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Introduction

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

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

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

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

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

Digital Television Production Company Limited

Xplicit XXX

On 8 December 2006, Ofcom published its decision:

- to impose a financial penalty of £35,000 (payable to HM Paymaster General) on Digital Television Production Company Ltd in respect of its service Xplicit XXX.

The licensee was found to be in breach of Rule 1.25 of Ofcom’s Broadcasting Code, Section One: Protecting the Under Eighteens on 13 December 2005. This states that:

“BBFC R18-rated films or their equivalent must not be broadcast.”

The full text of this decision can be found at:
In Breach

Duisg and news

*Isles FM (Western Isles Community Radio Limited), 14 March 2005, 16:30, 17:00, 17:30 and 18:00*

Introduction

Isles FM is a commercial radio station providing news and information for the Western Isles of Scotland. On 14 March 2005 a news item was broadcast at 0730, 0800, 0830 and 0900. This item concerned a news report on an employment tribunal which involved Mr Donald John MacSween and An Comunn Gàidhealach.

An Comunn Gàidhealach (“An Comunn”) is a voluntary organisation, with charitable status, founded for the preservation and development of the Gaelic language. Its President is Angus MacDonald who is also Chairman of Isles FM. The item announced a further postponement of the employment tribunal, stating that the hearing was likely to be “highly critical” of Angus MacDonald. The item went on to state that the legal action would focus on An Comunn’s “massive cash deficit” caused by the chartering of a cruise liner needed for extra accommodation during the Royal National Mod (a Gaelic festival). After this item was broadcast, a complaint that the item was inaccurate was made directly to Isles FM.

On the same afternoon, at 1630, 1700, 1730 and 1800, Isles FM broadcast a retraction of, and an apology for, the news item. The retraction stated that the information contained in the earlier news item was “incorrect” and that neither An Comunn nor its president Angus MacDonald had been given an opportunity to respond to the item. In the retraction, Isles FM apologised to them unreservedly.

Ofcom received two complaints under the Fairness and Privacy sections of the Broadcasting Standards Code (“Fairness complaints”) about the retraction of the news item. One complaint was from the author of the news item, Mr Murdo Maclean and the other was from Mr Donald John MacSween (a party in the Employment Tribunal case). These complainants stated that the retraction of the news item resulted in unfairness to them (the adjudications on these complaints were published on 6 March 2006)\(^1\). The complaints also raised issues concerning the role Angus MacDonald (Chairman of Isles FM) played in the broadcast of the retraction.

Isles FM was unable to supply recordings of the news item or the retraction. However, a script of the output was made available to Ofcom.

During the investigations of the Fairness complaints, it became apparent that certain issues relating to Standards had arisen which required further investigation. Therefore, once the consideration of the Fairness complaints was completed, Ofcom wrote to the broadcaster asking it to respond to the following standards issues raised under Ofcom’s (ex-Radio Authority’s) News and Current Affairs Code (“the Code”) in force at the time.

1. Due accuracy and due impartiality and opinions of the licensee

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\(^1\) Mr Murdo Maclean’s complaint of unfairness was upheld in part. Mr Donald MacSween’s complaint of unfairness was not upheld (see http://www.ofcom.org.uk/tv/obb/prog_cb/pcb40/).
Ofcom sought to establish the precise role, if any, played by Angus MacDonald – both the Chairman of the licensee and referred to in the news item - in the issuing of the on air retraction and whether this had led to a breach of the requirements of the Code for due accuracy and due impartiality in news (Rule 1.2) and the prohibition contained in Rule 1.5 of the expressions of the opinions of licence holders on matters of political or industrial controversy or matters relating to current public policy. To establish the exact nature of Mr MacDonald’s role, Isles FM was asked to provide details and copies of minutes of all meetings of the Isles FM Board at which the original news item and retraction were discussed.

2. The Failure to Provide Recordings

During the investigation of the Fairness complaints, Isles FM did not provide recordings of its output for 14 March 2005. In the absence of these recordings, the broadcaster was asked to provide transcripts of the material which had been the subject of the complaints.

Subsequently Isles FM was also asked to provide a recording of the on air summary of adjudication which it had been directed to broadcast by Ofcom as a result of the one partially upheld Fairness complaint. Isles FM did not provide the recording.

Response

1. Due accuracy and due impartiality and opinions of the licensee

Isles FM said that when it had received a complaint about the news item from An Comunn it had felt duty bound to consider it. No Board meeting took place on the day of the broadcast – the policy of the broadcaster was for the Managing Director to deal with complaints. She decided to write the retraction for broadcast that afternoon and her fellow directors supported this. With hindsight the Managing Director acknowledged that the retraction should have been withheld until she had had an opportunity to consult the broadcaster’s News Editor.

The broadcaster said it put great emphasis on due accuracy and due impartiality and said it was careful to ensure that there are no undue expressions of opinion by or on behalf of licence holders.

Ofcom considered that the information provided was insufficient and wrote on two further occasions to Isles FM. We asked who had made the complaint about the news item; what the nature of the complaint was; who authorised and decided on the wording of the retraction, and why it made reference to Angus MacDonald. We asked again for details of all meetings and discussions that took place about the news item and the retraction. We emphasised that we wished to understand the role of Angus MacDonald in the decision to issue the retraction.

In response to these further requests Isles FM informed us of a series of phone calls that had been made in relation to the news item and the on-air retraction:
• Angus Macdonald, the Chairman of Isles FM called the Managing Director to make the complaint;
• the Managing Director called two fellow directors to inform them of the complaint;
• the Managing Director called the news editor but could not contact him;
• the Managing Director took the decision to withdraw the item and subsequently called Angus Macdonald to inform him that she had withdrawn the item.

Isles FM reiterated that no Board meeting took place but the Managing Director did hold a brief meeting to update members on the action she had taken in relation to the complaint. As she had already taken the decision to issue a retraction, Angus MacDonald was invited to that meeting but in the role of a complainant. He was not involved in the process of deciding how to deal with the complaint. The Managing Editor decided on the retraction, she authorised it, she decided on its wording and decided on its scheduling. Reference was made to Angus MacDonald in the complaint in order to highlight the fact that Isles FM was not hiding the fact that the complaint involved its Chairman.

2. The Failure to Provide Recordings

The broadcaster said it was unable to provide a recording of the news item and retraction. Isles FM said that this was due to a technical fault as the machine did not record the items complained about. It provided transcripts/scripts of the output. The relevant parts of the transcript for the purposes of this standards investigation were agreed and accepted by Ofcom.

Subsequently Isles FM said that it was also unable to provide a recording of the on air summary of adjudication as severe interference had rendered this and the other recordings (which Isles FM did have) unintelligible. It provided a script.

Decision

1. Due accuracy and due impartiality and opinions of the licensee

Isles FM is a small radio station with limited resources. It is staffed largely by volunteers. Nevertheless, like all licensed services it is required by the terms of its licence to observe certain standards. In this respect one of the obligations under the Code in operation at the time was to ensure that all news in whatever form was presented with due accuracy and due impartiality. The fact that the station was broadcasting to a relatively small audience in a limited geographical area does not in any way diminish the requirement for due accuracy and due impartiality.

In the circumstances of this case, where the complainant is also the Chairman of the licensed service company, and where his company also sponsors a programme included in that service, the broadcaster should be alert to the sensitivity with which such a complaint should be handled. It should be particularly aware that the due impartiality and the due accuracy of the news on the service may be at risk. Similarly the serious implications of a breach of the rules concerning the expressions of the
Opinions of licence holders should inform the handling of the complaint. It is essential that the news is seen to be independent and that editorial control rests with the service and is not relinquished.

It is appropriate for the officers, in this case the Managing Director, of a broadcasting licensee to respond swiftly to a complaint about inaccuracy in news where the complaint suggests there are grounds for believing the news may have been inaccurate. Any such complaint should be investigated immediately and, if necessary, the item removed from air and, if the mistake is significant, corrected on air quickly in line with the requirements of the relevant standards code, currently Rule 5.2 of the current Ofcom Broadcasting Code.

However, when considering such a complaint, it would be expected that in establishing the facts, the broadcaster would not rest on the word of one of the interested parties (in this case Mr MacDonald) but would also seek information from the journalist who wrote the item and, if necessary, through the news desk, the other party. In this case, as the broadcaster admits, these checks were not carried out. The result was that a retraction was aired on four occasions based on the representations of only one party, the Chairman of the Licensee.

In not seeking other views and in accepting and broadcasting one view only - that of Mr MacDonald (and An Comunn) - without such checks, the licensee failed to present the news with due impartiality. The retraction of the news story was only one-side of the issue (i.e. that the original item was inaccurate). This amounted to a breach of Rule 1.2 of The Code which required that all news be duly impartial.

We considered whether Mr MacDonald had inappropriately used his position and put undue pressure on the station to carry his understanding of the matter – resulting in the retraction and the failure to present the news with due impartiality. We also considered whether – if that has been the case – this amounted to an expression of the views of the licence holder on a matter of industrial controversy in breach of Rule 1.5 of The Code.

The involvement of Mr MacDonald as complainant, Chairman, and sponsor in this case indicated that he was in a position where he had significant conflicts of interest of which the station would have been aware. Having lodged the complaint himself it was incumbent upon Mr MacDonald and upon the Board and responsible officers at the station to ensure that Mr MacDonald was removed, and seen to be removed, from the deliberations of the company’s directors and officers. This is particularly the case given that he was the Chairman of Isles FM and in normal circumstances had authority over other Board members and officers. We have been told that no Board meeting took place but that the Managing Director held a meeting with members of the Board to update them and discuss the retraction prior to its broadcast. The presence of Mr MacDonald at such a meeting - according to Isles FM, in his capacity as complainant - supports the suggestion that his unusual position had led to an extraordinary response by Isles FM. It is extraordinarily unusual for a broadcaster to invite a complainant to be briefed about a proposed retraction with members of the Board of a service prior to issuing a retraction. It is regrettable that there is a lack of proper minutes, or records of any kind to assist Isles FM in the presentation of their

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2 The ex-Radio Authority News and Current Affairs Code explains that the restrictions relating to matters of political or industrial controversy or matters relating to current public policy “apply to views expressed by licence holders i.e. the company or person holding the licence or its management or staff speaking on its behalf rather than employees/presenters speaking in a personal capacity in the normal course of programming”.

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The presence of Mr MacDonald at the impromptu meeting of Board members, combined with the lack of checks to substantiate his complaint before the retraction was issued, leads us to conclude that the station’s breach of Rule 1.2 of The Code sprung from a failure to maintain the editorial independence of the news in the face of the intervention by station’s Chair in the role of complainant.

In considering the separate standards issue, whether there has been a breach of Rule 1.5 of the Code, we took into account that whilst it required that all expressions of the views and opinions of the Licensee on matters of industrial controversy be excluded from the service, this did not mean that the Licensee cannot give its views if it has itself, become part of the controversy. In this case, (while recording a breach of Rule 1.2 for a breach of due impartiality partly due to the intervention by the station’s own Chair), we take the view that Mr Macdonald’s opinion which was broadcast by the service, (namely, that the original news item was inaccurate), was not an expression of the Licensee’s view, given Mr McDonald was involved in the dispute not as Chairman of the Licensee but by virtue of his presidency of An Comunn. We therefore find that Isles FM did not breach Rule 1.5.

2. Failure to Provide Recordings

Both TV and radio licences oblige licensees to “adopt procedures acceptable to Ofcom for the retention and production of recordings…of any programme which is the subject matter of a Standards Complaint…”

In particular, Radio Licensees are required by part 2 Section 8 of their licences to:

(a) make and retain for a period of 42 days from the date of its inclusion therein, a recording of every programme included in the Licensed Service together with regular time reference checks; and

(b) at the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction; and

(c) at the request of Ofcom forthwith produce to Ofcom any script or transcript of a programme included in the Licensed Service which he is able to produce to it.

The broadcaster failed to provide recordings of its output as required by this section. We note that recordings were being made but that severe interference rendered them unintelligible. However it should have been apparent that satisfactory recordings were not being made and steps should have been taken to rectify the matter in order to comply with the license. This is a serious and significant breach of the licence and will therefore be recorded as such.

The broadcaster was in breach of section 1.2 (due accuracy and due impartiality in news) of the Ofcom Code (ex Radio Authority News and Current Affairs Code)

The broadcaster was also in breach of Part 2 Section 8 of its licence (provision of recordings)
Resolved

Hell’s Kitchen USA
ITV2, 6 September 2006, 20:00

Introduction

Hell’s Kitchen USA is the American version of the UK show which features selected members of the public working in a highly pressurised environment under the tutelage of Gordon Ramsay. The eventual winner of the series is given the opportunity to run their own kitchen in a top restaurant.

A viewer complained that the word “fucking” was used during a conversation between a contestant and a sous chef at approximately 20:30.

Response

ITV2 accepted that an error had been made and apologised unreservedly. This edition of the programme had undergone a lengthy editing process to remove 30 strong swear words and, unfortunately, this particular use of the f-word was overlooked. ITV2 confirmed that this episode had subsequently been re-edited.

Decision

We understand how this error occurred and welcome ITV2’s apology and assurance that the programme was re-edited to remove the offending word. In the circumstances we consider the matter resolved.

Resolved
Not In Breach

Poker Face
ITV 1 (Channel Television), 12 and 16 July 2006, 20:00

Introduction

Poker Face is a quiz show, based on the bluffing aspect of poker, in which contestants competed for the chance to win a prize of one million pounds.

12 July 2006

25 viewers complained about the edition of the series shown on 12 July 2006. The majority were offended by the use of the word “bollocks” by a contestant. They considered the swearing unsuitable for use in a family programme, hosted by Ant McPartlin and Dec Donnelly, which attracted young children to view. As viewers were unsure if the programme was broadcast live or not, some said that the presenters should have apologised, others that the programme should have been edited to obscure the word.

A smaller number of viewers complained about the use of the word “smartarse” by both a presenter and a contestant. Others were offended by word play involving the word “shuttlecocks”.

16 July 2006

One viewer complained about the use of the word “bollocks” by a contestant.

Response

12 July 2006

Channel Television said that the contestant who said “bollocks”, Barbara, was persuaded to fold by the tactics of her fellow contestants, when in fact she was in a much better position than she had feared. When she was shown the leader board after her withdrawal from the game, she was so outraged that she expressed herself with the vulgar language complained of, remarking that she had been married three times and should have known better than to be fooled by men again.

All the shows were pre-recorded and transmitted ‘as live’ with as few edits as possible to retain the excitement and tension of the studio. When the producer alerted the compliance team to Barbara’s use of vulgar language, a discussion took place as to whether it might be better to edit out her comments. However, after some thought, it was decided to allow them to be retained because:

- This use of “bollocks” – defined in Ofcom’s own research as “mild language to most…” – would be shown at around 20:30, when it believed the youngest children would already be in bed – the series went out in term time.
  Additionally it did not believe that the programme would have been of interest to young children– the format was not one with an evident appeal for young viewers.
Barbara did not use the word ‘bollocks’ to another contestant or to the presenters in an aggressive or abusive fashion, she was reprimanding herself for being bluffed into ‘folding’. She has a big personality – several viewers e-mailed after the show went out to suggest that she should be offered more television work – and her aggrieved yet good-natured delivery of the word “bollocks” was, in the broadcaster’s view, so funny as to minimise any potential offence.

16 July 2006

While the other qualifying shows in the series were free of any vulgarities, the Final was recorded on the day before transmission – the Saturday – and during the recording for this show, a contestant remarked ‘that’s bollocks’ in response to an attempt by another to claim to be doing very well.

As this was the Final show, with so much to play for and such an air of tension in the studio, this element of the contestants’ banter was retained – although other occasions of bad language were removed - as it helped to communicate the tension and atmosphere. The different tactics employed by the final six contestants - who were required to gamble their original winnings of £50,000 to compete for the top prize of £1,000,000 - and the banter between them, made compelling viewing.

Mindful of the upset caused to some viewers in the previous edition, the broadcaster arranged for a presentation announcement to be given immediately before the programme began "With a million at stake, high tempers and harsh words in the Poker Face Final" in the hope that this would alert viewers to the inclusion of some mild bad language. This would seem to be confirmed by the significant reduction in the number of complaints received about the language.

Decision

Ofcom’s Broadcasting Code states:

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

Meaning of "children":
Children are people under the age of fifteen years.

Meaning of "appropriate scheduling":
Appropriate scheduling should be judged according to:

• the nature of the content;
• the likely number and age range of children in the audience, taking into account school time, weekends and holidays;
• the start time and finish time of the programme;
• the nature of the channel or station and the particular programme; and
• the likely expectations of the audience for a particular channel or station at a particular time and on a particular day.

1.16 Offensive language must not be broadcast before the watershed, or when children are particularly likely to be listening, unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed.”
Ofcom's research, *Language and Sexual Imagery in Broadcasting: A Contextual Investigation*, notes that both the terms “bollocks” and “arse” were considered mild swearing by the majority of respondents.

**12 July 2006**

While we recognise that some viewers would prefer not to hear any swearing or offensive language pre 21:00, the Guidance to Ofcom’s Code which is based on extensive research recognises that “milder language in the early part of the evening may be acceptable, for example, if mitigated by a humorous context”. Although vehement, Barbara’s use of “bollocks” was isolated rather than repeated, and was uttered in outraged frustration instead of aggression. Her reaction when finding out that she had been ‘bluffed’ was so incredulous that it would have been amusing to the vast majority of viewers.

While we recognise that some children were on summer holiday by this point in July, children aged 4-9 made up just 2.8% of the audience for the programme of 12 July 2006. In the particular context of this quiz show, we consider that neither the word “bollocks”, nor the childish taunt of “smartarse” were in breach of the Code. However broadcasters must continue to be sensitive to the expectations of their audiences. The fleeting play on words relating to “shuttlecocks” was not explicit and would have been missed by younger viewers.

**16 July 2006**

As noted above, research suggests that the term “bollocks” is considered to be mild swearing by the majority of viewers. In the context of the tense Final of this quiz show, which did not attract a large audience of young children and was preceded by information alerting viewers to the language, the use of the word “bollocks” was not in breach of the Code.

**Not in Breach**
Fairness and Privacy Cases

Upheld

Complaint by Mrs Susan Holland and Mr Marc Asquith
Y Byd ar Bedwar, S4C, 14 June 2005

Summary: Ofcom has upheld, with certain limited exceptions, these complaints of unfair treatment and unwarranted infringement of privacy.

Mrs Susan Holland and Mr Marc Asquith complained that they were treated unfairly and their privacy was unwarrantably infringed in an edition of the current affairs programme Y Byd ar Bedwar which featured them. Mrs Holland and Mr Asquith complained that the programme, which concerned a disputed grazing tenancy, portrayed them unfairly and included footage of them, and of Mrs Holland’s property, which was recorded and broadcast without their consent. S4C responded that the programme’s portrayal of Mrs Holland and Mr Asquith was fair and accurate, and that the footage broadcast did not unwarrantably infringe their privacy.

Ofcom found that the programme’s portrayal of Mrs Holland and Mr Asquith was unfair, through both individual statements made about them and through the cumulative effect of the programme as a whole. Ofcom further found that material recorded and broadcast which specifically featured them, and that which featured Mrs Holland’s house, unwarrantably infringed their privacy. Ofcom considered that the general footage of Mrs Holland’s other property, as recorded and broadcast, did not unwarrantably infringe her privacy.

Introduction

This edition of the Welsh-language current affairs programme Y Byd ar Bedwar examined a dispute over a grazing tenancy. The dispute, which had been taken up by Cymuned, a Welsh pressure group which campaigns for the rights of Welsh-speaking communities, related to rented fields at Tyn y Coed, in Cwm Mynach, Meirionnydd. The fields belonged to Mrs Susan Holland and were grazed by a local farmer Mr Meirion Jones.

The programme explained that generations of Mr Jones’s family have farmed land in Cwm Mynach and stated that only one Welsh person still lives and farms there, namely Mr Jones. The programme examined relations between Mr Jones on the one hand, and Mrs Holland and her partner Mr Marc Asquith on the other. It described disagreements between the parties, including the issue of dogs belonging to Mrs Holland and Mr Asquith running through land rented by Mr Jones during lambing. The programme discussed how Mrs Holland had given Mr Jones notice to leave the land and that further disagreements had ensued over the removal of Mr Jones’s stock and over the locking of gates to prevent Mr Jones returning the stock to the land. Interviews with local farmers, who observed the movement of stock, were included.

The programme examined the involvement of Cymuned in attempts to resolve the dispute and included an interview with its Chief Executive, Mr Aran Jones. The programme explained that Mrs Holland obtained a court order to evict Mr Meirion
Jones from her land. Mr Asquith’s home in England was discussed as were disagreements between the programme makers and Mr Asquith and Mrs Holland over filming on Mrs Holland’s property, both on and off the public highway which runs through it. The programme ended with Mr Jones’s distress at losing the tenancy.

Mrs Holland (whose face was obscured), and her partner Mr Marc Asquith were both featured in the programme.

Mrs Holland and Mr Asquith complained that their privacy was unwarrantably infringed in both the making and broadcast of the programme and that they were treated unfairly.

The Complaint

Mrs Holland’s and Mr Asquith’s cases

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

a) The programme contained many factual inaccuracies and portrayed other facts in a wholly misleading fashion which resulted in unfairness to her, including the following:

i. The description, in the programme’s commentary, of the farmer, Mr Jones, being “pushed out of the valley” was unfair. Mrs Holland’s fields made up only eight acres of the valley and she had offered to let him remain on them for a further year.

ii. The programme’s commentary reference to Mrs Holland as an “incomer”, and Mr Jones’s rhetorical question in interview “why buy a house in such a location?” were unfair. Mrs Holland has lived in the valley for in excess of forty years and full time for the last ten years.

iii. The commentary description that “most of the houses in this valley are holiday homes” and the suggestion that Mrs Holland was a second home owner were unfair as her home and land are her full time residence.

iv. The commentary reference to Mrs Holland “letting her dogs run off the leash” was unfair since this is not an offence. Indeed when the farmer, Mr Meirion Jones, brought a prosecution against her for sheep worrying, it was not upheld. The reference to Mrs Holland having given Mr Jones “final notice to cease the tenancy over a year ago” was also unfair, since the programme portrayed the notice to quit as following Mr Jones’s court action against Mrs Holland regarding her dogs. In fact the reverse was true. Mr Jones brought the court case, regarding Mrs Holland’s dogs, after the notice to quit.

v. The commentary reference that “She (Mrs Holland) argues that Meirion Jones doesn’t really need her land” was unfair, as Mrs Holland accepts that morally, historically and culturally the Jones family should be grazing her land. It was Mr Jones’s actions that have led to him being prevented from grazing it.

vi. The section of the programme regarding local farmers who allegedly observed Mr Asquith moving Mr Jones’s sheep was also inaccurate, biased and unfair to Mrs Holland, in that it failed to mention that on the occasion referred to, Mrs Holland alone herded and removed sheep.
vii. The commentary reference that “Meirion Jones went to court” was inaccurate and unfair to Mrs Holland since, in fact, it was she who instituted proceedings. The further commentary reference “In April she obtained a Court order to remove the farmer from her land” was inaccurate as it was not obtained until 8 July 2005. It was also unfair to Mrs Holland in that she did not force him off the land, it was he who had no entitlement to stay.

viii. The commentary reference to the road over her land being “a private road” was inaccurate and the programme unfairly attributed this inaccurate description of the road to Mrs Holland. In fact, it is not a private road but a public highway which passes over her land.

b) Overall, the programme makers exhibited bias, chose to ignore the facts and unfairly portrayed Mrs Holland as an English holiday-home owner who had thrown a Welsh farmer off her land because she did not like his farming activities.

In spite of the complainant’s expressed wish not to appear in the programme she featured for around six minutes.

The programme makers also omitted to broadcast an interview recorded with a neighbour, Mr Mygind, which would have shown that Mr Jones behaved unreasonably with other neighbours and was the cause of his own difficulties. This omission resulted in unfairness to Mrs Holland.

In summary, Mrs Holland complained that her privacy was unwarrantably infringed in the making and broadcast of the programme in that:

c) The programme makers entered her land without permission and recorded footage in spite of requests not to do so.

d) The programme makers broadcast the footage recorded on her land in spite of requests not to do so. Further, the programme makers used the caption “she didn’t want to be filmed” over footage broadcast of Mrs Holland when she did not wish to participate in the film in any way.

e) The programme makers included sufficient information within the film, including nearly all of her postal address, to identify her and her home, and thereby put her security at risk.

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

f) The programme contained many factual inaccuracies and portrayed him inaccurately, which resulted in unfairness to him, including:

i. The commentary reference to the farmer, Mr Jones, saying he was “being pushed out of his native valley by a “barrister from England” was unfair since Mr Asquith is of Welsh extraction, only recently moved to England, and owns no land in the valley; further, the explanation of his “Welsh descent” was too far into the programme for viewers to gain a proper understanding of Mr Asquith’s background from the outset, resulting in unfairness to him.

ii. The commentary references to him as an “incomer” were unfair since the only sense in which he is an “incomer” to Wales was in respect of this particular valley, and this was clearly not what the programme makers intended to convey.
iii. The reference, in Mr Jones’s interview, to Mr Asquith sending his dogs to run through Tyn y Coed woodland was unfair since he was perfectly entitled to do this; further, other references to the dogs in the fields during lambing unfairly implied negligence.

iv. The reference, in commentary and in interviews with Mr Jones and with local farmers, to Mr Asquith “removing sheep” and “stock” was inaccurate and an unfair portrayal of him since, in fact, the sheep were moved by Mrs Holland alone at the expiry of the first notice to quit.

v. The reference, in interview with Mr Meirion Jones, to Mr Asquith “playing around with the gates” in order to prevent Mr Jones’s sheep returning to the fields, was inaccurate and an unfair portrayal of Mr Asquith. In fact his actions were in response to Mr Jones leaving the gates open, which was confirmed by the Council as an offence under the Highways Act.

vi. Mr Jones’s statement, in interview, “I’m the last Welshman in the Valley” was inaccurate, as there is another Welsh farmer just below the Tyn y Coed land, and added to the unfairly sympathetic portrayal of Mr Jones’s side of the dispute.

vii. The programme attributed to Mr Asquith the opinion that Cymuned, the Welsh pressure group which campaigns for the rights of Welsh-speaking communities, was “sticking its nose” into the dispute. This was unfair since, in fact, he supported Cymuned’s involvement in attempting to resolve the dispute and had expressed this opinion to the programme makers.

viii. The programme’s reference, in commentary and in the reporter’s piece to camera, to his home as near Manchester was biased; and, was intended to portray him, unfairly, as an evil rich English Tory barrister trampling the innocent Welsh farmer; further it was his mother’s house that was shown not his own more modest house.

g) The programme makers were biased in their making of the programme, inaccurately portraying him as the protagonist and as an evil English wealthy barrister in spite of information provided to them. Furthermore, small mitigating elements of commentary did not detract from the overall unfairness of the portrayal.

In spite of the complainant’s wish not to appear in the programme, he featured for around six minutes.

The programme makers also omitted to broadcast an interview recorded with a neighbour, Mr Mygind, which would have shown that Mr Jones behaved unreasonably in other situations and was the cause of his own difficulties. This omission resulted in unfairness to Mr Asquith.

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

h) The programme makers effectively door stepped him, filming and broadcasting his discussions with them in spite of his request not to do so.
S4C's case

In summary, the broadcaster responded to the fairness complaint by Mrs Holland that:

a) *Y Byd ar Bedwar* was a long-running current affairs series with a strong track record. In this edition, it investigated the wider issues of the case of farmer Meirion Jones which had been taken up by the pressure group Cymuned. The story was a microcosm of the tension between traditional ways of life and those of in-migrants who have little in common with the communities among whom they live. It was not a conflict between English and Welsh but between different ways of life. It was in the public interest to tell this story and it was told as a complex dispute which, it was hoped, would not be repeated. Any repeat of such a dispute would result in dire consequences for relations between the indigenous people and those they see as a threat to their way of life and for their language.

i. The farmer, Mr Jones, felt “pushed out of the valley” because the eight acres he rented from Mrs Holland were sheltered, with good access to water and therefore crucial to him at lambing time when the sheep roamed between the rented field of Tyn y Coed and adjacent woodland. Without the Tyn y Coed land at lambing time, no matter how many acres the sheep could range over the rest of the time, he would be unable to continue working and living there.

ii. According to the Concise Oxford Dictionary, Mrs Holland was an “incomer” since she had come to live in an area in which she has not grown up; the reference to incomer was part of a rhetorical question about the work of the pressure group Cymuned: “Tonight, is Cymuned defending Welsh people’s interests or simply antagonising incomers” (programme subtitle).

Further, Mr Jones’s subsequent reference “why buy a house in such a location?” was a reference to any incomer choosing to live in a rural environment.

iii. It was correct to say most of the houses in this valley “Cwm” are holiday homes, as the reference to valley “Cwm” was a reference only to the small valley (Cwm Mynach) which included Mr Jones’s farm, Mrs Holland’s house and four holiday homes. The reference to a second home was Aran Jones of Cymuned’s explanation of the wider implications of this type of dispute. S4C noted that Mrs Holland’s business address is in Manchester where she spends about three nights a week.

iv. The programme fairly summarised the prosecution and showed that Mr Jones’s allegations against Mrs Holland were baseless. The complaint over the reference to Mrs Holland having given “final notice to cease the tenancy over a year ago” appeared to be a quibble over chronology and caused no unfairness. The programme made clear that the notice to quit followed a history of disputes.

v. Mrs Holland accepted that Mr Jones does need her land which contradicted her earlier complaint that he did not need her eight acres. Further, the programme makers relied on what the complainants had told them when this statement was used in the programme and considered that most viewers would agree with Mrs Holland that Mr Jones’s actions have not helped his case.
vi. The description of local farmers helping Mr Jones with the stock was information from Mr Jones.

vii. The commentary reference “Meirion Jones went to court” summarised the position, it mattered little who initiated the action. Further, the commentary line “In April she obtained a Court order” was the programme makers’ understanding from Mr Jones, but in any case the complainants confirm he had no entitlement to be on the land from late March and was thus forced off.

viii. Mrs Holland told the programme makers that the road over her land was a private road that she owned. It was the county council that confirmed it was a public highway.

b) The issue of bias was dealt with in the opening comments above at head a).

The length of time the complainant featured in the programme reflected the amount of time she spent approaching the camera crew. It was debatable whether Mrs Holland had departed from her stated wish not to appear but the programme makers erred on the side of caution by obscuring her face in the broadcast material.

