In the case of Format definitions such as "Adult Contemporary", Ofcom will take a sensibly wide interpretation of the genre. For example, some artists have made tracks that could comfortably be classified as Adult Contemporary, even though the artist's overall catalogue of work may not necessarily fall easily into that category.

Similar principles apply to other Formats. Ofcom's expectation of a "contemporary and chart music" station is that the main diet is of modern music, reflecting the charts of today and recent months. Older, classic tracks would not be out of place, but only

as 'spice' to the main offering. If they become more dominant than that it is likely the station will be operating outside its Format.

For stations that have broad (i.e. non-specialist) music formats, listeners should expect to hear at any point a broad mix of genres, unless a specialist show is being broadcast. "Identifiable" specialist shows indicate programme-length sequences, and not a short music feature contained within a broader programme.

With regard to localness, the detail (such as specific requirements to carry what's-ones and the like) may have gone, but listener expectation means that much of that sort of material should still be carried if a station is to carry out its function of providing a local, or locally-oriented, station for a particular geographical area. As stated in the letter to stations which accompanied the new Format drafts, if a service is described as "locally focused" or "locally oriented", we would not expect hour after hour to pass by with no local content.

Following further discussions with Ofcom about the definition and scope of 'Adult Contemporary' music, GCap provided us with evidence that Ocean FM's music database has been restructured. All songs have been now been classified by genre to ensure the mix of genres is not weighted too heavily towards one particular genre, such as rock, that might compromise the overall Adult Contemporary flavour of the station.

Despite the Yellow Card warning that was issued in November 2007, it was clear from the monitoring carried out in January 2008 that Ocean FM was still not operating within the parameters of its published Format. A formal breach of Ocean FM's licence has therefore been recorded. We conclude that the Yellow Card issued in October 2007 should remain in place.

We will monitor Ocean FM's music output again within the next three months. If we find that the relevant issues identified in this report have been addressed, we will lift the Yellow Card. However, further failure to meet its Format will lead Ofcom to consider further regulatory action, including the imposition of a financial penalty against Ocean FM.

Breach of Part 1 of the Annex to Ocean FM's Licence

Trailer for I huvudet på Gynning *Kanal 5 (Sweden), 18 February 2008 at 19:15*

Introduction

This trailer was for a programme in which Carolina Gynning, a Swedish model and television presenter, went to Hollywood to meet “Hollywood groupies”. During the trailer, Carolina Gynning was shown meeting a woman who - the trailer said - had slept with “stars such as Mick Jagger” and “had made a career from making casts of celebrities’ private parts”. The trailer then stated “does she just like touching cocks?” and showed a back view of a semi-naked man apparently having a cast made. It also showed a cast of an erect penis. A viewer complained to Ofcom that the trailer’s inclusion of the image of the cast and “coarse sex words” was inappropriate for the time of broadcast.

Kanal 5 (Sweden) is a Swedish language channel licensed in the United Kingdom by Ofcom, and whose licence is held by SBS Broadcasting Networks Limited (“SBS Broadcasting”). SBS Broadcasting is responsible for compliance at Kanal 5. Ofcom therefore asked SBS Broadcasting for its comments in relation to the following Rules of the Code: Rules 1.3 (inappropriate scheduling), 1.16 (offensive language must not be broadcast before the watershed unless justified by the context), and 2.3 (generally accepted standards).

Response

The broadcaster said that, although it believed it had adequate compliance procedures in place, on this occasion human error led to this trailer being inappropriately scheduled. SBS Broadcasting admitted there were breaches of Rules 1.3, 1.16 and 2.3 of the Code. Following this incident, SBS Broadcasting said that its legal department would provide further compulsory training to all relevant production, scheduling and content staff, and scheduling procedures had been tightened.

Decision

This trailer contained language and images which were potentially offensive to viewers in general and children in particular, and which were inappropriately scheduled before the watershed and not justified by the context. Ofcom welcomes the broadcaster’s recognition that this trailer breached the Code and the subsequent remedial measures it has taken to strengthen and improve compliance. All broadcasters are under a clear duty to ensure that robust procedures are in place, supported by a sufficient number of appropriately qualified and trained staff, to ensure full compliance with the Code.

Breach of Rules 1.3, 1.16 and 2.3 of the Code

Resolved

The Simpsons

Channel 4, 15 April 2008, 18:00

Introduction

This episode featured a cameo appearance by the pop group U2 during which one of the band members called his colleagues “wankers”. This incident was later mimicked by the character Mr Burns in the closing credits of the episode. 31 viewers complained that this language was unacceptable in a programme which appeals to children and was broadcast before the watershed.

Ofcom asked Channel 4 for its comments against Rules 1.16 (offensive language must not be broadcast before the watershed unless justified by the context) and 2.3 (generally accepted standards) of the Code.

Response

Channel 4 apologised for this offensive language and acknowledged that it was unsuitable for broadcast at 18:00. The broadcaster explained that it has robust compliance procedures for *The Simpsons*. On this occasion, however, there was an error by one of its compliance staff, who incorrectly certified the programme as suitable to be shown from 18:00 and this mistake was not subsequently corrected by the Acquisitions Department. Channel 4 regretted these mistakes, and said it was the first time in over 10 years of its compliance system being in place that an incorrect certification by a viewer had resulted in a programme being transmitted in a wrong slot. They told Ofcom that, despite the unlikely repeat of this unusual set of circumstances, the Compliance and Acquisitions teams are reviewing their procedures to prevent any similar recurrence.

Decision

Ofcom’s research indicates that the word “wanker”, although quite mild to many people, is clearly offensive language¹. Its use at 18:00 in a programme like *The Simpsons*, with a clear appeal to children², and broadcast on the main Channel 4 service, was not justified by the context and was not in line with audience expectations – as Channel 4 has acknowledged.

Ofcom is concerned about the compliance failure in this case. However Ofcom has taken into account that Channel 4’s compliance procedures in relation to scheduling before the watershed appear relatively robust, that this failure seems an isolated incident, and that Channel 4 is reviewing its compliance procedures. It has therefore decided to treat the matter as resolved on this occasion.

Resolved

¹ <http://www.ofcom.org.uk/research/radio/reports/bcr/language.pdf>; page 84

² The programme has a child index of 146.5. Child index is the figure used to calculate the proportion of children in an audience against the general viewing population. A figure of 100 indicates that the child audience watching the programme exactly matches the general profile. A figure of e.g. a 120 would mean that children watching that programme are over-represented by 20%.

Not In Breach

Dispatches: The Court of Ken

Channel 4, 22 January 2008, 20:00

Introduction

This edition of the *Dispatches* investigative current affairs programme, presented by Martin Bright (Political Editor of *The New Statesman*) looked at Ken Livingstone's record as Mayor of London and questioned whether the Office of Mayor was best serving the needs of London. In particular, the programme looked into allegations of electoral malpractice by special advisors and unprofessional conduct by the then London Mayor, Ken Livingstone. The programme also examined issues surrounding the London Congestion Charge, and Ken Livingstone's so called "oil for transport" deal with the Venezuelan President Hugo Chavez, under which Venezuela was to exchange cheap oil for London providing advice on public services such as transport, tourism and housing. The views of a number of contributors were included in the programme. These included representatives of the main political parties, former advisors to the Mayor and the London Assembly and representatives of various non-politically aligned groups.

Ofcom received 12 complaints from viewers about this programme. These fell into two groups:

- i) that the programme made unsubstantiated allegations against Ken Livingstone, then Mayor of London and this was unfair; and
- ii) overall, the programme was not presented with due impartiality.

In relation to i), Ofcom can only consider whether the treatment of an individual or organisation is unfair, if it has received a complaint from the affected party or someone authorised to bring a complaint on their behalf. Ofcom has received no complaint from Ken Livingstone (or someone authorised by him). Ofcom therefore has not investigated these matters.

Broadcasters must ensure that due impartiality is preserved when dealing with matters of political or industrial controversy. In terms of *Dispatches: The Court of Ken* Ofcom considered that the issues of the Congestion Charge and the "oil for transport" deal were matters of political controversy and therefore Channel 4 was required to ensure that these matters were dealt with due impartiality in accordance with Section Five of the Code. In particular:

- **Rule 5.5** states that "[d]ue impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved"...; and
- **Rule 5.8** states that any "personal interest of a reporter or presenter, which would call into question the due impartiality of the programme, must be made clear to the audience..."

Response

Channel 4 stated that viewers were made aware of Martin Bright's professional position at the start of the programme when he was captioned as the "*Political Editor*,

New Statesman”, and it was also made clear that Martin Bright had once been a supporter of the former Mayor, but was now disappointed by his record. Channel 4 said that the programme did not offer Martin Bright’s personal or authored view of Ken Livingstone’s performance as Mayor but presented the findings of a six month investigation by the programme team. It was Martin Bright’s role to report them. Channel 4 said that, as the programme was clearly promoted as a *Dispatches* investigation and not an authored or personal view programme, it was not necessary or appropriate to alert viewers otherwise from the outset.

London Congestion Charge

Channel 4 said that the programme presented the introduction of the Congestion Charge in a positive light, saying that it was a genuinely bold measure, and included library footage of the former Mayor explaining its rationale. The programme also made clear that in 2003 the former Mayor had introduced the scheme with the stated intention that *“the only reason we are doing congestion charging is so that cars can speed up in London”* and it included quotes from contributors who acknowledged that the scheme had reduced congestion and had alleviated the amount of traffic in London. However, Channel 4 said that the programme’s investigation found that since 2004 the way in which the scheme was promoted to the public had been subtly changed from “reduction of congestion” to “reduction of cars” coming into London. It also said that the scheme was promoted to the public as getting more people out of cars and onto buses. Channel 4 said that the programme acknowledged that more people were using buses since the introduction of the Congestion Charge, but that according to Transport for London’s (“TFL”) own figures in 2007, buses were travelling progressively slower every year.

Channel 4 said that the programme examined the issue of the Congestion Charge with due impartiality. The former Mayor’s position was fairly reflected for example through the contribution of Professor Stephen Glaister (a board member of TFL, which is controlled and chaired by the Mayor and oversees the Congestion Charge scheme), and through the publicly available facts sourced from TFL’s own reports which were fairly reflected in the programme.

Venezuelan “oil for transport” deal

Channel 4 said the programme examined this issue with due impartiality. The programme fairly reflected the former Mayor’s argument that fostering trade relations with foreign countries helped “drum up” business for London and raised London’s international profile. It included Ken Livingstone’s public statement as Mayor in which he maintained the deal was beneficial to both countries and his explanation of the financial benefits to Londoners, and an extract from his public announcement in which he stated *“a quarter of a million Londoners will now benefit by having a half price concession on the buses and trams”*.

However, the programme also sought to question whether these trade relations were necessarily in the best interest of Londoners or indeed the people of Venezuela. The Conservative MP Alan Duncan questioned why one of the world’s poorest countries was subsidising one of the richest, a view shared by critics of President Chavez. Concern was also echoed across party lines by the inclusion of comments by Labour MP Nick Raynsford, the former Minister for London and the minister responsible for setting up the Mayor’s Office. He questioned why Mr Livingstone had felt inclined to venture into international politics in this way with President Chavez’s regime. However, the former Mayor’s stated reasons for the benefits of trade relations

generally and his public pronouncements as to the merits of the deal were fairly reflected in the programme.

Decision

Investigative journalism plays an essential role in public service broadcasting and is clearly in the public interest. Ofcom considers it of paramount importance that broadcasters, such as Channel 4, continue to explore controversial subject matter. It is inevitable such programmes which tackle highly sensitive subjects will have a high profile. Such controversial programmes may inevitably lead on occasions to complaints.

In making investigative programmes, broadcasters must always take care to ensure that the material broadcast is in accordance with the Code. For instance, broadcasters must ensure that: matters of political or industrial controversy and matters relating to current public policy included are presented with due impartiality; the content does not materially mislead viewers; and, those featured in programmes are not treated unfairly.

Ofcom considered the complaints that programme was not presented with due impartiality with reference to Martin Bright's status as presenter and the two matters of political controversy which were raised in the programme. Ofcom did not consider whether Ken Livingstone was treated fairly in the programme.

Martin Bright

Ofcom noted that Martin Bright was captioned at the beginning of the programme as "*Martin Bright, Political Editor, New Statesman*". We also consider that any personal interest of Martin Bright which would call into question the due impartiality of the programme was made clear to viewers through various comments made by Martin Bright about his personal views on Mr Livingstone at the beginning of the programme. In any event, Martin Bright's role was primarily to present the findings of the *Dispatches* production team's investigation and not his personal views about Ken Livingstone and the Office of Mayor. Rule 5.8 was therefore not breached.

London Congestion Charge

As acknowledged by Channel 4, the rationale and effectiveness of the London Congestion Charge is a matter of political controversy or current public policy.

Ofcom noted that the programme included a number of viewpoints – both supportive and critical - about the Congestion Charge. It noted that this issue was introduced in the programme with library footage of the former Mayor setting out the reasons for imposing a charge on all traffic entering a designated area of the city. The programme also included quotes from Greater London Assembly press releases that promoted the Congestion Charge scheme and comments from contributors who acknowledged that the scheme had reduced congestion and had alleviated the amount of traffic in London. The programme also stated that the Congestion Charge scheme had also been promoted as a means of getting more people onto the bus network rather than using their cars. Ofcom noted that the inclusion of a quote from a statement by Mr Livingstone was an acknowledgement by the programme that more people were using the bus network since the introduction of the Congestion Charge.

The programme also included voices and analysis critical of the way the Congestion Charge policy has developed.

Taking the above factors into account, Ofcom considered that the issues related to congestion charging in London were presented with due impartiality and Rule 5.5 of the Code was therefore not breached.

Venezuelan “oil for transport” deal

The issue relating to the Venezuelan “oil for transport deal” is also a matter of political controversy and current public policy. Ofcom noted that in questioning whether the trade relations were necessarily in the best interest of Londoners and the people of the foreign countries involved, the programme introduced the issue by reflecting the then Mayor’s views. It expressed Ken Livingstone’s reasoning that fostering trade relations with foreign countries would be beneficial to London. The programme also included Mr Livingstone’s public statement that explained why he was behind the deal with Venezuela (namely that oil was cheap to Venezuela and that London’s expertise in transport was cheap to London) and it made clear his explanation of the financial benefits that the deal would provide to Londoners.

Ofcom also noted that the programme included comments from the Labour MP, Nick Raysford, who questioned whether it was appropriate for the Mayor of London to venture into international politics. The programme also included the view of Conservative MP, Alan Duncan, who questioned why one of the world’s richest countries was being subsidised by one of the poorest - a view shared across all party lines.

Taking the above factors into account, Ofcom concluded that the programme examined this issue with due impartiality. The former Mayor’s reasons for entering into the deal were fairly reflected in the programme together with the views of those opposed to it. Rule 5.5 of the Code was therefore not breached in relation to this issue.

Not in breach

Fairness and Privacy Cases

Upheld

Channel S Global Limited and Mr Mahee Ferdahus *News, Bangla Television, 24 May 2007*

Summary: Ofcom has upheld this complaint of unfair treatment made by Channel S Global Limited and Mr Mahee Ferdahus.

Bangla TV, which broadcasts to the Bengali community, broadcast a news item about the Boishakhi Mela festival (“the Mela”), which took place in London in May 2007. The Mela, which celebrates the Bengali New Year, was organised by the Mela Trust and was supported by Channel S Global Limited (“Channel S”), which also broadcasts to the Bangladeshi community. The news item said that complaints had been made that the festival was used as a means of smuggling illegal immigrants into the UK. The report also said that allegations had been made that Channel S had applied for visas for performers who did not in fact participate in the Mela.

Ofcom found that the item made a serious allegation about Channel S and Mr Ferdahus. In relying on newspaper articles and taking no steps to verify the story, Bangla TV failed to take reasonable care to ensure that the material facts were presented in a way that was fair to Channel S and Mr Ferdahus. Having made this serious allegation, it was incumbent upon Bangla TV to provide Channel S and Mr Ferdahus with an appropriate and timely opportunity to respond. The failure to do so resulted in unfairness to Channel S and Mr Ferdahus.

Introduction

On 24 May 2007 Bangla TV, which broadcasts to the Bengali community, broadcast a news item about an allegation concerning the Boishakhi Mela festival (“the Mela”), which took place in London in May 2007. The Mela, which celebrates the Bengali New Year, was organised by the Mela Trust and was supported by Channel S Global Limited (“Channel S”), which also broadcasts to the Bangladeshi community. The news item said that complaints had been made that the festival was used as a means of smuggling illegal immigrants into the UK. The report also said that allegations had been made that Channel S had applied for visas for performers who did not in fact participate in the Mela. The report said:

“... [the] same allegations have been raised against Boishakhi Mela’s Media partner Channel S. Tower Hamlets Council informed the Home Office that none of the names on the Channel S applications appeared on its list of designated performers. Boishakhi Mela Trust applied for 63 people and Channel S applied for 37 people, so total 100 people had applied for the visa. According to the Evening Standard’s report, 15 applicants may be artists and 10 people, who came as the members of Drama (Jatra Dol) did not participate in the event”³.

Channel S and Mr Mahee Ferdahus, the Chairman and principal shareholder of Channel S, complained to Ofcom that they were treated unfairly in the broadcast of the programme.

³ Translated from Bengali.

The Complaint

Channel S and Mr Ferdahus' case

In summary, Channel S and Mr Ferdahus complained that they were treated unfairly in that the item said incorrectly that Channel S was involved in illegal human trafficking. Although Mr Ferdahus was not named in the report, given his position at Channel S and the fact that he is a well known figure in the Bangladeshi community, this criticism of Channel S would also have reflected negatively on him. Furthermore, Channel S and Mr Ferdahus were not contacted by Bangla TV for their views on the allegations made in the programme.

Bangla TV's case

In summary Bangla TV responded to the complaint by saying that the news item concerned an allegation that was already in the public domain. The allegation had already been published in the *East London Advertiser* and *London Evening Standard* on 24 May 2007. Bangla TV had simply shown viewers scanned copies of the relevant pages as evidence and reported the contents of the articles without offering any interpretations or views. Bangla TV said that, since the programme did not offer any opinions on the contents of the articles referred to, it was not incumbent on the broadcaster to solicit the complainants' views on the item or to concern itself as to whether the item had an adverse effect on their reputations. Bangla TV said that the *East London Advertiser* had attempted to obtain a comment from Channel S but that its representatives could not be contacted for comment.

Decision

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

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

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

Ofcom found as follows:

Ofcom considered the complaint that an unfair and untrue allegation was made about Channel S and Mr Ferdahus and that Bangla TV did not contact them for their comments.

Ofcom considered whether the broadcaster's actions were consistent with its obligation to avoid unjust or unfair treatment of individuals in programmes as set out in Rule 7.1 of the Ofcom Broadcasting Code ("the Code"). In particular Ofcom considered Practice 7.9, which states that broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation and Practice 7.11,

which states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

Ofcom noted that the item complained of was based on articles published in the *London Evening Standard* and the *East London Advertiser*. It did not appear from the information provided to Ofcom by Bangla TV that the broadcaster took any steps to verify the story and instead it simply relied on what appeared in the two newspapers. In Ofcom's view this did not constitute taking reasonable care to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to either Channel S or Mr Ferdahus.

In Ofcom's view, the item included a serious allegation about Channel S and Mr Ferdahus, since they were accused of being involved in irregularities in applications for visas for participants in the Boishakhi Mela. This allegation was made specifically in relation to Channel S and by implication in relation to Mr Ferdahus, given his role as Chairman and principal shareholder at Channel S.

Ofcom noted that Bangla TV argued that there was no need to contact Channel S and Mr Ferdahus prior to the broadcast. However, in Ofcom's view, as set out above, a serious allegation was made about Channel S and Mr Ferdahus, in relation to alleged irregularities in applications for visas for participants in the Boishakhi Mela. In these circumstances, it was incumbent upon Bangla TV to provide Channel S and Mr Ferdahus with an appropriate and timely opportunity to respond. As stated by Bangla TV, no such opportunity was offered.

