

Ofcom Broadcast Bulletin

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Introduction

The Broadcast Bulletin reports on the outcome of investigations into alleged breaches of those Ofcom codes and licence conditions with which broadcasters regulated by Ofcom are required to comply. These include:

- a) Ofcom's Broadcasting Code ("the Code"), the most recent version of which took effect on 20 December 2010 and covers all programmes broadcast on or after 20 December 2010. The Broadcasting Code can be found at:
<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>.

Note: Programmes broadcast prior to 20 December 2010 are covered by the version of the Code that was in force at the date of broadcast.

- b) the Code on the Scheduling of Television Advertising ("COSTA") which came into effect on 1 September 2008 and contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken. COSTA can be found at:
<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/advert-code/>.

- c) certain sections of the BCAP Code: the UK Code of Broadcast Advertising, which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility. These include:
- the prohibition on 'political' advertising;
 - sponsorship (see Rules 9.2 and 9.3 of the Code);
 - 'participation TV' advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including 'adult' chat), 'psychic' readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and 'message board' material where these are broadcast as advertising¹; and
 - the imposition of statutory sanctions in advertising cases.

The BCAP Code can be found at:

www.bcap.org.uk/The-Codes/BCAP-Code.aspx

- d) other licence conditions which broadcasters must comply with, such as requirements to pay fees and submit information which enables Ofcom to carry out its statutory duties. Further information on television and radio licences can be found at: <http://licensing.ofcom.org.uk/tv-broadcast-licences/> and <http://licensing.ofcom.org.uk/radio-broadcast-licensing/>.

Other codes and requirements may also apply to broadcasters, depending on their circumstances. These include the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code. Links to all these codes can be found at:
<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/>

It is Ofcom's policy to describe fully the content in television and radio programmes that is subject to broadcast investigations. Some of the language and descriptions used in Ofcom's Broadcast Bulletin may therefore cause offence.

¹ BCAP and ASA continue to regulate conventional teleshopping content and spot advertising for these types of services where it is permitted.

Standards cases

Notice of Direction

Hoppr Entertainment Limited holds a broadcasting licence for the television service Live 960.

In 2010 Hoppr Entertainment Limited underwent a change of control, and the appropriate Change of Control form and signed declaration were submitted. Between July 2010 and November 2010, subsequent amendments to this form resulted in a request from Ofcom for the Change of Control form and signed declaration to be re-submitted with the correct and accurate information. Ofcom has asked on several occasions and set various deadlines requesting that Hoppr Entertainment Limited re-submit the Change of Control form and signed declaration. Hoppr Entertainment Limited has failed to comply with these requests.

On 28 January 2011, Ofcom directed Hoppr Entertainment Limited, under the terms of its licence, to comply with the following direction.

TLCS 851 “Live 960” held by Hoppr Entertainment Limited (“the Licence”)

OFCOM NOW FORMALLY DIRECTS UNDER CONDITION 12 AND CONDITION 13 OF THE LICENCE:

Hoppr Entertainment Limited, the holder of TLCS licence 851 to provide the following information:

1. A signed copy of the Change of Control form complete with the declaration, providing the details of the shareholdings and control of the company, the parent company and any parties which may have de facto control of Hoppr Entertainment.
2. Details of the beneficial owner(s) of Regent Nominees Limited, as the ultimate owner/shareholding company of Hoppr Entertainment.

Ofcom requires this information in order to determine whether the de facto control of Hoppr Entertainment Limited complies with the media ownership rules as set out in the Broadcasting Act 1990. Ofcom’s guidance on the control of media companies can be found at

http://stakeholders.ofcom.org.uk/binaries/consultations/media2/statement/media_statement.pdf

Failure to comply with a direction given to it by Ofcom would be a further breach of its Licence Conditions (Licence Conditions 12 and 13) and could give rise to consideration of the imposition of a statutory sanction, including revocation of the Licence.

In Breach

Climax 3-3

Channel Climax 3-3, 1 July 2010, 22:15 to 22:45

Introduction

Climax 3-3¹ was a channel broadcast under a licence held by Playboy TV UK/Benelux Limited (“Playboy” or “the Licensee”) in the adult section of the Sky Electronic Programme Guide (“EPG”). The service comprised adult sexual entertainment broadcast in Sky channel number 961, and was normally provided only between 22:00 and 05:30 and subject to mandatory restricted access with measures in place to ensure the subscriber is an adult. The channel however included some “freeview” sections broadcast without mandatory restricted access in order to promote the channel and encourage viewers to subscribe.

On 1 July 2010 between 22:15 and 22:45, the service showed prolonged and explicit scenes of sexual activity. The broadcast, which comprised three separate scenes, featured either two or three actresses together.

The first scene showed two actresses in a bar setting. This scene included the depiction of the insertion of a bottle, a straw, a dildo and a hand-held soft drink dispenser gun. The second scene showed what appeared to be a lone woman urinating in a barn. The third scene showed three actresses in a barn who appeared to be inserting fingers and dildos into themselves and each other.