The interview with the neighbour Mr Mygind was not used as it concerned a very different dispute over how the land should be farmed.

In summary, the broadcaster responded to the privacy complaint by Mrs Holland that:

c) With regard to recording material on Mrs Holland’s land, the programme makers believed they were entitled to film as they were on the edge of the public highway between the road surface and the field fence. It was debateable whether this strip of land to the side of the road was private property owned by Mrs Holland or part of the public highway. The programme makers believed it was part of the public highway and, therefore, they were entitled to film from there. However if they were wrong in this belief, they apologised. Other shots were taken from the highway itself from which they were entitled to film.

d) With regard to the broadcast of material recorded on Mrs Holland’s land, the programme makers denied that this amounted to an infringement of Mrs Holland’s privacy. For the reasons given immediately above at head c) the programme makers believed they were entitled to film, and subsequently broadcast, material recorded on, or at the edge of, the public highway.

The programme makers understood that Mrs Holland did not wish to appear in the programme, and although the programme could not be made without referring to her, they set out to respect her wishes and obscured her face in the broadcast footage. The programme makers were justified in filming her in her car as they sought to show her dogs running along with the car and therefore not in her control.

e) The programme did not give Mrs Holland’s postal address. The complainants wilfully overstated safety concerns, but in deference to the insecurities of a woman living in an isolated setting, the programme makers did not show her face or vehicle registration and did their best not to show her home. Behind this complaint lurks the suggestion that she could have fallen prey to militant Welsh-language campaigners. However, the arson campaign targeting holiday homes ended in the
early 1990s. While the programme makers did not identify her home, they gave Mrs Holland no assurance that they would not film her house. They acted in accordance with her stated wish not to appear in the programme.

In summary, the broadcaster responded to the fairness complaint by Mr Asquith that:

f) The opening comments, at head a) above, deal with general points raised by the complainant.

i. The description of Mr Asquith was carefully worded. It was correct that he was a barrister from England: the point was the contrast between the indigenous farmer and the person he viewed as pushing him out. The programme reflected what it was told by Mr Asquith, namely that he was of Welsh descent, an important detail to avoid the impression that this was a Welsh versus English dispute and this was mentioned only one minute in to the programme.

ii. According to the Concise Oxford Dictionary, Mr Asquith was an “incomer” since he has come to live in an area in which he has not grown up; the reference to incomer was part of a rhetorical question about the work of Cymuned. The programme also reported Mr Jones’s not unreasonable perspective that Mr Asquith was an incomer.

iii. Mr Jones’s sheep could wander freely in the Tyn y Coed woodland; the programme referred to Mr Jones being happy for Mr Asquith to take his dogs through the fields during lambing in an attempt to achieve balance on this issue and advance Mr Asquith’s side of the story.

iv. The references to Mr Asquith “removing sheep” and “stock”, and to local farmers helping Mr Jones to return the sheep to the land, were quoting an allegation made by Mr Jones. Further Mr Asquith had admitted, in a phone conversation with the programme makers, to shutting out the sheep which made any inaccuracy immaterial.

v. The main gate below Mrs Holland’s home was always kept shut. The other gates were deliberately, and correctly, left open to allow sheep to roam.

vi. Mr Jones’s statement “I'm the last Welshman in the Valley” was accurate as a reference to the small valley of Cwm Mynach.

vii. The programme makers could not respond to the reference to an opinion regarding Cymuned without more details concerning the alleged inaccuracy.

viii. There was no intention to portray Mr Asquith as an evil rich English Tory barrister. The location of his home was relevant to the issue of how much understanding he could have of Mr Jones’s position as he lives, works and is a county councillor around Manchester. The information on his house was taken from the then current Cheshire County Council website.

g) The issue of bias was dealt with above in the opening comments at head a).

The length of time the complainant featured reflected the amount of time he spent approaching the camera crew.

The interview with the neighbour, Mr Mygind, was not used as it concerned a very different dispute over how the land should be farmed.
In summary, the broadcaster responded to the privacy complaint by Mr Asquith that:

h) Mr Asquith’s first words to the programme makers were a command that the camera be switched off, however the programme makers carried on until it became clear why he wanted them to stop filming. His argument was not that they were filming him, but that they were filming on land where they had no right to film. On all other occasions, he approached the camera and clearly wanted them to film, for example an occasion when he clearly wanted a letter filmed. In contrast to Mrs Holland, who stated that she did not wish to appear in the programme, the same demand was not made by Mr Asquith.

**Mrs Holland’s and Mr Asquith’s comments on S4C’s response**

In summary, Mrs Holland commented on the broadcaster’s response to the fairness complaint that:

a) The programme makers adopted Mr Jones’s view as indisputable fact rather than viewing matters dispassionately, and in a small number of instances have been demonstrably dishonest.

i. The sheep could not wander over between Mrs Holland’s Tyn y Coed fields and adjacent land, as described in the broadcaster’s response, as it was separated by fences and gates. Indeed this was a finding made by magistrates in the court case brought by Mr Jones over Mrs Holland’s dogs. Mrs Holland’s land was not special or crucial to Mr Jones’s sheep and he continued to run sheep and raise lambs.

ii. According to the programme makers’ definition of the word “incomer”, the farmer Mr Jones would be one, as he had lived outside the valley for many years. The use of the phrase was simply pejorative. Mr Jones’s question “why buy a house in such a location?” ignored the fact that Mrs Holland had owned property and had close connections with Cwm Mynach for many decades. The programme makers adopted the premise that the dispute must be because incomers have not adapted to the rural way of life, and failed to challenge Mr Jones’s views.

iii. The programme makers made a technical definition of the word valley (Cwm). The result was that the programme gave the misleading impression that the community was overrun by holiday homes. The editing of the comments of Aran Jones of Cymuned regarding second homes made it appear to be a comment on Mrs Holland. Mrs Holland was also unaware of the relevance of her business activities in Manchester. Tyn y Coed is her sole residential address. Furthermore, would the same point have been made about a Cardiff based business?

iv. The unfair impression was given that the courts let Mr Jones down in his prosecution over her dogs. Mrs Holland did not merely quibble over chronology. The impression was given that she gave Mr Jones notice to quit as a result of the court case over her dogs. By reversing the chronology the programme makers unfairly portrayed her as petty and small minded.

v. Mrs Holland was sensitive to Mr Jones’s viewpoint but the practical reality was that he had no need for such a small patch of land.
vi. The section concerning local farmers was an example of how once again the programme makers accepted Mr Jones’s version without challenge.

vii. The reference “Meirion Jones went to court” presented Mr Jones as the aggrieved party when it was Mrs Holland. It does therefore matter who initiated the action. Further, the reference “In April she obtained a Court order” was taken, unconfirmed by the programme makers, from Mr Jones. There was no court order when the programme was made and Mr Jones could have remained until the order was made in July but he voluntarily vacated the land. Mrs Holland had made a formal offer to allow him to stay until March 2006 but he had not accepted it. The untransmitted material shows that Mrs Holland was not permanently excluding Mr Jones from her land.

viii. The untransmitted material showed that the status of the road was repeatedly explained, namely that it is a public highway passing over private land.

b) In their response, the programme makers for the most part simply adopted Mr Jones's views as indisputable facts.

The programme makers used pressure techniques and underhand behaviour which were disproportionate to the investigation. Furthermore, the refusal of anyone to participate in a programme did not remove the programme makers’ duty to be accurate and both complainants had provided information over the telephone.

The interview with Mr Mygind showed a pattern of behaviour by a farmer, Mr Jones, who made claims of rights to land to which he was not entitled and so alienated his neighbours. The material was not used as this was not the programme that the programme makers wanted to make.

In summary, Mrs Holland commented on the broadcaster’s response to the privacy complaint that:

c) Regarding the recording of material, prior to transmission Mrs Holland offered to refrain from legal proceedings as long as no footage was taken from her land and used in the programme; she owns all the land and can fence any area as long as she does not block the public highway. The programme makers should have taken proper legal advice over the issue of entitlement to be on her land. Mr Asquith and Mrs Holland were adamant, as shown in the untransmitted material, that the piece to camera should not be filmed on Mrs Holland’s land and could not therefore show the house. The untransmitted material showed the programme makers whispering together in order to breach an agreement to film away from the house and land. The angle of other shots show they were not taken from the highway but from Mrs Holland’s land.

d) Regarding the broadcast of material, prior to transmission Mrs Holland offered to refrain from legal proceedings as long as no footage was taken from her land and used in the programme. As discussed at head c) immediately above, the programme makers were not entitled to film on her land or show the house.

The programme makers repeatedly intruded on Mrs Holland’s privacy with blatant disregard for her requests not to; there was no justification in filming her car and dogs as they were under the appropriate control and if sheep are encountered were trained to progress close to the car.
e) Mrs Holland’s security concerns were well founded since there was an attack in the past.

In summary, Mr Asquith commented on the broadcaster’s response to the fairness complaint that:

f) The programme makers adopted Mr Jones’s view as indisputable fact rather than viewing matters dispassionately, and in a small number of instances have been demonstrably dishonest.

i. The description of Mr Asquith was carefully worded, but not to give the impression suggested; i.e. he was no more from England than any of the other Welsh people who have been forced by economics to work in England; Mr Asquith is half Welsh, his ‘Englishness’ is however established in the opening shots and by the Nimrod music over the footage of Alderley Edge. It was plain the programme makers sought to portray him as an evil English barrister bullying a poor Welsh farmer. It was unfair to suggest he is a foreigner and easy to use the term English as a pejorative term.

ii. According to the programme makers’ definition of the word incomer, Mr Jones would be one as he had lived outside the valley for many years. The use of the phrase was simply pejorative.

iii. The programme also reported that, as an incomer, Mr Asquith had been frightening Mr Jones’s sheep when there is no evidence for this. Mr Asquith’s dogs only run in a fenced off area; further Mr Jones requested they be left out to deter foxes. Mr Jones’s position was left unchallenged.

iv. The assertion that Mr Asquith removed sheep was not prefaced by “Mr Jones said that...” but asserted as a matter of fact. Mr Asquith shut the gate with the sheep in the fields as required by the Highways Act. The reference to “local farmers” was an example of how once again the programme makers accepted Mr Jones’s version without challenge.

v. The reason Mr Asquith shut the gates to the fields was that Mr Jones had been committing an offence by allowing the sheep to run on the lane without a farming need (e.g. for shade and water). Furthermore, the programme implied through the reference to Mr Asquith “paragliding” that he visits the area just to play, when in fact his weekends are spent on woodland management.

vi. There is another Welshman farming in the small valley of Cwm Mynach although it is conceded that he no longer lives there.

vii. The programme makers put into Mr Asquith’s mouth the comment that “he can’t understand why Cymuned is sticking its nose into (this matter)”, when in fact Mr Asquith, Mrs Holland and Cymuned together sought to broker a compromise.

viii. Mr Asquith admitted he was a visitor to Cym Mynach but questioned the relevance of the references to his home near Manchester, when Mrs Holland made all the decisions regarding her land and had the final say on filming. From the section regarding his home in Alderley Edge onwards, the programme seemed to be all about Mr Asquith and Mrs Holland objecting to filming, around half of the time broadcast. Mr Asquith’s address details on the Cheshire County Council website were updated on 5 May 2005 and the
broadcast was 14 June 2005 with inaccurate information taken from a cutting dated January 2001.

g) In their response, the programme makers for the most part simply adopted Mr Jones's view as indisputable fact.

The programme makers used pressure techniques and underhand behaviour which were disproportionate to the investigation. Further, the refusal of anyone to participate in a programme does not remove the programme makers’ duty to be accurate and both complainants had provided information over the telephone.

The interview with Mr Mygind showed a pattern of behaviour by a farmer, Mr Jones, who made claims of rights to land to which he was not entitled and so alienated his neighbours; the material was not used as this was not the programme that the programme makers wanted to make.

In summary, Mr Asquith commented on the broadcaster’s response to the privacy complaint that:

h) He was door stepped by the programme makers and at no time did they cease filming, although he made very clear that he wished to discuss their presence without being filmed. He wanted to show the letter referred to, but not have it filmed. He was hounded by the crew. He had made it clear from the moment that he discovered he was being filmed that he did not wish to be filmed. He continued to try to negotiate with the programme makers to leave, while trying to block filming. The programme makers attempted to differentiate between Mr Asquith’s position and that of Mrs Holland who wanted no part in the film, when his position was that he would act in concert with Mrs Holland and comply with her wishes.

The untransmitted material made clear that neither Mrs Holland nor Mr Asquith wished to be filmed, make comment or participate in the programme. Further it showed that the programme makers were intent on obtaining further footage of Mr Asquith.

S4C’s second statement in response

In summary, S4C responded to Mrs Holland’s comments on the fairness complaint that:

a) The charge that programme makers adopted Mr Jones’s views as indisputable facts rather than viewing matters dispassionately related to S4C’s response rather than the programme as broadcast. The programme presented the views of both sides and the programme makers’ response sought to justify the inclusion of the farmer’s views in the programme, not to accept them as fact. The programme did justice to the complainants’ position although they declined every opportunity to appear in the programme. In any event, the complainants failed to explain how the alleged inaccuracies resulted in unfairness to them.

i. The complainants argued that Mrs Holland’s land was not special or crucial to Mr Jones’s sheep, but Mr Jones now has one hundred fewer sheep because of the loss of Tyn y Coed land and the margin between profit and loss is extremely narrow.

ii. Mr Jones’s view (“Why buy a house in such a location?”) was challenged by the reporter’s question “Don’t you think it’s hard for them, living in these houses
surrounded by land that you’re farming?” The programme did not adopt the premise that the dispute must be because incomers have not adapted to the rural way of life. The programme reported Mr Jones’s point of view and challenged him on whether he needed Mrs Holland’s land, whether he sought to intimidate her, whether he was anti-English. The programme also put forward the complainants’ views and made plain that they had won all the legal battles, showing they were in the right on these issues.

iii. The programme makers used Cwm (valley) to refer to Cwm Mynach, a distinct area as understood by the locals. The remark by Aran Jones of Cymuned, concerning second homes, was talking about something that has not yet happened, and the possible consequences. Mrs Holland’s business address served to dispel any impression that her entire life was spent at Cwm Mynach. Had her business been based in Cardiff, this would have been reported.

iv. No separate response was made regarding any impression given concerning Mr Jones’s prosecution over Mrs Holland’s dogs. The chronology was given to the programme makers by Mr Asquith, in a letter detailing the exact sequence of events.

v. Mrs Holland complained about the programme’s commentary line “She [Mrs Holland] argues that Meirion Jones doesn’t really need her land”. This complaint was contradicted by the comment in her second submission that “the practical reality is that he has no need for such a small patch of land”.

vi. No separate response was made regarding the section concerning local farmers.

vii. No separate response was made regarding the reference “Meirion Jones went to court”. The programme makers were surprised that the complainants stated that Mr Jones could have remained on the land until a court order was made in July but that he voluntarily vacated it. The programme makers understood from Mr Asquith that Mr Jones had been trespassing since March 2005 and was only allowed to leave sheep there until the end of May for animal welfare reasons, because of recent lambing.

viii. No separate response was made regarding the status of the road.

b) The programme exhibited no anti-English bias as alleged by the complainants, rather it reported facts, for example Mr Jones was the last Welshman who lives and farms in Cwm Mynach and Mr Asquith was of Welsh descent with close ties to Manchester.

No “pressure techniques” were used as stated in the complainants’ second comments. The programme makers gave the complainants every opportunity to participate as required by good journalistic practice.

Had the programme makers been hell-bent on making an anti-English programme they would have included rather than excluded the interview with Mr Mygind (an English landowner who has also been in dispute with Mr Jones). They would also not have included the broadcast interview with a further English landowner, Mr Yoward, who came across as reasonable, likeable and perceptive.

In summary, S4C responded to Mrs Holland’s comments on the privacy complaint that:
c) Regarding the recording of footage, the programme did not unwarrantably infringe Mrs Holland’s privacy. To do so would have meant intruding into an aspect of her life she was entitled to keep private and for that intrusion to have been unwarranted. Neither was the case.

The programme makers filmed on the Tyn y Coed land believing they were entitled to do so with Mr Jones’s permission, and after they spoke to Mrs Holland they left the land. After obtaining legal advice, they filmed on or close to the road on the second day of filming, and parked at the nearest convenient spot. The filming that was conducted infringed no-one’s privacy. There was no agreement to film away from the house and land. The footage did not support the complainants’ conclusions over the whereabouts of the cameraman as he was filming from a high tripod.

d) Regarding the broadcast of the footage, the same response was made as immediately above at head c).

e) The complainants raised security issues, however Mrs Holland’s name was uncommon in North Wales which made her phone number easy to trace. No earlier attack was mentioned at the time of making the programme. Had it been mentioned then the perceived risk would have been re-assessed.

In summary, S4C responded to Mr Asquith’s comments on the fairness complaint that:

f) The charge that programme makers have adopted Mr Jones’s views as indisputable facts, rather than viewing matters dispassionately, related to S4C’s response rather than the programme as broadcast. The programme presented the views of both sides and the programme makers’ response sought to justify the inclusion of the farmer’s views in the programme, not to accept them as fact. The programme did justice to the complainants’ position although they declined every opportunity to appear in the programme. In any event, the complainants failed to explain how the alleged inaccuracies resulted in unfairness to them.

i. There was nothing sinister in the use of a familiar piece of English music to accompany footage of Alderley Edge. There was no suggestion that Mr Asquith was a foreigner, only an incomer to the Cwm. The word “English” was not used to describe him.

ii. No separate response was made regarding further use of the word incomer.

iii. The evidence regarding Mr Asquith’s dogs frightening Mr Jones’s sheep was Mr Jones’s account, which was put to Mr Asquith in a telephone conversation. His response, that Mr Jones was happy for his dogs to run through the sheep to deter foxes, was represented in the programme. The programme makers saw for themselves that there was no fence separating the woodland, where Mr Asquith’s dogs can go, from the fields where the sheep grazed; Mr Jones’s position on his sheep being disturbed was challenged by the programme putting forward Mr Asquith’s stance.

iv. Mr Asquith did not deny removing a sheep by throwing it over a fence. No separate comment was made regarding the section, including contributions from local farmers.
v. Mr Jones kept the gates to the field open in order that the sheep could have a supply of fresh water via the lane.

vi. No separate response was made regarding those living in Cwm Mynach.

vii. Mr Asquith’s initial response to the involvement of the pressure group Cymuned was dismissive. The question put to Aran Jones (“he [Mr Asquith] can’t understand why Cymuned is sticking its nose into [this matter]”) was put as a perfectly legitimate point of view.

viii. On at least one occasion, when the crew were trying to film a piece to camera, Mr Asquith had the final say on filming, not Mrs Holland. It was incorrect to state that half the broadcast was about Mr Asquith and Mrs Holland objecting to filming; the section referred to was 4 minutes 16 seconds out of 24 minutes 45 seconds running time. The information on Mr Asquith’s home, in Alderley Edge, was supported by the electoral roll and the landline number given by Mr Asquith which he explained was the phone number for a house shared with his mother.

g) The programme exhibited no anti-English bias as alleged by the complainants, rather it reported facts, for example Mr Jones was the last Welshman who lives and farms in Cwm Mynach, Mr Asquith was of Welsh descent with close ties to Manchester.

Had the programme makers been hell-bent on making an anti-English programme, they would have included rather than excluded the interview with Mr Mygind (an English landowner who has also been in dispute with Mr Jones). And they would not have included the broadcast interview with a further English landowner, Mr Yoward, who came across as reasonable, likeable and perceptive in the programme.

No “pressure techniques” were used. The programme makers only gave the complainants every opportunity to participate, as required by good journalistic practice.

In summary, S4C responded to Mr Asquith’s comments on the privacy complaint that:

h) There was no doorstep. The programme makers were filming an interview when they were accosted by Mr Asquith who chose to stop and debate matters. The reporter put no questions to him about his relationship with the farmer. The letter referred to had already been shown to the producer at Mrs Holland’s house; there was no need to show it in the presence of the crew if he was concerned about being filmed. He clearly enjoyed expounding his legal opinions in front of the camera. The footage showed Mr Asquith was not hounded.

Unlike Mrs Holland who did not wish any footage of herself or her property to be shown, Mr Asquith merely declined to provide an interview. He communicated Mrs Holland’s position to the programme makers and it would have been simple to express it as a joint position. It was clear from the footage that the desire not to be filmed had far more to do with Mr Asquith’s insistence on advancing his opinion about filming on the highway than with any desire to protect his privacy. The programme makers also ensured they obtained footage of Mr Asquith from the highway that did not cross Mrs Holland’s land, in case an injunction was obtained concerning the footage filmed on her land.
Decision

Ofcom’s statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unfair treatment in programmes and unwarranted infringements of privacy in and in connection with 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, consistent and targeted only at cases in which action is needed.

In view of the fact that these complaints related to a Welsh language programme, the Fairness Committee ("the Committee", Ofcom’s most senior decision making body with respect to Fairness and Privacy complaints) included the Member for Wales who is a Welsh speaker. All references to the programme are given in Welsh as broadcast and as a full English translation agreed by the parties. The English language subtitle, as broadcast, is also given.

In the circumstances of this case, the Fairness Committee found the following:

a) The Fairness Committee first considered Mrs Holland’s complaint that the programme contained many factual inaccuracies and portrayed other facts in a wholly misleading fashion, which resulted in unfairness to her. The ex-BSC Fairness Code (“the Fairness Code”) was the applicable Code when this programme was broadcast. Broadcasters must avoid unfairness to individuals or organisations featured in programmes through the use of inaccurate information or distortion, for example by the unfair selection or juxtaposition of material (the Fairness Code paragraph 2). Furthermore, broadcasters should take special care when their programmes are capable of adversely affecting the reputation of individuals, companies or other organisations, and should take all reasonable care to satisfy themselves that all material facts have been considered before transmission and so far as possible fairly presented (the Fairness Code Paragraph 7). Taking these requirements into account, the Committee addressed separately each of the individual complaints made by Mrs Holland concerning the programme’s content.

i. The Fairness Committee considered Mrs Holland’s complaint concerning the programme’s reference in its opening commentary to:

“ma’ ffarmwr yn deud bod o’n cael ei erlid o’i fro enedigol.”

“a farmer is alleging that he is being victimised from the area of his birth” (agreed translation).

“The farmer who says he is being pushed out of his native valley” (programme subtitle).

The Committee considered Mrs Holland’s complaint that this statement was unfair as her fields made up only eight acres of the nearly four hundred acres in the valley which the farmer, Mr Meirion Jones, grazed; and, further, that Mr Jones continues to run sheep and raise lambs. The Committee also took account of S4C’s comments that these particular eight acres were crucial to Mr
Jones at lambing time due to their sheltered nature and access to water, and to his ability to continue working and living in the valley; that he now has one hundred fewer sheep because of the loss of the Tyn y Coed land; and, the fact that he felt pushed out of the valley.

The Committee considered that it was disproportionate to indicate that losing eight acres out of four hundred would result in Mr Jones “being victimised” or “pushed out”. In the Committee’s view, the commentary’s description was therefore unfair, given the small proportion of the disputed acreage as compared to the rest of the acreage in the valley grazed by Mr Jones. The expression "erlid o’i …"., translated as “victimised from” in the agreed translation, and “pushed out” in the programme subtitles, was, in the Committee’s view, emotive language in the context of the amount of acreage concerned and in the circumstances of this case which are considered at Decision head vii below. The Committee concluded that, although the description was attributed to the farmer, it served to introduce the dispute at the start of the programme in a way that was unfair to Mrs Holland. This resulted in unfairness to Mrs Holland in the programme as broadcast.

ii. The Fairness Committee considered Mrs Holland’s complaint concerning the programme’s reference in its opening commentary to:

“mewnfdwyr”

“incomers” (agreed translation and programme subtitle)

The Committee noted Mrs Holland’s complaint that this description was unfair because she has lived in the valley for over forty years, full time for the last ten. The Committee also considered S4C’s submissions that the word referred to Mrs Holland having not grown up in the area as well as their response that the statement was part of a rhetorical question about the work of Cymuned.

The Committee noted the full reference in the programme:

“Heno: ydi mudiad Cymuned yn amddiffyn y Cymry neu’n cynddeiriogi mewnfdwyr?”

“Tonight, is Cymuned protecting the people of Wales or infuriating incomers?” (agreed translation).

“Tonight, is Cymuned defending Welsh people’s interests or simply antagonising incomers” (programme subtitle).

In the Fairness Committee’s view, the word “mewnfdwyr” (incomers) followed the commentary’s description of the dispute with Mr Jones and clearly referred to Mrs Holland. The Committee considered that this reference was unfair in that it stretched the meaning of “mewnfdwyr” (incomers) too far given Mrs Holland’s home in the valley and the length of time that she had spent there, as well as lived there. The Committee also considered that the use of the word held the connotation of a reference to someone who did not belong. The Committee found that this resulted in unfairness to Mrs Holland in the programme as broadcast. The cumulative effect of the presentation of Mrs Holland is considered at Decision head b).
Mrs Holland further complained about Mr Meirion Jones’s interview, as broadcast, in which he asked:

“pam dod yma i brynu tŷ mewn fath le yn y cychwyn?”

“why buy a house in an area such as this in the first place?” (agreed translation).

“why buy a house in such a location?” (programme subtitle).

The Committee noted S4C’s response that the reference was to any incomer choosing to live in a rural environment and that the comment followed the interviewer’s question:

"Newyddiadurwr: ‘Da chi’n meddwl bod hi’n anodd iddyn nhw yn byw yn y tai ‘na a’ch tir chi yn amlgychynu nhw? A chithau yno yn ffermio?’"

“Do you think it is difficult for them to be living in those houses and being surrounded by your land? And you farming?” (agreed translation)

“Don’t you imagine it’s difficult for them living there with your farming land surrounding them?” (programme subtitles)

and did not adopt the premise that the dispute was the fault of the incomers.

The Committee found that the rhetorical question put by Mr Jones was a general one, did not refer to Mrs Holland and did not therefore result in unfairness to Mrs Holland in the programme as broadcast.

iii. The Fairness Committee considered Mrs Holland’s complaint concerning the commentary reference:

“Ma’r rhan fwya o dai’r Cwm yn dai haf.”

“The majority of houses in Cwm Mynach are holiday homes” (agreed translation).

“Most of the houses in this valley are holiday homes” (programme subtitle).

The Committee noted Mrs Holland’s complaint that her home and land were her full time residence and that this description was unfair to her. The Committee also noted S4C’s response that the reference was only to the small valley Cwm Mynach. The Committee noted that Mrs Holland did not disagree with the reference within the narrow context of Cwm Mynach.

The Committee considered the programme’s commentary which preceded this reference:

“Cwm Mynach ger Dolgellau ym mherfeddion Meirionydd.”

“Cwm Mynach near Dolgellau is in the heart of Meirionydd” (agreed translation).

“Cwm Mynach, near Dolgellau, in the heart of Meirionydd” (programme subtitles).
It appeared to the Committee that this preceding commentary sentence clearly placed the reference to holiday homes within Cwm Mynach and noted that Mrs Holland did not dispute the accuracy of the reference within this context. The Committee therefore concluded that the reference was accurate in the context of the immediate neighbourhood referred to, and on this basis did not result in unfairness to Mrs Holland in the programme as broadcast.

The Committee considered Mrs Holland’s further complaint that the programme suggested she was a second home owner. This was a reference to an interview with Mr Aran Jones of Cymuned, broadcast in the programme, in which Mr Aran Jones stated:

“Mi fase fe’n sefydlu’r cydsyniad os ydi ffermwr yn torri ar draws rhywun sy’n defnyddio tŷ fel ail gartref bod y ffarmwr rhywsut ar fai.”

“It would establish the concept that if a farmer impinges on someone who is using a home as a second home, that the farmer is somehow to blame” (agreed translation).

“The suggestion is that if a farmer disrupts the habits of somebody who uses the house as a second home then the farmer is somehow at fault” (programme subtitle).

The Committee noted S4C’s response that Mr Aran Jones was explaining the wider implications of this dispute and also their reference to Mrs Holland’s business address in Manchester.

However, the Committee considered that while Mr Aran Jones’s comment was a general one, it was positioned following a line of commentary referring to the specific dispute concerning Mrs Holland and Mr Meirion Jones.

“Yng Nghwm Mynach, ma’ Meirion Jones wedi ei amgylchynu gan dai mewnfulwyr. Mae o’n teimlo bod o’n cael ei wthio allan o’r Cwm ac ma hynny’n annheg yn ôl Cymuned.”

“In Cwm Mynach, Meirion Jones is surrounded by incomers’ houses. He feels that he is being pushed out of the Valley and that is unfair according to Cymuned”. (agreed translation).

“Meirion Jones is surrounded by houses owned by incomers. He feels he is being pushed out of Cwm Mynach and Cymuned claims this is unfair.” (programme subtitle).

In the context within which it was included the Committee felt that the reference to “rhywun sy’n defnyddio tŷ ..fel ail gartref” (“somebody who uses the house as a second home”) could be taken to relate to Mrs Holland. It was equally clear to the Committee that, regardless of her business address, this was not her second home. The reference therefore resulted in unfairness to Mrs Holland in the programme as broadcast.

iv. The Fairness Committee next considered Mrs Holland’s complaint that the reference to her “letting her dogs run off the leash” was unfair as this was not an offence, and that when Mr Jones brought a prosecution for sheep worrying it was not upheld.
The Committee noted Mrs Holland’s further complaint that the reference to her having given “final notice [for Mr Jones] to cease the tenancy over a year ago” gave the misleading impression that she was acting as a result of Mr Jones’s court case regarding her dogs, and thus unfairly portrayed her as petty and small-minded. In fact Mr Jones brought the court case regarding Mrs Holland’s dogs after the notice to quit was served.

The Committee noted S4C’s response that the prosecution was fairly summarised, that the programme showed that Mr Jones’s allegations against Mrs Holland, concerning the dogs, were baseless and that the chronology was unimportant and caused no unfairness.

The Committee considered the commentary as broadcast:

“Llynedd yn ılys yn adon Dolgellau, mi nath Meirion Jones ddwyn achos yn erbyn Susan Holland am gerdded ei chwîn heb dennyn drwy’r defaid ar ei dir o. Ond mi nath y ılys dderybyn bod ganiatad y ffarmwr i wneud hynny… Mi nath perthnas y ffarmwr a Susan Holland waethgu ar ılıs yr achos ılys. Mi roth hi rybudd terfynol i dddod â’r denantiaeth i ben dros fwyddyn yn ılıs.”