The inclusion in the programme of an item that made a serious allegation about Channel S and Mr Ferdahus, without offering them an appropriate and timely opportunity to respond, was unfair to them.

Accordingly, the complaint of unfair treatment by Channel S and Mr Ferdahus was upheld and the broadcaster found to be in breach of Rule 7.1.

Upheld in Part

Complaint by Mr Matthew Butler

Crisis at the Castle, BBC4, 27 June 2007

Summary: Ofcom has upheld this complaint of unfair treatment by Mr Matthew Butler. It has not upheld the complaint of unwarranted infringement of privacy in the making and broadcast of the programme.

This edition of an observational documentary series, following aristocratic families who were struggling to hold onto their homes, featured the Dent-Brocklehurst family. The programme described how, in order to pay for its upkeep, parts of the family estate Sudeley Castle (“Sudeley”) were hired out for social events such as weddings and concerts. One particular sequence showed how family members, and the head of the family Lady Ashcombe in particular, were affected by these events.

The programme included footage of the wedding reception of Mr Matthew Butler which was being held at Sudeley. In addition to footage of the wedding photos being taken and the speeches being given, the piece showed how one guest had to be removed from Sudeley because of his drunken behaviour. This part of the programme was intercut with footage of a private drinks party, hosted by Lady Ashcombe on a different day from Mr Butler’s wedding. Also intercut with this section of the programme were audio extracts of an interview with Lady Ashcombe. During this interview, Lady Ashcombe voiced her misgivings of events like weddings being held at Sudeley.

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

Ofcom found as follows:

- Ofcom noted that footage of Mr Butler’s wedding, including the unruly guest’s behaviour, was intercut with Lady Ashcombe’s criticisms of public events being held at Sudeley. In addition the audio track from the wedding footage was played over footage of Lady Ashcombe’s private party and audio of a separate interview during which these criticisms were voiced. In Ofcom’s view this created the unfair impression that Lady Ashcombe’s criticisms were directed at Mr Butler’s wedding in particular when they were not. The manner in which the wedding was portrayed resulted in unfairness to Mr Butler. Mr Butler’s complaint of unfair treatment therefore was upheld.
- Mr Butler was aware that filming would take place at his wedding and had been informed of this before the wedding day. Ofcom noted that on the day of the wedding the programme’s producer stated that he confirmed with Mr Butler that he was aware of the purpose of the filming. Ofcom also noted from the untransmitted footage that Mr Butler made no objection to the open and extensive filming of his wedding. Ofcom found that in these circumstances Mr Butler had consented to the filming. He did therefore not have a legitimate expectation of privacy in relation to the filming and broadcast of footage of his wedding. His complaint of unwarranted infringement of privacy was not therefore upheld.

Introduction

On 27 June 2007, BBC4 broadcast an episode of *Crisis at the Castle*, a three part observational documentary that followed three aristocratic families struggling to keep their historic homes. This particular episode featured the Dent-Brocklehurst family and their home Sudeley Castle ("Sudeley") which the family had turned into a tourist attraction. Visitor numbers had dwindled over the years and one of the business schemes the family employed was hiring the castle and its grounds out for events such as weddings, concerts and corporate events.

During the programme, footage of Mr Matthew Butler's wedding was shown being held in a marquee on the castle's North lawn. Lady Ashcombe (who co-owns the castle) was shown in her private apartments entertaining a group of friends intercut with footage of the wedding to suggest it was going on outside. The programme said that such events were the "bane" of Lady Ashcombe's life at the castle due to the noise and the disruption they caused to the family. Night-time footage of the wedding was also shown in which the Events Manager and a member of her staff were filmed dealing with a drunken wedding guest.

Mr Matthew Butler, who was not named, was shown in the programme along with his wife and other wedding guests.

Mr Butler complained to Ofcom that he was unfairly treated and his privacy was unwarrantably infringed in the making and broadcast of the programme.

The Complaint

Mr Butler's case

In summary, Mr Butler complained that he was treated unfairly in the programme in that:

- a) his wedding was unfairly portrayed as a rowdy inconvenience. In particular Mr Butler complained that the programme showed footage from his wedding and focused on a single incident of one wedding guest causing trouble and also showed members of staff at the castle "moaning" about the event.

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

- b) he did not give his permission for the wedding to be filmed and broadcast. Mr Butler stated no explanation was given to him for the cameraman's presence at the wedding.

By way of background, Mr Butler stated that the programme caused him great upset.

The BBC's case

In summary and in response to Mr Butler's complaint that he had been unfairly treated the BBC argued as follows:

- a) The BBC said that the programme makers' contract with Sudeley allowed filming in the house and grounds and with the family and staff and a number of different events, some of which involved filming people other than the

family and staff. In such circumstances, the programme makers abided by Sudeley's request to contact the member of staff dealing with the event, who in turn contacted the people involved to seek their agreement to film it. The BBC said that it was made clear to the parties involved that if they needed more information about the series they could speak to the programme makers, but Sudeley were very clear that the initial contact must come from their own staff, on the basis that they wanted to guard against anyone being pressured into being filmed and ensure that nothing detrimental to Sudeley's image was included. The BBC said that the procedure worked well and in seven months of filming the production team encountered no-one who said they were unaware of or unhappy about being filmed.

The BBC said that the programme makers discussed their interest in filming a wedding at the castle with Sudeley's Events Manager, Ms Sara Jane Thompson. Ms Thompson contacted the complainant and subsequently confirmed the couple's agreement and the arrangements were confirmed a few days before the wedding.

The programme's producer travelled to Sudeley on the day of the wedding, and began filming as photographs were being taken of the wedding party. The bride and groom and their respective parents expressed no surprise about the filming which, as the unedited footage indicates, was carried out openly and with the full knowledge of those concerned. The programme producer's conversation with them indicated that they had a very clear idea of the purpose of the filming and they were friendly, the bride's father at one point offering the producer a drink. Ms Thompson was also present at the time and would not have allowed filming to continue had Mr Butler and his party not known about or been happy with it. The BBC said that there was ample opportunity for them to raise any concerns with Ms Thompson and stop the filming if they had wished to, but this did not happen at any time when the programme's producer was there.

The BBC said that as the programme's producer was preparing to leave, conversations between Ms Thompson and security staff indicated that one of the guests was "a little bit the worse for wear". The programme's producer followed her as she went to deal with the situation and filmed her exchanges with the guest over the next hour as he progressed from being merry and jovial to rather aggressive. The BBC said that when events took a more aggressive turn the programme's producer stopped filming and went home.

The BBC said that the programme makers were not contacted directly or indirectly by anyone from the wedding party until after transmission of the programme. The BBC said that the edited sequence shown in the programme fairly and accurately reflected what happened at the wedding. The wedding party was not named, nor was it implied that the main party was involved in any way in the later incident. The BBC said that the sequence made it clear that this involved one young man who had drunk too much and was perhaps experiencing difficulties in his relationship. For the most part, the BBC said that the event manager's tone was light hearted and uncritical and she did not imply that the situation was particularly unusual (other than one comment very specifically directed at the individual concerned) or that the wedding as a whole had been rowdy or drunken.

The BBC said that it had already been made clear in earlier footage in the programme that Lady Ashcombe found weddings and other events intrusive

and, while this particular sequence included an expression of opinion by Lady Ashcombe on the issue, her comments amounted to general criticism and there was no implication that Mr Butler's wedding had caused her more inconvenience or annoyance than any other. The BBC said that the sequence illustrated the broader issue of the conflict between choosing to live in a house like Sudeley and having to find ways to finance the considerable cost of its upkeep. It was true that the behaviour of one guest in particular added impact to the sequence, but that sequence would have been used in the same way regardless of these events to illustrate the conflict between the financial advantages of capitalising on Sudeley's appeal and Lady Ashcombe's aversion to them.

However, the BBC said that it acknowledged that there was a degree of unfairness to Mr Butler, his family and guests arising from the fact that the wedding did not take place on the same date as the social event hosted by Lady Ashcombe with which it was intercut. The BBC emphasised that the programme makers intended no unfairness, because they believed, in good faith, that the Butler's wedding was entirely typical of the kind of event which Lady Ashcombe had repeatedly made clear that she regarded as intrusive. However, though this may indeed be true, the BBC said that it had no knowledge that the Butlers' wedding actually impinged upon Lady Ashcombe as the programme suggested it did.

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

- b) Mr Butler was fully aware of the circumstances surrounding the filming of his wedding and gave his consent for it to be filmed and broadcast (see head a) above). The programme makers have confirmed with Ms Thompson that when she spoke to Mr Butler prior to the wedding, she was clear about the purpose of the filming and, on that basis, he was happy for it to take place.

It said that it understood that, in the light of events at the wedding, Mr Butler may have been embarrassed by elements of the film. Had he contacted Sudeley, the programme makers or the BBC to express concern at any time between the filming in September 2006 and the broadcast of the programme in June 2007, his concerns would have been given sympathetic consideration. The BBC said that it and the programme makers genuinely regretted that the programme caused upset Mr Butler and his family. However, the BBC said that while it recognised the impact the broadcast may have had on the family's memory of a very special day for them, it was justified to reflect the events that took place. The BBC said that it did not feel that it was justified to imply that the events caused inconvenience to Lady Ashcombe and her guests during the social occasion shown in the relevant part of the programme.

Decision

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

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

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

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

- a) Ofcom considered Mr Butler's complaint that he was treated unfairly in the programme as broadcast in that his wedding was portrayed as a rowdy inconvenience. In particular Mr Butler complained that the programme showed footage from his wedding and focused on a single incident of one wedding guest causing trouble and also showed members of staff at the castle moaning about the event.

In considering whether the portrayal of his wedding in the programme had caused unfairness to Mr Butler, Ofcom took account of Rule 7.1 of the Code which states that broadcasters must avoid unjust or unfair treatment to individuals and organisations in programmes. Ofcom also took account of Practice 7.6 of the Code which states that contributions to a programme must be edited fairly and of Practice 7.9 of the Code which states that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

The section of the programme which dealt with Mr Butler's wedding contained footage of guests at a drinks reception on the lawns of Sudeley. It documented the wedding day, following guests as they listened to speeches and later at an evening reception. It ended with footage of one of the guests being removed from the Sudeley grounds because of drunken behaviour. Ofcom noted that the programme contained commentary such as "*for Events Manager Sarah Jane, weddings can also be a bit of a nightmare*" and "*(weddings) are the bane of Lady Ashcombe's life*". In relation to the incident of the drunken wedding guest the cameraman was heard asking the Events Manager "*do you usually clean up vomit on a Saturday night?*". The Events Manager was also seen remonstrating with the drunken wedding guest saying "*I am now going to ask my security men to remove you from the premises. I have had enough of you...I have never had behaviour like this at Sudeley. I am disgusted.*"

Ofcom recognised that it was acceptable for the programme makers to include footage filmed of the wedding day (the issue of consent for the filming and broadcast of this footage is dealt with at head b) below. It was also entirely acceptable for the programme to include footage of Lady Ashcombe's private cocktail party and comments made by Lady Ashcome in a separate interview which reflected her concerns about Sudeley's commercial activity, such as "*If you look at our function sheet they're all the time now, if it's not a wedding it's a small concert or it's a play in the garden...when it's someone else's wedding that's going on outside your window 'til all hours it starts to grate a bit..*".

However, Ofcom noted that Mr Butler's wedding did not take place on the same day as Lady Ashcombe's cocktail party. In spite of this however the impression was created, through the editing of the material, that both events had occurred at the same time. This was done by the intercutting of pictures

of the wedding – in particular footage of the altercation between the Event Manager and the drunken wedding guest – together with footage from Lady Ashcombe's private gathering and audio from a separate interview in which she criticised weddings. In addition Ofcom also noted that the programme makers had broadcast audio (noise and music) from the wedding footage over footage of Lady Ashcombe's cocktail party. This reinforced the impression that both events were taking place at the same time. In Ofcom's view this unfairly placed particular emphasis on Mr Butler's wedding and created the unfair impression that it had caused Lady Ashcombe and her guests disturbance when there was no material to suggest that this was actually the case.

Accordingly, Ofcom has upheld Mr Butler's complaint of unfair treatment in the programme as broadcast.

- b) Ofcom then considered Mr Butler's complaint that his privacy was unwarrantably infringed in both the making and broadcast of the programme in that he did not give his permission for the wedding to be filmed and broadcast.

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

Ofcom first considered whether or not Mr Butler had a legitimate expectation of privacy in relation to the footage of his wedding being recorded. The Code states that "legitimate expectations of privacy will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye."

Ofcom noted that the parties disputed whether Mr Butler's consent was sought and obtained for the filming and broadcast of footage of his wedding. Mr Butler complained that he was given no explanation for the cameraman's presence and did not give his permission for the filming to take place. The BBC stated that the programme makers had first of all relied on Sudeley's Events Manager to describe the nature and purpose of the programme to Mr Butler, and stated that the producer had spoken to Mr Butler on the day of the wedding and he appeared to have a very clear idea of the purpose of the filming.

In view of these conflicting accounts, the panel considered the manner of filming that had taken place at Sudeley on the day of Mr Butler's wedding. It viewed both the transmitted and untransmitted footage. It was apparent to Ofcom that access to the wedding by the camera crew had been entirely open and uninterrupted (extensive footage was taken throughout the day for example of the inside of the marquee where speeches took place) and no one in the wedding party had seemingly objected to the presence of the camera crew.

In Ofcom's view Mr Butler's expectation of privacy was heightened by the fact that the footage filmed was of his wedding reception which is a particularly sensitive occasion and included the recording of private scenes including speeches and the later behaviour of his guests. It was also heightened by the fact that although Mr Butler was not named he and his wife were recognisable

from the footage included. However Ofcom considered that any expectation of privacy was diminished by the absence of any objection or challenge by Mr Butler to the cameraman's presence. Ofcom also noted the broadcaster's statement that the producer had confirmed the purpose of filming with Mr Butler on the day of filming. In these circumstances it was, in Ofcom's view, reasonable for the broadcaster to consider that he had consented to the filming. Having balanced these factors, the panel therefore concluded that Mr Butler had no legitimate expectation of privacy in the making of the programme.

As to whether Mr Butler's privacy was infringed by the broadcast, Ofcom again considered whether there was a legitimate expectation of privacy.

Ofcom noted that the broadcast footage included the behaviour of a drunken wedding guest within the context of wider shots of Mr Butler's wedding reception which Ofcom recognised to be of a highly personal and sensitive nature. However as discussed above, the open and unchallenged nature of the filming was in Ofcom's view indicative of Mr Butler's consent to both the recording and broadcast of the material. Ofcom considered that this, combined with the BBC's account of the producer having checked that Mr Butler understood the purpose of filming on the day, diminished Mr Butler's expectation of privacy. On balance Ofcom found that Mr Butler did not have a legitimate expectation of privacy in relation to the broadcast of the footage.

Given that Mr Butler did not have a legitimate expectation of privacy in the circumstances of this complaint, Ofcom found that there was no infringement of his privacy in either the making or broadcast of the programme. Therefore Ofcom did not go on to consider the issue of whether any infringement was warranted.

In conclusion, the complaint of unfair treatment was upheld and the broadcaster found in breach of Rule 7.1 of the Code. The complaint of unwarranted infringement of privacy in the making and broadcast of the programme was not upheld.

Ofcom decided it was appropriate for a summary of the finding of unfair treatment to be broadcast on this occasion.

Not Upheld

Complaint by Mr Anthony Bennett

The James Whale Show, TalkSPORT, 2 December 2007

Summary: Ofcom has not upheld this complaint by Mr Anthony Bennett of unfair treatment in the programme as broadcast.

On 2 December 2007, TalkSPORT broadcast an edition of *The James Whale Show*, a radio programme presented by James Whale. This programme contained a contribution by Mr Anthony Bennett about his attempt to launch a private prosecution for child neglect against the parents of Madeleine McCann.

Mr Bennett complained that he had been treated unfairly in the programme in that the programme makers had failed to honour assurances given to him about the content of the programme; and, Mr Whale's conduct of the interview had been unfair.

In summary Ofcom found the following:

- Ofcom found no evidence that the complainant secured an assurance constituting a clear and agreed guarantee in relation to the content of the programme. As such, Ofcom did not go on to consider whether the programme as broadcast had failed to honour a guarantee to Mr Bennett. Ofcom found no unfairness in this respect.
- Ofcom found that Mr Bennett had volunteered to take part in a programme (whose nature and format is well established) when information indicating the presenter's style and standpoint on an issue of some controversy, were known to him.

Given this, and in light of Ofcom, finding that no clear and agreed guarantee had been secured in relation to the content of the programme, it considered that the treatment received by Mr Bennett had not been unfair as it had been in keeping with the established nature of *The James Whale Show* and one which Mr Bennett had volunteered to take part in. Ofcom found no unfairness to Mr Bennett in this respect.

Accordingly Ofcom has not upheld Mr Bennett's complaint of unfair treatment.

Introduction

On 2 December 2007, TalkSPORT broadcast an edition of *The James Whale Show*, a radio programme presented by James Whale that is broadcast each weeknight, Monday to Thursday.

This edition featured a short, live telephone interview with the complainant, Mr Bennett, in relation to his attempt to launch a private prosecution for child neglect against the parents of Madeleine McCann, Gerry and Kate McCann.

The phone call from Mr Bennett was introduced by the presenter as follows:

"I noticed that the McCanns aren't as prominently in the papers today as they have been ... One of the people who I think has got a lot to answer for is a man called Tony Bennett. He's a retired solicitor and he got a bit of a slap in the face again I'm quite glad to see because he was trying to bring a private summons for child neglect against the McCanns and he joins me now. Mr Bennett, good evening to you."

Mr Bennett and the presenter spoke for approximately three and a half minutes before the presenter ended the phone call.

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

The Complaint

Mr Bennett's case

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

- a) The following assurances had been given to him by the programme makers in advance of his live interview but they were not honoured:
 - (i) The programme makers had agreed in writing that "there would be a fair introduction which would summarise changing opinion towards the McCanns in the Madeleine McCann case"; and
 - (ii) The programme makers had also agreed that a "fair balance of calls" would be taken during the programme from "pro-McCann" listeners and "McCann-sceptics", like Mr Bennett.
- b) The presenter, James Whale, "adopted a bullying tone" throughout the interview, cut Mr Bennett off while he was speaking and falsely accused Mr Bennett of being "rude". There was no debate or discussion during Mr Bennett's interview. Despite Mr Bennett having prepared carefully for his interview, James Whale was "so intimidating and unpleasant" during the interview that Mr Bennett was given no chance to explain the "McCann-sceptic" point of view and was "barely allowed an opportunity to make any of the points" that he had set out in his preparatory notes.

TalkSPORT's statement in response to the complaint

TalkSPORT provided a statement in response to the complaint and a transcript of the relevant parts of the programme. In summary, TalkSPORT responded to the complaint as follows:

- a) In response to the complaint that the programme makers had not honoured assurances given to Mr Bennett before the live interview, it said that the programme makers had not given the assurances referred to by the complainant.

TalkSPORT said that Mr Bennett had emailed the station to take up a "challenge" to come onto the programme which he said the presenter, James Whale, had issued to him the night before (on-air). TalkSPORT said that during the email correspondence that followed, between Mr Bennett and the programme maker, Mr Bennett laid down a number of conditions. TalkSPORT said that the

programme maker did not agree to any of these by email. Rather the programme maker had spoken to Mr Bennett over the phone and agreed to the following two conditions:

- That Mr Bennett would be introduced as the retired solicitor who had tried to prosecute the McCanns for child neglect; and
- That if calls were to come into the show on the subject, there would be a fair representation of opinions expressed, so long as those opinions were compliant with regulatory and legal guidelines.

TalkSPORT said the programme transcript showed that the first condition had been adhered to. While the second, did not apply because in the event of the encounter ending as it did, no calls were put to air on the subject. However, TalkSPORT said it noted that the presenter had read out a selection of pro and anti Bennett emails and texts on the subject, which had been sent into the station after the live interview.