The sexual activity in all three scenes included depictions of: insertion of dildos, fingers and other objects either by one female on another or one female on herself; oral sex; and masturbation. During the broadcast the camera featured close up and intimate shots of the sexual activity but some activity was partially hidden by parts of the actresses’ bodies.

On 2 July 2010 Playboy informed Ofcom that there had been a scheduling error by the company that organised the listing of its broadcasts and that this material had been played out by mistake without any protections. Some time later Ofcom received a complaint from a viewer who said that broadcasts in the “freeview” section of Climax 3-3 on 1 July 2010 included some strong material that should have been subject to mandatory restricted access.

Ofcom requested formal comments from Playboy in relation to the following Code Rule:

Rule 1.17 “Material equivalent to the British board of Film Classification (BBFC) R18-rating must not be broadcast at any time”.

Response

Playboy confirmed that the material had been broadcast without mandatory restricted access and in error on 1 July 2010, and that it had informed Ofcom the next day of this particular scheduling failure before any complaint was made. An employee at its listing company had accidentally imported the incorrect data on to the scheduling

¹ From 1 November 2010 the channel name changed to ‘Girl Girl’

system and this resulted in scheduled encrypted content being broadcast free to air. This human error was not picked up at the “safety net” stage. Playboy had now put in place stringent new checking processes to ensure this would not happen again.

Regarding the explicitness of the material and whether this was of R18 equivalent rating, Playboy said that there were a limited number of borderline shots of angles where there could be some debate over whether the object or finger penetration was simulated. It said that when deciding whether to edit out certain shots from its material it always sought advice from the BBFC. It said that it went by the rule that “if it cannot be argued that penetration is not occurring, then it must be cut”. For example fingers may be bent at the knuckle rather than penetrating, objects may go underneath or behind an orifice, and if objects are filmed from behind there could potentially be a gap between the orifice and the object. With regard to what appeared to be urination by one of the actresses, Playboy argued that it always ensured that the point of exit was obscured so that it could be argued that the act was simulated, for example, by using a water bottle hidden by a leg.

Playboy accepted however that it was in breach of the Code, in that it had broadcast “adult sex material” (material that contains images and/or language of a strong sexual nature broadcast from the primary purpose of sexual arousal or stimulation) without the necessary mandatory restricted access required by the Code. However, it argued that “there was nothing broadcast which could be construed as unarguably R18 or equivalent i.e. full-on penetration”. It did accept that there was a “very fine line between simulated and non-simulated” activity.

Playboy said in light of the compliance error, it had acted responsibly and informed Ofcom of this breach as soon as possible, on the day after the error occurred. This underlined the Licensee’s commitment to compliance and “willingness to keep an open dialogue” with Ofcom.

Decision

Ofcom has a duty to ensure that people under eighteen are protected and generally accepted standards are applied to the content of radio and television services so as to provide adequate protection from the inclusion of harmful or offensive material. Ofcom seeks to ensure that material of a sexual nature, when broadcast, is editorially justified, appropriately scheduled and where necessary access is restricted to adults behind mandatory restricted access.

Rule 1.17 of the Code means, however, that BBFC R18 rated films or equivalent material must not be broadcast at any time, whether or not behind mandatory restricted access. Ofcom guidance makes clear that broadcasters should be guided by the BBFC guidelines on “R18” works in deciding what is equivalent to BBFC R18 rated material. The BBFC states that: “The R18 category is a special and legally restricted classification primarily for explicit works of consenting sex...”. Various Ofcom decisions have clarified what Ofcom has regarded as content equivalent to R18-rated material².

² For example, decisions of the Ofcom Content Sanctions Committee in the following cases:

- RHF Productions Ltd dated 18 May 2009
(<http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/rhfportland.pdf>)
- Portland Enterprises (C.I.) Limited dated 23 July 2008
(<http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/portland.pdf>)

In considering the content of this programme Ofcom asked itself first whether the content of the programme was equivalent to that in a BBFC R18-rated film or video.

Ofcom first examined a scene during this broadcast which included what appeared to be a lone actress urinating. Ofcom considered that this scene had a clear focus on the act of urination and that, as with other material in this programme, was broadcast for the primary purpose of sexual arousal. In the circumstances, Ofcom considered that this particular content was of an equivalent standard to R18-rated material and its broadcast was therefore a breach of Rule 1.17.

Ofcom next examined other scenes in the programme which appeared to show either vaginal or anal penetration by various objects, including dildos, fingers and a bottle. Ofcom recognised that these scenes were less clear. However, viewers would have reasonably believed that penetration was taking place despite there being no explicit shots of point of insertion. In particular, Ofcom considered that despite the partially obscured nature of the images, viewers would have been left with the clear impression that penetration by the bottle had occurred in the first scene and that penetration by dildos had occurred in the third scene.

In any event, this material clearly constituted at the very least 'adult sex material' – i.e. images of a strong sexual nature that were broadcast for the primary purpose of sexual arousal and should not therefore have been broadcast without mandatory restricted access.

Ofcom notes that the Licensee alerted the regulator of the compliance error the day after the broadcast and acknowledged that it was a potentially serious mistake, before a complaint was received by Ofcom. Ofcom welcomes the proactive stance of Playboy with regard to this matter.