“Last year at Dolgellau magistrates’ court, Meirion Jones brought an action against Susan Holland for walking her dogs on his land without them being on a lead. But the court accepted that she had the farmer’s permission to do so…The relationship between the farmer and Susan Holland deteriorated after the court case. She gave him a final notice to terminate the tenancy over a year ago” (agreed translation).”

“Last year at Dolgellau magistrates’ court Meirion Jones brought a case against Susan Holland for letting her dogs run off the leash on his land. But the court accepted she had the farmer’s permission to do so…The farmer’s relationship with Susan Holland deteriorated following the court case. She gave final notice to cease the tenancy over a year ago (programme subtitle).”

The actual sequence of events was clear from Mrs Holland’s submissions and had not been disputed by the programme makers. Whilst the commentary explained that the prosecution against Mrs Holland did not succeed, the Committee agreed that the chronology given in the programme was inaccurate, giving the erroneous impression that Mrs Holland had given final notice to Mr Meirion Jones to cease the tenancy as a result of Mr Meirion Jones bringing a court case concerning her dogs. The Committee found that this sequencing and juxtaposition of material resulted in unfairness to Mrs Holland in the programme as broadcast.

v. The Fairness Committee next considered Mrs Holland’s complaint concerning the commentary line:

“Ma’ hi’n dadla’ nad ydi Meirion Jones wir angen ei thir hi.”

“She (Mrs Holland) argues that Meirion Jones doesn’t really need her land” (agreed translation and programme subtitle).
The Committee noted Mrs Holland’s complaint that this was unfair because she accepts that morally, historically and culturally the Jones family should be grazing her land, but that it was Mr Jones’s actions that have led to him being prevented from grazing it and that in practical terms he has no need for it. The Committee also noted S4C’s comments that Mrs Holland in this complaint contradicted her earlier complaint that Mr Jones did not need Mrs Holland’s eight acres and that the programme makers relied on what the complainants had told them.

The Committee considered that the programme simply asserted “Ma’ hi’n dadla” (“She argues…”) without giving an explanation as to when, and under which circumstances, Mrs Holland had made this assertion. Without such context, the Committee considered that the assertion gave an incomplete impression of Mrs Holland’s position and therefore found that its inclusion resulted in unfairness to Mrs Holland in the programme as broadcast.

vi. The Committee next considered Mrs Holland’s complaint regarding the section:

“Sylwebaith: Mi oedd ffarmwyr lleol yno hefyd yn helpu Meirion Jones i droi’r sdoc yn ol i’r caeau, ac mi o nhw’n dys t i ymateb Marc Asquith”
Cyfwiol: ‘Mae e’n cydio yn y ddafad, wel, cydio yn ei asgwn cefn – tu ol i’w… chefn hi, ac yn ei… yn ei gwâr mewn ffordd ac yn usio’i benglin i luchio’i drosodd.”

“Commentary: Local farmers were also there helping Merion Jones to turn the livestock back to the fields and they witnessed Marc Asquith’s reaction.
Interview: He grabbed hold of a sheep by the rump and the scruff of the neck and then used his knee to throw it over” (agreed translation).

“Commentary: Some local farmers had come to help Merion Jones with the sheep and they witnessed Marc Asquith’s reaction.
Interview: He took hold of the sheep at the lower spine and by the scruff and using his knee he threw it over” (programme subtitle).

The Committee noted Mrs Holland’s complaint that this was unfair since it was she who herded and removed the sheep alone. The Committee also noted S4C’s response that this was information given by Mr Meirion Jones.

This section did not mention Mrs Holland and, in the Committee’s view, would therefore have had little impact on a reasonable viewer with regard to Mrs Holland. The Committee concluded that the section did not therefore result in unfairness to her in the programme as broadcast.

vii. The Committee next considered Mrs Holland’s complaint concerning the commentary on court proceedings:

“Mi ath Meirion Jones i lys i drio cael cytundeb tenantiaeth lawn ar dir Tyn y Coed. Ond unwaith eto Susan Holland nath ennill y dydd. Fis Ebrill mi gath hi orchymyn Ilys i hel y ffarmwr o ‘na.”

“Meirion Jones went to court to try to get a full tenancy agreement on the land of Tyn y Coed. But again, Susan Holland won the day. In April she
obtained a court order to evict the farmer from the land” (agreed translation).

“Meirion Jones went to court in an attempt to secure a full tenancy agreement on the land at Tyn y Coed. But once again Susan Holland came out the winner. In April she obtained a court order to remove the farmer from her land” (programme subtitles).

The Committee considered Mrs Holland’s complaint that the reference “Meirion Jones went to court” was inaccurate since it was she who instituted proceedings and that the reference “In April she obtained a Court order” was also inaccurate as it was not obtained until 8 July 2005, nor did she force him off the land; he had no entitlement to stay. The Committee also took into account S4C’s response that the programme fairly summarised the position and that it mattered little who initiated the action, further that the date was provided by Mr Jones and in any case the complainants confirmed that he was effectively forced from the land.

The Committee noted that the programme makers did not dispute the version of events given by the complainants, namely that it was Mrs Holland who initiated court proceedings. The Committee concluded that the accuracy of the final sentence, regarding the date of the court order, did not in itself result in unfairness to Mrs Holland. However, the Committee considered that, in light of the earlier finding concerning court proceedings dealt with above at Decision head a)(iv), it was relevant who instituted the proceedings. The Committee considered that the presentation of material in this section compounded the unfairness as outlined at Decision head a)(iv) above, and taken together with the earlier commentary this was likely to affect viewers’ interpretation of the issues and, consequently, adversely affect their impression of Mrs Holland and her actions in relation to Mr Jones. The Committee therefore concluded that the presentation and juxtaposition of material in relation to court proceedings, in this section of commentary, was unfair to Mrs Holland.

viii. The Fairness Committee next considered Mrs Holland’s complaint concerning the programme’s reference to “a private road”.

The Committee noted that Mrs Holland complained that the reference to the road over her land being “a private road” was inaccurate since she owned the land, but the road which passed over it was a public highway.

The Committee noted S4C’s response that Mrs Holland had provided the information regarding it being a private road, but that it was the Council that had confirmed that it was a public highway.

The Committee considered the full section, the reporter’s spoken “piece to camera”, which stated that:

“Roedd hi’n deud nad oedd gennym ni’r hawl i’w ffilmio hi ar y ffordd yma gan ei bod hi, medde hi, yn ffordd preifat oedd yn pia iddi.”

“She (Mrs Holland) said that we did not have the right to film her on this road because, according to her, it was a private road which she owned” (agreed transcript).
“She (Mrs Holland) claimed we had no right to film on this road because it was a private road which belonged to her” (programme subtitle).

It is not within the Committee’s remit to determine the nature of this particular road and its ownership. Leaving aside the different interpretations of the legal status of the road, the Committee was able to consider whether any unfairness resulted to Mrs Holland from the use of the term “ffordd preifat” (“private road”) in the programme as broadcast. The Committee considered that the reporter’s summary of the disagreement between Mrs Holland and the programme makers over filming on the road did not give an unfair presentation of Mrs Holland or her views concerning the general principle of filming on her property, since Mrs Holland did not, in any event, wish S4C to film on her property. Therefore, the Committee concluded this had not caused any unfairness to Mrs Holland in the programme as broadcast.

b) The Committee next considered Mrs Holland’s complaints that the programme makers exhibited bias; that they chose to ignore the facts and portrayed her as an English holiday-home owner who had thrown a Welsh farmer off her land because she did not like his farming activities; that in spite of her wish not to appear in the programme, the complainants featured for around six minutes; and, that the programme makers also omitted to broadcast an interview recorded with a neighbour, Mr Mygind, resulting in unfairness to Mrs Holland.

Mrs Holland’s complaint of bias appears to relate to the requirement for broadcasters to maintain “due impartiality” on matters of political or industrial controversy and matters relating to current public policy. This is a “standards objective” under Section 319 of the Communications Act 2003 and as such cannot be considered by the Fairness Committee. However, in considering whether Mrs Holland was treated unfairly in the programme, the Committee is able to consider whether overall the portrayal of Mrs Holland was unfair in its cumulative effect.

As discussed above, broadcasters have a responsibility to avoid unfairness to individuals or organisations featured in programmes through the use of inaccurate information or distortion, for example by the unfair selection or juxtaposition of material (the Fairness Code paragraph 2). Ofcom noted S4C’s response that the story was not a conflict between English and Welsh but between different ways of life. However, taking into consideration the overall findings at Decision head a), it was the Committee’s view that while the intent of the programme may have been to consider issues concerning differing ways of life, the cumulative effect of the presentation of Mrs Holland in the programme as broadcast resulted in an unfair portrayal of Mrs Holland, her actions and motivation.

In its consideration of Mrs Holland’s further complaint that she featured in the programme when she did not wish to appear at all, the Committee noted S4C’s response that the length of time the complainants featured in the programme reflected the amount of time they spent approaching the camera and that it was debatable whether Mrs Holland had departed from her stated wish not to appear. The Committee examined, in detail, the untransmitted material filmed with Mrs Holland. This material showed Mrs Holland repeatedly stating that she did not wish to appear in the programme at all and repeatedly asking for the camera to be turned off. Paragraph 12 of the Fairness Code is clear about the rights of any person to refuse to participate in a programme. Paragraphs 25, 26 and 27 of the Fairness Code detail programme makers’ responsibilities only to feature such a person if they reasonably believed that their inclusion in the programme would
serve an overriding public interest and where reasonable requests for a contribution by the person have met with refusal.

S4C provided no evidence that the programme makers had exhausted reasonable requests for Mrs Holland to provide an off-camera contribution whether by letter, phone or in face to face conversation. Indeed the Committee noted, from consideration of the untransmitted material, that both Mrs Holland and her partner Mr Asquith (whose complaints are considered below) requested opportunities to speak to the programme makers off-camera and explain their position. In these circumstances the Committee was not satisfied that there was any such justification for the inclusion of Mrs Holland, nor that obscuring her face complied with her demands not to feature in the programme. Mrs Holland’s inclusion in a programme with which she did not wish to be associated, and without an overriding public interest justification as discussed above, therefore resulted in unfairness to her in the programme as broadcast.

Mrs Holland’s final fairness complaint was that the programme makers recorded, but did not broadcast, an interview with a neighbour, Mr Mygind and that this resulted in unfairness to her. Programme makers have a responsibility to take all reasonable care to satisfy themselves that all material facts have been considered before transmission and so far as possible fairly presented (Paragraph 7 of the Fairness Code).

Taking account of S4C’s response that the interview was not used because it concerned a very different dispute over the farming of the land, the Committee examined the untransmitted material of the interview recorded with Mr Mygind. It was apparent from this conversation that Mr Jones was a man who had disputes with other long-settled land owners in the area, and that Mrs Holland was not the only person who had found herself to be in disagreement with Mr Jones. Additionally, the interview could be taken to show the issues between Mrs Holland and Mr Jones in the context of a dispute in the agricultural community concerning Mr Jones’s farming activities and use of land in the valley. Whilst it was a matter for the programme makers whether or not to include footage of this interview in the programme, the programme makers did have a duty to take all reasonable care to satisfy themselves that all material facts had been considered before transmission (Paragraph 7 of the Fairness Code). It was the view of the Committee that in failing to fully contextualise the dispute between Mr Jones and Mrs Holland by reference to what was said in the interview with Mr Mygind, the programme makers had omitted to include material facts in the programme which would have affected the viewers’ understanding of Mrs Holland’s dealings with Mr Jones, and therefore their perception of her portrayal in the programme. The Committee therefore found that this omission, of material facts, resulted in unfairness to Mrs Holland.

c) The Fairness Committee then turned to Mrs Holland’s privacy complaints. Mrs Holland complained that the programme makers entered her land without permission and recorded footage in spite of requests not to do so. The Committee noted S4C’s response that the programme makers believed they were entitled to film as they were on, or on the edge of, a public highway.

The Committee first addressed the issue of whether Mrs Holland’s privacy was infringed in the recording of footage on her land. In its consideration, the Committee viewed both the transmitted and untransmitted material recorded on Mrs Holland’s land. The Committee made a distinction between the recording of general footage of her land and the recording of specific footage of Mrs Holland,
her house and car. The Committee had regard to the responsibility of programme
makers in their use of cameras on both public and private property, when the
subject is on private property, where such use must be appropriate to the
importance or nature of the story and such recording should not intrude
unnecessarily on private behaviour (Paragraph 18 (iii) of the Fairness Code). The
Committee considered that the recording of general footage on Mrs Holland’s
land, although recorded without her permission, did not therefore infringe her
privacy by, for example, intruding on her personal and family life. In terms of the
recording of specific footage of Mrs Holland, her house, and car, it was clear from
the gathered material that the programme makers had specifically set out to
capture such shots. For example, at one point in the untransmitted footage the
camera clearly focussed on a group of people standing outside the house. The
Committee considered that the combination of filming, and insistence on
continuing to film when Mrs Holland had made her wishes clear to the programme
makers, was intrusive into the conduct of her personal and family life, and did
infringe her privacy.

The Committee then considered whether the infringement of Mrs Holland’s
privacy, by the recording of specific footage of her and her home and car, was
warranted. The Committee considered that there was no over riding public
interest justification in recording the material, which persistently intruded on Mrs
Holland’s private life around her home and on her land despite her protestations.
The Committee was not persuaded that such intrusion, in the recording of specific
footage of Mrs Holland, her house and car, was warranted by the nature of the
story. The Committee therefore found that Mrs Holland’s privacy was
unwarrantably infringed in the making of the programme.

d) The Committee then considered Mrs Holland’s complaint that the programme
makers broadcast the footage recorded on her land in spite of requests not to do
so. Also that the programme makers broadcast material of her, introduced by the
caption “she didn’t want to be filmed”, when in fact she did not wish to participate
in the film at all. The Committee noted S4C’s response that the programme
makers believed they were entitled to film as they were on, or on the edge of, a
public highway; that they understood Mrs Holland’s wish not to appear and set out
to respect her wishes over filming; and, that filming of her in her car was to show
that she was not in control of her dogs.

For the reasons given above at Decision c) the Committee considered that the
broadcast of general footage of Mrs Holland’s land did not infringe Mrs Holland’s
privacy but that the broadcast of specific footage of Mrs Holland, her house and
car intruded on her private life and did infringe her privacy. The Committee then
considered whether this infringement of Mrs Holland’s privacy was warranted. In
particular the Committee noted that the programme stated:

“Doedd hi ddim isho cael ei fiilmio.”

“She didn’t wish to be filmed” (agreed translation and programme
subtitle).

The Committee also noted that the programme makers had obscured Mrs
Holland’s face. However, as discussed above at head b), it was clear from the
untransmitted material that Mrs Holland did not wish to feature in the programme
at all and repeatedly asked for the camera to be turned off. In certain
circumstances such recording of material might be justified by an over-riding
public interest, for example in exposing criminal activity. However, the Committee
considered that there was no over-riding public interest justification in featuring Mrs Holland in the programme, albeit with her face obscured, and were not persuaded that the material recorded of Mrs Holland’s dogs running next to the car justified the inclusion of this additional material. The Committee concluded that the broadcast of specific footage of Mrs Holland, her house and car was not warranted by the nature of the story and that Mrs Holland’s privacy was therefore unwarrantably infringed in the broadcast of the programme.

e) The Committee considered Mrs Holland’s further complaint that the programme makers included sufficient information within the film, including nearly all of her postal address, to identify her and her home, and thereby put her security at risk. The Committee noted S4C’s response that the programme did not give Mrs Holland’s postal address and that the programme makers gave Mrs Holland no assurance that they would not film her house.

The Committee considered the commentary references to the location of Mrs Holland’s property which included:

"Cwm Mynach ger Dolgellau ym mherfeddion Meirionnydd."

“Cwm Mynach near Dolgellau is in the heart of Meirionnydd” (agreed translation).

“Cwm Mynach, near Dolgellau, in the heart of Meirionnydd” (programme subtitles).

The Committee noted that, while issues of security do not fall within Ofcom’s remit, Paragraph 27 of the Fairness Code states that care must be taken not to make it easy to locate or identify the address of someone who has refused to give an interview, unless it is strictly relevant to the behaviour under investigation and there is an overriding public interest. The Committee considered that the material broadcast of Mrs Holland’s home, as discussed above at head d), combined with the commentary lines referring to the location of her property, did make it easy to locate or identify her address. The Committee further considered that in view of her specific request not to participate in the film and the Decision discussed at head b) above, this material and commentary did infringe her privacy and this infringement was not warranted by the nature of the story. This resulted in an unwarrantable infringement of her privacy.

f) The Fairness Committee next considered Mr Asquith’s complaint that the programme contained many factual inaccuracies and portrayed other facts in a wholly misleading fashion which resulted in unfairness to him. The Committee had particular regard to Paragraph 2 of the Fairness Code concerning the responsibilities of broadcasters to avoid unfairness to individuals or organisations featured in programmes through the use of inaccurate information or distortion, for example by the unfair selection or juxtaposition of material. The Committee also took into account Paragraph 7 of the Fairness Code in relation to broadcasters’ responsibilities in taking special care when their programmes are capable of adversely affecting the reputation of individuals, companies or other organisations, and in taking all reasonable care to satisfy themselves that all material facts have been considered before transmission and so far as possible fairly presented. Addressing separately each of the individual complaints made by Mr Asquith concerning the programme’s content, the Committee’s considerations were as follows:
i. The Fairness Committee considered Mr Asquith’s complaint that the reference:

“Ma’ ffarmwr yn deud bod o’n cael ei erlid o’i fro enedigol gan fargyfreithiwr o Loegr.”

“A farmer is alleging that he is being victimised from the area of his birth by a barrister from England” (agreed translation).

“A farmer who says he is being pushed out of his native valley by barrister from England” (programme subtitle).

was unfair as Mr Asquith is of Welsh extraction, only recently moved to England, and owns no land in the valley. And that the explanation:

“Ma’ Marc Asquith yn fargyfreithiwr o dras Cymreig…”

“Marc Asquith, a barrister of Welsh ancestry…” (agreed translation)

“Marc Asquith is a barrister of Welsh descent…” (programme subtitle)

was too far into the programme for viewers to gain a proper understanding of Mr Asquith’s background from the outset.

The Fairness Committee noted S4C’s response that the description was correct, carefully worded, reflected the views of the farmer and information provided by Mr Asquith, and the description of Mr Asquith’s ancestry was only one minute into the programme.

Although it was a view attributed to the farmer, the Fairness Committee considered that the first section complained of served to introduce the dispute at the start of the programme. This seemingly presented the dispute as one between the farmer, Meirion Jones, and Mr Asquith. However, the land was owned by Mrs Holland and Mr Jones’s legal dispute was with her. The Fairness Committee considered that the focus on Mr Asquith in the opening description of the dispute was misleading. The emphasis on Mr Asquith set a particular tone which was unfair to him. The Committee therefore found that the reference resulted in unfairness to Mr Asquith in the programme as broadcast.

In relation to the positioning of the explanation of Mr Asquith’s ancestry, the Committee did not accept that this was made too far into the programme, since it came on a few minutes after the opening, and this did not consequently result in any unfairness to Mr Asquith.

ii. The Fairness Committee considered Mr Asquith’s complaint concerning the programme’s reference in its opening commentary to:

“mewnfwydr”

“incomers” (agreed translation and programme subtitle).

The Committee noted Mr Asquith’s complaint that this description was unfair as the only sense in which he is an “incomer” is in respect of this particular valley and this was clearly not what the programme makers intended to convey.
The Committee also considered S4C’s response that Mr Asquith had come to live in an area in which he did not grow up; that the first reference was part of a rhetorical question; and, the second was reporting Mr Jones’s perspective.

The Committee noted the two references in the programme’s commentary:

“Heno: ydi mudiad Cymuned yn amddiffyn y Cymry neu’n cynddeiriogi mewnfüdwyrr?”

“Tonight is Cymuned protecting the people of Wales or infuriating incomers?” (agreed translation).

“Tonight, is Cymuned defending Welsh people’s interests or simply antagonising incomers” (programme subtitle).

And,

“Ma’ newydd-ddyfodiaid i'r Cwm wedi bod yn dychryn y defaid yno.”

“Incomers to the Valley have been scaring the sheep here” (agreed translation).

“And, An incomer has been frightening his sheep in the valley” (programme subtitles).

The Fairness Committee considered that both uses of the word “mewnfüdwyrr” (incomers) were positioned close to commentary descriptions of the dispute with Mr Jones and therefore could be interpreted as a reference to Mr Asquith. Whilst the word might have been factually correct in relation to Mr Asquith’s connection with the valley, it was not used neutrally as a statement of fact. On the contrary, the Committee considered that the context within which it was used on both occasions inferred pejorative connotations as a reference to someone who did not belong and had no right to be in the valley. The Committee found that this resulted in unfairness to Mr Asquith in the programme as broadcast.

iii. The Fairness Committee considered Mr Asquith’s complaint concerning two references, in an interview with the farmer Mr Jones and in commentary, to his control of his dogs:

Cyfnewiad 1: “Cyfnewiad: Beth oedd e’n wneud wedyn oedd gyllru’r cŵn ‘fyny trwy’r coed tra roedd o’n dreifio’r gweddil y ffordd i fyny at y tŷ. . .”

Cyfnewiad 2: “Sylwebaith: Mae o’n dadla’ bod Meirion Jones yn hapus iddo fynd a’r cŵn drwy’r caea’ adeg wynu, i gadw’r llwynogod draw.”

First reference: “Interview: What he (Marc Asquith) was then doing, was letting the dogs run through the woods whilst he drove the rest of the way up to the house...”

Second Reference: “Commentary: He (Marc Asquith) contends that Meirion Jones is happy for him to take the dogs through the fields during the lambing season as this keeps the foxes away” (agreed translation).

First reference: “Interview: He (Marc Asquith) would send the dogs to run up through the woodland while he drove up to the house...”
Second reference: “Commentary: He (Marc Asquith) claims Meirion Jones is happy for him to take his dogs through the fields during lambing because they deter foxes” (programme subtitles).

The Committee noted Mr Asquith’s complaint that he was entitled to send his dogs to run through Tyn y Coed woodland, and that the references in the programme implied negligence on his part. The Committee also considered S4C’s response that the sheep wandered freely in the woodland and that the second reference was included in an attempt to achieve balance on this issue and to advance Mr Asquith’s side of the story.

The Committee considered that the first reference, which was part of a list of complaints by Mr Jones, implied negligence and irresponsibility on the part of Mr Asquith, when in fact this was something, as agreed in S4C’s submission, in respect of which Mr Asquith did not need Mr Jones’ permission.

This was followed by the second reference which was a claim attributed to Mr Asquith in the programme’s commentary and which S4C argued, advanced Mr Asquith’s case. However, in the Committee’s view, since this claim was simply asserted, without any explanation for the sourcing of the commentary line, it did not properly serve to advance Mr Asquith’s side of the story and the viewer would have been left with an impression of negligence on the part of Mr Asquith. The Committee therefore considered the references resulted in unfairness to Mr Asquith in the programme as broadcast.

iv. The Committee then considered Mr Asquith’s complaints regarding references in the programme to the removal of stock:

Cyfeiriad 1 “Sylwebaith: ma’ Marc Asquith wedi bod yn hel y defaid o Dyn y Coed.”

Cyfeiriad 2 “Sylwebaith: nath Marc Asquith droi’r sdoc o gaeau Tyn y Coed.”

Cyfeiriad 3  ”Cyfweliad Meirion Jones: Ac fe ddaeth Marc Asquith i fan hyn ac roedd e’n lluchio stoc drosodd...yn y gornel pella.
Sylwebaith: Mi oedd fferymwr lleol yno hefyd yn helpu Meirion Jones i droi’r sdoc yn ôl i’r caeau, ac mi o nhw’n dyst i ymateb Marc Asquith. 
Cyfweliad: Mae e’n cydio yn y ddefad, weï, cydio yn ei asgwrn cefn – tu ôl i’w...chefn hi, ac yn ei...yn ei gwâr mewn ffordd ac yn usio’i benglin i luchio’i drosodd.”

First reference: “Commentary: Marc Asquith has been driving the sheep from Tyn y Coed.”

Second reference: “Commentary: Marc Asquith turned out the stock from the fields of Tyn y Coed.”

Third reference: “Interview Mr Jones: Marc Asquith came here and he was throwing stock over in that far corner. Commentary: Local farmers were also there helping Meirion Jones to turn the livestock back to the fields and they witnessed Marc Asquith’s reaction.”
Interview: He grabbed hold of a sheep by the rump and the scruff of the neck and then used his knee to throw it over” (agreed translation).

First reference: “Commentary: Marc Asquith has been removing sheep from Tyn y Coed.”

Second reference: “Commentary: Marc Asquith removed the stock from Tyn y Coed.”

Third reference: “Interview Mr Jones: Marc Asquith came here and he was throwing the stock over in that far corner.
Commentary: Some local farmers had come to help Meirion Jones with the sheep and they witnessed Marc Asquith’s reaction.
Interview: He took hold of the sheep at the lower spine and by the scruff and using his knee he threw it over” (programme subtitle).

The Committee noted Mr Asquith’s complaint that the references were inaccurate as the sheep were only moved by Mrs Holland alone at the expiry of the first notice to quit. The Committee also considered S4C’s response that the allegations were made by Mr Jones and admitted by Mr Asquith in a phone conversation.

The Fairness Committee noted that local farmers gave detailed, first hand accounts of the incident discussed, both in the third reference above, and in the full, untransmitted material. The Committee was persuaded that it was reasonable for the programme makers to include this testimony, from local eye witnesses, which supported the allegations concerning Mr Asquith’s actions made both in the commentary and in Mr Jones’s interview. The Committee therefore concluded that it was fair to include these references in the programme.

v. The Committee considered Mr Asquith’s complaint regarding Mr Jones’s reference, in interview, to Mr Asquith turning the sheep out of the rented field and locking the gates to the field to prevent the sheep from returning:

“Cyfweliad: a gofyn iddo os ma’ fo oedd yn chwara’ gwmpas efo’r gatiau ‘ma. Ac mi ddwedodd ma’ fe oedd wrthi.”

“Interview: I asked him if it was he who had been playing about with these gates. And he said that he was doing it” (agreed translation).

“Interview: I asked if he was the one playing around with the gates and he told me he was” (programme subtitles).

The Committee noted Mr Asquith’s complaint that the reference was inaccurate because his actions were in response to Mr Jones leaving the gates open, which was itself an offence under the Highways Act, as confirmed by the local Council. The Committee considered S4C’s response that the main gate was kept shut but the other gates deliberately, and correctly, left open to allow the sheep to roam.

The Fairness Committee was unable to conclude who did what with which gates and the precise chronology of events here, but in order to determine whether or not unfairness had resulted in the programme to Mr Asquith, the
Committee considered it appropriate to examine the wider context of this reference in the broadcast interview with Meirion Jones:

“Cyfweliad: Mi ddaru i mi daro heibio’r ty i gael gair gyda Marc... a gofyn iddo os ma’ fo oedd ynchwara’ gwmpas efo’r gatiau ‘ma. Ac mi ddwedodd ma’ fe oedd wrthi. A’i eiriau oedd: ‘From now on, I’ll be telling you where you put your stock up this valley’, medda fo wrtha’i. Ac ‘ma fi’n dweud wrtho fo: ‘No bloody way’, medde fi. ‘Born and bred here’, medde fi wrtho. ‘You’re only down on weekends’, medde fi. ‘And you’re causing us a lot of bother,’ medde fi wrtho, ‘by interfering with our way of life.’”

“Interview: I asked him [Marc Asquith] if it was he who had been playing about with these gates. And he said that he was doing it. And his words to me were: ‘From now on, I’ll be telling you where you put your stock in this valley’. So I told him: ‘No bloody way, I was born and bred here. You’re only down here at weekends. And you’re causing us a lot of bother by interfering with our way of life’” (agreed translation).

“Interview: I asked if he [Marc Asquith] was the one playing around with the gates and he told me he was. His words were, ‘From now on I’ll be telling you where you put your stock on this valley.’ ‘No bloody way,’ I said to him. ‘I was born and bred here; you’re only down on weekends. You’re causing us a lot of bother’” (programme subtitles).

Within the wider context of this section, which included remarks attributed to Mr Asquith by Mr Jones, the implication was that Mr Asquith was acting improperly by preventing the movement of Mr Jones’s stock back onto the land. However, this was Mrs Holland’s land and the alleged removal of the sheep followed the termination of Mr Jones’s tenancy. In the Committee’s view, the programme unfairly inferred that Mr Asquith was doing something he had no right to do and this resulted in unfairness to him in the programme as broadcast.

The Committee also considered Mr Asquith’s further complaint, clarified in his second submission, concerning the reference:

“Ar benwsnosa mae’n dod lawr i Cwm Mynach i weld ei gariad, Susan Holland, ac i baragleidio.”

“At weekends he [Marc Asquith] comes to Cwm Mynach to visit his girlfriend, Susan Holland, and to paraglide” (agreed translation).

“He [Marc Asquith] spends weekends in Cwm Mynach visiting his partner, Susan Holland, and paragliding” (programme subtitles).

The Committee noted Mr Asquith’s complaint that this reference implied that he visits the area just to play, when in fact, his weekends are spent on woodland management. The Committee noted that S4C did not appear directly to respond to this complaint which was only clarified in the second submissions to Ofcom. The Committee found that the reference to paragliding itself, the accuracy of which was not contested by Mr Asquith, did not in itself result in unfairness to him in the programme as broadcast. However, the cumulative effect of the portrayal of Mr Asquith is dealt with at Decision head g).

vi. The Committee considered Mr Asquith’s complaint concerning Mr Jones’s interview statement:
“Roeddwn i’n teimlo’r adeg hyn…ma’ fi oedd y cymro olaf yn y Cwm.”

“I felt at that time that I was the last Welshman in the Valley” (agreed translation).

“I’m the last Welshman in the Valley” (programme subtitles).

Mr Asquith complained that this was inaccurate as there was another Welsh farmer just below the Tyn y Coed land, and added to the unfairly sympathetic portrayal of Mr Jones’s side of the dispute. The Committee noted S4C’s response that this was accurate as a reference to the small valley of Cwm Mynach.