- b) In response to the complaint about the conduct of the presenter during the interview, TalkSPORT said that the interview between Mr Bennett and Mr Whale was never going to be a genteel encounter. However, it maintained that the treatment of Mr Bennett was not unfair.

As noted above, TalkSPORT said that Mr Bennett came onto the programme because he had asked to. TalkSPORT said this was so Mr Bennett could win publicity for his campaign against the McCanns. It said that Mr Bennett had been a guest on the James Whale show before, and was well aware of the tone and nature of the programme. TalkSPORT said this previous encounter had been referred to by Mr Bennett in his email correspondence, as was, his knowledge that Mr Whale was a sympathiser of the McCanns and highly critical of Mr Bennett's attempts to prosecute them. Given Mr Bennett's wide experience of dealing with the media, TalkSPORT said the complainant knew what to expect and was well aware of the fact that the interview would be combative and hostile.

TalkSPORT said it did not accept Mr Bennett's complaint that he had been given no chance to explain the "McCann-sceptic" point of view. TalkSPORT said that although the interview had been brief, Mr Bennett had been able to explain why his attempt to prosecute the McCanns had failed; why he had attempted the prosecution in the first place; and, referred to the support he claimed to have received as a result of his failed attempt to prosecute.

Mr Bennett's comments in response to TalkSPORT's statement

Mr Bennett provided comments in response to TalkSPORT's first statement. In summary the complainant responded as follows:

- a) In relation to Mr Bennett's complaint that the programme makers had not honoured assurances given to him, Mr Bennett confirmed that the pre-conditions referred to in his complaint had been agreed verbally, during a phone call, and not by email as originally complained. Mr Bennett maintained that during this phone call, the programme maker had assured him that "the two essential pre-conditions that I had laid down would be met".
- b) With regard to his complaint about Mr Whale's conduct of the interview, Mr Bennett challenged TalkSPORT's contention that he had been familiar with the

tone and nature of the show, and that he had been expecting a hostile line of questioning:

- Mr Bennett said he had only listened to the *The James Whale Show* on one previous occasion, many years ago, when his friend had been interviewed by Mr Whale. Mr Bennett explained that on this occasion the nature of the show had been "friendly". Mr Bennett also confirmed that he had been interviewed by TalkSPORT in the past, but did not believe the interviewer had been James Whale. On this occasion, Mr Bennett said that the interview was "certainly not remotely bullying or abusive as Mr Whale was". Mr Bennett said that since his most recent interview on *The James Whale Show*, he had learnt that the presenter had a bit of a reputation as a "Shock Jock".
- Mr Bennett stated that he did not expect the interview to be hostile except for a "clue" that had been reported to him, via the internet, that James Whale had described his as "sad, lonely and with no friends".

TalkSPORT's second statement in response to the complaint

TalkSPORT provided a second statement in response to the complaint. In summary the broadcaster responded as follows:

- a) In response to the complaint that the broadcaster had not honoured assurances given to Mr Bennett, TalkSPORT reiterated its previous statement (above).
- b) In relation to Mr Bennett's complaint about the conduct of the interview, TalkSPORT maintained that Mr Bennett was aware of the tone and nature of the programme; that James Whale was sympathetic towards the McCanns; and, that the interview would be combative and hostile. TalkSPORT said its view was supported by Mr Bennett's own email to the programme maker, sent prior to the live interview.

Decision

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

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

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.

Mr Bennett's complaint was considered by Ofcom's Executive Fairness Group. In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties, including a recording of the programme as broadcast, relevant programme transcript, copies of the pre-broadcast correspondence and both parties' written submissions.

Ofcom found as follows:

- a) Ofcom first considered Mr Bennett's complaint that the programme makers had failed to honour assurances given to him. Mr Bennett said he had been given assurances about the content of the programme's introduction and that the programme makers would take a "fair balance of calls" during the programme from both "pro-McCann" listeners and "McCann-sceptics".

In considering this part of Mr Bennett's complaint Ofcom took account of Practice 7.7 which states that:

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

Ofcom noted that Mr Bennett said that the assurance had been given to him by the programme maker during a phone conversation. Ofcom also noted that the parties' account of this phone conversation differed in the following way:

According to the complainant:

"Having considered again the email run of correspondence prior to the programme it is clear now that it was [the programme maker]'s verbal agreement that the conditions set out in my original emails would be met, rather than any written agreement – on which I relied. I thought I should make that clear for the record. During the last conversation I had with [the programme maker], prior to the broadcast, I asked her to confirm that the two essential preconditions that I had laid down would be met. She answered, in terms: 'Yes, we agree to the conditions in your letter'. Otherwise I would definitely not have taken part in the programme."

According to the broadcaster:

"[The programme maker] did speak to Mr Bennett over the phone and agreed to two conditions...:

1. That he would be introduced as the retired solicitor who had tried to prosecute the McCanns for child neglect.
2. That if calls were to come in to the show on the subject, there would be a fair representation of opinions expressed, so long as those opinions were compliant with regulatory and legal requirements."

Ofcom was not provided with any recording or transcript of the telephone call in question, and was not able to determine its contents.

Ofcom also had regard to the pre-broadcast and post-broadcast correspondence between Mr Bennett and the programme makers. Ofcom noted this correspondence confirmed that the complainant had set out his wish to receive an assurance from the programme makers about the content of the introduction and the balance of calls placed to air by "pro-McCann" listeners and "McCann-sceptics". However, nowhere in the email correspondence were there indications that Mr Bennett's requests had been agreed to by the programme makers.

From both parties' submissions, it was clear to Ofcom that Mr Bennett believed he had secured an assurance from the programme makers about the content of the introduction and the balance of calls, and equally the programme maker

understood that any assurance given was not of the kind referred to by Mr Bennett.

On the information before it, and in the absence of any record indicating that Mr Bennett's requests had been agreed to, it is Ofcom's view that the complainant had not secured an assurance constituting of a guarantee, that "there would be a fair introduction which would summarise changing opinion towards the McCanns in the Madeleine McCann case"; or, that a "fair balance of calls" would be taken during the programme from "pro-McCann" listeners and "McCann-sceptics". As such, Ofcom did not go on to consider whether the programme as broadcast had failed to honour a guarantee of this nature to Mr Bennett.

In relation to the programme itself, and the conditions which the broadcaster said it had given to Mr Bennett, it is Ofcom's view that the introduction provided by the presenter had not been unfair to Mr Bennett and viewers would have understood that it had been flavoured by the presenter's well known views in relation to the disappearance of Madeleine McCann. Ofcom also noted that the programme had contained the views of a number of listeners who were sympathetic with Mr Bennett. In Ofcom's opinion, the tone of the introduction, the presenter's remarks in relation to the views of "pro-McCann" listeners' and the discussion overall were in keeping with the established nature of *The James Whale Show* (also see Head (b)).

In relation to this head of complaint, Ofcom found no evidence that Mr Bennett had secured a clear and agreed guarantee in relation to the content of the programme and the programme as broadcast did not result in unfairness. Accordingly, Ofcom has not upheld this part of Mr Bennett's complaint.

- b) Ofcom next considered Mr Bennett's complaint about the conduct of the interview. Mr Bennett complained that the presenter had "adopted a bullying tone", cut him off while speaking and falsely accused him of being rude. Mr Bennett said that there had been no debate or discussion during the interview. The complainant said that he had been given no chance to explain the "McCann-sceptic" point of view and was "barely allowed an opportunity to make any of the points" that he had set out in his preparatory notes.

Ofcom listened to a recording of the programme. It considered that the presenter's tone had been confrontational and noted that Mr Whale had interrupted Mr Bennett's comments on a number of occasions. Ofcom also noted that Mr Whale had said that Mr Bennett was being rude; however, given that it had been a live unedited interview, Ofcom considered that listeners would have been capable of forming their own opinions about this comment.

Ofcom considered whether the presenter's treatment of Mr Bennett (as described above) resulted in unfairness.

In Ofcom's view, the manner in which Mr Whale treated Mr Bennett during the programme was not unusual to *The James Whale Show*. Mr Whale has a well established reputation as a confrontational, controversial presenter who is not afraid to criticise those whose views do not accord with his own. During discussions with people of opposing view, he is at times belligerent. Further, in Ofcom's view, it is established that phone-in talkback programmes will contain the views and opinions of the presenters. In the case of the more extreme examples of this genre, the style and views of the presenters are often controversial and confrontational. In relation to this programme, Ofcom

considered that regular listeners would have expected the programme's discussion to be dominated by Mr Whale's own views, after who the programme is named.

Ofcom took account of Mr Bennett's submission that he had not been aware of Mr Whale's reputation as a "Shock Jock".

Ofcom noted that Mr Bennett had emailed TalkSPORT to provide himself for an interview with James Whale. In his initial email to the programme makers Mr Bennett said that he was doing so in order to respond to "a challenge for me to come on to the programme". While Mr Bennett did explain the catalyst for approaching TalkSPORT was Mr Whale's comment about him in an earlier show, it was clear to Ofcom that Mr Bennett had made a conscious effort to go onto *The James Whale Show*. In Ofcom's view, the email correspondence indicated that Mr Bennett's took repeated, active steps to become a participant on the programme:

Mr Bennett's email of 23 November 2007:

"This follows my phone call to Nick this morning and my voicemail message left about 10am this morning...I hear that James Whale of TalkSPORT would like to interview me again. I was told by a supporter this morning that last night you described me as 'sad, lonely, and with no friends' and issued a challenged for me to come on the programme..."

Mr Bennett's email of 27 November 2007:

"...I have not yet had a response from you...I confirm that I would be very happy to be guest on your shown again but there must be a fair introduction about he Madeleine McCann case to any interview..."

Ofcom also noted from the initial contact with TalkSPORT, that Mr Bennett had been aware that the presenter was the kind that would refer to him as being "sad, lonely and with no friends" on-air, and whose views were in opposition to his own as a "McCann-sceptic".

Taking all of these factors into account, it is Ofcom's view that Mr Bennett had volunteered to take part in a programme (whose nature and format is well established) when information indicating the presenter's style and standpoint, on an issue of some controversy, were known to him.

Given this, and in light of Ofcom's finding at Head (a), Ofcom considered that the treatment received by Mr Bennett had not been unfair as it had been in keeping with the well established nature of *The James Whale Show* and one which he had volunteered to take part in. Ofcom found no unfairness to Mr Bennett in this respect.

Accordingly, Ofcom has not upheld Mr Bennett's complaint of unfair treatment in the programme as broadcast.

Complaint by Mr Meirion Bowen brought on his behalf by Mr Jan Frayne

Newyddion, S4C, 9 July 2007

Summary: Ofcom has not upheld this complaint of unfair treatment in the broadcast of the programme by Mr Bowen.

Mr Bowen was interviewed by BBC Wales (the programme maker) for a report broadcast on S4C on 9 July 2007 in its nightly news programme *Newyddion*. The report concerned the progress of the construction of a liquid natural gas (“LNG”) pipeline and some of the protests surrounding it.

Ofcom found that the programme did not result in unfairness to Mr Bowen because the report fairly represented Mr Bowen’s concerns over safety.

Ofcom also found that the omission of material supplied by Mr Bowen, regarding the devastation caused by the construction of the LNG pipeline, did not result in unfairness to him.

Introduction

On 9 July 2007, S4C included a news report concerning the progress of the construction of a liquid natural gas (“LNG”) pipeline between Milford Haven and Gloucestershire and some of the protests surrounding it in *Newyddion*, its nightly news programme.

A recorded interview with Mr Bowen was included in the report. Mr Bowen was a member of a pressure group called the Safe Haven Network (“the Network”). The Network was set up to highlight concerns about dangers involved in the project to lay a high pressure LNG pipeline across Wales.

The report also included an interview with Ms Laura Griffen, a representative of National Grid (“NG”) the company for which the pipeline is being constructed.

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

The Complaint

Mr Bowen’s case

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

- a) The interview with Mr Bowen which formed part of the report on the LNG pipeline was unfairly edited. Mr Bowen complained that it omitted several pertinent comments he made during the interview. This unfairly suggested that Mr Bowen was a ‘nimby’ (i.e. holding ‘not in my back yard’ views) without broadcasting the explanation, which he had given in the interview, that he believed that there was no evidence to prove that NG’s pipeline was safe.
- b) The report unfairly omitted evidence about the devastation caused by the construction of the pipeline which had been supplied by Mr Bowen.

S4C's case

In summary S4C responded to the complaint as follows:

- a) S4C did not consider that the interview with Mr Bowen was unfairly edited and made him look as if he was a 'nimby'.

It said that Mr Bowen had agreed to take part in an interview with Mr Aled Scourfield (the BBC Wales reporter) on the basis that he could represent those residents of Llandybie who harboured significant concerns about the pipeline's safety. The broadcaster also said that Mr Scourfield explained to Mr Bowen that only an extract of the interview summarising his concerns would be included in a brief news report. S4C argued that the introduction to the news report drew attention to the campaigners' concerns:

"Ond ar waetha'r ffaith bod y gwaith ar fin dod i ben mae yna ofid am y peryglon o hyd"

(in English)

"But despite the fact that the work is coming to an end concern remains about the dangers";

as did the following commentary:

"yn ol protestwyr does na ddim pris ariannol ar ddiogelwch pobl"

(in English)

"according to protestors there is no price on people's safety".

The broadcaster added that the section of Mr Bowen's interview included in the report graphically illustrated his concerns over the pipeline's safety and that in it Mr Bowen noted two possible types of accident. S4C said that *Newyddion* does not ordinarily retain untransmitted material for interviews of this type, and that therefore the untransmitted material in connection with Mr Bowen's interview had not been retained. However, it also said that Mr Scourfield was certain that the section included in the report was a fair representation of Mr Bowen's views.

S4C argued that there were no grounds to claim that the report gave the unfair impression that Mr Bowen was a 'nimby'. It said that viewers were left in no doubt that Mr Bowen believed that the LNG pipeline was dangerous and that his motivation for protesting was safety not 'nimbyism'. It added that in its view the section of his interview which was broadcast fairly reflected Mr Bowen's opinion that NG's claims that the pipeline was safe were unfounded.

- b) S4C stated that Mr Scourfield was clear that Mr Bowen did not produce any specific evidence about the damage caused by the construction of the pipeline (and it noted that Mr Bowen had made no reference to such material in his email complaint dated 30 October 2007). However, the broadcaster said that the report had reflected a range of concerns about the pipeline and had included references to the *"enormous trench"* and the *"practice of using explosives"* which it argued were indicative of the damage caused by the

construction of the pipeline. S4C also argued that there was no unfairness to Mr Bowen in excluding material reflecting a general concern about the pipeline which was shared by many protestors.

Decision

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

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

The complaint was considered by Ofcom's Executive Fairness Group. In reaching its decision, Ofcom considered the complaint and the broadcaster's response, together with recordings and transcripts of the programme as broadcast. It should be noted that the full untransmitted footage of the interview with Mr Bowen was not available because S4C did not retain the footage which was recorded with the use of a handheld digital camera.

Ofcom found as follows:

- a) Ofcom first considered Mr Bowen's complaint that his interview, which formed part of the report on the LNG pipeline, was unfairly edited in that it omitted several pertinent comments he made during the interview and unfairly suggested that he was a 'nimby'.
In considering this head of complaint, Ofcom took into account Practice 7.6 of the Code, which states that "when a programme is edited, contributions should be represented fairly".

Ofcom also took into account Practice 7.9 of the Code, which states that "before broadcasting a factual programme, including programmes examining past events, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation".

Programme makers can legitimately select, omit or edit interviews provided for inclusion in a programme as long as it does not result in unfairness to those people or organisations directly affected by the programme. This is an editorial decision for programme makers to take. Therefore, Ofcom was not concerned with the length of contributions made and subsequently included in the programme. Rather Ofcom sought to determine whether the programme maker's actions were consistent with its obligations to avoid unfair treatment.

Ofcom noted that the untransmitted footage of the interview with Mr Bowen was not available because S4C did not retain the footage which was recorded with the use of a handheld digital camera. Both parties appeared to agree that only part of Mr Bowen's interview was included in the broadcast.

In the absence of untransmitted footage, Ofcom noted that Mr Bowen complained that the programme omitted his point that there was no evidence to prove that NG's pipeline was safe. In Ofcom's view, this point was clearly and fairly reflected in his broadcast contribution (which is set out below) therefore Ofcom concluded that Mr Bowen was treated fairly in this respect.

"You are going to live with a bomb on your doorstep and if there's a fault and if this gas leaks and reacts with water then who knows, maybe someone lights a cigarette down in Ammanford or down in the village of Ammanford then bang and everything will have gone".

Ofcom also noted the context of the report including its introductory remarks and concluded that these addressed Mr Bowen's and the other campaigners' concerns over safety. These were:

"But despite the fact that the work is coming to an end, concern remains about the dangers [...] according to protestors there is no price on people's safety"

Ofcom further noted that prior to the interview, Mr Scourfield stated that he had told Mr Bowen that only an excerpt of the interview summarising his concerns would be broadcast within the report and that Mr Bowen was happy to proceed on this basis.

In Ofcom's view, the report gave a fair representation of Mr Bowen's concerns in that it made clear his view that the construction of the pipeline raised serious questions over its safety. In Ofcom's opinion, as the focus and content of the interview was absolutely centred on safety and in particular the potential dangers associated with the LNG pipeline, viewers could be left in no doubt that Mr Bowen's motivation was safety and not 'nimbyism'. Mr Bowen's interview gave a fair representation of his concerns over safety and consequently, Mr Bowen was portrayed as a reasonable individual whose concerns were well-founded and did not suggest or imply 'nimbyism'.

In consideration of the above points, Ofcom found that the programme makers' editing of Mr Bowen's contribution did not result in unfairness.

- b) Secondly, Ofcom considered Mr Bowen's complaint that the report unfairly omitted evidence about the devastation caused by the construction of the pipeline which had been supplied by Mr Bowen.

In considering this head of complaint, Ofcom took into account Practice 7.6 along with Practice 7.9 as set out above.

Ofcom considered whether the programme had omitted material produced by Mr Bowen which resulted in unfairness to him. In this respect, Ofcom observed that the editing of a programme is an editorial matter. However, broadcasters must ensure that the programme as broadcast does not result in unfairness to an individual or organisation.

Ofcom noted that it appeared that the issue of the damage caused by the construction of the pipeline was dealt with elsewhere in the report with the following references:

“This enormous trench gives you an idea of the project’s size”.

and

“In places like Trebanos and Pontsenni people have shown their opposition and fears regarding the practice of using explosives to dig and install the pipe”.

Ofcom also considered that there was no evidence suggesting that Mr Bowen produced any specific material regarding the damage caused by the construction of the pipeline and in any event there was no obligation on the broadcaster to include comments or material from Mr Bowen on this issue.

Taking these factors into account, Ofcom considered that the omission of Mr Bowen’s input in this area did not result in unfairness to him.

Cwyn gan Mr Meirion Bowen a gyflwynwyd ar ei ran gan Mr Jan Frayne

Newyddion, S4C, 9 Gorffennaf 2007

Crynodeb: Nid yw Ofcom wedi cynnal y gwyn hon o driniaeth annheg yn narllediad y rhaglen gan Mr Bowen.

Holwyd Mr Bowen gan BBC Cymru (gwneuthurwr y rhaglen) ar gyfer adroddiad a ddarllledwyd ar S4C ar 9 Gorffennaf 2007 yn ei raglen newyddion nosweithiol *Newyddion*. Roedd yr adroddiad yn delio â datblygiad adeiladu'r bibell nwy naturiol hylifol ('LNG') a rhai o'r protestiadau ynglŷn â hynny.

Daeth Ofcom i'r casgliad nad oedd y rhaglen wedi esgor ar annhegwch i Mr Bowen oherwydd bod yr adroddiad yn cynrychioli'n deg pryderon Mr Bowen ynglŷn â diogelwch

Daeth Ofcom i'r casgliad hefyd nad oedd gadael deunydd a gyflenwyd gan Mr Bowen ynglŷn â'r difrod a achoswyd oherwydd adeiladu'r bibell LNG allan wedi esgor ar annhegwch iddo.