However, this is a serious breach of the Code. Material equivalent to BBFC R18 content must not be broadcast at any time. As a result, the Licensee is put on notice that this present contravention of its licence is being considered for the imposition of a statutory sanction.

Breach of Rule 1.17

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- Gamecast UK Ltd dated 17 January 2007 (<http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/gamecast.pdf>)

In Breach

Electronic Arts (“EA”) branding during Premier League football coverage

Sky Sports 2, 11 September 2010, 12:30

Introduction

On 11 September 2010 Sky Sports 2 broadcast live coverage of the Premier League fixture between Everton and Manchester United. In the course of the game and the pre- and post-match comment, graphic on-screen displays of statistics and match facts appeared in total 14 times. For example, each time a goal was scored, an on-screen graphic appeared, indicating the time of the goal. Other graphics included data on shots on goal, numbers of corners, and so on.

On each occasion that such an on-screen graphic was displayed, it was accompanied by a logo for Electronic Arts (“EA”), a maker of video games.

A complainant objected to the EA branding, saying that it was “irrelevant”, “unnecessary” and “blatant”. Ofcom initially sought information on EA’s role in connection with the match data, and any contractual arrangements relating to the appearance of the on-screen branding.

Sky confirmed that the branding did not result from any programme sponsorship arrangements it had entered into with EA. Ofcom therefore considered Sky’s formal comments under the rules in Section Ten of the (September 2010) Code¹, and in particular:

- Rule 10.3 Products and services must not be promoted in programmes;
- Rule 10.4 No undue prominence may be given in any programme to a product or service; and
- Rule 10.5 Product placement is prohibited².

Response

Sky explained that EA was contracted to the Premier League (“PL”) as the ‘Official Sports Technology Partner’. Sky understood that this arrangement included sponsorship of the PL itself, a sponsor presence at matches and in other PL controlled properties, including in the overseas broadcast feed.

Sky stressed, though, that it had no contractual agreement with EA in respect of the on-screen credits.

Sky’s contract with the Premier League

¹ The Code that was in force at the time of the broadcast.

² On 20 December 2010, Ofcom published new rules that allow, subject to restrictions, product placement in programmes. These rules come into force on 28 February 2011. Until this date, programmes must comply with the existing rules, which include a prohibition on product placement. Further information on the new rules can be found at: <http://stakeholders.ofcom.org.uk/consultations/bcrtv2010/statement/>

The broadcaster said that, as part of its contractual agreement with the PL for the live broadcast of certain PL matches, it: “is required, subject to applicable laws and the Ofcom codes, to provide an on-screen credit for the ‘official technology partner’”. It went to say that “This credit must be included in Sky’s live broadcasts as part of the Sky Sports channels, and in the overseas world feed of all matches produced by Sky...”.

The broadcaster said that when, “at Sky’s election”, match statistics were shown it provided a credit for EA as official technology partner of the PL. Such credits are provided subject to EA “making available the required technology to facilitate the display of player or match statistics, and in all cases subject to Ofcom’s codes.”

Sky supplied relevant extracts of its contract with the PL.

Sky said that it maintained its independence of editorial control at all times, including where credits were given for EA or any other PL sponsor.

Sky told us that there was nothing in its agreement with the PL requiring the inclusion of the EA credit. Rather, the agreement provided that, should Sky make use of the statistical data provided by the PL, it “include an appropriate reference to the PL’s ‘official technology partner’”. Further, Sky said, its obligations to the PL “are subject to an express reservation in respect of Sky’s obligations under the Code”.

Sky said that each use of player and match statistics was editorially justified and was not influenced by any other consideration.

Sky submitted that, were it to be prevented from using the statistics – because, for example, Ofcom were to find the inclusion of the EA branding in breach of the Code – it would, in Sky’s view, represent a significant reduction in the quality of coverage and in its viewers’ enjoyment of the game.

Rule 10.3

Sky was of the view that the EA branding was not promotional. The broadcaster referred to parts of Ofcom’s guidance on this rule:

“For the purpose of this rule, products and services are promoted where there is a clear “sell”. This can occur, for example, where information is provided about prices or other specific attributes of the product”; and “Not all references, even where they are positive or favourable, are “promotional” in the context of this rule”

No specific product or service was mentioned, Sky said, and no ‘sales’ messages or the like were present. For these reasons, Sky did not consider that Rule 10.3 had been breached.

Rule 10.4

Sky acknowledged that, “on this occasion, the application of the EA on-screen credit should have been subject to greater editorial judgement given the high-scoring nature of this particular game, which meant the credit was displayed on a higher than normal number of occasions”. Sky accepted that its editorial policy in that respect should be “clarified”.

Even so, it said, the EA branding was in line with that adopted by other broadcasters covering sport. Sky drew attention to Ofcom's guidance on Rule 10.4, which includes the following:

“Editorial justification will depend on the nature of the programme and there may be certain types of programmes – e.g. sports and music coverage in television programmes – where there is a general acceptance that brands will feature.”