Whether or not this statement was accurate (which, accepting S4C’s definition of “Cwm”, the Committee considered it would be) it made no reference to Mr Asquith. Consequently, the Committee found that no unfairness resulted to Mr Asquith as a result of the inclusion of this statement in the programme as broadcast.

vii. The Committee considered Mr Asquith’s complaint concerning a question put by the programme’s reporter to Mr Aran Jones of the Welsh campaigning group Cymuned:

“Gohebydd: Roedd Marc Asquith, ar ôl iddo cyfarfod â chi, yn dweud: ‘Mater i’r gyfraith ydy hwn. Ffraz rhwng dau gmydog. Dwi ddim yn deall beth mae Cymuned yn gwneud yn rhoi eu trwyn yn y busnes yma?’”

“Reporter: After he met with you, Marc Asquith said: ‘This is a legal matter. It is a dispute between two neighbours. I don’t understand what Cymuned is doing poking its nose into this matter’” (agreed translation).

“Reporter: Marc Asquith is of the opinion that a dispute between neighbours is a legal matter. He can’t understand why Cymuned is sticking its nose into it” (programme subtitles).

The Committee noted Mr Asquith’s complaint that the reference to the opinion that Cymuned was “sticking its nose” into the dispute was inaccurately attributed to him, when in fact he expressed to the programme makers his support for Cymuned’s involvement and when Cymuned agreed to broker a deal it was Meirion Jones who rejected this deal. The Committee noted S4C’s response that Mr Asquith’s initial response to Cymuned’s involvement was dismissive and the question was put as a perfectly legitimate point of view.

The Committee was unable to judge whether or not Mr Asquith did make this comment. However it noted that the broadcaster did not contest Mr Asquith’s claim that he supported Cymuned’s involvement, and the programme itself stated that Marc Asquith attended meetings with Aran Jones of Cymuned.

The Committee noted that Mr Aran Jones’s response suggested the question was inaccurate:

“Tasa fo mor syml â hynny, buasa ni ddim wedi mynd yn rhan ohono fe.”
“If it was as straightforward as that, we would not have become involved in it” (agreed translation).

“If it were that simple, Cymuned wouldn't have become part of it” (programme subtitles).

The Committee concluded that the programme unfairly attributed direct opinions to Mr Asquith without giving an explanation as to the circumstances under which Mr Asquith had voiced them. Without such context, the Committee considered that the assertions gave an unfair impression of Mr Asquith’s position and therefore found that their inclusion resulted in unfairness to Mr Asquith in the programme as broadcast.

viii. The Fairness Committee next considered Mr Asquith’s complaint that the reference to his home as near Manchester was biased, intended to portray him as an evil rich English Tory barrister trampling the innocent Welsh Farmer, and that it was his mother’s house that was shown not his own more modest house. The Committee also considered S4C’s response that the location was relevant to the issue of how much understanding he could have of Mr Jones’s position and that the information had been taken from the then current website for Cheshire County Council where he is a county councillor.

As discussed above at head b) the complaint of bias appears to relate to the requirement for broadcasters to maintain “due impartiality” on matters of political or industrial controversy and matters relating to current public policy. This is a “standards objective” under Section 319 of the Communications Act 2003 and as such cannot be considered by the Fairness Committee. However, in considering whether Mr Asquith was treated unfairly in the programme, the Committee is able to consider whether the reference to Mr Asquith’s home could result in unfairness to him in the programme as broadcast. In doing so, the Fairness Committee noted the full context of the reference:

“Sylwebaith: Alderley Edge ger Manceinion. Hon ydi un o ardaloedd cyfoethca’r Prydain efo mwy o filiwnyddion y filltir sgwar yma na bron nunlla. Fan hyn oedd David Beckham yn arfer bywydd tra’n chwarae i Manchester United. [Gohebydd i gamera] “Fan hyn hefyd mae Marc Asquith yn byw...yn y tŷ ‘ma tu cefn i mi.”

“Commentary: Alderley Edge near Manchester. This is one of the richest areas in Britain with more millionaires per square mile than almost anywhere else. It was here that David Beckham lived whilst he played for Manchester United. [Reporter to camera] This is also where Marc Asquith lives, in this house behind me” (agreed translation).

“Commentary: Alderley Edge, near Manchester is one of Britain’s richest regions with more millionaires per square mile than almost anywhere else. This is where David Beckham used to live when he played for Manchester United. [Reporter to camera] This is also where Marc Asquith lives, in the house behind me” (programme subtitles).

The Committee noted further submissions regarding the accuracy of the information on the Cheshire County Council website and concerning electoral roll information. However the Committee concluded that Mr Asquith had not provided evidence to persuade the Committee that the reference to, and footage of, the house shown resulted in any unfairness to him, for example by
demonstrating how viewers’ perceptions and opinions of him would have been likely to have been significantly different or in any way materially diminished by the material included in this section of the programme. The Committee did not therefore find any unfairness to Mr Asquith in this respect.

g) The Committee next considered Mr Asquith’s complaints that the programme makers exhibited bias, inaccurately portraying him over all as the protagonist and “evil English wealthy barrister” despite information provided to them; that in spite of his wish not to appear in the programme the complainants featured for around six minutes; and, the programme makers also unfairly omitted to broadcast an interview recorded with a neighbour, Mr Mygind which would have shown that Mr Jones behaved unreasonably in other situations and was the cause of his own difficulties.

Again, as discussed above at head b) the complaint of bias appears to relate to the requirement for broadcasters to maintain “due impartiality” on matters of political or industrial controversy and matters relating to current public policy. This is a “standards objective” under Section 319 of the Communications Act 2003 and as such cannot be considered by the Fairness Committee. However, in considering whether Mr Asquith was treated unfairly in the programme, the Committee is able to consider whether overall the portrayal of Mr Asquith was unfair in its cumulative effect.

In its considerations, the Committee had particular regard to the responsibilities on broadcasters, discussed above, to avoid unfairness to individuals or organisations featured in programmes through the use of inaccurate information or distortion, for example by the unfair selection or juxtaposition of material (the Fairness Code paragraph 2). The Committee noted S4C’s response that the story was not a conflict between English and Welsh but between different ways of life. However, taking into consideration the overall findings at Decision head f), it was the Committee’s view that while the intent of the programme may have been to consider issues concerning differing ways of life, the cumulative effect of the presentation of Mr Asquith in the programme as broadcast resulted in an unfair portrayal of Mr Asquith, his actions and motivation.

In its consideration of Mr Asquith’s further complaint that he featured in the programme when he did not wish to appear, the Committee noted S4C’s response that the length of time the complainants featured in the programme reflected the amount of time they spent approaching the camera. The Committee examined, in detail, the untransmitted material filmed with Mr Asquith. This material showed Mr Asquith repeatedly stating that he did not wish his discussions with the camera crew to be filmed and repeatedly asking for the camera to be turned off.

Paragraph 12 of the Fairness Code clearly explains the rights of any person to refuse to participate in a programme. Paragraphs 25, 26 and 27 of the Fairness Code detail programme makers’ responsibilities only to feature such a person if they reasonably believe that their inclusion in the programme would serve an overriding public interest and where reasonable requests for a contribution by the person have met with refusal. S4C provided no evidence that the programme makers had exhausted reasonable requests for Mr Asquith to provide an off-camera contribution whether by letter, phone or in face to face conversation. Indeed the Committee noted, from consideration of the untransmitted material, that both Mr Asquith and Mrs Holland requested opportunities to speak to the programme makers off-camera and explain their position. In these circumstances, the Committee was not satisfied that there was any such justification for the
inclusion of Mr Asquith in the programme. Mr Asquith’s inclusion in the programme therefore resulted in unfairness to him in the programme as broadcast.

Mr Asquith’s final fairness complaint was that the programme makers recorded, but did not broadcast, an interview with a neighbour, Mr Mygind, and that this resulted in unfairness to him. As discussed at head b) above in relation to Mrs Holland the interview recorded with Mr Mygind provided additional context which would have been relevant to understanding the dispute between Mrs Holland and Mr Jones. Whilst it was a matter for the programme makers whether or not to include footage of this interview in the programme, the programme makers did have a duty to take all reasonable care to satisfy themselves that all material facts had been considered before transmission (Paragraph 7 of the Fairness Code). The Committee therefore set out to consider whether the programme makers had omitted to include material facts in the programme which would have affected the viewers’ understanding of Mr Asquith’s dealings with Mr Jones, and therefore their perception of his portrayal in the programme.

Although Mr Asquith was mentioned in the interview with Mr Mygind (Mr Mygind described him as “reasonable but determined”) it did not, as a whole, relate to Mr Jones’s dealings with Mr Asquith. Indeed Mr Mygind commented on relations between Mr Jones and Mr Asquith “I don’t really know the facts so I don’t want to comment on them”. The Committee considered that the interview showed Mr Jones to be a man who had disputes with other long-settled land owners in the area and that Mrs Holland was not the only land owner who had found herself in disagreement with Mr Jones. However, unlike Mrs Holland, Mr Asquith does not own the land in question and this recorded material, of an interview with a landowner, was not therefore relevant in assisting to contextualise relations between Mr Asquith and Mr Jones. The programme makers’ decision not to include in the programme material facts arising from this interview did not therefore result in unfairness to Mr Asquith.

h) Finally, the Fairness Committee considered Mr Asquith’s complaint that his privacy was unwarrantably infringed in the making and broadcast of the programme and that the programme makers effectively door-stepped him, filming and broadcasting his discussions with them in spite of his request not to do so. The Committee also considered S4C’s response that Mr Asquith’s argument was not that the programme makers were filming him but that they were filming on land where they had no right to film; that on occasions he clearly wanted to be filmed; and, that he was not door-stepped as he chose to stop and debate matters with the film crew.

The Committee first addressed the issue of whether Mr Asquith’s privacy was infringed in the recording and broadcast of material of him. In its consideration of the recording of the material, the Committee considered both the transmitted and untransmitted footage recorded of Mr Asquith. The Committee had regard to the responsibility of programme makers in their use of cameras on both public and private property, when the subject is on private property, under Paragraph 18 (iii) of the Fairness Code. This states that such use must be appropriate to the importance or nature of the story and such recording should not intrude unnecessarily on private behaviour. Mr Asquith made repeated requests for the camera to be turned off. The interview in relation to which Mr Asquith said he was doorstepped was clearly an impromptu one and had features of a doorstep (in that it was not pre-arranged and he said he did not want to be interviewed), but Mr Asquith was not doorstepped in the normal sense of the term. However, from the
footage of this particular incident it was clear that the programme makers were already filming as Mr Asquith drove towards them and that they continued to film him despite him asking them to stop filming. As discussed at Decision head g) above the gathering of material in such a way was not justified and consequently, the Committee considered that the recording of this footage did infringe Mr Asquith’s privacy. The Committee further concluded that the broadcast of this material in the programme was also intrusive and infringed his privacy.

The Committee then moved on to consider whether the infringement of Mr Asquith’s privacy, in the recording and broadcast of the material, was warranted. The Committee examined the untransmitted material filmed with Mr Asquith in detail as discussed above. This material showed Mr Asquith repeatedly stating that he did not wish his discussions with the camera crew to be filmed and repeatedly asking for the camera to be turned off. In certain circumstances such recording of material might be justified by an over-riding public interest, for example in exposing criminal activity, however the Committee was not satisfied that there was any public interest justification for either the recording or the broadcast of material featuring Mr Asquith, in the impromptu interview, or other material recorded with him. The recording and broadcast of footage of Mr Asquith therefore resulted in an unwarranted infringement of his privacy in the programme as broadcast.

The complaints of unfair treatment and unwarranted infringement of privacy were, with certain limited exceptions, upheld.
Cwyn gan Mrs Susan Holland a Mr Marc Asquith
Y Byd ar Bedwar, S4C, 14 Mehefin 2005

Crynodeb: Mae Ofcom wedi cynnwl, gydag eithriadau cyfyngedig neilltuol, y cwynion hyn o driniaeth anhleg a thorri ar breifatwydd anegusodol. Cwynodd Mrs Susan Holland a Mr Marc Asquith eu bod wedi eu trin yn anhleg a bod eu preifatwydd wedi ei dorri yn anegusodol mewn rhifyn o’r rhaglen materion cyfoes Y Byd ar Bedwar yr oeddent yn ymddangos arni. Cwynodd Mrs Holland a Mr Asquith bod y rhaglen, oedd yn ymwneud â thenantiaeth pori dadleuol, wedi eu portreadu yn anhleg ac yn cynnwys lluniau ohonynt ac o eiddo Mrs Holland, a recordiwyd ac a ddarledwyd heb eu caniatâd. Ymateb S4C oedd bod portread y rhaglen o Mrs Holland a Mr Asquith yn deg ac yn gywir ac nad oedd y lluniau a ddarledwyd yn torri yn anegusodol ar eu preifatwydd.

Darganfu Ofcom bod portread y rhaglen o Mrs Holland a Mr Asquith yn anhleg, trwy gyfrwng datganiadau unigol a wnaethpwyd amdanynt a thrwy effaith gronnol y rhaglen yn gyfan gwbl. Darganfu Ofcom ymheiliach bod y deunydd a recordiwyd ac a ddarledwyd oedd yn benodol eu ffilmio nhw, a’r hyn a ddangoswyd o dŷ Mrs Holland, yn torri yn anegusodol ar eu preifatwydd. Roedd Ofcom yn ystyr nad oedd y ffilmio cyffredinol o eiddo arall Mrs Holland, fel y’i recordiwyd ac y’i dderbynwyd, yn torri yn anegusodol ar ei phreifatwydd.

Cyflwyniad

Roedd yr rhifyn hwn o’r rhaglen materion cyfoes Y Byd ar Bedwar yn edrych ar anghyfod ynglŷn â thenantiaeth pori. Roedd yr anghyfod, a drafodwyd gan Cymuned, grwp pwyso Cymreig sydd yn ymgyrchu dros hawliau cymunedau Cymraeg eu hailth, yn ymwneud â chaeau wedi’u rhentu yn Tyn y Coed, yng Nghwm Mynach, Meirionnydd. Mae’r caeau yn eiddo i Mrs Susan Holland ac maent yn cael eu pori gan ffermwr lleol Mr Meirion Jones.

Esboniodd y rhaglen fod cenedlaethau o deulu Mr Jones wedi ffermio tir yng Nghwm Mynach a dywedwyd mai dim ond un person Cymraeg sydd yn dal i fwy a ffermio yno, sef Mr Jones. Edrychodd y rhaglen ar y berthynas rhwng Mr Jones ar un llaw a Mrs Holland a’i phartner Mr Marc Asquith ar y llaw arall. Roedd yn disgrifi anghyfod rhwng y partion, yn cynnwys y mater o gwân oedd yn perthyn i Mrs Holland a Mr Asquith yn rhedeg ar draws y tir yr oedd Mr Jones yn ei rentu yn ystod y tymor wyna. Trafodd y rhaglen sut yr oedd Mrs Holland wedi rhoi rhybudd i Mr Jones adael y tir a bod anghyfod pellach wedi codi oherwydd symud stoc Mr Jones a chlîo’r clwydi i atal Mr Jones rhag dychwelyd y stoc ar y tir. Roedd cyfweliadau hefyd gyda ffermwyr lleol oedd wedi gweld y stoc yn cael ei symud.

Edrychodd y rhaglen ar rôl Cymuned yn yr ymdrech i ddatrys yr anghyfod ac roedd yn cynnwys cyfweliad gyda’i Brif Weithredwr, Mr Aran Jones. Esboniodd y rhaglen bod Mrs Holland wedi caeli gorychymyn llys i dros Mr Meirion Jones allan o’i thir. Trafodydd cartref Mr Asquith yn Lloegr, yn ogystal â’r anghyfod rhwng gwneuthurwyd yr rhaglen a Mr Asquith a Mrs Holland ynglŷn â ffilmio ar eiddo Mrs Holland ac oddi ar y ffordd gyhoeddus sydd yn rhedeg trwyddo. Gorffennodd y rhaglen trwy ddangos gofis Mr Jones dros golli’r denantiaeth.

Dangoswyd Mrs Holland (oedd â’i wyneb wedi ei guddio), a’i phartner Mr Marc Asquith yn y rhaglen.
Cwynodd Mrs Holland a Mr Asquith bod eu preifatrwydd wedi ei dorri yn ansegusodol wrth wneud ac wrth ddarledu’r rhaglen a’u bod wedi eu trin yn annheg.

Y Gŵyn

Achosion Mrs Holland a Mr Asquith

I grynhoi, cwynodd Mrs Holland ei bod wedi ei thrin yn annheg oherwydd:

w) Roedd nifer o anghywirdebau ffeithiol yn y rhaglen ac roedd yn portreadu ffeithiau eraill mewn dull holol gamarweiniol oedd yn creu annhegwch iddi hi, yn cynnwys y canlynoł:

ix. Roedd y disgrifiad yn sylwebaeth y rhaglen o’r ffermwr Mr Jones, yn cael ei ‘wthio allan o’r cw’ yn annheg. Dim ond wyth acer o’r cw’ oedd yn eiddo i Mrs Holland o ran caeau ac roedd wedi cynnig iddo aros amnynt am flwyddyn arall.

x. Roedd y cyfeiriad ym sylwebaeth yr Mrs Holland fel ‘mewnfuldraig’ a chwestiwn rhefigol Mr Jones mewn cyfweliad ‘pam prynu tŷ mewn lleoliad o’r fath?’ yn annheg. Mae Mrs Holland wedi byw yn y Cwm am dros deugain mlynedd ac wedi byw yno llawn amser am y degawd diwethaf

xi. Roedd disgrifiad yn y sylwebaeth fod ‘y rhan fwyaf o’r tai yn y Cwm hwn yn gartref gwyliau’ a’r awgrym fod Mrs Holland yn berchenog ail cartref yn annheg gan mai’r cartref a’r tir yw ei phreswylfa llawn amser.

xii. Roedd y cyfeiriad yn y sylwebaeth at Mrs Holland yn ‘gadael i’w chwîn redeg yn rhydd o’u tennyn’ yn annheg gan nad yw hyn yn drosedd. Ac yn wir, pan ddaeth Mr Jones ag acos yn ei herbyn am boeni defaid ni chafodd yr acos ei gynnal. Roedd y cyfeiriad bod Mrs Holland wedi rhoi ‘rhybudd terfynol’ i Mr Jones ‘ildio’r denantiaeth dros flwyddyn yn ôl’ hefyd yn annheg gan fod y rhaglen wedi portreadu’r rhybudd i adael fel rhywbeth yn dilyn achos Ilys Mr Jones yn erbyn Mrs Holland mewn perthynas â’i chwîn. Mewn gwirionedd roedd y gwrrthwyneb yn wir. Daeth Mr Jones â’r achos Ilys, ynglŷn â chwîn Mrs Holland, ar ôl y rhybudd i adael.

xiii. Roedd y cyfeiriad yn y sylwebaeth ei ‘bod hi (Mrs Holland) yn ddalau nad yw Meiron Jones angen ei thir mewn gwirionedd’ yn annheg gan fod Mrs Holland yn derbyn yn foesol, yn hanesyddol ac yn ddiwylliantol y dylai teulu’r Jones fod yn pori ei thir. Gweithrediadau Mr Jones arweiniodd at wrthod gadael iddo bori’r tir.

xiv. Roedd yr rhan o’r rhaglen am ffermwr lleol oedd yn honedig wedi gweld Mr Asquith yn symud defaid Mr Jones hefyd yn anghywir, yn rhagfarnllwyd ac yn annheg i Mrs Holland oherwydd nad oedd wedi crybwyl mai Mrs Holland, ar yr achlysur y cyfeiriwyd ato, a gasglodd ac a symudodd y defaid.

xv. Roedd y cyfeiriad yn y sylwebaeth fod ‘Meirion Jones wedi mynd i’r Ilys’ yn anghywir ac yn annheg i Mrs Holland gan mai hi mewn gwirionedd a gychwynnodd yr acos. Roedd y cyfeiriad sylwebaeth bellach ‘yn Ebrill cafodd orchymyn Llys i symud y ffermwr oddi ar ei thir’ yn anghywir gan na chafwyd hynny tan 8 Gorffennaf 2005. Roedd hefyd yn annheg i Mrs Holland gan nad oedd wedi ei orfodi oddi ar y tir; doedd ganodd ddim hawli a aros.
xvi. Roedd y cyfeiriad yn y sylwebaeth bod y ffodd dros ei thir yn ‘ffordd breifat’ yn anghywir a phriodolodd y rhaglen y disgrifiad anghywir hwn o’r ffodd yn annheg i Mrs Holland. Mewn gwinonedd, ffodd gyhoeddus yw’r ffodd sydd yn mynd dros ei thir ac nid ffodd breifat.

x) Yn gyffredinol dangosodd gweithgareddu yr rhaglen ragfarn, a dewis anwybyddu’r ffeithiau gan bortreadu Mrs Holland yn annheg fel perchennog cartref gwyliau o Loegr oedd wedi taflu ffemmwr Cymreig oddi ar ei thir oherwydd nad oedd yn hoffi ei weithgarwch ffermio.

Er gwaethaf dymuniad pendant yr achwynydd i beidio ag ymddangos ar y rhaglen, fe’i dangoswyd ar y rhaglen am tua chwe munud.

Ni ddarledodd gweithgareddu yr rhaglen gyfweliad chwaith a recordiwyd gyda chymydon, Mr Mygind, a fydai wedi dangos bod Mr Jones wedi ymddwyn yn afresymol gyda chymdigion eraill ac mai ef ei hun oedd achos ei anawsterau. Roedd gadael hyn allan yn creu anhwy gwch i Mrs Holland.

I grynhoi, cwynodd Mrs Holland bod ei phreifatrywydd wedi ei dorri yn anesgusodol wrth wneud ac wrth ddarledu’r rhaglen oherwydd:

c) Daeth gweithgareddu yr rhaglen ar ei thir heb ganiatâd gan recordio ffilm er gwaethaf ei cheisiadau i beidio â gwneud hynny.

d) Darledodd gweithgareddu yr rhaglen y ffilm a recordiwyd ar ei thir er gwaethaf ei cheisiadau iddynt beidio â gwneud hynny. Ymhellach, defnyddiodd gweithgareddu yr rhaglen y pennawd ‘doedd hi ddim eisiau cael ei ffilmio’ dros ddarn o ffilmio a ddarledwyd o Mrs Holland pan nad oedd yn dymuno cymryd rhan yn y ffilm mewn unrhyw ffodd.

e) Cynhwysodd gweithgareddu yr ffilm ddigon o wybodaeth yn y ffilm, yn cynwys bron y cyfan o’i chyfiadau post, i’w hadnabod hi a’i chartref ac felly rhoi ei diogelwch mewn perygl.

I grynhoi, cwynodd Mr Asquith ei fod wedi ei drin yn anhwy oherwydd:

f) Roedd nifer o anghywirdebâu ffeithiol yn y rhaglen ac roedd yn ei bortreadu yn anghywir, gan esgor ar annhegwyd iddo ef, yn cynnwys:

viii. Roedd y cyfeiriad yn y sylwebaeth i’r ffemmwr, Mr Jones, yn dweud ei fod yn ‘cael ei wthio allan o’i gwm genedigol gan ‘fargyfreithiw o Loegr’ yn anhwy gan fod gan Mr Asquith wreiddiau Cymreig a dim ond yn ddiweddar wedi symud i Loegr ac nid yw’n berchen ar unrhyw dir yn y Cwm. Ymhellach roedd yr esboniad am ei ‘wreiddiau Cymreig’ yn rhy bell i mewn i’r rhaglen i wylwyr gael dealltwaeth gywir o gefndir Mr Asquith o’r cychwyn gan esgor ar anhwygwyd iddo.

ix. Roedd y cyfeiriadau yn y sylwebaeth afo fel ‘mewnfulwdr’ yn anhwy gan mai dim ond mewn perthynas â’r Cwm neilltuol hwn y mae’n ‘fewnfudwrd’, ac roedd yn amlwg nad hyn yr oedd gweithgareddu yr rhaglen yn bwriadu ei gwybleu.

x. Roedd y cyfeiriad, yng nghyf/heliad Mr Jones, at Mr Asquith yn anfon ei gwn i redeg trwy goedlan Tyn y Coed yn annheg gan fod gannddo berffaith hawl i
wneud hyn; ymhellach roedd cyfeiriadau eraill at y cŵn yn y caeau yn ystod y tymor wyna yn rhoi awgrym annheg o esgeulustod.

xi. Roedd y cyfeiriad yn y sylwebaeth ac mewn cyfweliadau gyda Mr Jones a gyda ffermwr lleol at Mr Asquith ‘yn symud defaid’ a ‘stoc’ yn anghywir ac yn bortread annheg ohono gan mai Mrs Holland yn unig a symudodd y defaid ar adeg y cyfnod y daeth y rhybudd cyntaf i adael dirwyn i ben

xii. Roedd y cyfeiriad mewn cyfweliad gyda Mr Meirion Jones at Mr Asquith yn ‘chwarae o gwmpas gyda’r clwydi’ i atal defaid Mr Jones rhag dychwelyd i’r caeau yn anghywir ac yn bortread annheg o Mr Asquith. Mewn gwirionedd roedd yn gweithredu mewn ymateb i’r ffaith bod Mr Jones wedi gadael y clwydi ar agor a chadarnhawyd hyn gan y Cyngor fel trosedd o dan y Ddeddf Prifffrydd.

xiii. Roedd datganiad Mr Jones mewn cyfweliad ‘fi wy’r Cymro olaf yn y Cwm’ yn anghywir gan fod ffermwr Cymraeg arall yn byw islaw tir Tyn y Coed ac roedd hyn yn ychwanegu at y portread cydymdeimadol annheg o ochr Mr Jones o’r anghydffod.

xiv. Roedd y rhaglen yn priodoli i Mr Asquith y farn fod Cymuned, y grŵp pwysau Cymreig sydd yn ymgyrchu dros hawliau cymunedau Cymraeg eu hiaith, yn ‘gwthio’u trwynu’ i’r anghydffod. Roedd hyn yn annheg gan ei fod mewn gwirionedd yn cefnogi cyfranogiad Cymuned yn yr ymdrech i ddatrys yr anghydffod ac wedi mynegi’r rhan honno i wneuthuruwr y rhaglen.

viii. Roedd cyfeiriad y rhaglen mewn sylwebaeth ac yn nghyfraniad o gohebydd i’r camera, at ei gartref ger Manceinion yn rhagfarnillyd; gyda’r bwriad o’i bortreadu, yn annheg, fel bargyfreithiwr Toriaidd Saesneg cyfoethog drwg oedd yn sathru ar ffermwr Cymraeg diniwed; hefyd tŷ ei fam a ddangoswyd ac nid ei dŷ mwy cyffredin ef ei hun.

g) Roedd gwneuthurwr y rhaglen yn rhagfarnillyd wrth wneud y rhaglen gan ei bortreadu yn anghywir fel y cefnogwr ac fel bargyfreithiwr cyfoethog dieflig er gwaethaf yr wybodaeth a roddwyd iddynt. Yn ychwanegol, nid oedd elfennau lliniarol bach o’r sylwebaeth yn tynnu oddi wrth annhegwch cyffredinol y portread.

Er gwaethaf dymuniad yr achwynydd i beiddio ag ymddangos ar y rhaglen, mae’n ymddangos arni am tua chwe munud.

Ni ddarledodd gwneuthurwr y rhaglen gyfweliad a recordiwyd gyda chymydog, Mr Mygind chwaith a fyyddai wedi dangos fod Mr Jones wedi ymddwyn yn afresymol mewn sefyllfa oedd eraill ac mai ef oedd achos ei anawsterau ei hun. Roedd gadael hyn anall yn esgor ar annhegwch i Mr Asquith.

I grynhoi cwynodd Mr Asquith bod ei breifatrywydd wedi ei dorri yn anesgusodol wrth wneud ac wrth ddarledu’r rhaglen oherwydd:

h) I bob pwras roedd gwneuthurwr yr rhaglen wedi gwthio eu hunain arno gan ffilmio a darlledu ei drafodaethau gyda nhw er gwaethaf ei gais i beiddio â gwneud hynny.

Achos S4C

I grynhoi ymatebodd y darlledwr i’r cwyn tegwch gan Mrs Holland trwy:
a) Roedd *Y Byd ar Bedwar* yn gyfres materion cyfoes gydag enw da. Yn y rhifyn hwn, ymchwiliodd i faterion ehangach achos y ffermwr Mr Meirion Jones oedd wedi dwyn sylw’r grwp pwysau Cymuned. Roedd yr hanes yn ficrocosm o’r tensiwn rhwng y dull traddodiadol o fyw a dull o fyw mewnfwywr sydd ag ychydig yn gyffredin gyda'r cymunedau y maent yn byw yn eu mysg. Nid gwrthdaro rhwng y Saeson a'r Cymry ydoedd ond rhwng gwahanol ffrydd o fyw. Yr oedd o fudd i’r cyhoedd i adrodd y stori hon ac fe’i hadroddwyd fel anghyfod cymhleth na fyddid gobeithio yn cael ei ailadrodd. Byddai ailadrodd anghyfod o’r fath yn esgor ar ganlyniadau dírifol i gysylltiadau rhwng y brodorion a’r rhai y maent yn eu gweld fel bygythiad i’w ffordd o fyw ac i’w hiaith.

ii. Roedd y ffermwr Mr Jones yn teimlo ei fod yn ‘cael ei wthio o’r cw’ oherwydd roedd yr wyth acer yr oedd yn eu rhen gan Mrs Holland yn gysgodol gyda modd o ael gafael ar dâw ac felly yn hanfodol iddo yn y tymor wynna pan oedd y defaid yn crwdro rhwng cae rhent Tyn y Coed a’r goedlan gyfagos. Heb dir Tyn y Coed yn y tymor wynna, dim ots fiant o aceri o dir y gallai’r defaid eu cyrwo a mewn weddill yr amser, ni fyddai’n gallu parhau i weithio a byw yno.

iii. Yn ôl Geiriadur Cryno Rhydychen roedd Mrs Holland yn ‘fewnfudwraig’ gan ei bod wedi dod i fyw mewn ardal lle na chafodd ei magu ynddi; roedd y cyfeiriaid at fewnfudwr yn rhan o gwestiwn rhethregol am waith y grwp pwysau Cymuned: ‘Heno, a yw Cymuned yn amddiffyn buddiannau pobl Cymru neu yn gelyniaethu mewnfwywr yn unig’ (is-dieth y rhaglen)).