Cyflwyniad

Ar 9 Gorffennaf 2007 roedd adroddiad newyddion ar S4C yn delio ag adeiladu pibell nwy naturiol hylifol ('LNG') rhwng Aberdaugleddau a Swydd Gaerloyw a rhai o'r protestiadau ynglŷn â hyn ar *Newyddion*, ei raglen newyddion nosweithiol.

Cafwyd cyfweiliad wedi'i recordio gyda Mr Bowen yn yr adroddiad. Roedd Mr Bowen yn aelod o grŵp pwyso o'r enw Safe Haven Network (Rhwydwaith). Sefydlwyd y Rhwydwaith i amlygu pryderon ynglŷn â pheryglon y prosiect i osod pibell LNG Pwysedd uchel ar draws Cymru.

Roedd yr adroddiad hefyd yn cynnwys cyfweiliad gyda Ms Laura Griffen, cynrychiolydd y Grid Cenedlaethol (GC) y cwmni y mae'r bibell yn cael ei hadeiladu ar eu cyfer.

Cwynodd Mr Bowen i Ofcom ei fod wedi cael ei drin yn annheg yn y rhaglen fel y'i darlledwyd.

Y Gwyn

Achos Mr Bowen

Yn gryno, cwynodd Mr Bowen ei fod wedi cael ei drin yn annheg yn y rhaglen fel y'i darlledwyd, sef:

- c) Cafodd y cyfweiliad gyda Mr Bowen oedd yn rhan o'r adroddiad ar y bibell LNG ei olygu'n annheg. Cwynodd Mr Bowen ei fod wedi gadael sawl sylw perthnasol a wnaeth yn ystod y cyfweiliad allan. Roedd hyn yn awgrymu'n annheg bod Mr Bowen yn 'nimby' (h.y. barn 'nid yn fy ngardd gefn i') heb ddarlledu'r esboniad, yr oedd wedi ei roi yn y cyfweiliad, ei fod yn credu nad oedd unrhyw dystiolaeth i brofi bod pibell GC yn ddiogel

Roedd yr adroddiad yn annheg wedi gadael allan dystiolaeth am y difrod oedd wedi'i greu trwy adeiladu'r bibell oedd wedi'i roi gan Mr Bowen

Achos S4C

Yn gryno ymatebodd S4C i'r gwyn fel â ganlyn:

- c) Nid oedd S4C yn ystyried bod y cyfweiliad gyda Mr Bowen wedi'i golygu'n annheg ac yn gwneud iddo ymddangos yn nimby.

Dywedodd bod Mr Bowen wedi cytuno i gymryd rhan mewn cyfweiliad gyda Mr Aled Scourfield (gohebydd BBC Cymru) ar y sail y gallai gynrychioli'r preswylwyr hynny yn Llandybie oedd â phryderon sylweddol am ddiogelwch y bibell. Dywedodd y darlledwr hefyd bod Mr Scourfield wedi esbonio i Mr Bowen mai dim ond darn o'r cyfweiliad yn mynegi ei bryderon fyddai'n cael ei gynnwys mewn adroddiad newyddion cryno. Roedd S4C yn dadlau bod y cyflwyniad yn yr adroddiad newyddion wedi tynnu sylw at bryderon yr ymgyrchwyr:

"Ond ar waetha'r ffaith bod y gwaith ar fin dod i ben mae yna ofid am y peryglon o hyd"

(in English)

"But despite the fact that the work is coming to an end concern remains about the dangers";

fel; y gwnaeth y sylwebaeth ganlynol:

"yn ôl protestwyr does 'na ddim pris ariannol ar ddiogelwch pobl"

(in English)

"according to protestors there is no price on people's safety".

Ychwanegodd y darlledwr bod darn o gyfweiliad Mr Bowen a gafodd ei gynnwys yn yr adroddiad yn dangos yn glir ei bryderon dros ddiogelwch y bibell ac yn y cyfweiliad nododd Mr Bowen ddau fath posibl o ddamweiniau. Dywedodd S4C nad yw Newyddion fel rheol yn cadw deunydd heb ei ddarlledu ar gyfer cyfweiliadau o'r math hwn ac felly nid oedd y deunydd nas darlledwyd mewn cysylltiad â chyfweiliad Mr Bowen wedi'i gadw. Ond dywedodd hefyd bod Mr Scourfield yn sicr bod y darn oedd yn yr adroddiad yn gynrychiolaeth deg o farn Mr Bowen..

Roedd S4C yn dadlau nad oedd sail i hawlio bod yr adroddiad yn rhoi'r argraff annheg bod Mr Bowen yn nimby. Dywedodd bod gwylwyr wedi cael yr argraff bendant bod Mr Bowen yn credu bod pibell LNG yn beryglus ac mai ei gymhelliant dros brotestio oedd diogelwch ac nid 'nimbuaeth'. Ychwanegodd, yn ei farn ef bod y darn o'r cyfweiliad a ddarllledwyd yn adlewyrchiad teg o farn Mr Bowen nad oedd sail i hawliadau'r GC bod y bibell yn ddiogel.

- d) Dywedodd S4C bod Mr Scourfield yn bendant na wnaeth Mr Bowen gynhyrchu unrhyw dystiolaeth benodol ynglŷn â'r difrod a achoswyd trwy adeiladu'r bibell (a nododd nad oedd Mr Bowen wedi gwneud unrhyw gyfeiriad at ddeunydd o'r fath yn ei gwyn ar e-bost dyddiedig 30 Hydref 2007).

Ond, dywedodd y darlledwr bod yr adroddiad wedi adlewyrchu amrediad o bryderon am y bibell ac wedi cynnwys cyfeiriadau at y 'ffos enfawr' a'r 'ymarfer o ddefnyddio ffrwydron', oedd yn arwydd o'r difrod achoswyd trwy adeiladu'r bibell. Roedd S4C yn dadlau hefyd nad oedd unrhyw annhegwch i Mr Bowen trwy adael deunydd allan oedd yn adlewyrchu pryderon cyffredinol am y bibell oedd yn cael eu rhannu gan nifer o brotestwyr.

Penderfyniad

Mae dyletswyddau statudol Ofcom yn cynnwys cymhwys, yn achos gwasanaethau teledu a radio, safonau fydd yn darparu amddiffyniad digonol i aelodau'r cyhoedd a phob person arall rhag triniaeth annheg mewn rhaglenni sydd yn gynwysedig mewn gwasanaethau o'r fath.

Wrth gyflawni ei ddyletswyddau rhaid i Ofcom dalu sylw i'r angen i sicrhau cymhwysiad y safonau hyn mewn modd sydd yn gwarantu orau lefel priodol o ryddid mynegiant. Mae Ofcom yn rhwymedig hefyd i dalu sylw, ym mhob achos, i'r egwyddorion y dylai gweithgareddau rheoleiddiol fod yn dryloyw, yn atebol, yn gymesur ac yn gyson ac wedi'u targedu'n unig at achosion lle mae angen gweithredu.

Ystyriwyd y gwyn gan Grŵp Tegwch Gweithredol Ofcom. Wrth ddod i benderfyniad ystyriodd Ofcom y gwyn ac ymateb y darlledwr, ynghyd â recordiadau a thrawsysgrifau o'r rhaglen fel y'i darlledwyd. Dylid nodi nad oedd y ffilm lawn nas darlledwyd o'r cyfweiliad gyda Mr Bowen ar gael oherwydd na wnaeth S4C gadw'r ffilm a recordiwyd gyda camera digidol llaw.

Darganfu Ofcom fel â ganlyn:

- c) I ddechrau ystyriodd Ofcom gwyn Mr Bowen bod ei gyfweiliad, oedd yn ffurfio rhan o'r adroddiad ar bibell LNG, wedi'i olygu'n annheg gan ei fod wedi gadael sawl sylw perthnasol a wnaeth yn ystod y cyfweiliad allan ac awgrymu yn annheg ei fod yn nimby. Wrth ystyried y rhan hwn o'r gwyn, cymrodd Ofcom i ystyriaeth Ymarfer 7.6 o Gôd Darlledu Ofcom (y Côt) sydd yn datgan 'pan gaiff rhaglen ei golygu, dylai cyfraniadau gael eu cynrychioli'n deg'.

Hefyd cymrodd Ofcom i ystyriaeth Ymarfer 7.9 o'r Côt sydd yn datgan 'cyn darlledu rhaglen ffeithiol. Yn cynnwys rhaglenni sydd yn edrych ar ddigwyddiadau yn y gorffennol. Dylai darlledwyr gymryd gofal rhesymol i fodloni eu hunain nad yw ffeithiau perthnasol wedi cael eu cyflwyno, eu hanwybyddu neu eu gadael allan mewn dull sydd yn annheg i unigolyn neu gorff'.

Gall gwneuthurwyr rhaglenni ddethol, gadael allan neu olygu cyfweiliadau a ddarparwyd ar gyfer eu cynnwys mewn rhaglen cyn belled nad yw yn esgor ar annhegwch i'r bobl neu'r cyrff hynny sy'n cael eu heffeithio yn uniongyrchol gan y rhaglen. Penderfyniad golygyddol i wneuthurwyr y rhaglen i'w wneud yw hyn. Felly nid oedd Ofcom yn poeni am hyd y cyfraniadau a wnaethpwyd ac a gafodd eu cynnwys wedyn yn y rhaglen. Yn hytrach roedd Ofcom yn ceisio penderfynu a oedd gweithrediadau gwneuthurwr y rhaglen yn gyson â'i rwymedigaethau i osgoi triniaeth annheg.

Nododd Ofcom nad oedd y ffilm nas darlledwyd o'r cyfweiliad gyda Mr Bowen ar gael oherwydd nad oedd S4C yn cadw ffilm a recordiwyd trwy ddefnyddio camera digidol llaw. Roedd y ddau barti yn ymddangos fel pe baent yn cytuno mai dim ond darn o gyfweiliad Mr Bowen oedd wedi'i gynnwys yn y darllediad.

Yn absenoldeb ffilm heb ei ddarlledu, nododd Ofcom bod Mr Bowen wedi cwyno bod y rhaglen wedi gadael allan ei bwynt nad oedd tystiolaeth i brofi bod pibell GC yn ddiogel. Ym marn Ofcom cafodd y pwynt hwn ei adlewyrchu yn glir ac yn deg yn ei gyfraniad a ddarlledwyd (a nodir isod) ac felly daeth Ofcom i'r casgliad bod Mr Bowen wedi'i drin yn deg yn hyn o beth.

"Rydych chi'n mynd i fyw gyda bom ar stepen eich drws ac os oes nam ac os yw nwy yn gollwng ac yn adweithio gyda dŵr, pwy a wŷr, efallai y bydd rhywun yn tanio sigarét yn Rhydaman neu ym mhentref Rhydaman ac yna bang a byth popeth wedi diflannu".

Nododd Ofcom hefyd gyd-destun yr adroddiad yn cynnwys y sylwadau rhagarweiniol a daeth i'r casgliad bod y rhain yn delio â phryderon Mr Bowen ac ymgyrchwyr eraill am ddiogelwch, sef

"Ond er gwaethaf y ffaith bod y gwaith yn dirwyn i ben, mae pryder yn parhau am y peryglon [...] yn ôl y protestwyr does dim pris ar ddiogelwch pobl,"

Nododd Ofcom ymhellach bod Mr Scourfield, cyn y cyfweiliad, wedi datgan ei fod wedi dweud wrth Mr Bowen mai dim ond darn o'r cyfweiliad yn crynhoi ei bryderon fyddai'n cael ei ddarlledu o fewn yr adroddiad a bod Mr Bowen yn hapus i gario mlaen ar y sail hon.

Ym marn Ofcom rhoddodd yr adroddiad gynrychiolaeth deg o bryderon Mr Bowen o ran esbonio'i farn yn glir bod adeiladu'r bibell yn codi cwestiynau difrifol am ei diogelwch. Ym marn Ofcom, gan fod ffocws a chynnwys y cyfweiliad yn hollol ganolog ar ddiogelwch ac yn enwedig y peryglon potensial yn gysylltiedig â phibell LNG nid oedd y gwylwyr wedi'u gadael mewn unrhyw amheuaeth mai cymhelliant Mr Bowen oedd ddiogelwch ac nid 'nimbuaeth'. Rhoddodd cyfweiliad Mr Bowen gynrychiolaeth deg o'i bryderon dros ddiogelwch ac o ganlyniad, cafodd Mr Bowen ei bortreadu fel unigolyn rhesymol oedd â sail dda i'w bryderon ac nid oedd yn awgrymu na chyfleu 'nimbuaeth'.

Wrth ystyried y pwyntiau uchod darganfu Ofcom nad oedd golygu gwneuthurwyr y rhaglen o gyfraniad Mr Bowen wedi esgor ar annhegwch

- d) Yn ail, ystyriodd Ofcom gwyn Mr Bowen bod y rhaglen yn annheg wedi gadael allan dystiolaeth a gyflenwyd gan Mr Bowen am y difrod a achoswyd trwy adeiladu'r bibell, .

Wrth ystyried y gwyn hon, cymrodd Ofcom i ystyriaeth Ymarfer 7.6 ynghyd ag Ymarfer 7.9 fel y nodwyd uchod.

Ystyriodd Ofcom a oedd y rhaglen wedi gadael deunydd a gynhyrchwyd gan Mr Bowen allan a esgorodd ar annhegwch iddo. Yn hyn o beth, sylwodd Ofcom mai mater golygyddol yw golygu rhaglen. Ond rhaid i

ddarledwyr sicrhau nad yw'r rhaglen fel y'i darlledir yn esgor ar annhegwch i unigolyn neu gorff.

Nododd Ofcom ei bod yn ymddangos bod y mater o ddifrod a achoswyd trwy adeiladu'r bibell wedi cael ei drin yn rhywle arall yn yr adroddiad gyda'r cyfeiriadau canlynol:

"Mae'r ffos enfawr hon yn rhoi syniad i chi o faint y prosiect".

ac

"Mewn lleoedd fel Trebanos a Pontsenni mae pobl wedi dangos eu gwrthwynebiad a'u hofnau ynglŷn â'r ymarfer o ddefnyddio ffrwydrion i gloddio a gosod y bibell".

Ystyriodd Ofcom hefyd nad oedd unrhyw dystiolaeth i awgrymu bod Mr Bowen wedi cynhyrchu unrhyw ddeunydd penodol ynglŷn â'r difrod a achoswyd trwy adeiladu'r bibell a beth bynnag nid oedd unrhyw rwymedigaeth ar y darlledwr i gynnwys sylwadau na deunydd gan Mr Bowen ar y pwnc hwn.

Gan gymryd y ffactorau hyn i ystyriaeth, roedd Ofcom yn ystyried nad oedd gadael cyfraniad Mr Bowen yn y maes hwn allan wedi esgor ar annhegwch iddo.

Complaint by Professor John Bridle brought on his behalf by Fisher Scoggins LLP

You and Yours, BBC Radio 4, 18 October 2006

Summary: Ofcom has not upheld this complaint of unfair treatment made by Professor John Bridle.

This edition of “*You and Yours*” included a report on Professor John Bridle, who it introduced with the words: “the man behind Asbestos Watchdog who claims to have saved people millions of pounds, but the claims about himself are littered with lies”. The programme stated that Professor Bridle, an asbestos surveyor, portrayed himself as “the world’s foremost authority on asbestos science”. The programme claimed that Professor Bridle’s views on the safety of one type of asbestos were contrary to those held by the British Government, the Health and Safety Executive and the World Health Organisation, among others. The programme also questioned Professor Bridle’s credentials and expertise in testing for the presence of asbestos.

Professor Bridle complained to Ofcom that he was treated unfairly in the programme as broadcast in that he was unfairly portrayed as a liar and charlatan; his expertise and qualifications were questioned along with his business credentials; it alleged, wrongly, that he carried out unauthorised white asbestos “testing” and that he had claimed that asbestos posed no measurable risk to health; and, it failed to include “evidence” provided by him that offset the criticisms made in the programme.

Ofcom found as follows:

Ofcom considered that the programme makers took reasonable care to satisfy themselves that the information presented in the programme relating to Professor Bridle’s expertise, qualifications, business practices and his claims about testing asbestos had not been presented in a way that was unfair to Professor Bridle. Nor had relevant information been omitted or ignored. Professor Bridle had been offered an opportunity to contribute. Ofcom therefore found no unfairness to Professor Bridle in the programme as broadcast.

Accordingly Ofcom has not upheld Professor Bridle’s complaint of unfair treatment.

Introduction

On 18 October 2006, BBC Radio 4 broadcast an edition of the programme *You and Yours* which focused on an asbestos surveyor, Professor John Bridle. The programme was introduced as a piece looking at “*the man behind Asbestos Watchdog who claims to have saved people millions of pounds, but the claims about himself are littered with lies*”. According to the programme, Professor Bridle portrayed himself as being “*the world’s foremost authority on asbestos science*”. The programme claimed that Professor Bridle’s views on the safety of one type of asbestos were contrary to those held by the British Government, the Health and Safety Executive (“the HSE”) and the World Health Organisation, among others.

Professor Bridle did not appear in the programme but was named, and excerpts from his contribution to a previously broadcast television programme were included.

Ofcom received a complaint by Professor Bridle, brought on his behalf by Fisher Scoggins LLP ("Fisher Scoggins"). Professor Bridle complained to Ofcom that he had been treated unfairly in the programme as broadcast.

The Complaint

Professor Bridle's case

In summary, Professor Bridle complained he was treated unfairly in the programme as broadcast in that:

- a) The programme claimed that Professor Bridle portrays himself as "the foremost world authority on asbestos science", which was untrue. The inclusion of the claim gave the impression that he had lied about, and inflated for personal gain, the level of his expertise.
- b) The programme alleged that he personally carried out "testing" of materials suspected to contain asbestos fibres and did so in an unauthorised, unlawful and dangerous manner, which was untrue. Professor Bridle said his explanation had been given to the programme makers before broadcast but was "suppressed and ignored".
- c) The programme alleged that he claimed untruthfully to hold an honorary professorship awarded by the Russian Academy of Sciences ("the RAS"). In fact, he stated that he had been awarded an honorary professorship by the Institute of Occupational Health of the Russian Academy of Medical Sciences ("the RAMS"). These are two distinct institutions and although the former institution had appeared in error on his CV, he had explained the error to the programme makers before the broadcast of the programme. However, that explanation was not given in the programme, therefore creating the impression that he had lied about the relevant award.
- d) The programme gave the impression that his award was a "worthless sham, awarded by a bogus, disreputable or partial institution and by cronies of the complainant". This gave the further impression that he was a charlatan and a liar.
- e) The programme alleged that he claimed on his CV to be a consultant to the European Asbestos Accreditation Centre ("the EAAC") in Lisbon which was untrue. This gave the impression that he had lied, and inflated for personal gain, his connections, experience and status.
- f) The programme failed to mention his connection with the Sociedade de Informacao do Amianto Lda ("the SIA") of Lisbon and the favourable reports from it concerning him. The programme makers chose, "without good reason, to overlook, ignore and fail to broadcast information and evidence" that offset criticism of him, giving further support to the general theme that he had lied about his standing, experience and connections.
- g) The programme alleged that he claimed that asbestos posed no measurable risk to health and supported "writing which advocates that white asbestos is harmless". This was untrue. It was complained that the programme failed to make clear that Professor Bridle's view on the measurability of health risks related only to white asbestos bonded to manufactured products. This was unfair because it portrayed Professor Bridle as someone who, in the face of "established science", believed that asbestos in all its forms posed no risk to health.

- h) The programme challenged his claim that he acted as a consultant to the Vale of Glamorgan Trading Standards Department. Professor Bridle said had acted for the department in the past and that for the programme to state that he had never carried out any work for them gave the unfair impression that he was a liar.