Further, Sky said, technical provider credits may be reflected in broadcast coverage. However, in subsequent correspondence, Sky clarified that EA was not a technology or technical provider in this case – EA does not, for example, gather data on football matches. (A different company part-owned by the PL does that job). Sky also said that it generates its own data for use in its broadcasts and other services.

More generally, Sky told us that Ofcom's guidance on undue prominence – which advises against products' appearances being the subject of negotiation or agreement – could not be intended to preclude the sort of contractual arrangements entered into by Sky and the PL. To do so, Sky said, would prohibit the appearance of editorially justified branding, for example during post-match interviews in front of heavily branded hoardings. Instead, it was Sky's view that the application of this guidance should be limited to circumstances in which the exact nature of exposure for a brand in a programme might have been arranged, akin to product placement.

Sky stated that: “...notwithstanding Sky's view that, on this occasion, there were too many EA on-screen credits, Sky does not consider that the manner in which the EA on-screen credit appeared was unduly prominent. The logo only appeared with relevant data and for a maximum of 4 seconds at a time...this is the first year that the PL has had an 'official technology partner', and therefore the event branding may have greater prominence as compared to broadcast coverage in previous seasons.”

Sky explained its view that “there were too many references to the EA on-screen credit due to a lack of appreciation for the risks involved in the mechanical application of the credit in a high scoring game such as this one (which ended 3-3)”. Sky submitted that it had therefore revised its editorial policy to ensure that, in future “the EA on-screen credit will not be applied in a mechanical fashion to all uses of the relevant statistical data in order to minimise the risks of any potential infringement of Ofcom's codes”.

Rule 10.5

Sky pointed to the current Code's definition of product placement: “Product placement is the inclusion of, or a reference to, a product or service within a programme in return for payment or other valuable consideration to the programme maker or broadcaster (or any representative or associate of either).”

Given this, the broadcaster argued, the EA branding could not amount to product placement as Sky had received no consideration and that the exposure of the brand was a function of the event organiser's sponsorship arrangements.

Decision

Ofcom accepts, as our guidance to Section Ten of the Code indicates, that sports coverage is a genre in which branding and general commercial exposure can be expected. In our view, audiences generally accept and understand that branding

associated with advertising and the sponsorship of professional sport is part and parcel of that industry.

In that respect, for example: there is more likely to be sufficient editorial justification for a post-match interview to be conducted in front of venue advertising or sponsorship hoardings in sports coverage, than in other types of programme genres. Logos and branding on players' kits, and on display around a pitch, track or venue are also common. However, under the current Code, the scope for an Ofcom licensee to transmit sports programming in which it has elected to add branding - such as in on-screen graphic elements - is extremely limited.

As Sky noted, Ofcom (like its predecessor, the ITC) has considered that, in certain circumstances, there is sufficient editorial justification for broadcasters to show brief and limited credits for companies who provide technical services to sports events and coverage. For example, the display of the names of companies who supply timing services when lap times, finishing times and so on are shown.

However, Ofcom notes that in this case, according to Sky, EA was not a technical supplier in that sense. Instead, EA's role was the 'Official Sports Technology Partner' of the PL, subject to a contractual arrangement between EA and the PL (to which Sky confirmed it was not party to).

Rule 10.5

As such, the on-screen credits had arisen as a result of Sky's contractual arrangement with the PL. On the basis of Sky's representations, Ofcom accepted that the credits were not broadcast in return for payment or other valuable consideration to Sky or its associates. Therefore, Rule 10.5 (prohibition of product placement) was not breached.

Rules 10.3 and 10.4

Ofcom noted that the contract between the PL and Sky in relation to the "official technology category" and the display of player or match statistics stated that Sky must "ensure that on-screen credit is given to the PL sponsor [EA]...". We accept Sky's submission that its obligations to the PL were subject to "an express reservation in respect of Sky's obligations under the Code". The situation appeared to accord with Sky's explanation that the on-screen credits were displayed "at Sky's election".

However, in Ofcom's view, the inclusion of the logo could not be described as an editorially justified means of indicating to the audience who had been the technical provider of the statistical information in question. In light of the fact that EA was not a technology or technical provider of the statistical data in question (notwithstanding any funding arrangements between EA and the PL in respect of the provision of such data), Ofcom did not accept that there was any editorial justification for Sky to elect to add the EA logo to its coverage.

Ofcom was of the view that the inclusion of the EA logo arose solely from the relevant contractual arrangements that were in place between the PL and EA and between the PL and Sky. Ofcom therefore concluded that, in the absence of any editorial justification, and in view of the inclusion of the logo arising from these contractual arrangements, the only purpose it could serve was to promote EA's name and trade mark. On this basis, Ofcom concluded that Rule 10.3 had been breached.

In addition, Ofcom judged that the repeated appearance of the logo – 14 displays of it across the programme - gave undue prominence to EA, in breach of Rule 10.4. Further, Ofcom was of the view that the extent of this undue prominence was such that it, in itself, amounted to the promotion of EA, further underlining the breach of Rule 10.3.