Hefyd roedd cyfeiriaid dilynol Mr Jones ‘pam prynu tŷ yn y fath leolaid?’ yn gyfeiriaid at unrhyw fewnfudwr yn dewis byw mewn amgylchedd gwledig.

vi. Roedd y gwyir dweud bod y rhan fwyaf o’r tai yn y ‘Cwm’ hwn yn gartrefi gwyliau gan fod y cyfeiriaid at y ‘Cwm’ yn gyfeiriaid yn unig at y cwm bychan (Cwm Mynach) oedd yn cynnwys fferm Mr Jones, tŷ Ms Holland a phhedwar cartref gwyliau. Y cyfeiriaid at ail cartref oedd esboniad Mr Aran Jones o Gymuned, o oblygiadu ehangac m y math hwn o anghyfod. Nododd S4C bod cyfeiriaid busnesMrs Holland ym Manceinion lle mae’n treulio tua thair noson yr wythnos.

vii. Rhoddodd y rhaglen grynhoad teg o’r achos a dangosodd nad oedd sail i honiadau Mr Jones yn erbyn Mrs Holland. Roedd y gŵn am y cyfeiriaid at Mrs Holland wedi rhoi ‘rhybudd terfynol i roi’r gorau i’r denantiaeth dros fiwyddyn yn ôl’ yn ymddangos i fod yn ddadl dros gronoleg ac ni achosodd unrhyw annhegwch. Roedd y rhaglen wedi nodi’r glir fod o rhybudd i adael yn dilyn hanes o anghyfodau.

ix. Roedd Mrs Holland wedi derbyn fod Mr Jones angen ei thir oedd yn gwthdddweud ei chwín blaenorol nad oedd angen ei wyth acer. Ymhellach roedd gwneuthunwyr y rhaglen yn dibynnu ar yr hyn y dywedodd yr achwyndyd wrthystant pan ddefnyddiwyd ei ddatganiad yn y rhaglen ac yn ystyried y byddai’r rhan fwyaf o wylwyr yn cytuno gyda Mrs Holland nad oedd gweithrediau Mr Jones wedi helpu ei achos.

ix. Roedd y cyfeiriaid yn y sylwebaeth at ‘aeth Meirion Jones i’r Llys’ yn crynhoi’r sefyllfa; doedd dim ots pwy oedd wedi cychwyn yr achos. Ymhellach,
Ofcom broadcast bulletin
11 December 2006

dealttwriaeth y gwneuthurwyr rhaglen oedd y llinell sylwebaeth ‘Ym mis Ebrill cafodorchymyn Llys’ o’r hyn a ddwyedodd Mr Jones, ond beth bynnag, mae’r achwynwyr yn cadarnhau nad oedd hawl i fod ar y tir o ddyddiau olaf Mawrth ac felly fe’i gorfodwyd oddi ar y tir.

x. Dywedodd Mrs Holland wrth wneuthurwyr y rhaglen mai ffordd breifat yr oedd yn berchen arni oedd y ffordd dros ei thir. Y cyngor sir a gadarnhaodd mai prifffordd gyhoeddus oedd y ffordd.

b) Cafodd y mater o ragfarn ei drafod gyda’r sylwadau agoriadol uchod dan a).

Roedd y cyfnod o amser yr ymddangosodd yr achwynychu’r amser a dreiliodd yn dod at y criw camera. Roedd yn amheus a oedd Mrs Holland wedi newid ei meddwl ynglŷn â’i dymuniad i beidio ag ymddangos ond penderfynodd gwneuthurwyr y rhaglen fod yn ofalus trwy guddio ei wynneb yn y deunydd a ddarledwyd.

Ni chafoedd y cyfweliad gyda’r cymydog Myr Mygind ei ddefnyddio gan ei fod yn ymwneud ag anghyfod gwahanol iawn ynglŷn â sut y dyli ffermio’r tir.

I grynhoi, ymatebodd y darledwr i’r gwyn preifatwydd gan Mrs Holland trwy:

f) O ran recordio deunydd ar dir Mrs Holland roedd gwneuthurwyr y rhaglen yn credu fod ganyddiant hawl i ffilmio gan eu bod ar ochr prifffordd gyhoeddus rhwng wynyb y ffordd a ffens y cae. Roedd yn ddadleuadwy a oedd y darn hwn o dir yn eiddo preifat i Mrs Holland neu yn rhan o’r prifffordd gyhoeddus. Roedd gwneuthurwyr y rhaglen yn credu ei fod yn rhan o’r prifffordd gyhoeddus ac felly roedd ganddynt hawl i ffilmio oddi yno. Ond os oeddent yn anghywir yn hyn o beth, roeddent yn ymddiheuro. Cafodd y lluniau eraill eu tynnu o’r prifffordd ei hun lle roedd ganddynt hawl i ffilmio.

g) O ran darleudu’r deunydd a recordiwyd ar dir Mrs Holland roedd gwneuthurwyr y rhaglen yn gwadu fod hyn yn torri ar breifatwydd Mrs Holland. Am y rhesymau a roddwyd uchod yn c) roedd gwneuthurwyr y rhaglen yn credu fod ganddynt hawl i ffilmio ac felly darleudu’r deunydd a recordiwyd ar, neu wrth ymlyl y byrrfodd gyhoeddus.

Roed gwneuthurwyr y rhaglen yn deall nad oedd Mrs Holland eisiau ymddangos yn y rhaglen ac er na ellid gwneud y rhaglen heb gyfeirio ati, fe barchwyd ei dymuniadau gan guddio ei wynneb yn y deunydd a ddarledwyd. Roedd gwneuthurwyr y rhaglen yn iawn i’w ffilmio yn ei char gan eu bod eisiau dangos y c wn yn rhedeg wrth ymlyl y car ac felly nid o dan ei rheolaeth.

h) Ni chafoedd cyfeiriad post Mrs Holland ei ddatgelu ar yr rhaglen. Roedd yr achwynwyr yn fwradiol wedi gorodatgan pryderon am ddiogelwch ond o ran parch i ansicrwydd menyw yn byw mewn lleoliad unig ni ddangosodd gwneuthurwyr y rhaglen ei wynneb na rhif cofrestru’r car a gwaethant eu gorau i beidio â dangos ei chartref. Y tu ôl i’r gwyn hon mae’r awgrym y gallai fod wedi dod yn darged i ymgyrchwyr iaith Gymraeg milwriaethus. Ond daeth yr ymgyrch losgo yn targedu cartrefi gywliau i ben yn gynnar yr yr 1990au. Er na wnaeth gwneuthurwyr y rhaglen enwi ei chartref ni wnaethant roi unrhyw sicrwydd i Mrs Holland na fuasent yn ffilmio ei thŷ. Roeddent wedi gweithredu yn unol â’i dymuniad i beidio ag ymddangos yn y rhaglen.

I grynhoi ymatebodd y darledwr i’r gwyn tegwch gan Mr Asquith trwy:
f) Mae’r sylwadau agoriadol yn a) uchod yn delio â’r pwyntiau cyffredinol a godwyd gan yr achwneydd.

ii. Roedd y disgrifiad o Mr Asquith wedi ei eirio’n ofalus. Roedd yn gywir i ddweud ei fod yn fargyfreithiwr o Loegr: y pwnt oedd y gwahaniaeth rhwng y ffarmwr brodorol a’r person yr oedd ef yn ei ystyried oedd yn ei wthio allan. Roedd y rhaglen yn adlewyrchu’r hyn a ddywedwyd gan Mr Asquith, sef ei fod o dras Gymreig, manylon pwysig i osgoi’r argraff mai anghydfod oedd hwn rhwng Cymry a Saesoon a chafodd hyn ei grybwyll am un munud yn unig i mewn i’r rhaglen.

ix. Yn ôl Geiriadur Cryno Rhydynchen roedd Mr Asquith yn ‘fewnfudwr’ oherwydd ei fod wedi dod i fyw i ardal lle nad oedd wedi ei fagu ynddi; roedd y cyfeiriad at fewnfudwr yr hyn o gwestiwn rhethregol am waith Cymuned. Adroddodd y rhaglen hefyd bersbectif nîd affresymol Mr Jones fod Mr Asquith yn fewnfudwr

xi. Roedd y cyfeiriadau at Mr Asquith yn ‘symud defaid’ a ‘stoc’ ac at fferrmwr lleol yn helpu Mr Jones i ddychwelyd y defaid ar y tir yn dyfynnu honiad a wnaethpyd gan Mr Jones. Ymhellach roedd Mr Asquith wedi cyfaddef mewn sgwrn fydd ganwneuthurwyr yr rhaglen ei fod wedi cau’r defaid allan gan wneud unrhyw anghywirdeb yn amherthnasol.

xii. Roedd y brif glwyd dan gartref Mrs Holland bob amser ar gau. Roedd y clwydi eraill wedi’u gadael ar agor yn fwriadol ac yn gywir er mwyn caniatâu i’r defaid grwydro.

xiii. Roedd datganiad Mr Jones ‘fi yw’r Cymro olaf yn y Cwm’ yn gywir fel cyfeiriad at gwm bychan Cwm Mynach

xiv. Ni allai gwneuthurwyr yr rhaglen ymateb i’r cyfeiriad at farn ynglŷn â Cymuned heb ragor o fanylion ynglŷn â’r anghywirdeb honedig.

xv. Nid oedd bwiad i bortredu Mr Asquith fel bargyfreithiwr Toriaidd o Sais cyfoethog dieflow. Roedd lleoliad ei gartref yn berthnasol i’r mater o faint o ddealltwriaeth y gallai fod ganddo o sefyllfa Mr Jones gan ei fod yn byw, gweithio ac yn gynghorydd sir o gwmpas Manceinion. Cymerwyd y wybodaeth am ei gartref o wefan gyfredol ar y pryd Cyngor Sir Gaer.

g) Cafodd yr mater o ragfarn ei drafod uchod yn y sylwadau agoriadol yn a).

Roedd yr amser yr oedd yr achwynydd yn ymddyng o adlewyrchu’r amser a dreuliodd yn dod at y criw camera.

Ni chafodd y cyfweliad gyda Mr Mygind ei defnyddio gan ei bod yn ymwneud ag anghydfod gwahanol iawn am sut y dylid ffarmwr i’r tir.

I grynhoi ymatebodd y darlledwr i’r gŵyn preifatrwydd yn erbyn Mr Asquith trwy: 

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h) Geiriaw cyntaf Mr Asquith i wneutherwyr y rhaglen oedd gorchymyn i ddifodd y camera, ond parhaodd gwneutherwyr y rhaglen i ffilmio hyd nes y daeth yn amlwg pam ei fod eisiau iddynt roi’r gorau i ffilmio. Ei ddadl oedd, nid eu bod yn ei ffilmio ef, ond eu bod yn ffilmio ar dir lle nad oedd ganddynt hawl i ffilmio. Ar bob achlysur arall, roedd yn dynesu at y camera ac roedd yn amlwg ei fod eisiau iddynt ei ffilmio, er enghraiff, ar achlysur lle roed yn amlwg ei fod eisiau ffilmio llthyfr. Yn wahanol i Mrs Asquith a ddywedodd nad oedd yn dymuno ymddangos yn y rhaglen, ni chafwyd yr un datganiad gan Mr Asquith.

Sylwadau Mrs Holland a Mr Asquith ar ymateb S4C

I grynhoi symwebodd Mrs Holland ar ymateb y darledwr i’r gŵyn tegwch trwy:

a) Mabwysiadodd gwneutherwyr y rhaglen farn Mr Jones fel ffaith ddiameheul yn hytrach nag edrych ar faterion yn ddiuessed, ac mewn nifer fechan o achosion maent wedi bod yn amlwg yn anonest.

i. Ni allai’r defaid grywdro drosodd rhwng caeau Tyn y Coed Mrs Holland a’r tir cyfagos fel y dysgrifiwyd yn ymateb y darledwr gan eu bod wedi eu gwahanu gan ffensiws ac chliwyd. Mewn gwirionedd, canfuwyd hyn gan yr ynadon yn yr achos llys a ddechreuwyd gan Mr Jones ynglŷn â chwân Mrs Holland. Nid oedd tir Mrs Holland yn arbennig nac yn hanfodol i ddefaid Mr Jones ac roedd yn parhau i gadw defaid a magu wyn.

ii. Yn ôl diffiniad gwneutherwyr y rhaglen o’r gair ‘mewnfulwdr’ byddai’r ffermwr Mr Jones yn feunfudwdr gan ei fod wedi byw y tu allan i’r cwm am nifer o flynyddoedd. Roedd y defnydd o’r ymadrodd yn ddifriol yn unig. Roedd cwestiwn Mr Jones ‘pam prynu tŷ mewn lleoliad o’r fath?’ yn anwybyddu’r ffaith fod Mrs Holland wedi bod yn berchen ar yr eiddo ac wedi bod â chysylltiadau agos â Chwm Mynach am nifer o ddegawdau. Mabwysiadodd gwneutherwyr y rhaglen y rhagymadrodd mai'r rheswm dros yr anghydrafodd oedd bod mewnfulwdr wedi methu a'g addasu i’r ffordd wledig o fyw ac roeddent wedi methu â hero barn Mr Jones.

iii. Gwaeth gwneuterwyr y rhaglen ddiffiniad technegol o’r gair ‘cwm’. Canlyniad hynny oedd bod y rhaglen wedi rhol argraff gamarweiniol bod y gymuned yn llawn cartrefi gwylliau. Roedd golygu sylwadau Aran Jones o Gymuned am ail cartrefi yn gwneud iddynt ymddangos fel sylw am Mrs Holland. Nid oedd Mrs Holland chwawith ymwybodol o berthnasedd o’i gweithgarwch busnes ym Manceinion. Tyn y Coed yw ei hunig gyfieiriad preswyl. Ymhellach, a fyddai’r un pwyt wedi’i wneud am fynsau wedi’i leoli yng Nghaerdydd?

iv. Rhoddwyd yr argraff anhleg fod y llysoedd wedi siomi Mr Jones yn ei erlyniaid o’r cŵn. Nid ddaclau ym unig dros gronoleg a wnaeth Mrs Holland. Rhoddwyr yr argraff ei bod wedi rhoi rybudd i Mr Jones adael oherwyd yr achos llys ynglŷn â’i chwân. Trwy newid y gronoleg portreadodd gwneutherwyr y rhaglen hi yn anhleg fel rhywun bach ei meddlw.

v. Roedd Mrs Holland yn sensitif i safbwynt Mr Jones ond y realiti ymarferol oedd nad oedd angen darn mor fychan o dir.

vi. Roedd y darn gyda ffermwr lleol yn enghraiff unwaith eto o’r modd y derbyniodd gwneutherwyr y rhaglen fersiwn Mr Jones heb ei herio.
vii. Roedd y cyfeiriad ‘aeth Meirion Jones’ i’r llys’ yn gyfwystro Mr Jones fel y parti oedd wedi cael cam pan mai Mrs Holland oedd honno. Mae’r cyfrif felwy pwy gychwynnodd yr achos. Ymhellach cymerwyd y cyfeiriad ‘ym mis Ebrill cafodd Orchymyn Llys’ heb y ei gadarnhau gan wneuthuwrwy y rhaglen gan Mr Jones. 

Nid oedd gorchymyn llys pan gafodd yr rhaglen ei gwneud a gallai Mr Jones fod wedi aros hyd nes y cafodd y gorchymyn ei wneud ym mis Gorffennaf ond gadawodd y tir yn wirfoddol. Roedd Mrs Holland wedi gwneud cynnig ffurfio iddo aros fan Tawr 2006 ond nid oedd wedi ei dderbyn. Mae’r deunydd na chafodd ei ddarlledu yn dangos nad oedd Mrs Holland yn cadw Mr Jones oddi ar ei thir yn barhaol.

viii. Roedd y deunydd na chafodd ei ddarlledu yn dangos bod statws y ffordd wedi ei esbonio sawl tro, sef mai priffordd gyhoeddus ydyw yn mynd dros dir preifat.

b) Yn eu hymateb yn gyffredinol mabwysiadodd gwneuthuwrwy y rhaglen fam Mr Jones fel ffêithiaid di-ddadl.

Defnyddiodd gwneuthuwrwy y rhaglen dechnegau pwysau ac ymddygiad twyllodrus oedd yn anghymesur â’r ymchwiliad. Ymhellach nid oedd y ffaith bod unrhyw un wedi gwrthod cymryd rhan yn y rhaglen yn cael gwared â dyletswydd gwneuthuwrwy y rhaglen i fod yn gywir ac roedd y ddau achwynyd wedi darparu gwybodaeth ar y ffôn.

Roedd y cyfweliad gyda Mr Mygindyn y dangos patrwm o ymddygiad gan ffarmr, Mr Jones, oedd yn gwneud hawliadau o hawl ar dir nad oedd ganddo hawl arno ac felly yn gelyniaethu ei gymdogion. Ni chafodd y deunydd ei ddefnyddio a gan nad dyma’r rhaglen yr oedd gwneuthuwrwy y rhaglen eisiau ei gwneud.

I grynhoi sylwebodd Mrs Holland ar ymateb y darlledwr i’r gŵyn preifatrwydd trwy:

c) O ran recordio deunydd cyn darlledu, cynigiodd Mrs Holland beidio à chychwyn achos cyfreithiol cyn belled â bod dim lluniau’n cael eu cymryd o’i thir a’u defnyddio yn y rhaglen; mae’n berchen ar yr holl dir a gall ffensio unrhyw ardal cyn belled â’r brifffordd gyhoeddus. Dylai gwneuthuwrwy y rhaglen fod wedi cymryd cyngor cyfreithiol cywir dros y mater o hawl i fod ar ei thir. Roedd Mr Asquith a Mrs Holland y bendant, fel y dangosir yn y deunydd nas darlledwyd, na ddyll idd ilio’r darn i gamera ar dir Mrs Holland ac na ellid felly dangos y tŷ. Roedd y deunydd nas darlledwyd yn dangos gwneuthuwrwy y rhaglen yn sibrwd gyda’i gyfleidd er mwyn torri cytundeb a ffilmio oddi wrth y tŷ a’r tir. Mae ongl y lluniau yn dangos na chawsant eu tynnnu o’r brifffordd ond o dir Mrs Holland.

d) O ran darlledu deunydd, cyn darlledu cynigiodd Mrs Holland i beidio à chychwyn achos cyfreithiol cyn belled nad oedd dim lluniau yn cael eu tynnnu o’i thir a’u defnyddio yn y rhaglen. Fel y trafodwyd yn c) uchod, nid oedd gan wneuthuwrwy y rhaglen hawl i ffilmio ar ei thir nac i ddangos ei thî.

Torrodd gwneuthuwrwy y rhaglen ar breifatrwydd Mrs Holland dro ar ôl tro gan anwybyddu yn llwyrn ei cheisiadau i beidio à gwneud hynny; doedd dim cyfiawnhad dros ffilmio ei char a’i chwân gan eu bod dan reolaeth briodol ac os oeddent yn nod ar drawdef daid roeddent wedi eu hyfforddi i dddyn yn nes at y car.

e) Roedd prydoron Mrs Holland am ddiogelwch yn deg gan fod ymosodiad wedi bod yn y gorffennol.

I grynhoi sylwebodd Mr Asquith ar ymateb y darlledwr i’r gŵyn tegwch trwy:
f) Mabwysiadodd gwneuthurwyr y rhaglen farn Mr Jones fel ffaith ddiamheul yn hytrach nag edrych ar faterion yn ddiudded, ac mewn nifer fechan o achosion maent wedi bod yn amlwg yn anonest.

i. Roedd y disgrifiad o Mr Asquith wedi ei eirio yn ofalus, ond nid i roi’r argraff a awgrymwyd h.y. nid oedd o Loegr yn fwy nag unrhyw Gymry eraill sydd wedi eu gorfodi, oherwydd economeg, i weithio yn Lloegr; mae Mr Asquith yn hanner Cymro, ond sefydlir ei ‘Seisnigrwydd’ yn y lluniau aghoriadol a chan y gerddoriaeth Nimrod dros y lluniau o Alderley Edge. Roedd yn amlwg fod gwneuthurwyr y rhaglen eisiau ei bortredu fel bargyfreithiwr dieflig o Sais oedd yn bwlio fferrmw trlawn Cymreig. Roedd yn annheg i awgrymu ei fod yn dramorwr ac yn hawdd defnyddio’r term Saesneg fel term difrîol.

ii. Yn ôl diffiniad gwneuthurwyr y rhaglen o’r gair mewn hudwr byddai Mr Jones yn un gan ei fod wedi byw y tu allan i’r cwmm am sawl blwydden. Roedd y defnydd o’r ymadrodd yn diffiniad difrîol gwneuthurwyr y rhaglen o’r gair mewn hudwr, a byddai Mr Jones yn un gan ei fod wedi byw y tu allan i’r cwmm am sawl blwydden. Roedd y defnydd o’r ymadrodd yn difrîol.

iii. Adrooddodd y rhaglen hefyd fod Mr Asquith fel mewn hudwr wedi bod yn dychryn defaid Mr Asquith pan nad oes tystiolaeth o hyn. Dim ond mewn lle wedi ei ffensio y mae cwmm Mr Asquith yn rhedeg; ymhellach roedd Mr Jones wedi gofyn iddint gael eu gadael allan i ddychryn llwynogod. Ni heriwyd sefyllfa Mr Jones.

iv. Ni ddywedwyd ‘dywedodd Mr Jones fod…’ cyn yr honiad fod Mr Asquith wedi symud y defaid, ond yn hytrach fe’i dywedwyd fel mater o ffaith. Caedd Mr Asquith y glwyd gyda’r defaid yn y caeau yn ôl gofyniad y Ddeddf Priifyrrdd. Roedd y cyfeiriad at ‘ffermwyr lleol’ yn enghraifft o sut unwaith eto roedd gwneuthurwyr y rhaglen wedi derbyn fersiwn Mr Jones heb sialens.

v. Y rheswm pam fod Mr Asquith wedi cau’r clwydi i’r caeau oedd bod Mr Jones wedi bod yn cyflawni trosedd trwy ganiatáu i’r defaid redeg ar y ffordd heb angen fferrmio (e.e. cysgod a dŵr). Ymhellach roedd y rhaglen yn awgrymu trwy’r cyfeiriad at Mr Asquith yn ‘paragleidia’ ei fod yn ymweld àr ardal i chwarae yn unig pan, mewn gwirionedd, maen’eu treulio ei benwythnosau yn rheoli’r goedlan.

vi. Mae Cymro arall yn fferrmio yng nghwmp bychan Cwm Mynach er y cydnabyddir nad yw bellach yn byw yno.

vii. Rhoddodd gwneuthurwyr y rhaglen y sylw yng nghwmp Mr Asquith ‘nad yw’n deall pam fod Cymuned yn gwrthio eu trwynau i mewn (i’r mater hwn’) pan, mewn gwirionedd, ceisiodd Mr Asquith, Mrs Holland a Cymuned ddod i gyfaddawd.

viii. Cyfaddefodd Mr Asquith mai ymweyledd oedd à Chwm Mynach ond cwestiynododd berthnasedd y cyfeiriadau at ei gartref ger Manceinion pan mai Mrs Holland oedd yn gwneud yr holl benderfyniadau ynglŷn âi’r holl ac mai hi oedd âr gair olaf am y ffilmio. O’r darn am ei gartref yn Alderley Edge ymlaen, roedd y rhaglen fel pe i gyd am Mr Asquith a Mrs Holland yn gwrthwynebu ffilmio. Tua hanner yr amser a ddarlledwyd. Diweddarwyd manynion cyfeiriad Mr Asquith ar wefan Cyngor Sir Gaer ar 5 Mai 2005 ac roedd y darllediad ar 14 Mehefin 2005 gyda gywboeth anghywir wedi’i gymryd o doriad dyddiedig Ionawr 2001.
g) Yn eu hymateb mabwysiadodd gwneuthurwyr y rhaglen farn Mr Jones yn bennaf fel ffaith ddli-ddadl.

Defnyddiodd gwneuthurwyr y rhaglen dechnegau pwyso ac ymddygiedi twyllodrus oedd yn anghymesur â’r ymchwilied. Ymhillach nid yw gwrthodiad unrhyw un i gymryd rhan mewn rhaglen yn cael gwared â dyletswydd gwneuthurwyr rhaglen i fod yn gywir ac roedd y ddau achwinydd wedi darparu gwybodaeth ar y ffôn.

Roedd y cyfwiolaeth gyda Mr Mygind yn dangos patrwm o ymddygied gan ffermwr, Mr Jones, oedd yn gwneud hawl-iau i dir nad oedd ganddo hawl-iau iddo ac felly’n gelyniaethu ei gymhogion; nis defnyddiwyd y deunydd gan nad dyma'r rhaglen yr oedd gwneuthurwyr y rhaglen eisiau ei gweud.

I grynhoi sylwebodd Mr Asquith ar ymateb y darledwr i’r gwyn preifatwydd trwy:

h) Roedd gwneuthurwyr y rhaglen yn ymwthio arno ac ni wnaethant roi’r gorau i ffilmio ar unrhyw adeg er ei fod wedi’i gwneud yn amlwch ei fod yn dymuno trafod eu presenolddeb heb gael ei ffilmio. Roedd eisiau dangos y llythyr y cyfeiriwyd ato ond dim ei ffilmio. Roedd yn cael ei eriu gan y criw. Roedd wedi ei gwneud yn amlwch o’r funud y darganfu ei fod yn cael ei ffilmio nad oedd yn dymuno cael ei ffilmio. Parhaodd i geisio trafod gyda’r gwneuthurwyr ffilm eu bod yn gadael, wrth geisio blocio’r ffilmio. Cesiodd gwneuthurwyr y ffilm awaniaethu rhwng sefyllfa Mr Asquith a sefyllfa Mrs Holland nad oedd eisiau unrhyw ran yn y ffilm, pan, mewn gwirionedd, ei sefyllfa oedd y bydai’n gweithredu yn gytûn gyda Mrs Holland ac yn cydymffurfio gyda’i dymuniadau.

Roedd y deunydd na chafodd ei ddarledu yn ei gwneud yn glir nad oedd Mrs Holland na Mr Asquith yn dymuno cael eu ffilmio, gwneud sylw na chymryd rhan yn y rhaglen. Ymhillach roedd yn dangos fod gwneuthurwyr y rhaglen yn benderfynol o gael lluniau pellach o Mr Asquith.

Ail ddatganiad S4C mewn ymateb

I grynhoi, ymatebodd S4C i sylwadau Mrs Holland ar y gwyn tegwch trwy:

a) Roedd y cyhuddiad fod gwneuthurwyr y rhaglen wedi mabwysiadu barn Mr Jones fel ffeithiau di-ddadl yn hytrach nag edrych ar bethau yn ddidwed yn berthynol i ymateb S4C yn hytrach nag i’r rhaglen fel y’i darledweth. Cyflwynodd y rhaglen farn y ddwy ochr ar roedd ymateb gwneuthurwyr y rhaglen yn ceisio cyfiawnhau cynnwys barn y ffermwr yn y rhaglen, ac nid yw’n derbyn fel ffaith. Gwnaeth y rhaglen gyfrwnder â sefyllfa’r achwynwyr er eu bod wedi gwrthod pob cyfle i ymddangos yn y rhaglen. Beth bynnag, methodr yr achwynwyr ag esbonio sut yr esgorodd yr anghywiredebau honedig ar annhegwy chynt hwy.

i. Roedd yr achwynwyr Mr Jones yn dadlau nad oedd tir Mrs Holland yn arbennig nac yn hanfodol i ddefaid Mr Jones, ond mae gan Mr Jones bellach gant yn llai o ddefaid oherwydd iddo golli tir Tyn y Coed ac mae’r ffin rhwng elf a cholloed yn hynod o gol.

ii. Heriwyd barn Mr Jones (pam prynu tŷ mewn lleoliad o’r fath?) gan gwestiwn y gohebyd ‘ydych chi ddim yn meddwl ei bod yn galed arnyn nhw, yn byw yn y tai hyn wedi’u hamgylchynu gan dir yr ydych chi ym i ffermio?’ Ni fabwysiadodd y rhaglen y rhagymadrodd mai’r rheswm dros yr anghyfod hwn
oedd oherwydd nad yw mewnfwydd wedi addasu i’r ffodd wledig o fyw. Adroddodd y rhaglen safbwynt Mr Jones a’i herio a oedd angen tir Mrs Holland, a oedd yn ceisio ei dychryn, a oedd yn wrth Seisnig. Cyflywynodd y rhaglen hefyd farn yr achwynwyr gan wneud yn amlwg eu bod wedi ennill pob brwydr gyfreithiol, yn dangos eu bod yn iawn ar y materion hyn.

iii. Defnyddiodd gwneuthurwyr y rhaglen y gair Cwm i gyfeiriio at Gwm Mynach, ardal neilltuol fel y’i hadnabyddir gan bobl leol. Roedd sylw Aran Jones o Cymuned, yn ymwenedd ag ail gartrefi, yn siarad am rywbeth nad yw wedi digwydd eto, a’r canlyniadau posibl. Roedd cyfeiriad post Mrs Holland yn cael gwared ag unrhyw argraff bod ei holl fywyd yn cael ei dreulio yng Nghwmm Mynach. Pe bai ei busnes wedi bod yng Nghaerdydd byddai hynny wedi ei adrodd.

iv. Ni wnaethpwyd unrhyw ymateb ar wahân ynglŷn ag unrhyw argraff a roddwyd ynglŷn ag achos Mr Jones ynglŷn â chwîn Mrs Holland. Rhoddwyd y gronoleg i wneuthurwyr y rhaglen gan Mr Asquith mewn llythyr yno manyion am union ddilyniant digwyddiadau.

v. Cwynodd Mrs Holland am linell sylwbaeth y rhaglen ‘mae hi (Mrs Holland) yn dadlau nad yw Meirion Jones angen ei thir mewn gwirionedd’. Cafodd y gŵn hon ei gwthddweud gan y sylw yn ei hail gyflwyniad ‘y realiti ymarferol yw nad yw angen darn mor fach dà’.

vi. Ni wnaethpwyd ymateb ar wahân ynglŷn â’r cyfeiriad ‘aeth Meirion Jones i’r llys’. Roedd gwneuthurwyr y rhaglen wedi synnu bod yr achwynwyr wedi datgan y gallai Mr Jones fod wedi aros ar y tir hyd nes y byddai gorchymyn lllys yn cael ei wneud ym mis Gorffennaf ond ei fod wedi gadael y tir yn wirfoddol. Roedd gwneuthurwyr y rhaglen wedi cael ar ddeall gan Mr Asquith fod Mr Jones wedi bod yn tresmasu ers mis Mawrth 2005 a’i fod yn cael gadael defaid yno tan ddiweddu Mai am resymau lles anifeiliaid, oherwydd y tymor wyna diweddar.

vii. Ni wnaethpwyd ymateb ar wahân ynglŷn â statws y ffodd.

b) Nid oedd y rhaglen yn arddangos unrhyw ragfarn wrth-Seisnig fel yr honnwyd gan yr achwynwyr, ond yn hytrach roedd yn adrodd ffeithiau, er enghraiff Mr Jones oedd y Cymro olaf i fyw a ffermio yng Nghwmm Mynach ac roedd Mr Asquith o dras Gymreig gyda chysylltiadau agos â Manceinion.