The BBC's case

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

- a) In relation to the first complaint the BBC said the programme had actually stated that Professor Bridle portrayed himself as "*the foremost authority on asbestos science in the world*". The BBC stated that this was based on verbatim claims made in copies of Professor Bridle's personal CV and in profiles of him found on the Asbestos Watchdog (Professor Bridle's company) website throughout 2006. The BBC's statement also went on to say that the Asbestos Watchdog website on numerous occasions continued to refer to Professor Bridle as "the foremost authority on asbestos science in the world". The BBC said that on the day prior to the broadcast of the programme, the wording remained on the website with a slight amendment to "the foremost authority on asbestos matters in the world", changing the word "science" to "matters". The BBC provided screen grabs of the website taken from December 2005 to October 2006 to support its submission. The BBC said that given the website had clearly been updated regularly it was not possible to argue that the site had been left dormant or had been inadvertently left to get out of date.

The BBC said that the reporter also spoke to Professor Bridle about this claim on the Asbestos Watchdog website, prior to broadcast of the programme. The BBC provided transcribed extracts of this conversation, of 7 September 2006. According to the transcript, when the programme maker queried with Professor Bridle, what was on the website, he responded:

"I wasn't aware of that. That's very interesting. I'll have to correct that. That's certainly not anything I've put out".

As referred to above, the BBC stated that Professor Bridle did not correct the claim, and it was still on the Asbestos Watchdog website up to the day the programme was broadcast. The BBC said Professor Bridle was the sole Director of Asbestos Watchdog at the time.

- b) In relation to the complaint concerning Professor Bridle personally carrying out "testing" of materials suspected to contain asbestos fibres in an unauthorised, unlawful and dangerous manner, the BBC stated that Section 21 of the Control of Asbestos at Work Regulations 2002 (CAW) (which was in force at the time that the programme was made) states that it is a mandatory requirement that anyone using a laboratory to analyse material that was suspected to contain asbestos had to be accredited to ISO 17025 (that is, an International Organisation of Standardisation accreditation). The BBC stated that if a sole trader or surveyor did not possess ISO 17025 then he or she had to send the samples to a laboratory that had ISO 17025 accreditation. The BBC stated that Professor Bridle claimed in his asbestos surveys that he used:

"a combination of MDHS100 (Method of Determining Hazardous Substances) methodology and our own in-house adaption...In addition we carry out our

own ACPA (Asbestos Cement Product Producers Association) on site testing methods for the presence of asbestos”.

The BBC said that this statement confirmed that Professor Bridle’s tests were not to the required standard of ISO 17025. The BBC also stated that Professor Bridle regularly told his customers that “a sample was taken and tested”. The BBC referred directly in their statement to a specific report Professor Bridle wrote for Bellway Homes in September 2004. The BBC said that in the report Professor Bridle made it clear that his sample taking and testing process were entirely separate, despite the fact that Professor Bridle was not qualified to test to ISO 17025 standard. The BBC concluded by saying that Professor Bridle, during his discussions with the reporter, made clear the circumstances in which he decided to send samples for laboratory analysis, and that was in the case of dust samples, which were sent to Cardiff Mineralogical Air Pollution Laboratory. The BBC noted that on another occasion Professor Bridle stated in correspondence with the reporter that he sent his dust samples to the University of Cardiff. Finally, the BBC stated that at no time did the programme accuse Professor Bridle of acting in a dangerous way as claimed by his solicitor.

- c) In relation to the complaint regarding the BBC alleging that Professor Bridle claimed untruthfully to hold an honorary professorship awarded by the Russian Academy of Sciences (“the RAS”), the BBC stated that Professor Bridle’s claim that he was awarded this professorship from the RAS appeared consistently on his CV on the Asbestos Watchdog website between April 2006 and October 2006. The BBC said that this information was repeated in his biographical details on another section of the website. The BBC said the claim was also included in a career resume submitted by Professor Bridle in 2006 to Pontypridd County Court where he was an expert witness in a civil case, and repeated again in May 2006 in biographical details supplied to a television programme in which Professor Bridle appeared. The BBC said that during this programme Professor Bridle had stated that “I have an honorary professorship from the Russian Academy of Science”. The BBC provided Ofcom with an unedited copy of the programme recording, which was entitled “*Gloves Off*”.

The BBC said that the programme maker had raised the professorship with Professor Bridle by phone prior to broadcast. It said that despite being given frequent opportunity to correct the error, Professor Bridle repeatedly insisted that his award was from the RAS. The BBC provided a transcribed extract of the phone conversation between Professor Bridle and the programme maker of 7 September 2006 in support of its submission.

The BBC said that two days prior to the broadcast of the programme Professor Bridle admitted that his honorary professorship came from the Russian Academy of Medical Sciences (“RAMS”) but insisted that the organisation was “affiliated to the Russian Academy of Sciences”. The BBC said its staff in Moscow contacted the RAS to find out if this was true and the RAS confirmed that it has no links with the RAMS.

- d) In relation to Professor Bridle’s complaint that the programme gave the impression that his honorary professorship was a “worthless sham”, the BBC stated that it gave a straightforward explanation of the professorship awarded to Professor Bridle by the RAMS, and that it made no value judgement about the reputation of the RAMS. The BBC said the programme had stated:

“Professor Bridle does have a certificate for an honorary professorship, signed and given to him by Nikolai Izmerov, the Director of the Institute of Occupational Health at the Russian Academy of Medical Sciences which Professor Bridle claims is affiliated with the prestigious Russian Academy of Sciences (RAS), a claim the RAS denies”

The BBC stated that the only judgement of RAMS made as part of the programme was in connection to its relationship - or lack of it - with the RAS, and that it had made clear that the RAS denied all professional connections with RAMS. The BBC concluded that the programme did not state that Professor Bridle's award from RAMS was any less valid despite the RAS's denial of any links with the RAMS.

- e) In relation to Professor Bridle's complaint that the programme alleged he had claimed on his CV to be a consultant to the EAAC in Lisbon which was untrue, the BBC stated that Professor Bridle's CV included a section with the heading "consultancy details". This recorded Professor Bridle as "Chief scientific asbestos consultant for the European Asbestos Accreditation Centre in Lisbon Portugal (EAAC)". The BBC went on to say that an asbestos survey carried out by Professor Bridle for Bellway Homes (which was signed by Professor Bridle and dated September 2004) listed Professor Bridle, saying: "John Bridle, the senior surveyor, is Chief scientific asbestos consultant for: The European Asbestos Accreditation Centre in Lisbon Portugal (EAAC)". The BBC said that after numerous searches on the internet it could find no trace of the EAAC, which raised questions about its authenticity.
- f) In relation to Professor Bridle's complaint that the programme failed to mention his positive attachment to/work for the SIA, despite Professor Bridle having fully briefed the reporter on this point, the BBC responded by saying that this allegation was untrue. The BBC stated that the programme made lengthy and specific reference to the SIA and Professor Bridle's links to the organisation. The BBC gave numerous examples of quotes included in the programme as broadcast which referred to Professor Bridle's connection with the SIA and made it clear that the SIA authorised and approved his work. The BBC added that although Professor Bridle believes the programme makers' decision not to interview a representative from the SIA was unfair to him, they were satisfied that the programme maker displayed sound editorial judgement in choosing to interview representatives of the Shadow Cabinet and the Health and Safety Executive, rather than the SIA, an organisation which was unknown to the accreditation authorities.
- g) In relation to Professor Bridle's complaint that the programme failed to make clear that his view on the measurability of health risks related only to white asbestos bonded to manufactured products, the BBC stated that the programme made it "abundantly clear" that the whole programme was about white asbestos. The BBC said that in the reporter's second sentence in the programme she referred to "His [Professor Bridle's] opinion on **one** type of asbestos is contrary to the Government, the European Union, the World Health Organisation and the World Trade Organisation". The BBC also quoted from a clip of an interview with Professor Bridle from *Gloves Off*, a television programme broadcast on Channel M (a Manchester based satellite/cable service) on 5 May 2006 (a copy of the unedited footage of the programme was provided to Ofcom) that came less than a minute into the item during which he referred twice to white asbestos, making it clear that he thought white asbestos posed no measurable risk to health, without qualifying the form in which white asbestos appeared.

The BBC also added that the *You and Yours* programme made it very clear that there was a huge difference between white asbestos and the more harmful blue and brown versions, and that at no time did the programme state that Professor Bridle has ever said that white asbestos was “harmless”, but merely repeated his view that it “poses no measurable risk to health”. Finally, the BBC went on to reiterate that although Professor Bridle has alleged that the programme failed to qualify that his views on measurability of health risks related only to white asbestos bonded to manufactured products, Professor Bridle consistently appeared to fail to make this distinction himself when discussing white asbestos. The BBC gave details of numerous quotes from Professor Bridle (about white asbestos) complete with dates to support this statement, one of which (dated January 2002) stated that white asbestos was “a product that poses no risk to human health and is chemically identical to talcum powder”.

- h) In relation to Professor Bridle’s complaint that the programme questioned whether he had acted as a consultant to the Vale of Glamorgan Trading Standards Department, the BBC cited that the Vale of Glamorgan County Council’s Building Control Department asked Professor Bridle to inspect a property in November 2000, regarding a possible grant for removal of any asbestos present. The BBC said that at that time the Trading Standards Department shared an office with the Building Control Department at Vale of Glamorgan, but stated that the Trading Standards team insisted that at no time did it have any dealings with Professor Bridle. The BBC added that in the programme the principle officer at Vale of Glamorgan Trading Standards, Mr Simon Wilkinson, confirmed that “*Vale of Glamorgan Trading Standards has no professional relationship with Professor Bridle in any capacity and certainly not as an asbestos consultant*”.

Professor Bridle’s response to the BBC’s first statement

In summary, Professor Bridle’s solicitors responded as follows:

- a) In relation to the complaint that the programme falsely stated that Professor Bridle portrayed himself as “*the foremost authority on asbestos science in the world*”, the complainant stated that at no time did Professor Bridle claim to have held any relevant degree in science or to be a formally qualified scientist, chemist or surveyor. It stated however, that Professor Bridle was a regular presenter, by invitation, of papers on asbestos at conferences around the world.

The complainant said that the BBC’s statement relied in large part on the contents of the Asbestos Watchdog website, from time to time and on amendments made (or not made) to it. It said that the BBC’s response hinged on a single assumption that because Professor Bridle was the sole registered statutory Director of Asbestos Watchdog (which the complainant admitted) it was within his power to dictate the content of the Asbestos Watchdog website and to insist on timely amendments to that website once inaccuracies in it came to his notice. The complainant said that at no time was this assumption put to the complainant prior to broadcast. It said that if it had been, Professor Bridle would have explained that he does not edit the website, or have any direct hand in its content or amendments. Such actions are in the hands of others who are not within his direction or control.

The complainant said that the untested assumption made by the BBC was illustrated by the several instances of the programme maker visiting the website after pointing out to Professor Bridle that inaccuracies appeared on it about him and hearing his surprise and concern that they were there: only to find that no correction had been made.

The complainant said that Professor Bridle had raised promptly with those in control of the website, the inaccuracies which had been highlighted to him by the programme maker. However, he was in no position to ensure that the relevant material was removed or amended within any particular timeframe.

- b) The complainant stated that the BBC “made much” of the word “test” when referring to the fact that Professor Bridle was not qualified under Regulation 21 of the CAW to test asbestos substances under ISO 17025. The complainant stated that Regulation 20 of the CAW did not use the word “test” (which Professor Bridle used in his reports) but referred to “analysis” of material, which they said Professor Bridle had never claimed to have undertaken. The complainant also added that Professor Bridle was clear that he identified asbestos by means of visual testing, and not by “analysing” samples of any given substance. They went on to say that the programme “ridiculed” Professor Bridle’s method of identifying asbestos and labelled his methods as “dangerous”, which was unsupported and unfair.
- c) & d)
The complainant said that the treatment of RAMS in the programme by the programme’s presenter, and her comparison between RAMS and RAS was blatantly intended to paint RAMS as an inferior organisation to the “prestigious” RAS. The complainant rejected the BBC’s assertion that the programme merely compared the respective prestige of the two institutions. The complainant maintained that the programme deliberately painted the RAMS as an “institution without integrity”, which awarded Professor Bridle’s honorary professorship because he opposed the “anti-asbestos lobby”.
- e) The complainant stated that the EAAC was the name that Professor Bridle was advised would be given to what is now the SIA, and that if the reporter had contacted the SIA about this matter they would have been in a position to explain this to her. The complainant stated that the reporter’s failure to investigate this matter thoroughly resulted in an unfair representation of Professor Bridle in the programme.
- f) The complainant said that although it accepted that the SIA was mentioned as part of the programme, it maintained that the organisation had been portrayed in a negative light, and was unfairly represented as an organisation of dubious standing. The complainant added that the reporter had made contact with the SIA’s Director who had provided her with complimentary information about Professor Bridle and his work, yet the reporter chose not to include any of this in the programme or allow the Director to talk directly as part of the programme, as this information did not suit the negative light in which the reporter had chosen to show Professor Bridle. Finally, the complainant referred specifically to the programme’s use of a “certificate” identifying the asbestos fibres which Professor Bridle had completed, and which had been authorised by the SIA. It said the programme had suggested that this certificate was deliberately made to look like a formal laboratory report, thus emphasising the programme’s portrayal of Professor Bridle as a fraud.

- g) The complainant stated that in its view the BBC blatantly failed to mention Professor Bridle's views on white asbestos in context, i.e. that his view of white asbestos being harmless related only to white asbestos bonded to manufactured products. The complainant said that Professor Bridle had made it clear in an email of 16 October 2006, to the reporter, that his views on white asbestos being harmless related solely to bonded manufactured products. It referred to Professor Bridle stating in the email that: "You attribute to me the view that white asbestos (chrysotile) is harmless. What I have said, in simple terms for you to understand, is that hard encapsulated white asbestos products pose 'no measurable risk to health'". The complainant said that this was not included in the programme as broadcast, which completely misrepresented Professor Bridle's view on the dangers of white asbestos and portrayed him as being at odds with the "asserted body of scientific opinion", which was unfair to Professor Bridle.

The complainant also cited that the programme makers included a short extract of a television interview with Professor Bridle which included him making numerous points about white asbestos without qualifying that his views only related to asbestos in bonded manufactured products, and that this video had been edited at some length specifically to remove Professor Bridle's comments which qualified his views on white asbestos and its potential risks. The complainant claimed that not only was this unfair to Professor Bridle but it was a blatant attempt by the broadcaster to discredit him and portray him as at odds with the majority of scientific opinion on this point.

- h) The complainant stated that they were pleased to note that the BBC now acknowledged that Professor Bridle had undertaken consultancy work for Vale of Glamorgan, but said that it had been for its Building Control Department rather than its Trading Standards Department. The complainant said the programme as broadcast gave the impression that Professor Bridle had never undertaken work for Vale of Glamorgan although this was blatantly untrue, and that Professor Bridle's invoice for the work he undertook was indeed sent to Vale of Glamorgan's Trading Standards Department, and that invoice was subsequently paid. The complainant said the claims made in the programme that Professor Bridle had never worked for Vale of Glamorgan at all, were not just misleading but were factually incorrect and led the viewer to believe that Professor Bridle was a liar when this was not the case. The complainant claimed that if the *Yours and Yours* reporter had taken the time to meet Professor Bridle and review his evidence on this point it would have enabled the programme to represent fairly the facts of the case.

The BBC's second statement

In summary, the BBC responded as follows:

- a) In response to Fisher Scoggin's statement that the programme maker had proceeded on the basis of an untested assumption, the BBC said it was certainly the programme maker's initial assumption – as it would be anyone's – that Asbestos Watchdog had some control over its own website. The BBC said that this assumption had been fortified by the programme maker's conversations with Professor Bridle. The BBC said that the programme maker had pointed out the errors on the website to Professor Bridle and he had responded that he would correct them. It said that if Professor Bridle had no means of ensuring that errors on the website were corrected, then that is what he should have told the programme maker. The BBC said that if it was the case the complainant's

statements about the set up of Asbestos Watchdog were true, the programme maker could hardly have been blamed for proceeding on an understanding which Professor Bridle could have corrected on a number of occasions, but instead seemed to confirm.

- b) The BBC maintained that Professor Bridle's signed asbestos surveys (copies of which Professor Bridle himself presented to the BBC) clearly suggested that he was "carrying out more than simple visual inspection of material suspected of containing asbestos...his signed asbestos surveys, which were given to clients, clearly state that samples were "taken and tested"". The BBC reiterated their comments made in their earlier submission that Professor Bridle wanted to give the impression that his samples were sent away for scientific testing in order to further endorse his professional image. Finally, the BBC stated that the use of the word "test" or "analysis" in the CAW regulations was irrelevant, in that the HSE confirmed that a "test" and an "analysis" are regarded as one and the same thing.
- c) & d)
The BBC had nothing further to add to its earlier submission on these points except to say that the programme did not portray the RAMS as an "institution without integrity" (as suggested by the complainant).
- e) The BBC stated that the complainant had provided no evidence to support his claim that the title "EAAC" was the name initially considered by the organisation that was later established as the SIA. The BBC went on to say that even if this were true "it remains the case that the documents he provided to clients include the claim that he was chief expert consultant to an organisation which has never existed under that name", which in the BBC's view did not demonstrate scruple in the way Professor Bridle represented his credentials.
- f) The BBC said that the programme had established that the SIA was not recognised by any asbestos industry accrediting body, and that Professor Bridle had not provided any evidence to show that the SIA has any standing within the industry other than as the programme stated it "*has authorised and approved J&S Bridle Associates to identify ACM's (Asbestos Containing Material)*". The BBC stated that in their view Professor Bridle included the SIA form in his signed asbestos surveys "to give the impression that his [Professor Bridle's] work had been independently verified".
- g) The BBC maintained that Professor Bridle had not qualified his view regarding the "measurability of risk" for white asbestos as being from bonded asbestos products only. The BBC reiterated that in *Gloves Off*, a programme broadcast in May 2006, Professor Bridle made a number of categorical statements about white asbestos without once referring to bonded asbestos products. Finally, the BBC refuted Professor Bridle's claim that the programme *Gloves Off* had been unfairly edited stating that it had not been edited at all and had fairly represented Professor Bridle's views on white asbestos.
- h) In response to the complainant's claim that the BBC only obtained evidence of the work Professor Bridle carried out for Vale of Glamorgan County Council once he had complained about the programme, the BBC stated that the reporter had researched this point in some detail prior to the programme being broadcast and that she was well aware of the invoice Professor Bridle had submitted and subsequently received payment for. The BBC reiterated that the programme did not say that Professor Bridle had never carried out work for Vale of Glamorgan County Council, but merely pointed out that he had was not a "consultant" for

Vale of Glamorgan Trading Standards Department and had never undertaken any work for that Department. Finally, the BBC said that Professor Bridle claimed the reporter failed to view his evidence on this point as she cancelled a meeting with him, when in fact their records show that Professor Bridle agreed in a telephone conversation dated 12 October 2006 to send all of his evidence to her (the reporter) by post, but it was never received.

Professor Bridle's response to the BBC's second statement

- a) The complainant submitted a signed witness statement from the office manager of Asbestos Watchdog, dated 15 May 2007, in response to the claim that the company was run by Professor Bridle. The statement confirmed that Professor Bridle was the sole Director of the company at the time the programme was broadcast. It stated that he had no control over the content of the company's website which included his CV and listed his qualifications. It included the following:

"Specifically in regard to the company's website, I confirm that the content of this, its design, and any changes to it, were at the time of broadcast of [the programme] within the control of and owned by the main benefactor. It was not within my power or that of Professor Bridle to authorise changes to the site, and all I could do was to give feedback on content and suggest changes. As and when Professor Bridle wanted any change made to it, I had to contact the benefactor, explain what was suggested to be altered and why, and ask him to arrange an amendment. This was by no means a quick process, and changes habitually took some weeks to appear. Neither I nor Professor Bridle could do anything to speed up that process."

The statement also cited that the company had never been run from Professor Bridle's home address, although this address did appear on Companies House records as being his residence, nor had the website been managed from that address.