Ofcom considered it relevant that, on 26 October 2009, Ofcom recorded a breach of Rule 10.3 in a case involving the appearance of commercial branding in Sky's cricket coverage³. Although that case differed from the current case in that the former concerned a logo displayed under an agreement made directly between Sky and a commercial third party, it nevertheless resulted in similar broadcast content: during sports coverage, a commercial third party's logo was displayed when technical data was presented on-screen graphically. A breach of Rule 10.3 (promotion) was recorded in that case.

On 28 June 2010, following the UK Government's decision to permit product placement, subject to certain safeguards, Ofcom issued a Code Review consultation on the rules relating to commercial references in television programming.

As well as proposing rules to permit product placement to reflect EU and UK legislative changes, we proposed related revisions to other Code rules that we considered were impacted by the introduction of product placement, such as sponsorship. In particular, we proposed that limited sponsorship credits (e.g. a sponsor's logo with a brief association statement) be allowed during programmes (see Part 5 of the consultation document⁴).

Ofcom repeatedly made clear⁵ that, until it had completed its review and issued its statement⁶, broadcasters must comply with the Code rules currently in force.

Breaches of Rules 10.3 and 10.4

³ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb144/Issue144.pdf>

⁴ <http://stakeholders.ofcom.org.uk/binaries/consultations/724242/summary/tvcondoc.pdf>

⁵ See, for example, paragraph 1.40 of the consultation document available via the link at footnote 2.

⁶ As noted in footnote 2 above, Ofcom issued its statement and a revised Section Nine of the Code (Commercial references in television programming) on 20 December 2010. The new rules do not come into force until 28 February 2011. Until that time, Sections Nine (Television) and Ten (Television) of the December 2010 Code remain in force.

In Breach

Kundli Aur Kismat (Future & Fortune)

Sunrise TV, 20 July 2010, 14:00 to 16:00

Introduction

Kundli Aur Kismat (Future & Fortune) is a two-hour astrology show on Sunrise TV, a general entertainment channel for the UK Asian community. The programme invites viewers to call in using an 0845 number to receive on-air astrological readings. Numbers with an 0845 prefix are relatively low cost, attracting geographic call rates if rung from a BT landline.

A viewer complained that on ringing the programme on the 0845 number he was told that he would need to pay £30 by debit or credit card to receive a reading. The programme had said nothing about the charge.

On viewing the programme, we noted that the programme's presenter made numerous verbal invitations to viewers to call in. In addition, a large on-screen banner was displayed for about six minutes at the end of the first hour of the programme, and another was shown throughout the second hour. The earlier banner displayed the 0845 number, the programme's name and the words '*Live Entertainment*'; the later banner was identical but also contained text saying '*Phone lines are open till 5pm*'.

Ofcom sought information and comments from Sunrise TV, under the rules within Section Ten of the Code¹, including Rules 10.2 and 10.3:

Rule 10.2 Broadcasters must ensure that the advertising and programme elements of a service are kept separate;

Rule 10.3 Products and services must not be promoted in programmes.

In particular we sought comment in respect of the degree of promotion given to the paid-for readings and their availability to viewers at times when the programme was not on air, including for an hour after the programme's close.

Sunrise initially responded to Ofcom arguing that the readings qualified as programme-related material ("PRM"). Ofcom therefore sought further comment on the conformity of the programme and the readings with the rules on PRM, mindful that the Code defines PRM as "...products or services that are both directly derived from a specific programme and intended to allow listeners or viewers to benefit fully from, or to interact with, that programme."

Response

The broadcaster explained that at the time of the complainant's call the programme was using a comparatively low cost 0845 number, and not a much more expensive premium rate number. It had wished to use a premium rate number but had discovered that a live chat service of this sort requires prior permission from the premium rate regulator PhonepayPlus (PPP). During the time that its request for prior

¹ This case was considered by Ofcom under the December 2009 Code (which was in force at the time of this broadcast).

permission was being processed, the broadcaster chose to use the 0845 number and charge callers for the reading by other means.

Sunrise TV further explained that the maximum charge that can be applied to a premium rate phone call is £30. This was therefore the amount it charged callers using the temporary 0845 route. Payment was requested when a call was received and was made generally either by debit or credit card, the broadcaster said, although in some rare circumstances payment was made through money transfer.

Callers were told immediately on getting through to the 0845 line that a charge of £30 was payable if they wished to have a reading. Documentation supplied by the broadcaster showed that 75 calls were answered during the course of the programme on 20 July 2010, of which 25 callers agreed to pay the charge of £30. For those that declined the charge, the call was terminated.

The broadcaster said further that the number of callers put through to the show is managed to ensure that all those who wish to receive a live reading on air will get one. In some rare cases callers to the show agree to the charge but for their own reasons do not want the reading live on air. In these circumstances, Sunrise TV said, the presenter will call back after the show and give the reading off-air.

Sunrise TV said that the presenter is paid to host the show and receives no additional payment from the charges that are made to those that call in. Sunrise TV receives all of the money that is generated by the charges made to callers. Advertising and programming were kept distinct, the broadcaster argued, as using a telephone number, whether of a relatively low rate as in this case, or premium rate, is an accepted way of encouraging interaction with viewers and is part of the programme. Further, it submitted that the programme's advertising breaks were clearly separated from editorial content.