Ni ddefnyddiwyd unrhyw ‘dechnegau pwysau’ fel y datganwyd yn ail sylwadau’r achwynwyr. Rhoddodd gwneuthurwyr y rhaglen bob cyfle i’r achwynwyr gymryd rhan fel ag sy’n ofynnol yn ôl ymarfer gohebu da.

Pe bai gwneuthurwyr y rhaglen wedi bod yn benderfynol o wneud rhaglen wrth-Seisnig byddent wedi cynnwys yn hytrach nag eithrio’r cyfwioliad gyda Mr Mygind (perchennog tir Saesneg sydd hefyd wedi bod mewn anghydfod â Mr Jones). Ni fyddent chwaith wedi cynnwys y cyfwioliad a ddarledwyd gyda pherchennog tir Saesneg arall, Mr Yoward, a ddaeth drosodd fel rhywun rhêsymol, hoffus a chraff.

I grynhoi, ymatebodd S4C i sylwadau Mrs Holland ar y gŵn preifatrwydd trwy:

c) O ran recordio’r lluniau, ni wnaeth y rhaglen dorri ar breifatrwydd Mrs Holland yn ansegusodol. I wneud hynny byddai wedi golgytu torri i mewn ar agwedd o’i bywyd.
yr oedd hawl ganddi i’w gadw’n breifat ac i’r torri i mewn hwnnw fod yn anesgusodol. Nid oedd yr un yn wir.

Ffilmiodd gweunethurwyr y rhaglen ar dir Tyn y Coed gan gredu fod ganddynt hawl i wneud hynny gyda chaniatâd Mr Jones ac ar ôl siarad gyda Mrs Holland aethant oddi ar y tir. Ar ôl cael cynghor cyfreithiol, buont yn ffilmio ar neu yn agos at y ffordd ar yr ail ddwrnod o ffilmio a pharcio wrth y man agosaf cyfleus. Ni wnaeth y ffilmio a wnaethpwyd torri ar breifatrwydd unrhywun. Nid oedd unrhyw gytwunedb i ffilmio oddi wrth y ty’u tir. Nid oedd yr lluniau yn cefnogi casgliadau’r achwynwyr dros leoliad y dyn camera gan ei fod yn ffilmio o dreipod uchel.

d) O ran darlledu’r lluniau, gwnaethpwyd yr un ymateb ag uchod yr mwyn c).

e) Cododd yr achwynwyr faterion diogelwch ond nid oedd enw Mrs Holland yn gyfrefiyn yng Nogledd Cymru ac roedd hynny yn ei gwneud yn hawdd i olrhain ei rhif ffôn. Ni chrybwyllwyd ymosodiad cynharach ar adeg gwneud y rhaglen. Pe bai wedi ei grybwyll yna byddda’r risg canfyddedig wedi ei ail asesu.

I grynhoi ymatebodd S4C i sylwadau Mr Asquith ar y gwyn tegwch trwy:

f) Roedd y cyhuddiad fod gweunethurwyr y rhaglen wedi mabwysiadu barn Mr Jones fel ffeithiau di-ddaith ar hytrach nag edrych ar faterion yn ddidweddi yn berthynol i ymateb S4C yn hytrach na’r rhaglen fel y’i darledwyd. Cyfllwynodd y rhaglen farn y ddwy ochr ac roedd ymateb gweunethurwyr y rhaglen yn ceisio cyfiawnhau cynnwys barn y ffermwyr yn yr rhaglen, dim i’w derbyn fel ffaith. Gwnaeth y rhaglen gyfiawnder à sefyllfa’r achwynwyr er eu bod wedi gwthod pob cyfle i ymddeang yn yr rhaglen. Beth bynnag, method yr achwynwyr ag esbonio sut yr esgorodd yr anghywirdebau honedig ar annhegchw iddint hwy.

i. Doedd dim bygythiol yn y defnydd o ddarn cyfarwydd o gerddoriaeth Saesneg i gyd-ynhyd à lluniau o Alderley Edge. Doedd dim awgrym mai tramorwr oedd Mr Asquith, dim ond mewnudiwr i’r Cwm. Ni ddefnyddiwyd y gair ‘Saesneg’ i’w ddisgrifio.

ii. Ni wnaethpwyd ymateb ar wahân ynglŷn â’r defnydd pellach o’r gair mewnudiwr.

iii. Adroddiad Mr Jones oedd y dystiolaeth am gwn Mr Asquith yn dychryn defaid Mr Jones a chyfllwynwyd hyn i Mr Asquith mewn sgwrs ar y ffon. Cynrychiolwyd ei ymateb fod Mr Jones yn hapsus i’w gwn redeg trwy’r defaid i ddychryn llwynogod wedi’i gynrychioli yn yr rhaglen. Gwelodd gweunethurwyr y rhaglen drostynt eu hunain nad oedd ffens yn gwahanu’r goedlan lle y gall o’i Mr Asquith fynd o’r caeau lle roedd y defaid yn pori; heriwyd safbwynt Mr Jones ynglŷn â’i ddefaid yn cael eu styrbio gan y rhaglen yn cyfwlyno safbwynt Mr Asquith.

iv. Nid oedd Mr Asquith yn gwadu symud dafad trwy ei thafâu dros ffens. Ni wnaethpwyd sylw ar wahân ynglŷn â’r darn, yn cynnwys cyfraniadau gan ffermwyr lleol.

v. Cadwodd Mr Jones y glwyd i’r cae ar aghor fel bod y defaid yn gallu cael cyflenwad o ddŵr ffres trwy’r ffordd.

vi. Ni chafwyd ymateb ar wahân ynglŷn â’r rhai sydd yn byw yng Nghwm Mynach.

vii. Roedd Mr Asquith yn ddiystyriól yn ei ymateb cyntaf i gyfranogiad y grwp pwysau Cymuned. Cymflwynwyd y cwestiwn i Aran Jones ‘roedd ef [Mr Asquith]
yn methu deall pam fod Cymuned yn gwthio eu trwynau i’r [mater hwn]’ fel safbwynt cbwl gyfiawn’.

viii. Ar un achlysor o leiaf pan oedd y crw y ceisiu ffilmio darn i gamera, Mr Asquith a gafodd y gair olaf am y ffilmio, nid Mrs Holland. Roedd yn anghywir datgan bod hanner y dallediad am Mr Asquith a Mrs Holland ynw gwrthwaynebu ffilmio’ roedd y darn y cyfeiriwyd a o 16 eiliad allan o 25 munud 45 eiliad o amser rhedeg. Cefnogwyd y wybodaeth am gartref Mr Asquith, yn Alderley Edge, gan y gofrestr etholiadol a’r rhif ffôn a roddwyd gan Mr Asquith, yr esboniodd mai dyma’r rhif ffôn ar gyfer yr oedd yn ei rannu gyda’i fam.

g) Nid oedd y rhaglen yn arddangos unrhyw ragfarn wrth-Seisnig fel yr honnir gan yr achwynwyr, yn hytrach roedd yn adrodd ffeithiawr, er enghraifft Mr Jones oedd y dyn olaf oedd yn byw ac yn ffilmio yng Nghwma Mynach, roedd Mr Asquith o dras Gymreig gyda chysylltiadau agos à Manceinion.

Pe bai gwneuthurwyr y rhaglen wedi bod yn benderfynol o wneud rhaglen wrth-Seisnig byddent wedi cynnwys, yn hytrach nag eithrio’r cyfweliad gyda Mr Mygind (perchennog tir Seisnig sydd hefyd wedi bod mewn anghyfodaodd â Mr Jones). Ni fyddent chwaiith wedi cynnwys y cyfweliad a ddarledwyd gyda pherchennog tir Seisnig arall, Mr Yoward, a daeth drosodd fel rhywun rhesymol, hoffus a chrhafr.

Ni ddefnyddiwyd unrhyw ‘dechnegau pwysau’ fel y datganwyd yn ail sylwadau’r achwynwyr. Rhoddodd gwneuthurwyr y rhaglen bob cyfle i’r achwynwyr gymryd rhan fel ag sy’n ofynnol yn ôl ymarfer gohebu da.

I grynhoi ymatebodd S4C i sylwadau Mr Asquith ar y gwyn preifatrwydd trwy:

h) Nid oedd unrhyw ymhwthio. Roedd gwneuthurwyr y rhaglen yn ffilmio cyfweliad pan ddaeth Mr Asquith atynt, oedd wedi dewis stopio a thrhof materion. Ni holodd y gohebydd ef am ei berthynas gyda’r ffemwr. Roedd y llythyr y cyfeiriwyd ato eisoes wedi ei ddangos i’r cynhrychyd yn nhŷ Mrs Holland; doedd dim angen ei ddangos ym mhresenoldeb y crw os oedd yn bydymus ynglŷn â’i ffilmio. Roedd yn amlwg yna mwynhau mynegi ei farn gyfreithiol gerbron y camera. Dangosoddf y lluniau nad oedd Mr Asquith yn cael ei erlid.

Yn wahanol i Mrs Holland nad oedd yn dymuno bod unrhyw luniau ohoni hi na’i heidio yna cael eu dangos, gwrthod darparu cyfweliad yn unig a wnaeth Mr Asquith. Cyfathrebbad sefyllfa Mrs Holland i wneuthurwyr y rhaglen a byddai wedi bod yn syml ei fynegi fel cyddfelyf. Roedd yn amlwg o’r lluniau fod gan yr awydd a beidio cael eu ffilmio lawer mwy i’w wneud gyda thaeinw Mr Asquith i hynrywdd ei farn am ffilmio ar y briffordd na gydag unrhyw awydd i diogelu ei breifatrwydd. Roedd gwneuthurwyr y rhaglen hefyd wedi sicrhau eu bod yn cael lluniau o Mr Asquith o’r briffordd nad oedd yn croesi tir Mrs Holland rhag ofn i orchymyn llys gael ei roi ynglŷn â’r lluniau a ffilmwyd ar ei thir.

Penderfyniad

Mae dyletswydd statudol Ofcom yn cynnwys defnyddio, yn achos pob gwasanaeth teledu a radio, safonau sydd yn darparu diogelwch digonol i aelodau o’r cyhoedd a phob person arall rhag triniaeth annheg mewn rhaglenni a thorri preifatrwydd yn anesgusodol mewn ac mewn cysylltiad â rhaglenni sy’n gynwysedig mewn gwasanaethau o’r fath.
Wrth gyflawni ei ddyletswyddau, mae Ofcom yn talu sylw i’r angen i wneud yn siŵr bod y safonau hyn yn cael eu defnyddio mewn dull sydd yn gwarantu orau’r lefel priodol o rydidd mynegiant. Mae Ofcom hefyd yn rhwymedig i dala sylw yn mhob achos at yr egwyddorion y dylai gweithgarwch rheoleiddiol fod yn dryloyw, ateol, cymesur, cyson ac wedi’u targed yn unig ac achosion lle y mae angen gweithredu.

Yng ngoleuni’r ffaith bod y cwynion hyn yn ymwneud â rhaglen Gymraeg ei hiaith roedd y Pwyllgor Tecwch (‘Y Pwyllgor’, corff gwneud penderfyniadau mwya’f uchel Ofcom o ran cwynion Tecwch a Phreifatwrwydd) wedi cynnwys yr Aelod o Gymru sydd yn siaradwr Gymraeg. Rhoddir yr holl gyfeiriadau i’r rhaglen yn Gymraeg fel y’u darledwyd a chyfeithiadau Saesneg Iawn y cytunwyd arno gan yr holl bartin. Rhoddir hefyd yr is-deitlo Saesneg fel y’u darledwyd.

Yn yr amgylchiadau yn yr achos hwn, darganfu’r Pwyllgor Tecwch y canlynol:

c) I ddechrau ystyridd y Pwyllgor Tecwch gŵyn Mrs Holland fod nifer o anghywirdebau ffeithiol yn y rhaglen a’i bod yn portreadu ffeithiau eraill mewn dull holol gamarwneinol oedd yn esgor ar annhegwch iddi hi. Y cyn Côd Tecwch BSC (‘y Côd Tecwch’) oedd y Côd perthnasol pan ddarledwyd y rhaglen hon. Rheid i ddarledywyd yr osgoi annhegwch i unigolion neu gyrrf sydd yn ymddangos mewn rhaglenni trwy’r defnydd o wybodaeth anghywir neu wydrodi gwybodaeth, er enghraifft trwy ddehyd neu gyfosod deunydd yn anghywir (Côd Tecwch, paragraff 2). Ymhefaliadau dylai darledywyd gymryd gofal arbennig pan fo’u rhaglenni y gallu effeithio enw da unigolion, cwmmiau neu gyrrf eraill yn niweidiol a dylent gymryd pob gofal rhe.Disabled i fodlon eu hunain bod yr holl ffeithiau perthnasol wedi eu hystyried cyn darledu a chynh nhŷd à phosibl wedi eu cyfyllwyno’n deg (Côd Tecwch, paragraff 7). Gan gymryd y gofynion hyn i ystoriaeth deliodd y pwyllgor â phob un o’r cwynion unigol a wnaethpwyd gan Mrs Holland yn ymwneud â chwynnwys y rhaglen ar wahân.

i. Ystyriodd y Pwyllgor Tecwch gŵyn Mrs Holland am gyfeiriad y rhaglen yn ei sylwebaeth agoriadol at:

“ma’ ffarmwr yr deud bod o’n cael ei erlid o’i fro enedigol.”

Ystyriodd y Pwyllgor gŵyn Mrs Holland bod y datganiad hwn yn annheg gan mai dim ond wyth acer y mae ei chaeau hi yn ei gynnwys allan o bedwar can acer yn y cwm yr oedd y ffermwr Mr Jones yn eu pori, ac ymhefaliadau bod Mr Jones yn dal i gadw defaid a maguwyn. Cymerodd y Pwyllgor ystyriaeth hefyd o sylwadawu S4C bod yr wyth acer neilltuol hyn yn hanfodol i Mr Jones yn ystod y tymor wyn yna ohwerwydd eu natur gysegodol a modd o gael gafael ar ddwr a’i allu i barhau i weithio a byw yn y cwm nawr fod ganddo gant yn llai o ddefaid ohwerwydd iddo golli tir Tyn y Coed a’r ffaith ei fod yn teimlo ei fod wedi cael ei whio o’r cwm.

Roedd y Pwyllgor yn teimlo ei bod yn anghymerus nodi y byddai colli wyth acer allan o bedwar can acer yn esgor ar Mr Jones yn ‘cael ei erlid’ neu ‘ei wthio allan’. Ym marn y Pwyllgor roedd disgrifiad y sylwebaeth felly yn annheg o dderbyn y canran bychan o acer i mewn anghyfod o’i gymharu â gweddill yr aceri yn y cwm yr oedd Mr Jones yn eu pori. Roedd y mynegiant o ‘erlid o’i…’ a’i ‘wthio allan’ yn is-deitlau’r rhaglen ym marn y Pwyllgor yn iath emosiynol yng nghyd-destun y nifer o aceri dan sylw ac yn amgylchiadau’r achos hwn sy’n cael eu hystyried ym mhenderfyniad pwcient vii isod. Daeth y Pwyllgor i’r casgliad, er bod y disgrifiad wedi’i briodoli i’r ffermwr, roedd yn gwasanaethu i gyfiwyno’r anghydfor ddechrau’r rhaglen mewn modd oed yn annheg a Mrs
Holland. Esgorodd hyn ar annhegwch i Mrs Holland yn y rhaglen fel y'i darledwyd.

ii. Ystyriodd y Pwyllgor Tegwch gŵyn Mrs Holland am gyfeiriad y rhaglen yn ei sylwebaeth agoriadol at:

“mewnfnudwyr”

Nododd y Pwyllgor gŵyn Mrs Holland bod y disgrifiad hwn yn annheg ohenwydd ei bod wedi byw yn y cwm am dros ddeugain mlanedd, yn llawn amser am y deng mlanedd diwethaf. Ystyriodd y Pwyllgor gyfwyniadau S4C hefyd bod y gair yn cyfeirio at y ffaith nad oedd Mrs Holland wedi’i magu yn yr ardal yn ogystal â’u hymateb bod y datganiad yn rhan o gwestiwn rheithregol am waith Cymuned.

Nododd y Pwyllgor y cyfeiriad llawn yn y rhaglen:

“Heno: ydi mudiad Cymuned yn amddiffyn y Cymry neu’n cynddeiriogi mewnfnudwyr?”

Ym marn y Pwyllgor Tegwch, roedd y gair “mewnfnudwyr” yn dilyn disgrifiad y sylwebaeth o’r anghyfod gyda Mr Jones ac yn amlwg yn cyfeirio at Mrs Holland. Ystyriodd y Pwyllgor bod y cyfeiriad hwn yn annheg am ei fod yn ymestyn ystyr “mewnfnudwyr” yn rhy bell o ystyried bod cartref Mrs Holland yn y cwm ac o ystyried faint o amser y mae wedi ei wario yno, yn ogystal â byw yno. Roedd y Pwyllgor hefyd yn ystyried bod y defnydd o’r gair yn awgrymu cyfeiriad at rywun oedd ddin yn perthyn. Darganfu’r Pwyllgor bod hyn yn golygu annhegwch i Mrs Holland yn y rhaglen fel y’i darledwyd. Ystyriodd efallai cronnus y cyfwyniaid o Mrs Holland yr mhenderfyniad b).

Cwynodd Mrs Holland ymhellach ynglŷn â chyfweliad Mr Meirion Jones, fel y’i darledwyd, ble y gofynnodd:

“pam dod yma i brynu tŷ mewn math le yn y cychwyn?”

Nododd y Pwyllgor ymateb S4C bod y cyfeiriad at unrhyw fewnfnudwr yn dewis byw mewn amgylchedd gwledig a bod y sylwadau’n dilyn cwestiwn y newyddiadurwyr:

“Newyddiadurwyr: ‘Da chi’n meddwl bod hi’n anodd iddyn’ nhw yn byw yn y tai ‘na a’ch tir chi yn amgylchynu nhw? A chithau yno yn ffermio?’”

ac nid oedd yn mabwysiadu’r cynsail mai bai’r mewnfnudwyr oedd yr anghyfod.

Darganfu’r Pwyllgor bod y cwestiwn rheithregol a ofynnwyd gan Mr Jones yn un cyffredinol, nad oedd yn cyfeirio at Mrs Holland ac felly nad oedd yn golygu annhegwch i Mrs Holland yn y rhaglen fel y’i darledwyd.

iii. Ystyriodd y Pwyllgor Tegwch gŵyn Mrs Holland ynglŷn â chyfeiriad y sylwebaeth:

“Ma’r rhan fwyâ’ o daïr Cwm yn daf haf.”

Nododd y Pwyllgor gŵyn Mrs Holland mai ei chartref a’i thir oedd ei chartref parhaol a bod y disgrifiad hwn yn annheg iddi hi. Nododd y Pwyllgor hefyd
ymateb S4C mai cyfeiriad at y cwm bach Cwm Mynach yn unig ydoedd. Nodod y Pwyllgor nad oedd Mrs Holland yn anghytuno gyda’r cyfeiriad o fewn cyd-destun cul Cwm Mynach.

Ystyriodd y Pwyllgor sylwebaeth y rhaglen a ragflaenodd y cyfeiriad hwn:

"Cwm Mynach ger Dolgellau ym mherfeddion Meirionnydd."

Ymdangosodd i’r Pwyllgor bod y frawddeg hon o sylwebaeth ragflaenol yn gosod y cyfeiriad at dai haf yn glir o fewn Cwm Mynach a nodod nad oedd Mrs Holland yn dadlau gyda chwyriddeb y cyfeiriad o fewn y cyd-destun hwn. Cysgododd y Pwyllgor felly bod y cyfeiriad yn gywir yng nghyd-destun y gymdogaeth uniongyrchol y cyfeiriwyd ato, ac ar sail hyn nid oedd yn golygu annhegwch i Mrs Holland yn y rhaglen fel y'i darlledwyd.

Ystyriodd y Pwyllgorgwyn pellach Mrs Holland bod y rhaglen yn awgrymu ei bod yn berchnennog ail gartref. Roedd hyn yn gyfeiriad at gyfnewid gyda Mrs Aran Jones o Cymuned, a ddarllledwyd yn y rhaglen, ble gwnaeth y datganiad:

"Mi fase fe’n sefydlu’r cydsyniad os ydi ffarmwr yn torri ar draws rhywun sy’n defnyddio tŷ fel ail gartref bod y ffarmwr rhywsut ar fai."

Nododd y Pwyllgor ymateb S4C bod Mr Aran Jones yn egluro goblygiadau ehangach yr anghydffordd hwn a’u cyfeiriad at gyfeiriad busnes Mrs Holland yn Manceinion.

Fodd bynnag, ystyriodd y Pwyllgor bod sylw Mr Aran Jones, er yn gyffredinol, wedi ei osod yn dilyn llinell o sylwebaeth oedd yn cyfeiriio ar yr anghydfford penodol parthedy Mrs Holland a Mr Meirion Jones.

“Yng Nghwm Mynach, ma’ Meirion Jones wedi ei amgylchynu gan ddi mewn fudwyr. Mae o’n teimlo bod o’n cael ei wthio allan o’r Cwm a ma’ hynyn’nn annheg yn ôl Cymuned.”

O fewn cyd-destun y cafodd ei gynnwys teimlai’r Pwyllgor y gallai’r cyfeiriad at “rhywun sy’n defnyddio tŷ ..fel ail gartref” gael ei ddehongli fel bod yn berthnasol i Mrs Holland. Roedd yr un mor eglur i’r Pwyllgor, er gwaethaf ei chyfeiriad busnes, nad hwn oedd ei hail gartref. Roedd y cyfeiriad felly yn golygu annhegwch i Mrs Holland yn y rhaglen fel y’i darlledwyd.

iv.  Nesaf fe ystyriodd y Pwyllgor Tegwch gwyn Mrs Holland bod y cyfeiriad ati yn “gadael i’w chwîn redeg o gwmpas heb dennyn” yn annheg gan nad oedd hyn yn drosedd, ac a’r chafladd erlyniad gan Mr Jones yn ei herbyn am achosı gofid i ddefaid ei gynnal.

Nododd y Pwyllgor gwyn pellach Mrs Holland bod y cyfeiriad ei bod wedi rhoi “rhybudd terfynol [i Mr Jones] i ddarfod y denantiaeth dros flwyddyn yn ôl” yn rhoi’r argraff gamarweiniol ei bod yn gweithredu o ganlyniad i achosı llês Mr Jones yngychn ei chwîn, ac o ganlyniad yn ei phorthreadu fel person dibwys a bychan ei meddwl. Mewn gwirionedd, daeth Mr Jones â’r achosı llês yn erbyn Mrs Holland wedi i’r rhybudd i ymadael cael ei gyflwyno.

Nododd y Pwyllgor ymateb S4C bod yr erlyniaeth wedi ei grynhoi yn deg, bod y rhaglen wedi dangos bod honiadau Mr Jones yn erbyn Mrs Holland, ynglŷn â’r
cŵn, yn ddi-sail a bod y Gronoleg yn ddibwys ac nad oedd yn achosi annhegwc.

Ystyriodd y Pwyllgor y Sylwebaeth fel y'i darledwyd:

"Llynedd yn Ilys ynadon Dolgellau, mi nath Meirion Jones ddwyn achos yn erbyn Susan Holland am gerdded ei chŵn heb dennyn drwy'r defaid ar ei dir o. Ond mi nath y Ilys dderybod gan di ganiatâd y ffarmwr i wneud hynny... Mi nath perthynas y ffarmwr a Susan Holland waethyg ar ôl yr achos Ilys. Mi roth hi rybudd terfyanol i dddod â'r derantiaeth i ben dros fwyddyn yn ôl."

Roedd gwir ddilyniant y digwyddiadau yn glir o gyflwyniadau Mrs Holland ac nid oedd gwneuthurwr yr rhaglen yn dadlau gyda nhw. Tra bod y sylwebaeth yn egluro na lwyddodd yr erlynad yn erbyn Mrs Holland, cytunodd y Pwyllgor bod y Gronoleg a gafwyd yn yr yr rhaglen yn anghywir, ac yn rhoi'r argraff wallus bod Mrs Holland wedi rhoi rhybudd terfnol i Mr Meirion Jones i ddafrfdd y derantiaeth gan llynydd i'r achos Ilys a ddwynodd Mr Meirion Jones yn ei herbyn ynglyn â'i chŵn. Darganfu'r Pwyllgor bod y dilyniawt hwn a chyhosodiad deunydd yn golygu annhegwc i Mrs Holland yn yr yr rhaglen fel y'i darledwyd.

v. Nesyf, ystyriodd y Pwyllgor Tegwch gŵyn Mrs Holland yng hylch y llinell o Sylwebaeth:

"Ma' hi'n dadlau' nad ydi Meirion Jones wir angen ei thir hi."

Nododd y Pwyllgor gŵyn Mrs Holland bod hyn yn annheg gan ei bod yn derbyn y dylai'r teulu Jones yn foesol, hanesyddol a diwylliantol fod yn pori ar ei thir, ond mai gweithredoedd Mr Jones sydd wedi arwain iddo gael ei wahardd rhag pori yno ac mewn termau ymarferol does dim angen y tir arno. Nododd y Pwyllgor hefyd sylwadau S4C bod Mrs Holland, gyda'r gŵyn hon, yn gwrthddweud ei chŵyn cynharach nad oedd angen wyth acer Mrs Holland ar Mr Jones a bod gwneuthurwr yr rhaglen wedi dibynnu ar yr hyn ac ddywedodd yr achwynwyr wrthyn.

Ystyriodd y Pwyllgor bod yr rhaglen yn syml yn honni "Ma' hi'n dadla" heb gynnig eglurhad ynglyn â phryd, ac o dan ba amgylchiadau y gwnaeth Mrs Holland yr honiad hwn. Heb y fath gyd-destun, ystyriodd y Pwyllgor bod yr honiad yn rhoi argraff anghylfaeon o safbwynt Mrs Holland ac felly'n canfod bod ei gynhwysiad yn golygu annhegwc i Mrs Holland yn yr yr rhaglen fel y'i darledwyd.

vi. Nesyf ystyriodd y Pwyllgor gŵyn Mrs Holland am y darn:

"Sylwebaeth: Mi oedd ffarmwr lleol yno hefyd yn helpu Meirion Jones i droi'r sdoc yn ôl i'r caeau, ac mi o nhw'n dyst i ymateb Marc Asquith"

Cyfweliad: 'Mae e'n cydio yn y defaid, wel, cydio yn ei asgwrn cefn - tu ôl i'w... chefn hi, ac yn ei...yn ei gwâr mewn ffordd ac yn usio' i ben-glin i luchiu'i drosodd.'

Nododd y Pwyllgor gŵyn Mrs Holland bod hyn yn annheg gan mai hi yr rodd a symud y defaid ar ben ei hun. Nododd y Pwyllgor hefyd ymateb S4C mai gw wybodaeth a gafwyd gan Mr Meirion Jones oedd hwn.
Nid oedd y darn hwn yn crybwyll Mrs Holland ac, ym marn y Pwyllgor, ychydig o argraff a fyddai wedi ei wneud ar wylwr rhesymol parthed Mrs Holland. Casglodd y Pwyllgor nad oedd y darn felly yn golygu annhegwich iddi hi yn y rhaglen fel y'i darledwyd.

vii. Nesaf ystyriodd y Pwyllgor gŵyn Mrs Holland parthed y sylwebaeth ar yr achos llys:

“Mi ath Meirion Jones i llys i drio cael cytundeb tenantieth lawn ar dir Tyn y Coed. Ond unwaith eto Susan Holland nath ennill y dydd. Fis Ebrill mi gath hi ornchymyn llys i hel y ffarmwr o ‘na.”

Ystyriodd y Pwyllgor gŵyn Mrs Holland bod y cyfeiriad “mi ath Meirion Jones i llys” yn anghywir gan mai hi gychwynodd yr achos a bod y cyfeiriad “fis Ebrill mi gath hi ornchymyn llys i hel y ffarmwr o ‘na’, hefyd yn anghywir, gan na gafwyd y gorychymyn nes 8 Gorffenraf 2005, ac na wnaeth ei orfodi oddi ar y tir; nid oedd ganddo hawl i aros. Fe ystyriodd y Pwyllgor hefyd ymateb S4C bod y rhaglen yn crynhoi’r sefyllfa yn deg ac nad oedd fawr o bwys pwy gychwynodd yr achos, na chwith mai Mr Jones a ddarparodd y dyddiad a, fodd bynnag, fe gadarnhaodd yr achwynwyr ei fod i bob pwrpas wedi ei orfodi oddi ar y tir.

Nododd y Pwyllgor nad oedd gwneuthurwyr yr rhaglen yn dadlau gyda fersiwn yr achwynwyr o’r hyn digwyddodd, sef mai Mrs Holland gychwynnod yr achos llys. Casglodd y Pwyllgor nad oedd cwirdebyd y frawdle ollaf, yng Nghyfrifiad y Gorychymynn y Llys, ond o’i hun yn golygu annhegwich i Mrs Holland. Fodd bynnag, ystyriodd y Pwyllgor, yng ngoleuni’r darganfyddiadau cyharach ynghyd â’r achos llys a ddeliwyd gydag ef uchod yr mhenherfyniad a)(iv), bod pwy gychwynnod yr achos yn berthnasol. Ystyriodd y Pwyllgor bod cyfywiadau deunydd yn yr hwan hyn yn dwysau’r annhegwich fel yr amlinellwyd yr mhenherfyniad a) iv) uchod, ac o’i gymryd gyda’r sylwebaeth gynharach roedd hyn yn debygol o effeithio ar ddamansodiad gywlwyr o’r digwyddiadau ac, yn sgil hynny, gael effaith anffafriol ar eu hargraff o Mrs Holland a’i gweithredodd parthed Mr Jones. Casglodd y Pwyllgor felwyd bod cyflyniadau a chyhosodiad deunydd yn ymwned a’r achos llys, yn y ran yma o’r sylwebaeth, yn annheg ar Mrs Holland.

viii. Nesaf ystyriodd y Pwyllgor Tegwch gŵyn Mrs Holland ynglŷn â chyfeiriad y rhaglen at “ffordd breifat”.