The BBC's third statement

- a) The BBC responded to the unsolicited material submitted by the complainant in relation to the Asbestos Watchdog's argument that the company was not run by Professor Bridle. In summary the BBC said that:
- Professor Bridle was the sole Director of Asbestos Watchdog between December 2004 and November 2006, and Professor Bridle only resigned as Director on 16 November 2006, after the programme was broadcast. The BBC said that documents from the period 2004 and 2006 showed that the contact details for Asbestos Watchdog were the same as Professor Bridle's home address and phone number.
 - Asbestos Watchdog is listed in a number of online marketing and trade directories where Professor Bridle's home address and phone number are given as the only contact details for the company. The BBC specifically referred to a trade directory called Contract Shop, which was run and funded by the Welsh Assembly, and allowed Welsh business services only (trading in Wales) to appear in their listings. The BBC said that if the statement submitted by the complainant was to be believed, Asbestos Watchdog had

misled Contract Shop, as the company was run in London as opposed to Wales.

- In 2006, Asbestos Watchdog offered a “sampling service” for people who thought they may have asbestos in their homes. The BBC said that the company’s website invited people to “print out the Sample Form [from the website] and send it, with your sample and donation of £20, to the address below”, the address being Professor Bridle’s home address.
- Professor Bridle’s other company, J&S Bridle Associates, was run from his home and there was never any previous indication that Asbestos Watchdog was any different.
- The BBC noted that the office manager’s statement said that Asbestos Watchdog’s business address was in London, and that this office is “*the company’s only office*”. However, the BBC said that despite this apparent claim that the business had never traded from any other address, Asbestos Watchdog only moved to this address in 2007, and that on 31 January 2007 a member of the *You and Yours* team visited that office and was told that Asbestos Watchdog had only just moved in. On this basis, the BBC cast doubt on the claim that the business was never run from Professor Bridle’s home address, and continued to support their inference in the programme as broadcast that Asbestos Watchdog was run from Professor Bridle’s home address for some time.

Decision

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

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

Ofcom’s Executive Fairness Group considered Professor Bridle’s original complaint and found that the complaint should not be upheld. The complainant requested a review of their Provisional Decision. The Fairness Committee, Ofcom’s most senior decision making body, reviewed part of the complaint described at Heads (a) and (c) below.

In reaching a decision Ofcom considered a recording and transcript of the programme, a recording of the programme “*Gloves Off*”⁴ and the submissions of both parties, including supporting material.

Ofcom considered the individual complaints made by Professor Bridle (Heads (a) to (h) above) in light of Rule 7.1 of the Code which states:

⁴ “*Gloves Off*” is broadcast by local Manchester Service Channel M. The relevant programme was broadcast in May 2006

“Broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes.”

Ofcom also took account of Practice 7.9 of the Code which states that:

“Before broadcasting a factual programme, including programmes examining past events, broadcasters should have taken reasonable care to satisfy themselves that: material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation; and, anyone whose omission could be unfair to an individual or organisation has been offered an opportunity to contribute.”

Ofcom found as follows:

- a) Ofcom first considered Professor Bridle’s complaint that it was unfair of the programme to state that he portrays himself as “*the foremost authority on asbestos science in the world*”, as he made no claim to such a title and it led listeners to believe that he was a liar and that he “inflated for personal gain his level of expertise”.

In considering this complaint Ofcom considered whether the BBC took reasonable care before broadcasting the statement about Professor Bridle, to satisfy itself that material facts relating to it had not been presented, disregarded or omitted in a way that was unfair to the complainant, and whether Professor Bridle had been offered an opportunity to contribute (as set out in Practice 7.9 above).

Ofcom noted that the programme as broadcast had stated:

“John Bridle has made himself an influential voice on the subject of asbestos safety. He’s affected the decisions of major builders and the discussions of parliament; he portrays himself as the foremost authority on asbestos science in the world; and is a man who can save the nation millions of pounds.”

Ofcom noted that the BBC said the statement made in the programme had been based on information found on the Asbestos Watchdog website. Screen grabs of the website, from various dates, showed that the website had claimed of Professor Bridle:

“His new professorship makes him the foremost authority on asbestos science in the world”

And

“His new professorship makes him the foremost authority of asbestos matters in the world”.

In its view, the information on the website was the official way in which Asbestos Watchdog actively promoted Professor Bridle to the public.

Ofcom noted that prior to broadcast the programme maker had spoken to Professor Bridle about the claims found on the Asbestos Watchdog website, and one conversation, on 7 September 2006, had included the following exchange:

- Programme maker: "...Well your current website says precisely that."
[i.e. that Professor Bridle was the world's leading authority on asbestos]
- Professor Bridle: "My what?"
- Programme maker: "Your CV."
- Professor Bridle: "Says I'm the world leading authority?"
- Programme maker: "Hang on, hang on, let me get to it. Er, yes, it says precisely that."
- Professor Bridle: "What does it say?"
- Programme maker: "The foremost authority on asbestos science in the world."
- Professor Bridle: "I wasn't aware of that. That's very interesting. I'll have to correct that. That's certainly not anything I've put out."

Ofcom noted from the above, that prior to broadcast Professor Bridle had expressed to the programme maker that he had no knowledge of the claim on the website and that he would "have to correct it". Ofcom noted that after this conversation the website claim remained on the site until the day before broadcast of the programme (save for the replacement of the word "science" to "matters", which in Ofcom's view was not significant).

In Ofcom's opinion, the programme maker and the BBC took reasonable care, by relying on a credible source of information (the official website of Asbestos Watchdog, a company of which Professor Bridle was the sole Director) and also seeking Professor Bridle's response to this website's claim, to satisfy themselves that material facts relating to the claim that Professor Bridle portrays himself as "*the foremost authority of Asbestos Science in the world*", had not been presented, disregarded or omitted unfairly in a way that was unfair to Professor Bridle. In Ofcom's view, it was not incumbent on the programme makers, having already approached Professor Bridle about the claim, to approach him again in relation to why the website continued to promote him in this way after he had been made aware of it by the programme maker and when Professor Bridle had informed the programme maker that he would correct the website.

Ofcom had regard to the statements provided on behalf of Professor Bridle, and by the Asbestos Watchdog's office manager, that Professor Bridle had no control of the Asbestos Watchdog's website; could not authorise changes to it; and could do nothing to speed up the process involved in requesting changes to the website. It also noted that according to the complainant's submission, Professor Bridle had attempted to have the errors corrected on the website (though in this respect Ofcom was not provided with evidence of any such attempts).

In Ofcom's view, even if it were the case that Professor Bridle had no authority to affect the content of the website or the speed with which his requested changes were made (which Ofcom considered to be highly unlikely given Professor Bridle's position within the company), it remained the case that he decided to be associated with Asbestos Watchdog on terms that would allow his credentials to

be used, apparently without his control, for its promotional purposes. Moreover, he had continued to play a significant role in the company after he was made aware of the claims on the Asbestos Watchdog website and up until the time of broadcast.

In the circumstances, Ofcom found that in broadcasting the statement that Professor Bridle *“portrays himself as the foremost authority on asbestos science in the world”*, the programme maker and the BBC took reasonable steps to ensure that material facts were not presented in an unfair way. They had sought the contribution of Professor Bridle. Ofcom found that the statement did not result in unfairness to Professor Bridle as it was how he had been promoted on the Asbestos Watchdog’s official website (put out by a company that Professor Bridle had accepted a significant role within) prior to broadcast, despite Professor Bridle being made aware of the claim.

Accordingly, Ofcom found no unfairness to Professor Bridle in this respect.

- b) Ofcom considered the complaint that the programme alleged that Professor Bridle carried out testing of materials suspected to contain asbestos fibres and did so in an unauthorised, unlawful and dangerous manner. Professor Bridle added that the explanations he had given to the broadcaster on this point were “suppressed and ignored”.

Ofcom took account of Practice 7.9 of the Code (as set out above).

Ofcom noted that the programme in particular stated:

“Professor Bridle and J&S Bridle Associates are not accredited by UKAS (the United Kingdom Accreditation Service) to be either asbestos surveyors, or asbestos analysts”

Ofcom noted from the evidence made available to it that it was a mandatory requirement that anyone using a laboratory to analyse material that was suspected to contain asbestos had to have been accredited or that they had to send their samples to a laboratory that had the required ISO 17025 accreditation.

Ofcom noted a paragraph contained in a “briefing” prepared by J&S Bridle Associates Limited for Persimmon Homes and submitted in the evidence, which stated that Professor Bridle and a Mr Christopher Bridle had carried out the asbestos survey using “a combination of MDHS100 (Method of Testing Hazardous Substances) methodology and our own in house adaptations” which were primarily the “photographic identification of products and on-site testing to confirm the product type”. Ofcom also noted that a Certificate of Identification for Bellway Homes signed by Professor Bridle was included in the material made available to Ofcom. The certificate appeared to refer to samples being taken and tested and to a conclusion reached on whether asbestos fibres were present or not.

Ofcom also noted from the complainant’s submissions that Professor Bridle had: “never himself carried out scientific or chemical analysis on samples of material suspected to contain asbestos” and that “his method is to use visual inspection involving no destruction or disturbance of fibres: a point he made clear to the BBC in advance of broadcast of the programme and in writing”.

Ofcom noted that the complainant had maintained that the BBC lifted the word “test” from Professor Bridle’s reports and raised it to the status of “analysis”, which in his view was unfair as the listener was not informed that the law requires accreditation only for “analysis”.

In Ofcom’s view, the programme makers were entitled to rely on information taken from Professor Bridle’s own documents regarding his testing methods. Ofcom accepted that Professor Bridle’s documents did not make clear whether he sent samples to an accredited laboratory or conducted the testing which required ISO17025 accreditation himself. However Ofcom was satisfied from the material submitted to it that Professor Bridle’s references to “testing methods” could reasonably be taken to refer to an analysis of samples rather than to a visual inspection. It therefore appeared to Ofcom, on the basis of this information, that it was reasonable for the programme to allege that he undertook “testing” without the necessary accreditation.

Ofcom considered that the programme makers took reasonable steps to ensure that the factual information and the evidence it had gathered had not been presented unfairly in the programme as broadcast. Ofcom therefore found no unfairness to Professor Bridle in this respect.

- c) Ofcom next considered the complaint that the programme had claimed that Professor Bridle had lied about holding an honorary professorship from the RAS (the Russian Academy of Sciences) rather than the RAMS (the Russian Academy of Medical Sciences).

Ofcom took account of Practice 7.9 of the Code (as set out above).

In relation to this complaint, Ofcom noted that the programme as broadcast had included the following:

Commentary: *“...the achievements illustrated on Mr Bridle’s CV have blossomed. He claims he has been granted a substantial honour from a very august organisation.”*

Actor’s voice: *“John has recently been awarded a prestigious honorary degree in Asbestos Sciences from the Russian Academy of Sciences, the world’s leading authority on asbestos related disease. His new professorship makes him the foremost authority on asbestos science in the world”.*

Ofcom noted that Professor Bridle had himself made the following claim about receiving an honorary professorship, during the recording of the programme “Gloves Off”. During this programme he had claimed:

John Bridle: *“I’ve been awarded an honorary professorship by the Russian Academy of Science”.*

Ofcom also noted from the information provided, that Professor Bridle’s CV which was available on the Asbestos Watchdog website claimed that he had been awarded an honorary professorship from the RAS. The statement read out by the actor in the programme as broadcast was a verbatim extract taken from the website CV on 30 August 2006.

Ofcom noted that the programme maker had raised the topic of the honorary professorship from the RAS with Professor Bridle prior to broadcast of the programme. During a phone conversation on 7 September 2006, the following exchange took place:

Programme maker: “And you are absolutely sure to the best of your knowledge that the Russian Academy of Sciences had given you a degree and a professorship?”

Professor Bridle: “I have, I have an honorary degree. Yes, I have...”

Programme maker: “An honorary degree, yeah?”

Professor Bridle: “An honourable degree is actually what is written and it’s a beautiful certificate. It’s in English and in Russian.”

Programme maker: “In the Russian Academy of Sciences.”

Professor Bridle: “A Russian Academy of Sciences in Moscow. I’ve been there several times.”

Ofcom noted that Professor Bridle had referred to “**A** Russian Academy of Sciences”, [Ofcom emphasis] but it also noted that he did not clarify that it had been the Russian Academy of Medical Sciences that had given him the award and not the RAS. Professor Bridle later wrote in an email to the programme maker on 16 October 2006, that:

“None of your claims is more surprising than the allegation that I do not have an Honorary Professorship from the Russian Academy of Medical Sciences, affiliated to the Russian Academy of Sciences...”

Ofcom noted that while Professor Bridle, in this email, had identified that it was the RAMS who had given him the honorary professorship, he maintained that this organisation was affiliated with the RAS. Ofcom noted that the BBC had said that its correspondents in Moscow had contacted the RAS. The RAS had confirmed that it had no affiliation with the RAMS.

Lastly, Ofcom noted that after the programme maker’s phone conversation and email from Professor Bridle (above), the Asbestos Watchdog website continued to claim that Professor Bridle had received a honorary degree from the RAS, on 17 October 2006 (the day before broadcast of the programme).

Taking into account all of the information above, and Professor Bridle’s own claims to have received an honorary award from the RAS or an organisation affiliated with the RAS, Ofcom took the view that the programme was entitled to reflect the public claims by the complainant that he had been given an honorary professorship by the RAS, and his later statement to the programme maker that the RAMS (who had awarded him the honorary professorship) was affiliated with the RAS.

In the circumstances, Ofcom found no unfairness to Professor Bridle in this respect.

- d) Ofcom considered the complaint that the programme as broadcast portrayed Professor Bridle's honorary professorship from the RAMS as a "worthless sham" and that this was unfair to him.

Ofcom took account of Practice 7.9 of the Code (as set out above).

Ofcom noted the full commentary from the programme:

"Professor Bridle does have a certificate for an honorary professorship, signed and given to him by Nikolai Izmerov, the Director of the Institute of Occupational Health at the Russian Academy of Medical Sciences"

Having listened to the full programme, Ofcom was satisfied that it gave a straightforward explanation of Professor Bridle's award stating that it was not awarded by the RAS but by the RAMS. This was not disputed by Professor Bridle.

In Ofcom's view, the programme did not portray the RAMS in a negative light, it merely clarified the nature of both organisations and from which organisation Professor Bridle had received his award. Therefore, in Ofcom's view, the programme makers did not misrepresent or omit any facts that would have resulted in unfairness to Professor Bridle.

On this basis, Ofcom took the view that the programme maker was entitled to reflect these facts in the programme as broadcast and that Professor Bridle's honorary professorship was not portrayed as a "worthless sham". Ofcom concluded that the programme's commentary did not result in unfairness to Professor Bridle.

- e) Ofcom considered the complaint that the programme had alleged that Professor Bridle's CV stated he was a consultant to the EAAC which was untrue, and that this had given the impression that he had lied, which resulted in unfairness to him.

Ofcom took account of Practice 7.9 of the Code (as set out above).

Ofcom noted that Professor Bridle's CV (which was available on the Asbestos Watchdog website from August 2006) stated that he was the "*Chief scientific asbestos consultant for the European Asbestos Accreditation Centre in Lisbon, Portugal (EAAC)*". Also, Ofcom noted from part of the asbestos survey carried out by Professor Bridle for Bellway Homes in 2004, that Professor Bridle had stated that he was "*Chief scientific asbestos consultant for: The European Asbestos Accreditation Centre in Lisbon, Portugal (EAAC)*".

On this basis, Ofcom took the view that the programme makers had taken reasonable steps to ensure that the above description in relation to Professor Bridle's connection with the EAAC was not presented unfairly in the programme as broadcast; indeed, it had come from Professor Bridle's own CV and survey documentation. Ofcom therefore found no unfairness to Professor Bridle in this respect.

- f) Ofcom considered the complaint that the programme failed to mention Professor Bridle's "positive" connection with the Sociedade de Informacao do

Amianto Lda (“the SIA”) despite Professor Bridle having given the programme makers full details of his links with it.

Having listened to the full programme, Ofcom noted that it made numerous references to Professor Bridle’s connection with the SIA including the following reference:

“Accompanying Professor Bridle’s reports is a “certificate of identification”. It comes from a Portuguese company called SIA....SIA has authorised and approved J&S Bridle Associates to identify asbestos containing materials”.

It is clear to Ofcom from this statement made in the programme and from the Certificate of Identification itself submitted as evidence by the BBC that the SIA endorsed and supported Professor Bridle’s work. The programme said that:

“the SIA website says that it was formed recently to clarify and inform the public on questions relating to asbestos. It lists Asbestos Watchdog as one of its partners”. Ofcom also noted that the programme said that “UKAS (United Kingdom Accreditation Service) tells us SIA is not known to them, the Portuguese Accreditation Authorities, or any European umbrella organisation – but it is the body whose stamp Mr Bridle uses on his reports”.

Based on the information provided to the programme makers by a credible source, namely UKAS, Ofcom considered that the comments in the programme did not cast Professor Bridle’s association with the SIA in an unfairly negative light. Ofcom was satisfied that on that basis the programme makers did not omit or fail to present any material facts which resulted in unfairness to Professor Bridle.

It was also complained that the programme makers failed to interview a member of the SIA which resulted in unfairness to Professor Bridle. Who a programme decides to interview is an editorial matter made at the programme maker’s discretion. Nevertheless, broadcasters must ensure that their content complies with the Code, including the requirements to avoid unfairness. In this case, Ofcom noted that the programme makers chose to interview a member of the Shadow Cabinet and a member of the Health and Safety Executive, rather than a member of the SIA which the programme makers had reasonable grounds to believe was an organisation unknown to the accreditation authorities. In these circumstances, Ofcom found no unfairness to Professor Bridle in this respect.

- g) Ofcom considered Professor Bridle’s complaint that the programme claimed that he believed that asbestos posed no measurable risk to health and failed to consider his view that health risks related only to white asbestos bonded to manufactured products.

Ofcom took account of Practice 7.9 of the Code (as set out above).

Ofcom noted from Professor Bridle’s submission his claim that his views on the health risks associated with white asbestos only applied to white asbestos bonded to manufactured products. However, from the evidence made available to it, Ofcom takes the view that this claim is unsupported. In the

Gloves Off programme broadcast in May 2006 (an unedited version of which was provided to Ofcom), Ofcom noted that Professor Bridle made numerous references to white asbestos “*posing no measurable risk to health*” and stated that “*the mechanism to get mesothelioma from white asbestos just isn’t there*”. Ofcom was presented with no evidence to suggest that Professor Bridle was referring only to white asbestos bonded to manufactured products when he made these statements, nor that these statements had been unfairly edited. This was evident to Ofcom having watched the unedited version of the *Gloves Off* programme.

On this basis, Ofcom took view that the programme makers did take reasonable steps to ensure that they fairly reflected Professor Bridle’s expressed views on white asbestos in the programme as broadcast. Ofcom found no unfairness to Professor Bridle in this respect.

- h) Ofcom considered the complaint that the programme challenged Professor Bridle’s claim that he had acted as a consultant for Vale of Glamorgan Trading Standards Department. This gave the impression that he was a liar, which was unfair to him as he had acted for the department in the past.

Ofcom took account of Practice 7.9 of the Code (as set out above).

Ofcom noted that although Professor Bridle had been hired to inspect a single property in November 2000 by a department of Vale of Glamorgan County Council (namely, its Building Control Department), he had not been employed by the Trading Standards Department of that County Council in any capacity. This was not disputed by the complainant.

Having listened to the programme in full, Ofcom was satisfied that it did not state that Professor Bridle had not undertaken any work for the Vale of Glamorgan Trading Standards Department. The programme, in fact, stated that Professor Bridle was not a “*consultant for Vale of Glamorgan Trading Standards Department*”. In Ofcom’s view, this statement was fully supported by a contribution from an informed and credible source, namely Mr Simon Wilkinson, of the Vale of Glamorgan Trading Standards Department, who stated in the programme that “*Vale of Glamorgan Trading Standards Department has no professional relationship with Professor Bridle in any capacity and certainly not as an asbestos consultant*”.

On that basis, it was Ofcom’s view that the programme makers took reasonable steps to ensure that the above facts were presented fairly in the programme as broadcast.