As to the prohibition on promoting products or services in programmes (Rule 10.3), Sunrise TV said that the use of the 0845 number was an integral part of creating a link with the audience. As such, the broadcaster was of the view that the promotion of the astrological reading service was programme-related material (PRM) and therefore fell into the exemption from the requirements of Rule 10.3. Similarly, the broadcaster said, because there was no promotion of a product or a service, there was no undue prominence and Rule 10.4 did not apply.

In response to questioning about the degree of promotion given to the 0845 number, the broadcaster stressed that as *Kundli Aur Kismat* is an interactive programme "trailing the contact details in an integral part of that". That viewers were encouraged to call for an hour following the show was, Sunrise TV told us, a means of creating programme material for the next broadcast: "the gist of the topics raised in such readings is often used as an initial discussion topic in the following show".

In making the decision to charge at the point of viewer contact, Sunrise TV said that it had taken note of the obligations imposed under the Code, in particular the definition of PRM. In this case, the show's viewers were encouraged to participate in the show and the readings given to those participants formed the core of the programme, though not necessarily the entire programme which also included more general presenter discussion of the subject.

Sunrise TV said it had formed the view that the charges made were not a relevant factor in determining whether or not the service offered was PRM. Neither did the broadcaster consider the scale of the charges applied to be relevant to the Code

position of live interaction with the show, provided that the charges did not impact on the editorial integrity of the show. Sunrise TV took the view that the service offered was directly derived from the show and it allowed viewers to participate in it. As such, in Sunrise TV's view, the service satisfied the Code's definition of PRM. The broadcaster told us that it had relied on the definition of PRM contained within the Code when it set up the mechanics for the viewer interaction within this programme. Sunrise TV did not see a distinction between this interaction taking place during the broadcast or at other times.

Generally, Sunrise TV acknowledged that in order to participate in the show callers were required to pay a charge, but it was not aware that the Code prohibits this practice. The broadcaster said that callers were not obliged in any way to accept the charge and if they did they were guaranteed to participate. A premium rate number has been used since the beginning of September following the grant of permission by PPP.

Sunrise TV stressed that it treats all complaints seriously and endeavours to ensure that it complies fully with the Code. It said that this particular show has proved popular with the audience generally by offering a unique format to its Asian audience. Sunrise stated that it and the presenter are conscious of the potential difficulties with the format of this show, particularly given that it is broadcast live, and strive to deliver advice that satisfies both the audience and the Code.

Decision

The guiding principle behind Section Ten of the Code is that commercial references in programmes should not compromise the editorial independence of the broadcaster. Viewers must be able to listen to and watch programming confident that what they are presented with is the product of an independent editorial voice.

The principle of prohibition of commercial distortion of programming applies to broadcasters' own commercial activity as much as to that of others. One aim of Section Ten is therefore to ensure that the promotion of products and services is excluded from programming (Rule 10.3). As set out in the Code, there is a specific exemption from this rule for the provision of programme-related material (PRM). The Code defines PRM as:

“...products or services that are both directly derived from a specific programme and intended to allow listeners or viewers to benefit fully from, or to interact with, that programme.”

This definition follows that set out in European law, the Audiovisual Media Services Directive. Recital 99 explains that PRM should be both additional to a programme and directly derived from it:

“[PRM] should be limited to announcements concerning products that fulfil the dual condition of being both ancillary to and directly derived from the programmes concerned. The term ‘ancillary’ refers to products intended specifically to allow the viewing public to benefit fully from, or to interact with, these programmes.”

PRM therefore applies to *supplementary* products and services *derived from* a programme and from which the consumer benefits outside of their viewing experience of the programme itself – for instance, books and CDs derived from

programmes, and podcasts and web pages that provide discussion or information further to the programme and that viewers can themselves sometimes contribute to.

Services provided to viewers during the course of a programme itself cannot therefore be described as PRM.

In addition to the exemption from Rule 10.3 for PRM, premium rate telephone services (“PRS”) have long been a further qualified exception to the general prohibition of the promotion of products or services in programmes. The reasoning behind this exception is that communication between viewers and broadcasters or programme makers is a natural and desirable addition to broadcasting and PRS – if properly used and clearly priced – can be justified for use in programmes in that way.

However, the technique of soliciting payment by debit and credit cards cannot be justified by reference to the charges that could have been applied (and subsequently have been) by means of a PRS. Furthermore, a broadcaster cannot make an unacceptable ‘sell’ of a product or service comply with the Code by showing that it could have been charged for by means of a PRS.

In any event, there has always been a need for PRS to be used in a manner that is editorially justified – see the Note at the end of this Finding for further guidance on this subject.

Ofcom therefore noted that this case did not involve PRS, and the astrological reading service in question did not meet the definition of PRM. Furthermore, we took into account that viewers could receive readings off-air, and indeed were encouraged to call for readings for an hour after the programme had finished. As such, Ofcom concluded that the programme promoted a commercial service, and was therefore in breach of Rule 10.3.