Nododd y Pwyllgor bod Mrs Holland wedi cwyno bod y cyfeiriad at y ffordd dros ei thir fel “ffordd breifat” yn anghywir gan mai hi oedd piau’r tir, ond bod y ffordd oedd yn mynd drosto yn briffordd gyhoeddus.

Nododd y Pwyllgor ymateb S4C mai Mrs Holland roddodd yr wybodaeth iddynt fod y ffordd yn breifat, ond mai’r Cyngor a gadarnhaodd ei fod yn briffordd gyhoeddus.

Ystyriodd y Pwyllgor y rhan yn llawn, “darn i gamera” llafar y newyddiadurwr oedd yn datgan:

“Roedd hi’n deud nad oedd gennym ni’r hawl i’w ffilmio hi ar y ffordd yma gan ei bod hi, medde hi, yn ffordd preifat oedd yn pia iddi.”
Nid yw o fewn cylch gwaith y Pwyllgor i benderfynu natur y ffordd arbennig hon a’i berchnogaeth. Gan roi gwahanol ddadansoddiadau o statws cyfreithiol y ffordd o’i neilitu, roedd y Pwyllgor yn gallu ystyried a achoswyd unrhyw annhegchw i Mrs Holland o ddefnyddio’r term “ffordd breifat” yn y rhaglen fel y’i darlledwyd. Ystyriodd y Pwyllgor nad oedd crynodeb y newyddiadur wr o’r anghyfrodol rhwng Mrs Holland a gwneutronwyr yr rhaglen ynglŷn â’ffilmio ar y ffordd yn rohri gyflymu ni anhheg o Mrs Holland na’i barn ynglŷn ag egwyddor gyffredinol ffilmio ar ei heiddo, gan nad oedd Mrs Holland yn dymuno i S4C ffilmio ar ei heiddo etho bynnag. Casglodd y Pwyllgor felly nad oedd hyn wedi achosi unrhyw annhegchw i Mrs Holland yn y rhaglen fel y’i darlledir.

d) Nesaf, ystyriodd y Pwyllgor gwynion Mrs Holland bod gwneutronwyr y rhaglen wedi arddangos rhagfarn; eu bod wedi dewis anwybyddu’r ffeithiau a’i phortreadu fel perchennog anghyfwr haef Saesneg oedd wedi tafel ffermwr Cymraeg oddi ar ei thir am nad oedd hi’n hoffi ei weithgareddau ffermio; bod yr achwinywyd wedi ymddangos yn y rhaglen am tua chwe munud; er gwawtha’i dymuniad hi i beidio ag ymddangos; a bod y gwneutronwyr rhaglenni hefyd wedi peidio â chynnwys cyfweliaid a recordiwyd gyda chymydog, Mr Mygind, oedd y golygu annhegchw i Mrs Holland.

Ymddengys bod cŵyn Mrs Holland am ragfarn yn ymwneud â’r angen i ddarledwyr gadw “amhleidioldeb dyledus” ar faterion anghyfrodol gwleidyddol neu ddiwydiannol a materion yn ymwneud â pholisi cyhoeddus cyfredol. Mae hwn yn “nod safonom” o dan Adran 319 o Ddeddf Cyfathrebiadau 2003 ac fel y cyflyw ni ellir ei ystyried gan y Pwyllgor tegwch. Fodd bynnag, wrth ystyried a gafodd Mrs Holland ei thrin yn annheg yn y rhaglen, mae’r Pwyllgor yn gallu ystyried a oedd y portread o Mrs Holland yn gyffredinol yn annheg yn ei effaith cronnsus.

Fel y trafodwyd uchod, mae gan ddarledwyr ddyletswydd i osgoi annhegchw i unigolion neu sefydliaid sy’n ymddangos mewn rhaglenni trwy ddefnydd o wybodaeth anghywir haef Saesneg oedd wedi tafel ffermwr Cymraeg oddi ar ei thir am nad oedd y byddai’n hoffi ei weithgareddau ffermio; bod yr achwinywyd wedi ymddangos yn y rhaglen am tua chwe munud; er gwawtha’i dymuniad hi i beidio ag ymddangos; a bod y gwneutronwyr rhaglenni hefyd wedi peidio â chynnwys cyfweliaid a recordiwyd gyda chymydog, Mr Mygind, oedd y golygu annhegchw i Mrs Holland.

Yn ei ystyriaeth o gŵyn bellach Mrs Holland ei bod wedi ymddangos yn y rhaglen pan nad oedd yn dymuno ymddangos o gwbl, nododd y Pwyllgor ymateb S4C bod y cyfnod o amser yr oedd yr achwinywyd yn ymddangos yn y rhaglen yn adlewyrchu faint o amser y gwnaethant ei wario yn mynd at y camera a’i bod yn ddadleuol a oedd Mrs Holland wedi gwyro o’i datganiad nad oedd yn dymuno. Archwiliodd y Pwyllgor yn fanwl y deunydd heb ei ddarledu a ffilmwyd gyda Mrs Holland. Roedd y deunydd hwn yn dangos Mrs Holland yn datgan drachefn nad oedd yn dymuno ymddangos yn y rhaglen o gwbl ac yn gofyn drachefn i’r camera gael ei ddifododd. Mae paragraff 12 o’r Côd Tegwch yn eglur ynglŷn â hawliau unrhyw berson i wrthod cymryd rhan mewn rhaglen. Mae paragraffau 25, 26 a 27 o’r Côd Tegwch yn manylu ar ddyletswyddau’r gwneutronwyr rhaglenni na ddylent ddangos person o’r fath oni bai eu bod yn credu’n rhysymol bod eu cynhwysoi yn y rhaglen er budd hollbwysig i’r cyhoedd a ble bo ceisiadau rhysymol am gyfraniad gan y person wedi eu gwrthod.
Ni chafwyd tystiolaeth gab S4C bod gwneuthurwyr y rhaglen wedi disbyddu ceisiadau rhsymol i Mrs Holland ddarparu cyfraniad oddi ar gamera naill ai trwy lythyrr, iffon neu sgwrs wyneb yn wyneb. Yn wir, nododd y Pwyllgor, o ystyried y deunydd na chafodd ei ddarledu, bod Mrs Holland a'i phartner Mr Asquith (ystyrir ei gwynion isod) wedi ceisio cysfeoedd i siarad gyda gwneuthurwyr y rhaglen oddi ar gamera ac egluro’u sefyllfa. Yn yr amgylchiadau hyn nid oedd y Pwyllgor yn fodlon bod yna unrhyw fath o gyfiawnhad i gynnwys Mrs Holland, na bod cuddio’i hwyneb yn cymdymffurfio gyda’i hawliau i beidio ag ymddangos yn y rhaglen. Roedd cynhwysoedd siarad Mrs Holland mewn rhaglen nad oedd hi eisiau bod yn rhan ohono, a heb gyfiawnhad budd hollbwysig i’r cyhoedd fel y trafodwyd uchod, felly yn golygu annhegchw iddi hi yn y rhaglen fel y’i darledwyd.

Cwyn olaf Mrs Holland ynglŷn à thegwch oedd bod gwneuthurwyr y rhaglen wedi recordio, ond heb ddarledu, cyfweliaid gyda chymydog, Mr Mygind a bod hyn wedi golygu annhegchw iddi hi. Mae gan wneuthurwyr rhaglen dyletswydd i gymryd pob gofal rhsymol i fodloni eu hunain bod holl ffeithiau perthnasol wedi eu hystyried cyn darledu a chyn bellad a bo’n bosib yn cael eu cyfwyno’n deg (Paragraff 7 o’r Côd Tegwch).

Gan ystyried ymateb S4C na ddefnyddiwyd y cyfweliant gan ei fod yn cynnwys anghyfod gwahanol iawn yng Nghymru ffermio’r tir, archwiliodd y Pwyllgor y defnydd na chafodd ei ddarledu o’r cyfweliant gyda Mr Mygind. Roedd hîn amlwg o’r sgwrs hwn bod Mr Jones yn ddyf a chanddo ddaddeuon gyda pherchnogion tir eraill oedd wedi hen setio yn yr ardalo, ac nad Mrs Holland oedd yr unig berson i gael ei hun mewn anghyndedef gydag ef. Yn ogystal, fe allai’r cyfweliant gael ei gymryd i fod yn dangos y materion rhwng Mrs Holland a Mr Jones yng nghyd-destun anghyfod yn y gymuned amaethyddol yng Nghymru gweithgareddau ffermio Mr Jones a defnydd o’r tir yn y dyffryn. Er mai heter i wneuthurwyth y rhaglen yw penderfynu a ddylid cynnwys deunydd o’r cyfweliant hwn yn y rhaglen ai peidio, roedd gan wneuthurwyr y rhaglen dyletswydd i gymryd pob gofal rhsymol i fodloni eu hunain bod yr holl ffeithiau perthnasol wedi eu hystyried cyn darledu (Paragraff 7 o’r Côd Tegwch). Barn y Pwyllgor yw, oherwydd bod gwneuthurwyr y rhaglen wedi methu a gosod yr anghyd fod rhwng Mrs Holland a Mr Jones yn ei gyd-destun llawn trwy gyfeirio at yr hyn a ddywedwyd yn y cyfweliant gyda Mr Mygind, roedd gwneuthurwyr y rhaglen wedi peidio â chynnwys ffeithiau perthnasol yn y rhaglen a fyddai’n efeithio ar ddealltwriaeth y gywlwyr o ddeliadau Mrs Holland gyda Mr Jones, ac felly’n efeithio eu cysyniad o’i phortread yng n y rhaglen. Darganfu’r Pwyllgor felly bod yr hepgori hwn, o ffeithiau perthnasol, yng n golygu annhegchw i Mrs Holland.

c) Fe drodd y Pwyllgor Tegwch wedyn at gwnion Mrs Holland ynglŷn â phreifatrwydd. Cwynwod Mrs Holland bod gwneuthurwyr y rhaglen wedi mynd ar ei thir heb ganiatâd a recordio deunydd er gwaethaf ceisiadau i beidio â gwneud hynny. Nododd y Pwyllgor ymateb S4C bod gwneuthurwyr y rhaglen yn credu bod ganddynt hawl i ffilmio gan eu bod ar, neu ar gyrion, prifordd gyhoeddus.

Deliodd y Pwyllgor yn gyntaf gyda’r mater o p’un ai cafodd preifatrywyd Mrs Holland ei dorri wrth recordio’r deunydd ar ei thîr. Yn ei ystyriaeth, fe edrychodd y Pwyllgor ar y deunydd a recordio wedi ei ddarledu ac na chafodd ei ddarledu. Gwahaniaethodd y Pwyllgor rhwng recordio deunydd cyffredinol o’i thîr a recordio deunydd penodol o Mrs Holland, ei thî y a’i char. Roedd gan y Pwyllgor ystyriaeth i ddyletswydd gwneuthurwyr y rhaglen yn eu defnydd o gamerau ar eido cyhoeddus a phreifat, ble bo’n rhaid i’r fath ddefnydd fod yn addas i bwysigrywyd neu natur y stori ac na ddyllai’r fath recordio dorri’n ddiangen ar ymddygiad preifat (Paragraff 18 (iii) o’r Côd Tegwch). Ystyriodd y
Pwyllgor felly nad oedd y recordiad o ddeunydd cyffredinol ar dir Mrs Holland, er ei fod wedi ei recordio heb ganiatâd, yn torri ar ei phreifatrwydd trwy, er enghraiff, amharu ar ei bywyd personol a i bywty teuluol. Yn nhemau’r recordiad o ddeunydd penodol o Mrs Holland, ei thŷ, a’i char, roedd yn glir o’r deunydd a gasgliwyd bod gwnenathurwyr y rhaglan wedi bwriadu recordio’r fath siotes. Er enghraiff, ar un pwynt yn y deunydd na chafoedd ei ddarledu roedd y camera’n amlwg yn ffocysu ar grŵp o bobl oedd yn sefyll y tu allan i’r ŵy. Ystyriodd y Pwyllgor bod y cyfuniad o ffilmio, a mynnu parhau i ffilmio pan oedd Mrs Holland wedi gweun ei dymuniadau’n eglur i wneuthurwyr y rhaglen, yn amharu ar ei bywty personol a theuluol, ac yn torri ar ei phreifatrwydd.

Yna ystyriodd y Pwyllgor p’un ai oedd y toriaid ar breifatrwydd Mrs Holland, trwy recordio deunydd penodol ohoni hi, ei thŷ, a’i char, yn gyfaint. Ystyriodd y Pwyllgor nad oedd unrhyw gyfainthad ar sail budd hollbwysig i’r cyhoedd wrth recordio’r deunydd, oedd yn barhaus yn amharu ar fywyd preifat Mrs Holland o gwmpas ei chartref ac ar ei thir, er gwaetha’i phrotestiadau. Nid pherswadiwyd y Pwyllgor bod y fath amhariad, wrth recordio deunydd o Mrs Holland, ei thŷ, a’i char, yn cael ei gyfiawnhau gan natur y stori. Darganfu’r Pwyllgor felly bod preifatrwydd Mrs Holland wedi ei dorri heb gyfiawnhad wrth wneud y rhaglen.

e) Yna ystyriodd y Pwyllgor gŵyn Mrs Holland bod gwnenathurwyr y rhaglen wedi darlledu’r deunydd a recordiwyd ar ei thir er gwaetha’i cheisiadau i beidio â gweun hynny. Hefyd bod gwnenathurwyr y rhaglen wedi darlledu deunydd ohoni, wedi ei chyflwyno gan bennawd “doedd hi ddim isho cael ei ffilmio” pan, mewn gwirionedd nid oedd eisiau cymryd rhan yn y ffilm o gwbl. Nododd y Pwyllgor ymateb S4C bod gwnenathurwyr y rhaglen yn credu bod ganddynt hawli i ffilmio am eu bod ar, neu ar gyiron, prifodd gyhoeddus; eu bod yn deall dymuniad Mrs Holland i beidio ag ymddangos ac wedi mynd ati i barchu eu dymuniadau parthed ffilmio a, bod ei ffilmio yn y car er mwyn dangos nad oedd hi mewn rheolaeth o’i chŵn.

Am y rhesymau a roddir uchyd ym mhenderfyniad c) ystyriodd y Pwyllgor nad oedd darlledu deunydd cyffredinol o dir Mrs Holland yn torri ar breifatrwydd Mrs Holland ond bod darlledu deunydd penodol o Mrs Holland, ei thŷ a’i char, yn amharu ar ei bywty preifat ac yn torri ar ei phreifatrwydd. Yna ystyriodd y Pwyllgor a oedd y toriaid hwn ar breifatrwydd Mrs Holland yn gyfaint. Fe nododd y Pwyllgor yn arbennig bod y rhaglen yn datgan:

“Doedd hi ddim isho cael ei ffilmio.”

Nododd y Pwyllgor hefyd bod gwnenathurwyr y rhaglen wedi cuddio wyneb Mrs Holland. Fodd bynnag, fel y trafodwyd uchod yn b), roedd hi’n amlwg oddi wrth y deunydd na ddarledwyd nad oedd Mrs Holland yn dymuno i ymddangos yn y rhaglen o gwbl ac wedi gofyn dro ar ôl tro i’r camera gael ei ddifffodd. Mewn rhai amgylchiadau fe ellid cyfiawnhau recordio’r fath ddeunydd ar sail budd hollbwysig i’r cyhoedd, er enghraiff yn dadorchuddio gweithgaredd troseddol. Fodd bynnag, ystyriodd y Pwyllgor nad oedd budd hollbwysig i’r cyhoedd o ddangos Mrs Holland yn y rhaglen, er bod ei hwyneb wedi ei guddio, ac ni chawsant eu perswadio bod y deunydd a recordiwyd o gwn Mrs Holland yn rhedeg wrth ochr y car yn cyfiawnhau cynnwys y deunydd ychwanegol hwn. Casglodd y Pwyllgor nad oedd natur y stori yn cyfiawnhau darlledu deunydd penodol o Mrs Holland, ei thŷ a’i char, a bod preifatrwydd Mrs Holland felly wedi ei dorri’n anghyfiawnadwy yn narlediad y rhaglen.
e) Ystyriodd y Pwyllgor gwyn pellach Mrs Holland bod gwneuthurwyr y rhaglen wedi cynnwys gwybodaeth ddigonol o fewn y ffilm, gan gynnwys ei chyfeiriad post bron yn gyflawn, i’w hadnabod hi a’i chartref, a thrwy hynny yn peryglu ei diogelwch. Nododd y Pwyllgor ymateb S4C na wnaeth y rhaglen roi cyfeiriad post Mrs Holland ac na roddodd gwneuthurwyr y rhaglen unryhn sicrwydd i Mrs Holland na fyddent yn ffilmio’i thy.

Ystyriodd y Pwyllgor y cyfeiriadau yn y sylwebaeth i leoliad eiddo Mrs Holland oedd yn cynnwys:

"Cwm Mynach ger Dolgellau yn mherfeddion Meirionnydd."

Nododd y Pwyllgor, er nad yw materion diogelwch yn rhan o gylch gwaith Ofcom, mae Paragraff 27 o’r Còd Tegwch yn datgan bod yn rhoaid cymryd gofal i beidio â’i gwneud hi’n hawdd dod o hyd i neu adnabod cyfeiriad rhywun sydd wedi gwrthod cyfweliad, oni bai ei fod yn fanwl berthnasol i’r ymddygiad dan archwiliaid a bod budd holibwysg i’r cyhoed. Ystyriodd y Pwyllgor bod y deunydd a ddarledwyd o gartref Mrs Holland, fel y trafodwyd uchod yn d), wedi ei gyfuno gyda’r llinellau sylwebaeth yn cyfeirio at leoliad ei heiddo, yn ei gwneud hi’n hawdd dod o hyd i neu adnabod ei chyfeiriad. Ystyriodd y Pwyllgor ymhellach, oherwydd ei chais penodol i beidio â chymryd rhan yn y ffilm a’r penderfyniad a drafodwyd uchod yn b), bod y deunydd a’r sylwebaeth hwn yn torri ar ei phreifatrwydd ac nad oedd natur y stori yn cyfianhau’r toriaid hwn. Canlyniaid hyn oedd toriaid anghyfiawnadwy o’i phreifafrwydd.

f) Nesaf ystyriodd y Pwyllgor Tegwch gwyn Mr Asquith bod y rhaglen yn cynnwys nifer o anghywrdebau ffeithiol ac yn portredu ffeithiau eraill mewn modd holol gamanweiniol oedd yn golygu annhegwch iddo ef. Roedd gan y Pwyllgor ystyriaeth arbennig i Baragraff 2 o’r Còd Tegwch ynghylch dyletswyddau darledwyr i osgo annhegwch i unigolion neu sefydliaidau’n ymdangos mewn rhaglenni trwy ddefnydd o wybodaeth anghywir neu afungl, er enghraifft trwy ddewis annheg o ddeunydd neu gyfosodiad annheg o ddeunydd. Ystyriodd y Pwyllgor hefyd Baragraff 7 o’r Còd Tegwch parhedyd dyletswyddau darledwyr i gymryd gofal arbennig pan fo’u rhaglenni’n gallu eifeithio’n anffafiol ar enw da unigolion, cwmniawu neu sefydliaidau eraill, ac i gymryd pob gofal rhesymlol i fodloni eu hunain bod yr holl ffeithiau perthnasol wedi eu hystyried cyn darleudu a, chyn belled â phosib wedi eu cyflwyno’n deg. Gan ddelio’n unigol â phob cwyn gan Mr Asquith parhedyd cynnwys y rhaglen, roedd ystyrdaethau’r Pwyllgor fel a ganlyn:

i. Ystyriodd y Pwyllgor Tegwch gwyn Mr Asquith bod y cyfeiriad:

"Ma’ ffarmwr yn deud bod o’n cael ei erlid o’i fro enedigol gan fargyfreithiwr o Loegr."

Yn annheg gan fod Mr Asquith o dras Cymraeg, wedi symud yn ddiweddar i Loegr, ac nid yw’n berchen ar unrhyw dir yn y dyffryn. A bod yr eglurhad:

"Ma’ Marc Asquith yn fargyfreithiwr o dras Gymreig…”

yn rhy bell i mewn i’r rhaglen i wylwyr gael dealtlwriaeth iawn o gefndir Mr Asquith o’r cychwyn.

Nododd y Pwyllgor Tegwch ymateb S4C bod y disgrifiad yn gywir, wedi ei eirio’n ofalus, yn adlewyrchu barn y ffarmwr a’r wybodaeth a gafwyd gan Mr Asquith, a bod y disgrifiad o dras Mr Asquith ond munud i mewn i’r rhaglen.
Er ei fod yn farn a briodolwyd i’r ffarmwr, ystyriodd y Pwyllgor Tegwch bod rhan gyntaf a gwynwyd amdano yn fodd o gyflwyno’r anghyfod ar ddechrau’r rhaglen. Roedd hwn yn ymddangos ei fod yn cyflwyno’r anghyfod fel un rhwng y ffarmwr, Meirion Jones, a Mr Asquith. Fodd bynnag Mrs Holland oedd yn berchen y tir a gyda hi roedd dadl Mr Jones. Ystyriodd y Pwyllgor Tegwch bod y ffocws ar Mr Asquith yn nisgrifiad agoriadol yr anghyfod yn gamarweiniol. Roedd y pwyslais ar Mr Asquith yn gosod tôn arbennig oedd yn annheg arno ef. Darganfu’r Pwyllgor felly bod y cyfeiriad yn achosi annhegchw i Mr Asquith yn y rhaglen fel y’i darlledwyd.

Parthed lleoli’r egurhad o dras Mr Asquith, nid oedd y Pwyllgor yn derbyn bod hyn wedi ei wneud yn rhy bell i mewn i’r rhaglen, gan iddo ddod ychydig funudau wedi’r agoriad, ac felly nid oedd yn golygu unrhyw annhegchw i Mr Asquith.

ii. Ystyriodd y Pwyllgor Tegwch gŵyn Mr Asquith ynglŷn à chyfeiriad yn sylwbaeth agoriadol y rhaglen i:

“mewnfwudwr”

Nododd y Pwyllgor gŵyn Mr Asquith bod y disgrifiad hwn yn annheg gan ei fod ond yn “fewnfwudwr” yn yr ystyrr ei fod yn “fewnfwudwr” i’r dyffryn arbennig hwn ac roedd hi’n glir nad dyma oedd y rhaglen yn ceisio ei gyfluo.

Ystyriodd y Pwyllgor hefyd ymateb S4C bod Mr Asquith wedi dod i fyw mewn ardal na chafodd ei fagu ynddi; bod y cyfeiriad cyntaf yr rhan o gwestiwn rhethregol; a’r ail yn adrodd safbwynt Mr Jones.

Nododd y Pwyllgor y ddau gyfeiriad yn sylwbaeth y rhaglen:

“Heno: ydi mudiad Cymuned yn amddiffyn y Cymry neu’n cynddeiriogi mewnfwudwyr?”

Ac,

“Ma’ newydd-ddyfodiad i’r Cwm wedi bod yn dychryn y defaid yno.”

Ystyriodd y Pwyllgor Tegwch bod y ddau ddefnydd o’r gair “mewnfwudwr” wedi eu lleoli yn agos at ddisgrifiadau yn y sylwbaeth o’r anghyfod gyroda Mr Jones ac y gallant felly gael eu dehongli fel cyfeiriad at Mr Asquith. Er bod y geirio yn ffeithiol gywir parthed cysylltiad Mr Asquith gyda’r dyffryn, nid oedd yn cael ei ddefnyddio’n niwtral fel datganiad o ffaith. I’r gwthrwyneb, ystyriodd y Pwyllgor fod y cyd-destun yr oedd wedi ei osod ynddo’r dwywaiith yn awgrymu arwyddocad difríol fel cyfeiriad at rywun nad oedd yn perthyn ac nad oedd ganddo hawl i fod yn y dyffryn. Darganfu’r Pwyllgor bod hyn yn golygu annhegchw i Mr Asquith yn y rhaglen fel y’i darlledwyd.

iii. Ystyriodd y Pwyllgor Tegwch gŵyn Mr Asquith ynglŷn à dau gyfeiriad, mewn cyfweliad gyda’r ffarmwr Mr Jones ac yn y sylwbaeth, at ei reolaeth o’i giwn:

Cyfeiriad 1: “Cyfweliad: Beth oedd e’n wneud wedyn oedd gyrru’r cŵn ‘fyny trwy’r coed tra roedd o’n dreifio’r gweddill y ffordd i fynu at y tŷ ..”
Cyfeiriad 2: “Sylwebaeth: Mae o’n dadla’ bod Meirion Jones yn 
hapus iddo fynd a’r cŵn drwy’r caea’ adeg wyne, i gadw’r llwynogod 
draw.”

Nododd y Pwyllgor gŵn Mr Asquith bod gando hawl i yrru ei gwîn i redeg trwy 
goetir Tyn y Coed, a bod y cyfeiriad yn y rhaglen yn awgrymu esegulustod ar ei 
ran. Ystyriodd y Pwyllgor hefyd ymateb S4C bod y defaid yn crwydro’r rhyyd 
yn y coetir a bod yr ail gyfeiriad wedi ei gynnwys i geisio cynnal cydbwysedd ar 
y mater hwn ac i gyflwyno ochr Mr Asquith o’r stori.

Ystyriodd y Pwyllgor bod y cyfeiriad cyntaf, oedd yn rhan o restr o gwynion gan 
Mr Jones, yn awgrymu esegulustod a diffyf cyrifoldeb ar ran Mr Asquith, pan 
oedd hyn, mewn ffafith yn rhywbeth, fel y cyfunwyd yng nghyflwyniad S4C, nad 
oedd Mr Asquith eisiau ganiatâd gan Mr Jones i’w wneud.

Dilynwyd hyn gan yr ail gyfeiriad oedd yn honiad a briodolwyd i Mr Asquith yn 
sylwebaeth y rhaglen ac yr oedd S4C yn dadlau oedd yn cyflwyno achos Mr 
Asquith. Fodd bynnag, yr marn y Pwyllgor, gan fod yr honiad hwn wedi ei 
honni’n syml, heb unrhyw eglurhad am ffynhonnell y llenin yn y sylwebaeth, nid 
oedd yn ateb y diben o gyflwyno ochr Mr Asquith o’r stori’n iawn ac fe allai’r 
gwyliwr fod wedi ei adael gydag argraff o esegulustod ar ran Mr Asquith. 
Roedd y Pwyllgor felly’n ystyried bod y cyfeiriadau yn golygu anhhegchwch i Mr 
Asquith yn y rhaglen fel y’i darledwyd.

iv. Yna ystyriodd y Pwyllgor gwynion Mr Asquith ynglŷn à’r cyfeiriadau yn y 
rhaglen at symud y stoc:

   Cyfeiriad 1 “Sylwebaeth: ma’ Marc Asquith wedi bod yn hel y defaid 
o Dyn y Coed.”

   Cyfeiriad 2 “Sylwebaeth: nath Marc Asquith droi’r sdoc o gaeau Tyn 
y Coed.”

   Cyfeiriad 3 "Cyfweliad Meirion Jones: Ac fe ddaeth Marc Asquith i fan hyn 
ac roedd e’n lluchio stoc drosodd…yn y gornel pella. 
Sylwebaeth: Mi oedd ffermwr lleol yno hefyd yn helpu Meirion Jones i 
droi’r sdoc yn ôl i’r caeau, ac mi o nhw’n dyst i ymateb Marc Asquith. 
Cyfweliad: Mae e’n cydio yn y ddafiad, wel, cydio yn ei asgwm cefn - tu ôl 
i’w… chefn hi, ac yn ei…yn ei ei gwâr mewn ffodd ac yn usio’i ben-glin 
i lluchio’i drosodd.”

Nododd y Pwyllgor gŵn Mr Asquith bod y cyfeiriadau yn anghywir gan fod y 
defaid ond wedi cael eu symud gan Mrs Holland ei hun pan ddaeth y rhybudd i 
ymadael cyntaf i ben. Ystyriodd y Pwyllgor hefyd ymateb S4C bod yr honiadau 
 wedi eu gwneud gan Mr Jones ac wedi eu cyfaddef gan Mr Asquith mewn 
sgwrs ffôn.

Nododd y Pwyllgor Tegwch bod ffermwr lleol wedi rhoi adroddiad manwl, o 
lygad y ffynnon o’r digwyddiad a drafodwyd, yn y drydydd cyfeiriad uchod ac yn 
y deunydd llawn oedd heb ei ddarledu. Perswadiwyd y Pwyllgor ei bod yn 
rhesymol i wneuthurwyr y rhaglen gynnwys y dysioliad hon, gan lygad 
dystion lleol, oedd yn cefnogi’r honiadau parthed gweithredoedd Mr Asquith a 
wnaed yn y sylwebaeth ac yng nghyflwyniad Mr Jones. Casglodd y Pwyllgor 
felly ei bod yn deg i gynnwys y cyfeiriadau hyn yn y rhaglen.
v. Ystyriodd y Pwyllgor gŵyn Mr Asquith am gyfeiriad Mr Jones, mewn cyfweliad, at Mr Asquith yn troi’r defaid allan o’r cae rhent a chloi’r giatiau i’r cae i rwystro’r defaid rhag dychwelyd:

“Cyfweliad: a gofyn iddo os ma’f oedd yn chwara’i gwmpas efo’r gatiau ‘ma. Ac mi ddwedodd ma’ fe oedd wrthi.”

Nododd y Pwyllgor gŵyn Mr Asquith bod y cyfeiriad yn anghywir gan fod ei weithredoedd yn ymateb i’r ffafih bod Mr Jones wedi gadael y giatiau ar agor, oedd yn drosedd ynddi’i hun dan Ddeddf Prifyrrdd, fel y cadarnhawyd gan y cyngor lleol. Ystyriodd y Pwyllgor ymateb S4C bod y brif giat yn cael ei chadw yngnau ond bod giatiau eraill yn bwrpasol, ac yn gywir, yn cael eu gadael ar agor er mwyn i’r defaid grwydro.