Accordingly, Ofcom has not upheld Professor Bridle complaint of unfair treatment in the programme as broadcast.

Complaint by Mr and Mrs R

Look North, BBC1, 30 August 2007 (13:25, 18:25 and 22:25)

Summary: Ofcom has not upheld this complaint of unwarranted infringement of privacy in the programmes as broadcast, made by Mr and Mrs R.

These editions of *'Look North'* included a report concerning a carer who had used her mobile phone to record herself bullying elderly residents at a care home, where she worked. Footage and still shots of the mobile phone footage were included in the programmes, and featured an elderly female resident (whose face had been obscured), being spoken to by the carer. At points in the footage the voice of the resident could be heard.

Mrs R and her husband, Mr R, complained that their privacy had been unwarrantably infringed in the programme as broadcast. The resident shown in the programmes was Mr R's mother.

Mr and Mrs R's complaint was considered by Ofcom's Fairness Committee, its most senior decision making body in matters of Fairness and Privacy. In summary the Committee found the following:

In the circumstances of this case, the Committee found that, given their close family connection, Mr and Mrs R had a legitimate expectation of privacy concerning the broadcast of footage of Mr R's mother suffering abuse in her nursing home.

The Committee considered that Mr R's mother would have been recognisable from the footage by those who knew her well. In the Committee's opinion, by broadcasting footage of Mr R's mother being abused, the programmes disclosed information that was of a very sensitive and private nature to the complainants. The Committee therefore found that the programmes as broadcast infringed the privacy of Mr and Mrs R.

However, the Committee found that the infringement of Mr and Mrs R's privacy was warranted by the public interest served by the broadcast of the footage. The Committee considered that there was a very strong public interest justification for the broadcast of the footage, which was itself crucial to the impact of the ongoing news story about the behaviour of the carer.

Introduction

On 30 August 2007, the BBC broadcast *Look North*, a daily regional news programme. Three versions of the programme were broadcast: the first at 1.25pm, the second at 6.25pm and the last at 10.25pm. Each version of the programme included a report about abuse of elderly care home residents.

The programmes reported that a carer had used her mobile phone to record herself bullying elderly residents at a nursing home, where she worked. The 6.25pm and 10.25pm programmes included video extracts from the mobile phone footage, which was said to show the carer "*goaded and swearing at*" residents and encouraging an argument between two residents. The extracts showed mainly an elderly female resident, whose face had been blurred. The resident could be heard speaking to the carer as she was being filmed. The 1.25pm programme did not include footage from

the mobile phone, but showed a close up still picture of a nursing home worker speaking to the elderly female resident, whose face had been pixellated.

In each programme, the programme's reporter explained that the owner of the nursing home where the incident had taken place was "*absolutely disgusted by what had happened*" and had immediately dismissed the person responsible for the mobile phone footage. The reporter commented in the 6.25pm and 10.25pm programmes that the footage showed how another female worker had been present during the incident and that no action had been taken against her. Footage of this second nursing home worker "*whispering into the ear*" of the elderly resident was shown in the 6.25pm and 10.25pm programmes.

Mrs R complained to Ofcom that her privacy and that of Mr R was unwarrantably infringed in the broadcast of the programmes. The elderly female care home resident shown in the programmes was Mr R's mother and Mrs R's mother-in-law.

The Complaint

Mr & Mrs R's case

In summary, Mrs R complained that her privacy and that of Mr R (since deceased) was unwarrantably infringed in the programme as broadcast in that the programme makers had used mobile phone footage of Mr R's mother without permission. By way of background, when making the complaint Mr and Mrs R said that they were "absolutely horrified, disgusted and totally distressed" that the BBC had used the material without seeking the permission of the family. Mrs R also explained that her mother-in-law was 93 years old, very frail, confused and had trouble hearing.

The BBC's case

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

The BBC said that the decisions of the High Court (in *R v The Broadcasting Complaints Commission (BCC) ex parte Granada Television Limited* (1993)) and the Court of Appeal (in 1995, when it examined the issue of "Privacy of the Individual or Privacy of the Family") made it quite clear that the particular facts of a case are central in considering whether a breach of privacy may have occurred. Both decisions focused on facts which the BBC believed marked clear differences between the Granada cases and the case of Mr and Mrs R.

Firstly, the BBC submitted that Mr Justice Popplewell (in the 1993 judgment referred to above) and Lord Justice Balcombe (when referring to the case in the 1995 Court of Appeal review) specifically referred to the fact that the Granada cases had concerned children who had died in particularly tragic circumstances. The BBC said that Mr and Mrs R's case did not concern the death of a relative, tragic or otherwise.

Secondly, the BBC submitted that in both Granada cases, the complainants were parents who had lost their children, which was a particularly extreme form of bereavement for which the grieving period might be unusually long and painful. The BBC submitted that deep, emotional wounds might, arguably, have been reopened by the broadcast of the Granada programmes. The BBC said that in the case of Mr and Mrs R there was no question of reopening wounds of that kind. The BBC believed that the adult children of an elderly parent would enjoy a significantly lower expectation of privacy in this respect than the parents of a young child, especially in the absence of any bereavement.

Thirdly, the BBC submitted that in the Granada programmes, both children had been pictured and named expressly in the accompanying commentary, which opened their parents up to identification. The BBC said that in the case of *Look North*, Mr R's mother had not been named and her face had been blurred in such a way that only people already very familiar with her appearance and her circumstances (such as Mr and Mrs R) could have recognised her, so it would have conveyed no information about her or her family's identity except to those already in possession of it. The BBC fully acknowledged that seeing a close relation in such circumstances might be upsetting, but it said that such damage to feelings did not equate to the damage to feelings arising from an infringement of privacy.

Finally, the BBC submitted that both Granada programmes had been broadcast a significant length of time after the children's deaths and the material in question was essentially historic, although it related to topics of ongoing concern. The BBC said that in contrast, the *Look North* material complained of by Mr and Mrs R was at the heart of a running news story which had featured in the local newspaper and on the local ITV news bulletin on the same day. The BBC said that the mobile phone footage was the key evidence that had led to the dismissal of an employee at the nursing home in question and the BBC submitted that its publication was undoubtedly in the public interest.

Decision

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

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

Mr and Mrs R's complaint was considered by Ofcom's Fairness Committee (the "Committee"), Ofcom's most senior decision-making body with respect to Fairness and Privacy complaints. In reaching its decision, the Committee carefully considered the complaint and the BBC's response, recordings and transcripts of the three programmes as broadcast.

The Committee considered this complaint in the light of Rule 8.1 of the Code, which provides that:

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

The Committee also took into account Practices 8.3, 8.6 and 8.10 of the Code, which state that:

"When people are caught up in events which are covered by the news they still have a right to privacy in the broadcast of a programme, unless it is warranted to infringe it."

“If the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted”

“Broadcasters should ensure that the reuse of material does not create an unwarranted infringement of privacy.”

The Committee acknowledges that the line to be drawn between the public’s right to information and individuals’ rights to privacy can be a fine one. In considering complaints about unwarranted infringement of privacy, where necessary, the Committee will, therefore, address two distinct questions: first, has there been an infringement of privacy and, if so, secondly, was it warranted?

Was the privacy of Mr and Mrs R infringed?

In reaching a decision about whether the privacy of Mr and/or Mrs R was infringed in the broadcast of the programmes, the Committee first sought to establish whether Mr and Mrs R had legitimate expectations of privacy in these circumstances.

The Committee considered the nature of the information that was broadcast. It noted that the potentially private information related to images of Mr R’s elderly mother reacting to the abusive behaviour of a carer within her nursing home. The Committee noted that the complaint had not been made by or on behalf of Mr R’s mother. However, in order to consider whether Mr and Mrs R had a legitimate expectation of privacy, the Committee first considered whether Mr R’s mother herself had a legitimate expectation of privacy in relation to the events that took place in her nursing home.

The Committee considered that the privacy expectation of residents in relation to footage shot in a nursing home was no less legitimate than that of individuals in relation to their own family home. In this context, therefore, a nursing home amounted to a private place. In the Committee’s view this expectation extended to footage shot in a nursing home’s communal areas, such as a communal sitting room. In this case, the Committee noted that the alleged abuse of Mr R’s mother was already to some extent public since there were clearly other people present in the room at the time. However on the basis that a nursing home could amount to a private place the Committee considered that, of itself, this was insufficient to diminish any expectation of privacy Mr R’s mother might have in relation to the broadcasting of footage of her within the home. Looking at the footage itself, the Committee was of the view that the words spoken by Mr R’s mother were not in themselves of an intrinsically private nature but that the tone and nature of her reaction showed her in a stressful and vulnerable position which it considered was something of a private and personal nature. Therefore, the Committee considered that Mr R’s mother herself had a legitimate expectation of privacy in relation to the footage.

The Committee then considered whether or not Mr R’s mother’s legitimate expectation of privacy extended to Mr and Mrs R.

The Committee noted that in certain circumstances the private nature of information relating to traumatic events extended to family members, but that the particular facts of each case were central in considering whether or not those family members had legitimate expectations of privacy. The Committee further noted that the BBC had sought to distinguish Mr and Mrs R’s case from those cases of the parents of deceased children considered in *R v Broadcasting Complaints Commission (BCC) ex parte Granada Television Limited* (1993). However, the Committee was not

persuaded by the BBC's argument that on the basis that Mr and Mrs R's case did not concern the death of a relative, tragic or otherwise, Mr and Mrs R's case was distinguishable from the events that were reported in the two broadcasts referred to in the 1993 *Granada* case. The Committee considered that it would be difficult to argue that abuse of an elderly parent would not be traumatic to the adult relative.

The Committee considered there was some merit in the BBC's submission that Mr and Mrs R's case was distinguishable from the *Granada* case on the basis that "there was no question of reopening wounds". The Committee noted that the passage of time between the date on which the abuse had occurred (March 2007, per the complaint) and the date on which the reports in *Look North* were broadcast (30 August 2007) was much shorter than those in the *Granada* case. From the information provided the Committee noted that the sequence of events was as follows:

- The mobile phone footage was filmed in March 2007.
- The carer responsible was dismissed on 21 June 2007.
- The *Northern Echo* obtained the mobile phone footage and subsequently published the story on its front page on 13 August 2007. The *Northern Echo* stated in the report that it had passed the mobile phone footage to Durham County Council, who had launched an investigation. The nursing home was not named in the report, but a picture of Mr R's mother, with her face pixellated, was published on page five of the newspaper.
- The *Northern Echo* published a further report on 30 August 2007, when it reported that Durham County Council had concluded its investigation and revealed that the carer responsible for the abuse had been sacked and blacklisted from working with the elderly again. It also named the nursing home.
- ITV broadcast a report on the matter on 30 August 2007 (the Committee was not able to discern from the information supplied to it by the complainants and the BBC whether this report had included footage of Mr R's mother).
- The BBC also reported on the matter in three *Look North* programmes broadcast on 30 August 2007, which is the subject of this complaint.

It appeared to the Committee that the broadcast was relatively proximate to the events which took place (i.e. the recording of the mobile phone footage, the subsequent dismissal of the carer responsible and the decision to blacklist her from working with the elderly again). This had been a running news story broadcast comparatively shortly after the carer had been dismissed and a still image from the mobile phone footage had appeared in the public domain. However, the Committee noted that the Code nevertheless provides that those caught up in events which are covered by the news still have a right to privacy in the broadcast of a programme, unless it is warranted to infringe it. In the circumstances of this case the Committee noted that Mr and Mrs R were not themselves directly caught up in the running news story but considered that the nature of the images, together with the close family connection of the complainants, did give them a legitimate expectation of privacy in respect of the broadcast of the mobile phone footage.

The Committee then considered whether Mr and Mrs R's privacy was infringed in the programme as broadcast.

In relation to considering the extent to which what was revealed by the broadcast was already in the public domain, the Committee noted that events had been reported publicly prior to the broadcast of the programme. Specifically, the Committee noted that the fact of the abuse, a pixellated still picture of Mr R's mother

and the name of the nursing home in question had been published (in a local newspaper).

As to the details of what was broadcast, the Committee noted that Mr R's mother was not named in any of the programmes and that her face had been obscured in all three programmes. However, this had not been sufficient to prevent her hair colour from being evident and her voice, which was clearly audible in two of the three programmes, from being recognisable. These factors distinguished the broadcast footage from the pictures that had already been published. In the Committee's view this was significant as her hair and voice would have made her identifiable to family members, friends and others who knew her well.

Turning to the footage itself, the Committee considered the images and sound of Mr R's mother reacting to the carer were of a particularly sensitive and private nature to the complainants on account of their close family relationship. In particular the Committee noted that the programmes broadcast footage which clearly showed the type and tone of the abuse and revealed the tone and nature of Mr R's mother's audible response to it. In these circumstances in the Committee's view the disclosure of the mobile phone footage infringed the privacy of the complainants.

In the circumstances, the Committee found that the privacy of Mr and Mrs R was infringed by the broadcasts of the programmes.

Was the infringement of privacy warranted?

The Committee went on to consider whether the infringement of Mr and Mrs R's privacy was warranted.

As discussed above, the Committee acknowledged that the broadcast of the mobile phone footage disclosed information that was of a very sensitive and private nature to the complainants. However it also considered that while Mr and Mrs R's privacy had been infringed (as discussed above) this infringement was limited since they themselves did not feature in the programmes. The infringement arose from the footage of a family member and a number of details of the incident were already in the public domain.

In considering the issue of whether the infringement of the complainants' privacy was warranted, the Committee noted that the footage of Mr R's mother had been included in an ongoing news story about abuse at the nursing home. As noted above the Code provides that "When people are caught up in events which are covered by the news they still have a right to privacy in the broadcast of a programme, unless it is warranted to infringe it." It also states that "If the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted"

The Committee considered that bullying or abuse in care homes is a matter of considerable public interest. In the Committee's opinion, the footage of Mr R's mother was not only an illustration of the abuse which was found to have occurred, but a key part of the story. The fact that the staff member had recorded her behaviour towards the residents in this home was an important aspect of the incident that remained at the heart of an on-going news story. It also formed the evidence which had led to the carer's dismissal which was reported in the media on the day of broadcast.

In the Committee's view although Mr R's mother was identifiable, in a particularly sensitive context, to family, friends and others who knew her well (as discussed

above) there was considerable public interest which warranted the broadcast of the mobile phone footage in such a way that the sound of the bullying and abuse could be heard. In these circumstances the Committee found that no consent was required from the family and that any infringement of Mr and Mrs R's privacy was warranted by the public interest in the broadcast.

In conclusion, Mr and Mrs R's complaint that their privacy had been unwarrantably infringed in the programme as broadcast was not upheld.

Complaint by Ms Linda Ware brought on her behalf by Mr Jan Frayne

Wales Today, BBC1 Wales, 9 July 2007

Summary: Ofcom has not upheld this complaint, by Ms Ware, of unfair treatment in the broadcast of the programme.

Ms Ware was interviewed by BBC1 Wales for a report broadcast on 9 July 2007 in *Wales Today* concerning the progress of the construction of a liquid natural gas (“LNG”) pipeline and some of the protests surrounding it. A recorded interview with Ms Ware was included in this report.

Ofcom found that the programme did not result in unfairness to Ms Ware because it represented Ms Ware’s concerns over the safety of the LNG pipeline in a way that did not result in unfairness.

Ofcom also found that the broadcaster made an editorial decision to omit specific material supplied by Ms Ware regarding the planned pressure reduction station (a pressure reduction station is used to transform a supply of highly pressurised liquid, vapour or gas into a supply of low pressure) and regarding the devastation caused by the construction of the LNG pipeline, which also did not result in unfairness.

With regard to the complaint that the programme makers did not to conduct a live interview with Ms Ware, Ofcom found that this did not result in unfairness to her. In reaching this decision, Ofcom noted that the communications between Ms Ware and the BBC showed that whilst Ms Ware initially agreed to take part in a live interview with BBC News 24, it appears that she later declined due to the fact that it would no longer be held in Cilfrew but rather in Brecon. There was also no material to suggest an offer of a live interview with *Wales Today* as opposed to BBC News 24.

Introduction

On 9 July 2007, the regional news programme, *Wales Today*, on BBC1 Wales included a report about the progress of the construction of the LNG pipeline between Milford Haven and Gloucestershire and some of the protests surrounding it.

A recorded interview with Ms Ware was included in this report. Ms Ware is a member of a pressure group called the Safe Haven Network (“the Network”). The Network was set up to highlight concerns about dangers involved in the project.

The report also included an interview with Mr David Mercer, a representative of National Grid (“NG”) the company for which the pipeline is being constructed.

Ms Ware complained to Ofcom that she was unfairly treated in the programme as broadcast.

The Complaint

Ms Ware’s case

In summary, Ms Ware complained that she was treated unfairly in the programme as broadcast in that:

- a) The interview with Ms Ware - which formed part of the report - was unfairly edited in that it included only two comments she made during a lengthy interview. This unfairly suggested that Ms Ware was a 'nimby' (i.e. holding 'not in my back yard' views) without broadcasting the full explanation, which she had given in the interview, that it would have been possible for NG to have laid the pipeline further from her village. Furthermore, rather than including her explanation, the report unfairly emphasised NG's safety standards.
- b) The report unfairly showed the existing pressure reduction station but did not include the artist's impression of the much larger pressure reduction station planned which Ms Ware had supplied to the BBC. The report also unfairly omitted evidence about the devastation caused by the construction of the pipeline which had been supplied by Ms Ware. The programme makers failed to conduct a live interview with Ms Ware, despite promising to do so but included live interviews with NG's representative and farmers who had received compensation.

BBC1 Wales' case

In summary BBC1 Wales responded to the complaint as follows:

- a) The BBC did not consider that the interview with Ms Ware was unfairly edited and made her look as if she was a nimby. It noted that the reporter had interviewed four people, two of whom had reservations about the project. It argued that the item included the reporter outlining the heart of Ms Ware's case against the pipeline (that she and her fellow protestors wanted the LNG pipeline moved a mile further away from Cilfrew). It said that the report included Ms Ware giving her answer to the reporter when asked what her objection was to having the LNG pipeline close to her home. The BBC argued that the programme makers had exercised appropriate editorial discretion in using this extract of the interview.

With regard to the complaint that the report gave the unfair impression that Ms Ware was a nimby, the BBC noted that she was shown in the report denying that she was a nimby. The BBC also noted that in her original complaint, Ms Ware made quite an issue about the visual impact of the new pressure reduction plant at Cilfrew, thereby indicating that this, as opposed to safety, was her highest priority. The broadcaster said that the issue of safety was dealt with in the section of the report which included Ms Ware. It also said that the issue of the environmental impact of, and the destruction caused by, the construction of the pipeline was dealt with elsewhere in the report. Taking all of the above factors into consideration, the BBC argued that there was no unfairness in choosing not to use an answer from Ms Ware on this topic.

- b) The BBC stated that the reporter had not felt that the artist's impression of a pressure reduction site provided by Ms Ware was suitable for broadcast (in part because she considered it to be a rather basic drawing and in part because of its provenance). It also noted that the specific impression supplied was not relevant to the interview with Ms Ware because it was of the installation planned for Corse (at the end of the pipeline) rather than the installation planned for Cilfrew (where Ms Ware lived and about which she was interviewed).

The BBC denied that Ms Ware was promised a live interview on *Wales Today*. It included copies of an e-mail exchange between Ms Ware and BBC News 24 (which it noted was entirely separate from *Wales Today*). The broadcaster said that these e-mails showed that Ms Ware had discussed the possibility of a live interview on BBC News 24 and that she had then agreed not to take part in such an interview.

Decision

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

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

The complaint was considered by Ofcom's Executive Fairness Group. In reaching its decision, Ofcom considered the complaint and the broadcaster's response, together with recordings and transcripts of the programme as broadcast. It should be noted that the full untransmitted footage of the interview with Ms Ware were not available because BBC Wales (the programme maker) did not retain the footage which was recorded with the use of a handheld digital camera.

Ofcom found as follows:

- e) Ofcom first considered Ms Ware's complaint that her interview with the reporter was unfairly edited in that it included only two comments Ms Ware made during a lengthy interview, omitted her full view on where the pipeline should be laid and suggested she was a nimby.