Further, we judged that the extent of the encouragement to call and the availability of the service outside of the programme amounted to the advertising of a service in programming. The programme was therefore also in breach of Rule 10.2.

Breaches of Rules 10.2 and 10.3

Note to Broadcasters

Although there is some latitude for PRS in programmes under the Code, they must nevertheless be editorially justifiable. This requirement is especially acute where interaction is charged for by higher priced premium rate telephone calls.

On 1 September 2010 (therefore some weeks after this programme was transmitted) revisions to Section Ten came into force that clarified the need for the promotion of PRS in programmes to be clearly subsidiary to the programme’s editorial purpose. The changes to the Code and Guidance arose from the Ofcom Regulatory Statement *Rules on the promotion of premium rate services*².

² Available at <http://stakeholders.ofcom.org.uk/binaries/consultations/participationtv3/statement/statement.pdf>

Guidance published at the same time contains extensive advice on the Code's new, more detailed requirements. This advice discusses, among other things, the relative balance of the PRS and other elements of a programme, the extent of the promotion of the PRS and the cost of the PRS.

In that respect, Ofcom wishes to make clear that programmes apparently wholly or mainly formulated to take advantage of premium rate revenues are likely to be in breach of the Code, or to require re-classifying by licensees as teleshopping (i.e. advertising) in the form of 'participation TV' (PTV). In the latter case, programmes must meet the requirements for teleshopping and licensees may need to adapt the item's format accordingly. Also, broadcasters must make absolutely clear to the audience that what they are watching is advertising material. Special rules apply to 'psychic' teleshopping: see BCAP Code Section 15³ and the Ofcom statement referred to in footnote 2 of this Finding.

³ Available at <http://www.cap.org.uk/The-Codes/BCAP-Code.aspx?q=test>

In Breach

JC Halliday sponsorship of Instant Traffic and Travel

Q97.2, 21 October 2010, 08:30

Introduction

Q97.2 is a local radio station that broadcasts to the Coleraine area in Northern Ireland. Its travel update bulletin featured a sponsorship credit by a local branch of a garage firm, JC Halliday, which contained the following claim.

“JC Halliday Bushmills, 20% cheaper than Kwik Fit: Oil and filter special only £39.99.”

A complainant claimed that this comparison was inaccurate and that Kwik Fit charged less than the sponsor for certain oil and filter changes.

Rule 9.3¹ of the Code states: “Sponsorship on radio and television must comply with ... the advertising content ... rules that apply to that medium.”

Rule 3.9 of the BCAP Code² states: “Broadcasters must hold documentary evidence to prove claims ... are capable of objective substantiation.”

Rule 3.33 of the BCAP Code states: “Advertisements that include a comparison with an identifiable competitor must not mislead, or be likely to mislead, consumers about either the advertised product or service or the competing product or service.”

Ofcom asked Northern Media Group, the owner of Q97.2, and the sponsor, for its comments under these rules.

Response

Northern Media Group accepted that the sponsor credit did not meet the standards required by these rules and said that approval for this particular credit was overlooked, owing to the relocation of its production department, which is based at one of its other radio stations, Q102.

The broadcaster explained that “due to the upheaval of the office move, a member of staff incorrectly sent the tag [sponsorship credit] to be broadcast before it was finally signed off.” It added that the “tag was played on four occasions, all on 21 October 2010” (between 07:20 and 08:40) and upon discovering the error, it immediately removed the sponsorship credit from further broadcast.

With regard to Rule 3.9 of the BCAP Code, the broadcaster admitted that it did not hold documentary evidence of the claim made in the sponsor credit prior to its

¹ This case was considered by Ofcom under the September 2010 Code (which was in force at the time of this broadcast). Broadcasters should note that, as of 20 December 2010, a new version of the Code is now in force, and in particular, a new Section Ten: Commercial communications in radio programming. Full information is available at: <http://stakeholders.ofcom.org.uk/consultations/bcrradio2010/statement/>

² The UK Code of Broadcast Advertising, which can be found at: <http://www.cap.org.uk/The-Codes/BCAP-Code.aspx>

broadcast. However, it stated that it was in the process of obtaining this, having already received some relevant documentation from the sponsor. It added that obtaining documentary evidence prior to broadcast was part of its normal internal approval procedures, which, in this case, were overlooked.

Northern Media Group wished to point out Q97.2's "previous good record in regard to advertising rules and codes".

JC Halliday said it was not its "goal to wrongly advertise". It argued that its own research found that the price quoted by Kwik Fit for an oil and filter change for one specific make of vehicle was £49.95. The sponsor acknowledged that it charged the same price as Kwik Fit for oil and filter changes on other makes of vehicle but added that this was due to Kwik Fit having "different prices for different grading of oil", of which it had not been aware at the time it had conducted its research.

Decision

Ofcom did not consider that the cost difference quoted in the sponsorship credit for an oil and filter change for one particular make of vehicle was representative of general price differences. By JC Halliday's own admission, the difference in cost varied considerably, depending on a number of factors.