Methodd y Pwyllgor Tegwch a chasglu pwy wnaeth beth gyda pha giatiau a chronleg union y digwyddiadau hyn, ond er mwyn diffinio a oedd y rhaglen wedi golygu annhegwch i Mr Asquith, ystyriodd y Pwyllgor ei bod yn addas i archwilio cyd-destun ehangach y cyfeiriad hwn yn y cyfweliad a ddarledwyd gyda Meirion Jones:

“Cyfweliad: Mi ddaru i mi daro heibio’r tŷ i gael gair gyda Marc…a gofyn iddo os ma’f oedd yn chwara’i gwmpas efo’r gatiau ‘ma. Ac mi ddwedodd ma’ fe oedd wrthi. A’i eiriau oedd: ‘From now on, I’ll be telling you where you put your stock up this valley’, medda fo wrtha’i. Ac ‘ma fi’n dweud wrtho fo: ‘No bloody way’, medde fi. ‘Born and bred here’, medde fi wrtho. ‘You’re only down on weekends’, medde fi. ‘And you’re causing us a lot of bother,’ medde fi wrtho, ‘by interefering with our way of life.’”

O fewn cyd-destun ehangach y rhan hwn, oedd yn cynnwys sylwadau a briodolwyd i Mr Asquith gan Mr Jones, yr awgrym oedd bod Mr Asquith yn gweithredu’n amhriodol trwy rwystro symud stoc Mr Jones yn ôl ar y tir. Fodd bynnag, Mrs Holland oedd yn berchen y tir ac roedd symud honedig y stoc oddi ar y tir yn dilyn terfyniad tenantiaeth Mr Jones. Ym marn y Pwyllgor, fe awgrymodd y rhaglen yn annheg bod Mr Asquith yn gwnued rhywbeth nad oedd ganndo hawl i’w wneud a bod hyn yn golygu annhegwch iddo ef yn y rhaglen fel y’i darledwyd.

Ystyriodd y Pwyllgor hefyd gŵyn pellach Mr Asquith, a eglurwyd yn ei ail gyflwyniad, ynglŷn â’r cyfeiriad:

“Ar benwsnosa mae’n dod lawr i Gwm Mynach i weld ei gariad, Susan Holland, ac i baragleidio.”

Nododd y Pwyllgor gŵyn Mr Asquith bod y cyfeiriad hwn yn honni ei fod ond yn ymweid â’r ardal er mwyn chwarae pan, mewn gwirionedd, mae’n gwario ei benwythnosau yn reoli coetir. Nododd y Pwyllgor nad oedd S4C i’w weld yn ymateb yn uniongyrchol i’r olyw hwn na chafodd ei egluro nes yr ayl gyflwyniad i Ofcom. Darganfu’r Pwyllgor nad oedd y cyfeiriad at baragleidio ei hun, na wnaeth Mr Asquith ddadlau ei gywirdeb, ynddo’i hun yn golygu annhegwch iddo yn y rhaglen fel y’i darledwyd. Fodd bynnag, fe ddelir gydag effaith cronnus y portread o Mr Asquith ym mhenderfyniad g).

vi. Ystyriodd y Pwyllgor gŵyn Mr Asquith ynglŷn â datganiad Mr Jones yn ei gyfweliad:
“Roeddwn i’n teimlo’r adeg hyny…ma’i oedd y Cymro olaf yn y Cwm.”

Cwynnodd Mr Asquith bod hyn yn anghywir gan fod ffermwr Cymraeg arall ychydig islaw tir Ty'n y Coed, ac yn ychwanegu at bortread cydymdeimladol annheg ochr Mr Jones o’r anghyfiedd. Nododd y Pwyllgor ymateb S4C bod hyn yn gywir fel cyfeiriad i’r dyffryn bychan Cwm Mynach.

P’un ai oedd y datganiad hwn yn gywir ai peidio (gan dderbyn diffiniad S4C o “Cwm”), roedd y Pwyllgor yn ystyried y byddai’n gywir) nid oedd yn gwneud unrhyw gyfeiriad at Mr Asquith. O ganlyniad, darganfu’r Pwyllgor na chafwyd unrhyw annhegwyd i Mr Asquith o ganlyniad i gynnwys y datganiad hwn yn y rhaglen fel y'i darledwyd.

Ystyriedd y Pwyllgor gŵyn Mr Asquith ynglŷn â chwestiwn a ofynnwyd gan newyddiadurwr y rhaglen i Mr Aran Jones o’r grŵp ymgyrchol Cymraeg Cymuned:

“Gohebydd: Roedd Marc Asquith, ar ôl iddo gyfarfod â chi, yn dweud: ‘Mater i’r gyfraith ydy hwn. Ffraw rhwng dau gymdog. Dwi ddim yn deall beth mae Cymuned yn gwneud yn rhoi eu trwyn yn y busnes yma?’”

Nododd y Pwyllgor ymateb Mr Aran Jones o’r anghyfaddoldeb o’i ddoeth gyda’r mae Cymuned yn ddiystyriol a bod y cwestiwn wedi ei ofyn fel safbwyt hollog ddîllys.

Methododd y Pwyllgor a barnu a wnaeth Mr Asquith y sylwadau hyn ai peidio. Fodd bynnag fe nododd na wnaeth y darledwr herio hawliad Mr Asquith ei fod yn cefnogi ymglymiad Cymuned, a bod y rhaglen ei hun yn datgan bod Marc Asquith wedi mynychu cyfarfodydd gyda Aran Jones o Cymuned.

Nododd y Pwyllgor bod ymateb Mr Aran Jones yn awgrymu bod y cwestiwn yn anghywir:

“Tasa fo mor syml â hynny, buasa ni ddim wedi mynd yn rhan ohono fe.”

Casglodd y Pwyllgor bod y rhaglen wedi priodoli barn uniongyrchol i Mr Asquith yn annheg heb egluro dan ba amgylchiadau y lleiisiodd Mr Asquith y farn honno. Heb y fath cyd-destun, roedd y Pwyllgor yn ystyried bod y gosodiadau yn rhoi argraff anhgheg o sefyllfa Mr Asquith ac eily darganfu bod eu cynnwys yn golygu anhewgch i Mr Asquith yn y rhaglen fel y’i darledwyd.

Nesaf fe ystyriedd y Pwyllgor Tegwch gŵyn Mr Asquith bod y cyfeiriad at ei gartref ger Manceinion yn rhagfarnllyd, ac wedi ei fwiadu i’w bortreadu fel Tori o Fargyfreithiwr Saesneg a wnaeth oedd yn satrhu ar y ffermwr Cymraeg diniwed, ac mai â tî ei fam a ddangoswyd ac nid ei dî mwy diymhongar ef. Ystyriedd y Pwyllgor hefyd ymateb S4C bod y lleioliad yn berthnasol i’r mater o faint o dealltwriaeth allai ef ei gael o safle Mr Jones a bod yr wybodaeth wedi ei gymynd o wefan Cyngor Sir Caer, ble mae’n gyngoryddir sir, oedd yn gyfredol ar y pryd.

Fel y trafodwyd uchod yn b) mae’n ymdangos bod y gŵyn o ragfarn yn berthnasol i’r angen i ddarledwyd gynnal “amhleidioldeb dyledus” ar faterion o
anghyfod gwleidyddol neu ddiwydiannol a materion sy’n ymwneud â pholisi cyhoeddus cyfredol. Mae hwn yn “nod safonol” o dan Adran 319 o’r Ddeddf Cyfathrebiadau 2003 ac fel y cyflywr ni ellir ei ystyried gan y Pwyllgor Tegwch. Fodd bynnag, wrth ystyried a gafodd Mr Asquith ei drin yn annheg yn y rhaglen, fe all y Pwyllgor ystyried a allai’r cyfeiriad at gartref Mr Asquith olygu annhegwch iddo ef yn y rhaglen fel y’i darllenwyd. Wrth wneud hynny, nododd y Pwyllgor Tegwch gyd-destun llawn y cyfeiriad:

“Sylwbaith:  Alderley Edge ger Manceinion. Hon ydi un o’r ardaloedd cyfoethcara’r Prydain o’r llenw mwy o filiwnyddion y filltir sgwâr yma na bron nunlla. Fan hyn oedd David Beckham yn arfer byw tra’n chwarae i Manchester United. [Gohebydd i gamera] “Fan hyn hefyd mae Marc Asquith yn byw...yn y tŷ ‘ma tu cefn i mi.”

Nododd y Pwyllgor gyflymyniadu bellach ynglŷn â chywirdeb yr wybodaeth ar wefan Cyngor Sir Caer ac ynglŷn â gwybodaeth y gofrestr etholiadol. Casgliodd y Pwyllgor fodd bynnag nad oedd Mr Asquith wedi darparu tystiolaeth i bwerswadio’r Pwyllgor bod y cyfeiriad at, a’r deunydd a ddangoswyd o’r tŷ wedi golygu unrhyw annhegwrch iddo ef, er enghraifft trwy ddangos sut y byddai cysyniadau a barn gwyllwyr gartref amdano wedi bod yn arwyddocao o wahanol neu wedi eu lleihau’n sylweddol gan y deunydd a gynhwysegwyd yn y rhan hwn o’r rhaglen. Ni ddarganfu’r Pwyllgor felly bod unrhyw annhegwch wedi ei ddangos tuag at Mr Asquith yn hyn o beth.

g) Nesaf fe ystyriodd y Pwyllgor gwynion Mr Asquith bod gwnethurwyr y rhaglen wedi dangos rhagfarn, yn ei bortreadu yn anghyfwr fel y prif gwymeriad yn gyffredinol ac fel “bargyfreithiwr Saesneg gyfoethog aelun” er gwaetha’r wybodaeth a roddwyd iddynt; bod yr achwynwyr wedi ymddangos yn y rhaglen am tua chwe munud, er gwaethaf ei ddymuniad i beidio ag ymddangos yn y rhaglen; a bod gwnethurwyr y rhaglen hefyd, yn annheg, wedi hepgor darllu cyfweliaid a recordiwyd gyda chymydog, Mr Mygind a fyddai wedi dangos bod Mr Jones wedi ymddwyn yn afresymol mewn sefyllfaedd eraill ac mai ef oedd achos ei anawstera ei hun.

Eto, fel y trafodyd uchod yn b) fe ymddengys bod y ragnfarn yn berthnasol i’r angen gan ddarllenwyr i gynnal “amhleidioldeb dyledus” ar faterion o anghyfod gwleidyddol neu ddiwydiannol a materion yn berthnasol i bolisi cyhoeddus cyfredol. Mae hyn yn “nod safonol” dan Adran 319 o Ddeddf Cyfathrebiadau 2003 ac fel y cyflywr ni ellir ei ystyried gan y Pwyllgor Tegwch. Fodd bynnag, wrth ystyried a gafodd Mr Asquith ei drin yn annheg yn y rhaglen, fe all y Pwyllgor ystyried a oedd y portread cyffredinol o Mr Asquith yn annheg o ran ei effaith cronnu.

Yn ei ystoriaethau, roedd gan y Pwyllgor ystoriaeth arbennig tuag at ddyleswyddau ar ddarllenwyr, a drafodwyd uchod, i osgoi annhegwch i unigolion neu sefydliaid sy’n ymddangos mewn rhaglenni trwy ddefnydd o wybodaeth anghyfwr neu afluuniad, er enghraifft trwy ddeurol annheg o ddeunydd neu gyfosodiad annheg o ddeunydd (Côd Tegwch paragraff 2). Nododd y Pwyllgor ymateb S4C nad oedd y stori yn withdrawal rhwng Saesneg a Chymraeg ond yn hytrach rhwng dwe ffrordd wahanol o fyw. Fodd bynnag, o ystyried y casgliadau cyffredinol ym mhenderfyniad f), barn y Pwyllgor oedd, er efallai mai browiad yr rhaglen oedd ystyried materion ynghylch dwe ffrord o fyw gwanhol, roedd effaith cronnu y cyflymniad o Mr Asquith yn y rhaglen fel y’i darllenwyd yng y golygu portread annheg o Mr Asquith, ei weithredoedd a’i gymhelliom.
Yn ei ystyriaeth o gŵyn pellach Mr Asquith ei fod wedi ymddangos yn y rhaglen pan na oedd yn dymuno gwneud hynny, nododd y Pwyllgor ymateb S4C bod y cyfnod o amser yr oedd yr achw Wynwr yn ymddangos yn y rhaglen yn adlewyrchu faint o amser y gwaethant ei drefiwo yn nesau at y camera. Archwilioodd y Pwyllgor, mewn yth manylider, y deunydd a ffilmiwyd gyda Mr Asquith ac na chafodd ei ddarledu. Dangosodd y deunydd hwn Mr Asquith yn datgan dro ar ôl tro nad oedd yn dymuno i’w sgwrs gyda’r cwiw camera gael ei ffilmio ac yn gofynn dro ar ôl tro i’r camera gael ei ddiffodd.

Mae Paragraff 12 o’r Côd Tegwch yn egluro’n glir hawliau unrhyw berson i wrthod cymryd rhan mewn rhaglen. Mae Paragraffau 25, 26 a 27 o’r Côd Tegwch yn manylu ar ddyledswyddau gwneuthurwyr rhagleni ond i gynnwys person o’r fath os eydnt yn credu’n rhesymol y byddai eu cynnwys yn y rhaglen er budd hollbwysig i’r cyhoedd a phan fo ceisiadau rhesymol am gyfraniad gan y person wedi cael eu gwrthod. Ni ddarparodd S4C unrhyw dysirolaeth bod gwneuthurwyr y rhaglen wedi disbyddu ceisiadau rhesymol i Mr Asquith i wneud cyfraniad oddi ar gamera p’un ai trwy llythyr, ffôn neu mewn sgwrs wyneb yn wyneb. Yn wir, nododd y Pwyllgor, o ystyrodd y deunydd na chafodd ei ddarledu, bod Mr Asquith a Mrs Holland wedi ceisio cyfleoedd i siarad gyda gwneuthurwyr yr rhaglen oddi ar gamera ac egluro eu safbwynt. Yn yr amgylchiadau hyn, nid oedd y Pwyllgor yn fodlon unrhyw gyfianhad o’r fath dros gynnwys Mr Asquith yn y rhaglen. Roedd cynhwsiad Mr Asquith yn y rhaglen felly’n golygu annhegchwch iddo ef yn y rhaglen fel y’i darlledwyd.

Cwyn ar sail tegwch terfynol Mr Asquith oedd bod gwneuthurwyr y rhaglen wedi recordio, ond heb ddarledu, cyfwelwaid gyda chymydog, Mr Mygind, a bod hyn yn golygu annhegchwch iddo. Fel y trafodwyd yn b) uchod parthed Mrs Holland roedd y cyfweliadai a recordiwyd gyda Mr Mygind yn cynnig cyd-destun ychwanegol a fyddai wedi bod yn berthnasol i ddeall yr anghyfodod rhwng Mrs Holland a Mr Jones. Tra mai mater i wneuthurwyr y rhaglen yw cynnwys deunydd o’r cyfwelwaid hwn ai peidio yn y rhaglen, roedd gan wneuthurwyr y rhaglen ddyledswydd i gymryd pob gofal rhesymol i fodlon eu hunain bod yr holl ffetiau perthnasol wedi eu hystyried cyn darlediad (Paragraff 7 o’r Côd Tegwch). Aeth y Pwyllgor ati ffely i ystyradd a oedd gwneuthurwyr y rhaglen wedi hepgor ffetiau perthnasol yn y rhaglen a fyddai wedi effeithio ar ddealltwriaeth y gwylywr o ddeliau Mr Asquith gyda Mr Jones, ac ffely effeitho ar eu cysyniad o’i bortread yn y rhaglen.

Er i Mr Asquith gael ei grybwyl yn y cyfweliadaid gyda Mr Mygind (disgrifiodd Mr Mygind ef fel t’rhesymol ond penderfyno)” nid oedd, ar y cyfan, yn berthnasol i ddeliau Mr Jones gyda Mr Asquith. Yn wir fe soniodd Mr Mygind am y berthnas rhwng Mr Jones a Mr Asquith “Dwi ddim wrin yr gwybod y ffeithiau felly ddi ddim eisiau gwneud sylwadau amdanyn”. Ystyriodd y Pwyllgor bod y cyfweliadaid yn dangos Mr Jones i fod yn dyn oedd gyda dadlau gyda pherchnogion tir eraill oedd wedi hen setlo yn yr ardal ac nad Mrs Holland oedd yr unig berchennerg tir oedd wedi ei chael ei hun mewn anghyfodod gyda Mr Jones. Fodd bynnag, yn wahalon i Mrs Holland, nid yw Mr Asquith yn berchen ar y tir dan sylw ac nid oedd y deunydd hwn a recordiwyd, o gyfweliadaid gyda pherchnogion tir, yr berthnasol i gymorthwyd i roi perthnas Mr Asquith a Mr Jones yn ei gyd-destun. Felly nid oedd penderfyniad gwneuthurwyr y rhaglen i beidio â chynnwys ffeithiau’n codi o’r cyfweliadaid hwn yn y rhaglen y golygu annhegchwch i Mr Asquith.

h) I gloi, ystyradd y Pwyllgor Tegwch gŵyn Mr Asquith bod ei breifatwyd wedi dioddef toriai anghyfaiadwy wrth wneud a darledu’r rhaglen a bod gwneuthurwyr y rhaglen fwy neu lai wedi gorfodi eu hunain arno ar drothywr’r drws, yn ffilmio ac yn darledu ei drafodaethau gyda nhw er gwasthaf ei gais iddynt.
beidio â gwneud hynny. Ystystyodd y Pwyllgor hefyd ymateb S4C mai dadl Mr Asquith oedd bod gwneuthurwyr y rhaglen yn ffilmio ar dir ble nad oedd ganddynt unrhyw hawl i ffilmio, ac nid eu bod yn ei ffilmio ef; ei fod weithiau yn amlwg eisiau cael ei ffilmio; ac na orfododd gwneuthurwyr y rhaglen eu hunain arno ar drothwy'r drws gan ei fod yn dewis oedi a thrafod materion gyda’r crîw ffilmio.

Deliodd y Pwyllgor yn gyntaf gyda’r mater o’r un ai y torrwyd ar breifatrywydd Mr Asquith wrth recordio a darledu deunydd ohono. Yn ei ystyriaeth o’r recordiad o’r deunydd, ystystyodd y Pwyllgor y deunydd o Mr Asquith gafodd ei ddarledu ac na chafodd ei ddarledu. Roedd gan y Pwyllgor ystyriaeth i ddyletswyd gwneuthurwyr y rhaglen yn eu defnydd o gamerâu ar eiddo cyhoeddus neu breifat, pan fo’r testun ar eiddo preifat, dan Baragraff 18 (iii) o’r Côd Tegwch. Mae hwn yn datgan bod yn rhaid i’r fath ddefnydd fod yn addas i bwysigrwydd neu natur y stori ac na ddyli’r fath recordiad amharu’n ddiangen ar ymddygiad preifat. Gofynnodd Mr Asquith dro ar ôl tro i’r camera gael ei ddiffodd. Roedd y cyfweliad y mae Mr Asquith yn dweud iddo gael ei orfodi ar drothwy’r drws yn amlwg yn un nad oedd wedi ei drefnu ac roedd ganddo nodweddon gorfodi ar drothwy’r drws (yn y fath nad oedd wedi ei drefnu o flaen llaw a’i fod wedi dweud nad oedd eisiau cael ei gyfweld), ond ni chafodd Mr Asquith ei orfodi ar drothwy’r drws yn ystyr normal y term. Fodd bynnag, o’r deunydd o’r digwyddiada arbennig hwn roedd hi’n amlwg bod gwneuthurwyr y rhaglen eisoes yn ffilmio wrth i Mr Asquith yrru tuag atynt a’u bod wedi parhau i ffilmio er gwaethaf ei geisiadau iddynt beidio â gwneud. Fel y trafodwyd ym mhenderfyniaid g) uchod nid oedd casglu deunydd yn y fath fodd yn gyfaint ac o ganlyniad ystystyodd y Pwyllgor bod y recordiad o’r deunydd hwn yn torri ar breifatrywydd Mr Asquith. Casglodd y Pwyllgor ymhellach bod darllediad y deunydd hwn yn y rhaglen hefyd yn amharu ac yn torri ar ei breifatrywydd.

Symudodd y Pwyllgor ymlaen i ystyried a oedd y toriad ar breifatrywydd Mr Asquith, yn recordio a darlediad y deunydd hwn, yn gyfaiawnadwy. Archwiliodd y Pwyllgor y deunydd na chafodd ei ddarledu a ffilmiwydd gyda Mr Asquith yn fanwl fel y trafodwyd uchod. Dangosodd y deunydd Mr Asquith yn dweud dro ar ôl tro nad oedd eisiau i’r trafodaethau gyda’r crîw camera gael ei ffilmio ac yn gofyn dro ar ôl tro i’r camera gael ei ddiffodd. Mewn amgylchiadau arbennig fe all recordio deunydd o’r fath gael ei gyfaiwchau ar sail budd hollbwysig i’r cyhoedd, er enghraifft wrth ddadorchuddu gweithredu troseddol, fodd bynnag nid oedd y Pwyllgor yn fodlon bod unrhyw gyfiawnhad ar sail budd hollbwysig i’r cyhoedd am y recordiad na darlediad o’r deunydd gyda Mr Asquith, yn y cyfweliad byrffyf, na deunydd arall a recordiwyd gydag ef. Roedd recordio a darledu deunydd o Mr Asquith felly’n golygu toriad anghyfiawnadwy ar ei breifatrywydd yn y rhaglen fel y’i darlledwyd.

Gyda rhai ethriadau cyfyng, cafoedd y cwynion o driniaeth annheg a thorri anghyfiawnadwy ar breifatrywydd eu cynnal.
Not Upheld

Complaint by Mr Andreas Tambourides
Athenorama, London Greek Radio, 3 March 2006

Summary: Ofcom has not upheld this complaint of unfair treatment by Mr Andreas Tambourides.

During this programme, the presenter played a song called Baby, shhh!, which contained the main refrain “Baby shut up”. While playing the song, the presenter made the following dedication to Mr Tambourides:

“Baby shut up! I should dedicate this to Andreas Tambourides who, the day before yesterday, was telling me how much he likes it. Well Andreas, I dedicate this to you with much love. Many kisses to you”

Mr Tambourides complained of unfair treatment in that: it was untrue for the presenter to state that he had told her that he liked the song; and, the playing of the song in such a way was personally insulting and offensive, and was an attempt to ridicule him. Mr Tambourides said that as Mayor of Barnet at the time, and a happily married man, the dedication of such a song caused immense embarrassment.

Ofcom found as follows:

a) Ofcom found the false statement that Mr Tambourides had told the presenter he liked the song Baby, shhh! did not result in unfairness to the complainant. In reaching this decision Ofcom considered that the song was not of a particularly objectionable or offensive nature (e.g. racist or overtly sexual). Ofcom considered that the presenter’s statement, that Mr Tambourides had told her he liked the song, was unlikely to have left listeners with a negative impression of Mr Tambourides himself or raise questions in the listeners’ mind about his character.

b) Ofcom found the playing of Baby, shhh! in conjunction with the presenter’s dedication did not result in unfairness to Mr Tambourides. In Ofcom’s opinion, the programme did not allege any wrongdoing on the part of Mr Tambourides or make any other type of significant allegation. In the circumstances Ofcom found the programme was unlikely to have materially affected listeners’ understanding of Mr Tambourides in a significant or unfair way. Accordingly Ofcom has not upheld Mr Tambourides’ complaint of unfair treatment.

Introduction

During this edition of Athenorama, the radio presenter Katia David played a song by the Greek artist Elli Kokkinou entitled Baby Shhh!. The main refrain of the song was “Baby shut up”.

Half way through the song Ms David interrupted and said:

“Baby shut up! I should dedicate this to Andreas Tambourides who, the day before yesterday, was telling me how much he likes it. Well Andreas, I dedicate this to you with much love. Many kisses to you.”
Mr Andreas Tambourides, who until 16 May 2006 was the Mayor of Barnet, made a complaint of unfair treatment in the programme as broadcast.

The Complaint

Mr Tambourides’ case

In summary, Mr Tambourides complained he had been treated unfairly in the programme as broadcast in that:

a) It was untrue to state that he had told the presenter that he liked the song. Mr Tambourides said that he had not spoken to the presenter for at least four years and never encouraged her to behave in such a way;

b) Playing the song in such a way was personally insulting and offensive, and was an attempt to ridicule him. Mr Tambourides said that as Mayor of Barnet at the time, and a happily married man, the dedication of such a song caused immense embarrassment.

London Greek Radio’s case

In summary, London Greek Radio ("LGR") responded to the complaint as follows:

a) & b) The Executive Director interviewed the presenter about the incident and was assured that the dedication was done in a light-hearted manner and not in response to a request by Mr Tambourides. LGR advised Ofcom that it had decided to suspend the presenter after the station received a complaint about the incident from Mr Tambourides. LGR provided Ofcom with a copy of Mr Tambourides letter of complaint, dated 17 May 2006, and a response from LGR to Mr Tambourides informing him of the suspension, dated 25 May 2006.

As regards Mr Tambourides' complaint of unfair treatment LGR said that, while the song on its own may not be insulting, the question of whether the broadcast was offensive and insulting would depend on the personal circumstances between the listener and the presenter.

Decision

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

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

In reaching a decision about this complaint Ofcom considered the written submissions of both parties, a recording of the programme and a transcript of the programme (in both Greek and English).
Ofcom’s findings in relation to Mr Tambourides’ specific heads of complaint are outlined below:

a) Mr Tambourides complained that it was untrue for the presenter to state he liked the song *Baby, shhh!* during the programme as broadcast.

Programmes should not portray facts, events, individuals or organisations in a way which is unfair to an individual or organisation. It is important to note, however, that an inaccuracy in a programme will not automatically result in unfairness. In relation to this complaint, Ofcom was required to determine whether the false statement - as admitted by the licensee - that Mr Tambourides had told the presenter that he liked the song, resulted in unfairness to him in the programme as broadcast.

In reaching a decision Ofcom considered the song *Baby, shhh!*, its lyrics and the connection, if any, between it and the complainant. The lyrics in Ofcom’s view were not of a particularly objectionable or offensive nature (e.g. racist or overtly sexual): the song was about a woman telling her partner to stop talking or “shut up”. Given the trivial nature of the song Ofcom considered that the presenter’s comment, that Mr Tambourides liked the song, was unlikely to have left listeners with a negative impression of Mr Tambourides himself or raise any questions about his character.

In the circumstances, Ofcom found that while it was untrue to state that Mr Tambourides had told the presenter that he liked the song *Baby, shhh!*, the programme did not result in unfairness to him as listeners were unlikely to have gained a negative impression of him as a result of the presenter’s comment.

b) Mr Tambourides complained the playing of *Baby, shhh!* in conjunction with the presenter’s dedication was personally insulting and offensive, and was an attempt to ridicule him. Mr Tambourides said that as Mayor of Barnet at the time, and a happily married man the dedication of such a song caused immense embarrassment.

In its submission to Ofcom, LGR did not elaborate on why the presenter had chosen to make the dedication to Mr Tambourides. The broadcaster simply explained that the presenter had made the comments in a light-hearted manner and confirmed that the complainant had not requested the song.

In considering this complaint Ofcom was required to assess listeners’ likely understanding of Mr Tambourides as a result of the programme with a view to determining whether the programme’s portrayal of the complainant resulted in unfairness.

After listening to the programme, Ofcom considered that listeners may have developed two different interpretations about the presenter’s comments. The first was a literal interpretation that the presenter was on good terms with Mr Tambourides and was playing him a song that he had told her he liked. The other interpretation was that listeners may have understood the presenter’s comments were sarcastic and the playing of the song for Mr Tambourides was done as a joke or as an opportunity to voice her opinion that she would like Mr Tambourides to “shut up”. Ofcom considered these interpretations separately to determine whether either of them resulted in unfairness to Mr Tambourides.
As noted above (finding (a)) Ofcom found the implication that Mr Tambourides might like the song Baby, shh! did not result in unfairness. Ofcom found the song itself was not of such a nature that liking it would cause listeners to significantly question Mr Tambourides’ character. Ofcom next considered the implication that the presenter was on good terms with Mr Tambourides. It was Ofcom’s understanding from reading Mr Tambourides complaint that he believed the programme insinuated a level of familiarity between the presenter and himself which resulted in unfairness. After listening to the programme Ofcom acknowledged that the statement, “Well Andreas, I dedicate this to you with much love. Many kisses to you” suggested a degree of familiarity between the presenter and the complainant. However Ofcom did not agree with Mr Tambourides that the comment would have led listeners to believe that Mr Tambourides’ relations with the presenter were inappropriate for either a married man or as the Mayor of Barnet. In Ofcom’s view listeners who interpreted the comment in the literal sense, were likely to have understood that the presenter’s comment was no more than a song dedication in response to a request from a friend. Given this likely interpretation, Ofcom found no unfairness to Mr Tambourides.

Ofcom next considered the possibility that the presenter’s dedication had been made in a sarcastic manner: specifically that some listeners might have understood the presenter, when dedicating the song to Mr Tambourides, was either making a joke about Mr Tambourides liking such a song, or that the presenter was voicing her opinion that Mr Tambourides should “shut up”.

In reaching a decision Ofcom noted that by his own estimation, Mr Tambourides was a “prominent figure” within the Greek Cypriot community. He had a certain level of local public prominence as the Mayor of Barnet. Ofcom therefore considered that Mr Tambourides could reasonably expect to be the topic of public opinion and discussion. In Ofcom’s opinion the nature of the dedication, whether interpreted as a joke (about Mr Tambourides liking such a trivial song as Baby, shh!) or an indication by the presenter that she would wish for him to stop talking would not have resulted in unfairness to Mr Tambourides. Ofcom considered that the opinion of the presenter, voiced in this way, did not allege wrong doing on the part of Mr Tambourides or make any other type of significant allegation that Mr Tambourides would be entitled to respond to.

Ofcom found the playing of the song in conjunction with the presenter’s dedication did not result in unfairness to Mr Tambourides.

Ofcom has not upheld Mr Tambourides’ complaint of unfair treatment.
# Other Programmes Not in Breach/Out of Remit

## 8 November - 21 November 2006

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11 December 2006

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