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

Ofcom also took into account Practice 7.9 of the Code, which states that "before broadcasting a factual programme, including programmes examining past events, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation".

Programme makers can legitimately select, omit or edit interviews provided for inclusion in a programme as long as it does not result in unfairness to those people or organisations directly affected by the programme. This is an editorial decision for programme makers to take. Therefore, Ofcom was not concerned with the length of contributions made and subsequently included in the programme. Rather Ofcom sought to determine whether the programme maker's actions were consistent with its obligation to avoid unfair treatment.

Ofcom noted that the untransmitted footage of the interview with Ms Ware was not available because BBC Wales did not retain the footage which was recorded with the use of a handheld digital camera. Both parties agreed that only part of Ms Ware's interview was included in the broadcast.

In the absence of untransmitted footage Ofcom noted that Ms Ware complained that the programme omitted her point that there was plenty of unpopulated land available where the pipe could be located thereby reducing the safety risk to those inhabitants in the locality. In Ofcom's view, this point was clearly and fairly reflected in her broadcast contribution (which is set out below) therefore Ofcom concluded that Ms Ware was treated fairly in this respect.

Ms Ware:

"People have called us nimbys publicly, they've called us a lot of things but, er, our argument is, has been from the very outset, that there is miles of mountain out there where this gas plant could be put but where it would not be a danger to any substantial, er, area where there are people".

Ofcom noted that the reporter's introductory comments which preceded Ms Ware's interview effectively set out Ms Ware's explanation for her views (i.e. that the project could be moved a mile away from her village). These were:

Reporter:

"Today I'm headed for Cilfrew, where villagers want a gas plant that's part of the project to be moved a mile further away from their homes".

Ofcom also noted the context of the report which covered further points in support of Ms Ware's position with regard to the environmental impact of the pipeline and with regard to the disruption caused by the construction of the pipeline, by including footage showing the scale of the pipeline, and by including an interview with Mr Nick Young, a farmer whose land it passed through.

Regarding Ms Ware's complaint that the editing of the programme portrayed her as a nimby, Ofcom noted that Ms Ware herself refuted the allegation that she was a nimby in her interview (in the quote above). Ofcom concluded that Ms Ware was portrayed as a reasonable individual and that the report did not suggest or imply that she was a nimby. In Ofcom's view, the report gave a fair representation of Ms Ware's concerns in that it made clear her view that there were a lot of other uninhabited places where the pipe could be laid thereby reducing the safety risk to villagers in the locality.

In light of the above reasons, Ofcom considered that the editing of the programme did not result in unfairness to Ms Ware.

- b) Secondly, Ofcom considered Ms Ware's complaint that the report unfairly showed the existing pressure reduction station but did not include the artist's impression of the much larger pressure reduction station planned which Ms Ware had supplied to the BBC. Ofcom also considered Ms Ware's complaint that the report unfairly omitted evidence about the devastation caused by the construction of the pipeline which had been supplied by Ms Ware; and that the programme makers failed to conduct a live interview with Ms Ware, despite promising to do so.

In considering this head of complaint, Ofcom took into account Practice 7.3 of the Code, which states that "where a person is invited to make a contribution to a programme (except when the subject matter is trivial or their participation minor) they should normally, at an appropriate stage [...] be told what kind of

contribution they are expected to make, for example live, pre-recorded, interview, discussion, edited, unedited etc;” as well as Practice 7.6 of the Code, which states that “when a programme is edited, contributions should be represented fairly” along with Practice 7.9 as set out above.

Ofcom considered whether the programme maker had omitted material produced by Ms Ware which resulted in unfairness to her. In this respect, Ofcom observed that the editing of a programme is an editorial matter for a broadcaster. However, broadcasters must ensure that the programme as broadcast does not result in unfairness to an individual or organisation.

Ofcom noted that Ms Ware’s artist’s impression depicted a planned installation at Corse, located near to the end of the pipeline, whilst the subject matter of Ms Ware’s interview was the laying of the LNG pipeline near her home village of Cilfrew.

Ofcom also took into consideration the broadcaster’s point that the BBC’s editorial guidelines prescribe that material produced by campaigners has to be handled with due regard for fairness and impartiality and that this means that in practice, the source and relevance of the material must be explained.

Ofcom also noted that the environmental implications of the pipeline were appropriately dealt with elsewhere in the programme, and there was no obligation on the broadcaster to include further comments or material from Ms Ware.

Taking these factors into account, Ofcom considered that the broadcaster’s decision to omit Ms Ware’s artist’s impression and her evidence about the devastation caused by the construction of the pipeline did not result in unfairness to her as this was a legitimate use of editorial discretion.

In considering Ms Ware’s complaint that the programme makers had failed to conduct a live interview with her, Ofcom noted from an exchange of emails between Ms Ware and Mr Paul O’Donovan, a producer from BBC News 24 that Ms Ware was offered a live interview at Cilfrew by Mr O’Donovan on 9 July 2007. It appeared from the exchange that, on 28 June 2007, Ms Ware declined the interview when Mr O’Donovan informed her that the interview would no longer take place in Cilfrew, but rather in Brecon. Ms Ware stated that she was “quite happy [...] to leave Cilfrew out and it would be awkward for me to get to Brecon”

Ofcom noted that Ms Ware’s recorded interview, for *Wales Today*, took place at Cilfrew on 6 July 2007. In Ofcom’s view there was no evidence to suggest that *Wales Today*, as opposed to BBC News 24, had offered Ms Ware a live interview.

In light of the above considerations, Ofcom found that the report and did not result in unfairness to her.

Other Cases Not in Breach/Resolved

21 May to 3 June

| Programme | Trans Date | Channel | Category | No of Complaints |
|-------------------------------------|------------|----------------|--------------------------------|------------------|
| 50 Cent featuring Justin Timberlake | 12/03/2008 | The Hits | U18 - Coverage of Sexual/other | 1 |
| A Girl's Guide to 21st Century Sex | 08/05/2008 | Five | Generally Accepted Standards | 1 |
| All Star Mr & Mrs | 10/05/2008 | ITV1 | Generally Accepted Standards | 1 |
| America's Next Top Model | 13/05/2008 | Living TV | Offensive Language | 1 |
| BBC Breakfast News | 20/05/2008 | BBC1 | Generally Accepted Standards | 1 |
| BBC News | 29/05/2008 | BBC1 | Crime (incite/encourage) | 1 |
| BBC News | 16/05/2008 | BBC1 | Violence | 1 |
| BBC News | 16/05/2008 | BBC1 | Generally Accepted Standards | 1 |
| BBC News 24 | 19/05/2008 | BBC News 24 | Generally Accepted Standards | 1 |
| Balaji | n/a | Star Plus | Flashing images | 1 |
| Balls of Steel | 09/05/2008 | Channel 4 | Generally Accepted Standards | 1 |
| Beat the Star | 11/05/2008 | ITV1 | Use of Premium Rate Numbers | 1 |
| Benidorm | 09/05/2008 | ITV1 | Generally Accepted Standards | 1 |
| Blood Ties (trailer) | 15/05/2008 | Virgin1 | Generally Accepted Standards | 1 |
| Breakfast Show | 09/05/2008 | Plymouth Sound | Generally Accepted Standards | 1 |
| Bremner, Bird and Fortune | 18/05/2008 | Channel 4 | Offensive Language | 5 |
| Bremner, Bird and Fortune | 18/05/2008 | Channel 4 | Generally Accepted Standards | 1 |
| Britain's Got Talent | 26/05/2008 | ITV1 | Generally Accepted Standards | 1 |
| Britain's Got Talent | 31/05/2008 | ITV1 | Other | 1 |
| Britain's Got Talent | 10/05/2008 | ITV1 | Animal Welfare | 4 |
| Britain's Got Talent | 26/05/2008 | ITV1 | Generally Accepted Standards | 5 |
| Britain's Got Talent | 24/05/2008 | ITV1 | Sex/Nudity | 1 |
| Britain's Got Talent | 26/05/2008 | ITV1 | Competitions | 1 |
| Britain's Got Talent | 26/05/2008 | ITV1 | Competitions | 1 |
| Britain's Got Talent | 28/05/2008 | ITV1 | Religious Offence | 1 |
| Britain's Next Top Model | 19/05/2008 | Living | Religious Offence | 1 |
| Britain's Next Top Model | 05/05/2008 | Living | Animal Welfare | 1 |

| | | | | |
|--------------------------------------|------------|------------------|------------------------------|----|
| British Touring Car Championship | 04/05/2008 | ITV4 | Inaccuracy/Misleading | 1 |
| Brokeback Mountain | 18/05/2008 | Channel 4 | Generally Accepted Standards | 3 |
| Cars, Cops and Bailiffs | 14/05/2008 | BBC1 | Crime (incite/encourage) | 1 |
| Champions League Final Live | 21/05/2008 | ITV1 | Due Impartiality/Bias | 1 |
| Channel 4 News | 13/05/2008 | Channel 4 | Due Impartiality/Bias | 1 |
| Channel 4 News | 16/05/2008 | Channel 4 | Generally Accepted Standards | 1 |
| Chris Moyles Show | 08/05/2008 | BBC Radio 1 | Competitions | 1 |
| Clarrisa | 01/05/2008 | TCM2 | Violence | 1 |
| Come Dine With Me | 15/05/2008 | Channel 4 | Religious Offence | 1 |
| Competitions | 02/06/2008 | Sunrise | Competitions | 1 |
| Crash | 15/05/2008 | Film4 | Generally Accepted Standards | 1 |
| Cutting Edge: Gridlock and Road Rage | 29/05/2008 | Channel 4 | Offensive Language | 7 |
| Dance Competition | 29/04/2008 | Zee TV | Competitions | 1 |
| Derren Brown: Trick or Treat | 09/05/2008 | Channel 4 | Animal Welfare | 11 |
| Doc Martin (trailer) | n/a | ITV3 | Inaccuracy/Misleading | 1 |
| Doctor Who | 17/05/2008 | BBC1 | Generally Accepted Standards | 5 |
| Doctor Who | 17/05/2008 | BBC1 | Sex/Nudity | 1 |
| Doctors | 19/05/2008 | BBC1 | Generally Accepted Standards | 1 |
| Dom Joly's Complainers | 14/04/2008 | Five | Crime (incite/encourage) | 1 |
| Duncan Barnes | 23/04/2008 | City Talk 105.9 | Due Impartiality/Bias | 1 |
| East is East | 10/05/2008 | Channel 4 | Religious Offence | 1 |
| EastEnders | 13/05/2008 | BBC1 | Generally Accepted Standards | 1 |
| EastEnders | 09/05/2008 | BBC1 | Generally Accepted Standards | 1 |
| EastEnders | 15/05/2008 | BBC1 | Generally Accepted Standards | 1 |
| Emmerdale | 26/05/2008 | ITV1 | Generally Accepted Standards | 1 |
| Emmerdale | 06/05/2008 | ITV1 | U18's in Programmes | 3 |
| European Cup Final | 29/04/2008 | ITV1 | Competitions | 1 |
| Evening Show | 20/05/2008 | KCR 106.7 | Generally Accepted Standards | 1 |
| F1: Monaco Grand Prix | 25/05/2008 | ITV1 | Due Impartiality/Bias | 1 |
| Fighting Talk | 03/05/2008 | BBC Radio 5 Live | Generally Accepted Standards | 1 |
| Football Focus | 24/05/2008 | BBC1 | Offensive Language | 1 |

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|--|------------|-----------|--------------------------------|---|
| Friday Night with Jonathan Ross | 02/05/2008 | BBC1 | Offensive Language | 2 |
| GMTV | 08/05/2008 | ITV1 | Due Impartiality/Bias | 1 |
| GMTV | 15/05/2008 | ITV1 | Elections/Referendums | 1 |
| GMTV | 20/05/2008 | ITV1 | Due Impartiality/Bias | 1 |
| GMTV | 14/05/2008 | ITV1 | Generally Accepted Standards | 1 |
| GMTV | 09/05/2008 | ITV1 | Due Impartiality/Bias | 1 |
| GMTV | 23/05/2008 | ITV1 | Generally Accepted Standards | 1 |
| Girls of the Playboy Mansion | 12/04/2008 | Living 2 | Sex/Nudity | 1 |
| Gladiators | 01/06/2008 | Sky One | Generally Accepted Standards | 1 |
| Gladiators Ready! The Gladiators Story | 10/05/2008 | Sky One | Offensive Language | 1 |
| Golden Balls | 09/03/2008 | ITV 3 | Generally Accepted Standards | 1 |
| Golden Balls | n/a | ITV1 | Generally Accepted Standards | 1 |
| Golden Balls / Dickinson's Real Deal | 07/05/2008 | ITV1 | Competitions | 1 |
| Gordon Ramsay's F Word | 13/05/2008 | Channel 4 | Animal Welfare | 1 |
| Gordon Ramsay's F Word | 20/05/2008 | Channel 4 | Animal Welfare | 8 |
| Gordon Ramsay's F Word | 17/05/2008 | Channel 4 | Generally Accepted Standards | 3 |
| Gordon Ramsay's F Word | 13/05/2008 | Channel 4 | Offensive Language | 1 |
| Hollyoaks | 16/05/2008 | Channel 4 | Sex/Nudity | 1 |
| Hollyoaks | 21/05/2008 | Channel 4 | Religious Offence | 1 |
| Hollyoaks | 23/05/2008 | Channel 4 | Generally Accepted Standards | 1 |
| How to Look Good Naked | 20/05/2008 | Channel 4 | Sex/Nudity | 6 |
| I Own Britain's Best Home | 08/05/2008 | Five | Inaccuracy/Misleading | 1 |
| I'd Do Anything | 17/05/2008 | BBC1 | Generally Accepted Standards | 1 |
| I'd Do Anything | 11/05/2008 | BBC1 | Violence | 1 |
| ITV News | 15/05/2008 | ITV1 | Generally Accepted Standards | 4 |
| ITV News | 14/05/2008 | ITV1 | Religious Issues | 2 |
| ITV News | 14/05/2008 | ITV1 | Inaccuracy/Misleading | 1 |
| ITV News | 19/05/2008 | ITV1 | Generally Accepted Standards | 1 |
| ITV News | 20/05/2008 | ITV1 | Generally Accepted Standards | 1 |
| ITV News | 16/05/2008 | ITV1 | U18 - Coverage of Sexual/other | 1 |
| James Whale | 05/03/2008 | TalkSPORT | Crime (incite/encourage) | 1 |

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| Jobs for the New Boys: Tonight | 19/05/2008 | ITV1 | Due Impartiality/Bias | 1 |
| Jon Gaunt | 15/05/2008 | TalkSPORT | Competitions | 1 |
| Jon Gaunt | 30/04/2008 | TalkSPORT | Generally Accepted Standards | 1 |
| Jon Gaunt | 15/05/2008 | TalkSPORT | Competitions | 1 |
| King of the Cage | 13/05/2008 | Extreme Sports | Violence | 1 |
| LBC | 17/05/2008 | LBC 97.3 | Use of Premium Rate Numbers | 1 |
| Lily Allen and Friends | 18/03/2008 | BBC3 | Dangerous Behaviour | 6 |
| Match of the Day Live | 17/05/2008 | BBC1 | Religious Offence | 1 |
| Meridian News | 15/05/2008 | ITV1 | Crime (incite/encourage) | 1 |
| Midsomer Murders | 11/05/2008 | ITV1 | Offensive Language | 3 |
| News at Ten | 21/05/2008 | ITV1 | Generally Accepted Standards | 1 |
| Newsdrive | 21/03/2008 | BBC Radio Scotland | Generally Accepted Standards | 27 |
| Newsnight | 16/05/2008 | BBC2 | Generally Accepted Standards | 1 |
| Newsnight | 13/05/2008 | BBC1 | Other | 1 |
| Nip/Tuck (trailer) | 20/05/2008 | FX | Sex/Nudity | 1 |
| One Life Special: Mum and Me | 20/05/2008 | BBC1 | Generally Accepted Standards | 1 |
| Police Interceptors | 09/05/2008 | Five | Offensive Language | 1 |
| Quiz Call | 25/05/2008 | Five | Competitions | 1 |
| Quiz Call | 25/05/2008 | Five | Competitions | 1 |
| Quiz Call | 25/05/2008 | Five | Competitions | 1 |
| Radio City - News | 19/05/2008 | Radio City Liverpool | Inaccuracy/Misleading | 1 |
| Rescue Remedies | 28/05/2008 | Channel 4 | Sex/Nudity | 2 |
| Reverend Death | 19/05/2008 | Channel 4 | Generally Accepted Standards | 4 |
| Saturday Breakfast | 24/05/2008 | Kestrel FM | Offensive Language | 1 |
| Shipwrecked 2008: Battle of the Islands | 18/05/2008 | Channel 4 | Sex/Nudity | 1 |
| Shipwrecked 2008: The Third Island | 18/05/2008 | Channel 4 | Animal Welfare | 1 |
| Sky News | 13/05/2008 | Sky News | Generally Accepted Standards | 1 |
| Sky News | 12/05/2008 | Sky News | Generally Accepted Standards | 1 |
| Smooth FM North East | 04/04/2008 | Smooth FM | Competitions | 1 |
| Soccer AM | 03/05/2008 | Sky One | Generally Accepted Standards | 3 |
| Spider-Man 2 | 04/05/2008 | Five | Violence | 1 |
| T4 | 18/05/2008 | Channel 4 | Generally Accepted Standards | 3 |
| The Andrew Marr Show | 25/05/2008 | BBC1 | Generally Accepted Standards | 1 |

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| The Bill | 15/05/2008 | ITV1 | Violence | 1 |
| The Great British Body (trailer) | 27/05/2008 | ITV1 | Sex/Nudity | 1 |
| The Interesting Alternative Show | 22/05/2008 | Phoenix FM | Offensive Language | 1 |
| The Secret of My Success | 24/05/2008 | ITV1 | Sex/Nudity | 1 |
| The Slammer | 18/05/2008 | CBBC | Generally Accepted Standards | 1 |
| The Sorcerer's Apprentice Extra | 10/05/2008 | CBBC | Generally Accepted Standards | 1 |
| The Supersizers Go...Wartime | 20/05/2008 | BBC2 | Generally Accepted Standards | 2 |
| The Ultimate Late Show presented by Ian Collins | 15/05/2008 | TalkSPORT | Generally Accepted Standards | 1 |
| The Very Best of You've Been Framed! | 24/05/2008 | ITV1 | Violence | 1 |
| The Wright Stuff | 26/05/2008 | Five | Generally Accepted Standards | 4 |
| The Wright Stuff | 15/05/2008 | Five | Inaccuracy/Misleading | 2 |
| The Wright Stuff | 16/05/2008 | Five | Inaccuracy/Misleading | 1 |
| The Wright Stuff | 07/05/2008 | Five | Due Impartiality/Bias | 1 |
| The Wright Stuff | 26/05/2008 | Five | Due Impartiality/Bias | 1 |
| The X Factor Final Results | 15/12/2007 | ITV1 | Competitions | 2731 |
| The X Factor Final Results | 15/12/2007 | ITV1 | Use of Premium Rate Numbers | |
| This Morning | 01/05/2008 | ITV1 | Due Impartiality/Bias | 1 |
| Top Gear | 21/05/2008 | Dave | Generally Accepted Standards | 1 |
| Trisha Goddard | 05/05/2008 | Five | Generally Accepted Standards | 1 |
| Uncut! The Villa | 16/05/2008 | Sky Three | Animal Welfare | 1 |
| Waking the Dead | 13/05/2008 | BBC1 | Violence | 1 |
| Wish FM | 09/05/2008 | Wish FM | Competitions | 1 |
| Women In Black | 22/05/2008 | BBC2 | Sex/Nudity | 1 |
| talkSport | 15/05/2008 | talkSport | Due Impartiality/Bias | 1 |
| talkSport promo | 02/05/2008 | talkSport | Other | 4 |
| talkSport promo | 14/05/2008 | talkSport | Sex/Nudity | 1 |