Since all oil and filter changes by JC Halliday were not 20% cheaper than those carried out by Kwik Fit, as the sponsorship credit claimed, Ofcom concluded that the credit was likely to have misled listeners, in breach of Rule 3.33 of the BCAP Code.

Ofcom noted that procedural failures led to Q97.2 holding no documentary evidence in support of the sponsor's claim that its "*oil and filter special*" was "*20% cheaper than Kwik Fit*". Holding appropriate substantiation prior to the broadcast of advertising claims is an important means by which to ensure consumer protection. In this instance Q97.2 did not hold documentary evidence to support fully the sponsor's claim, in breach of Rule 3.9 of the BCAP Code.

As the sponsorship credits breached BCAP Code requirements, they were also in breach of Rule 9.3 of the Code, which requires that sponsorship must comply with advertising content rules.

Ofcom noted Northern Media Group's explanation of how the sponsorship credit had been broadcast erroneously on four occasions, and its acceptance that it had not complied with relevant rules. We welcomed Q97.2's swift removal of the sponsorship credit from the schedules as soon as it became aware of its error. Nevertheless, Ofcom expects the broadcaster to ensure that appropriate contingencies are in place to ensure consistent Code compliance in the future.

Breach of Rule 9.3 of the Code Breaches of Rules 3.9 and 3.33 of the BCAP Code

Resolved

Comedy Circus KE Superstars

Sony Entertainment Television Asia, 20 October 2010, 15:00

Introduction

Sony Entertainment Television Asia (“SET Asia”) is a general entertainment channel aimed at a UK-based Asian audience. *Comedy Circus KE Superstars* is a stage-based comedy sketch show.

Ofcom received a complaint about references to Vodafone within the programme, which the viewer believed to be product placement.

On reviewing the material, Ofcom noted that Vodafone appeared to be the sponsor of the programme, and branding for the company appeared on the programme set and during on-screen graphics.

In addition, Ofcom noted that on one occasion during the programme, while the female presenter was talking, a caption appeared which read “*Jewellery Sponsored By Silver Queen*”.

Ofcom asked SET Asia how the material complied with the following Code rules in Sections Nine and Ten¹:

- Rule 9.5 There must be no promotional reference to the sponsor, its name, trademark, image, activities, services or products or to any of its other direct or indirect interests. There must be no promotional generic references. Non-promotional references are permitted only where they are editorially justified and incidental.
- Rule 10.4 No undue prominence may be given in any programme to a product or service; and
- Rule 10.5 Product placement is prohibited.

Response

The broadcaster said that *Comedy Circus KE Superstars* had not been scheduled to be broadcast. However, the previous programme had finished early and *Circus KE Superstars* was transmitted as an additional programme, in error.

SET Asia said all of its programmes are sourced from its parent channel in India which are then edited in India to ensure they comply with Ofcom’s regulations.

SET Asia said it has taken steps to remind staff that such mistakes must be avoided in the future, including refresher training for the editing team and “strict monitoring procedures” at the transmission stage for a second compliance check in the UK.

¹ This case was considered by Ofcom under the September 2010 Code (which was in force at the time of this broadcast).

The broadcaster said that no payment or other valuable consideration was received by its Indian parent company for the reference to the jewellery.

Decision

Rule 9.5 of the Code prohibits any promotional reference to the sponsor, its name, trademark, image, activities or products. It also prevents non-promotional sponsor references within programme that are not editorially justified and incidental.

In this case, the Vodafone branding in graphics and on the set during this programme identified the sponsorship arrangement. As such, they had clearly been placed deliberately by SET Asia's parent channel in India, and could not be described as incidental.

Rule 10.5 of the Code prohibits product placement. The Code sets out that, for the purposes of this rule, arrangements covering the inclusion of products or services in a television programme acquired from outside the UK (and films made for cinema) are not considered to be product placement, provided that no broadcaster regulated by Ofcom and involved in the broadcast of that programme (or film) directly benefits from the arrangement.

Ofcom noted that in this case the broadcaster noted its parent company did not receive any payment or other valuable consideration for the reference to the jewellers. Its broadcast on SET Asia was therefore not in breach of Rule 10.5.

However, Rule 10.4 makes clear that "undue prominence" may result from:

- the presence of, or reference to, a product or service in a programme where there is no editorial justification; or
- the manner in which a product or appears or is referred to in a programme.

In this case, there was no editorial justification for the on-screen caption referring to the supplier of jewellery worn by the presenter.

Ofcom notes that the programme's transmission on SET Asia occurred due to an error. Further, we note the steps taken by SET Asia as a result of the broadcast, including further training for the compliance team in India and a second stage of compliance in the UK.

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

Resolved

Resolved

In Demand with Luke Wilkins

Kerrang! Radio, 10 November 2010, 19:15

Introduction

Kerrang! Radio is a station that specialises in rock music. The station regularly runs a feature called “Hot or Not” in which two songs are played and listeners are invited to vote for their favourite. Listeners can submit their vote via email, the broadcaster’s Facebook page, or by premium rate text message costing 25 pence.

Ofcom received a complaint from a listener about the feature broadcast on 10 November 2010. The complainant was concerned that, during the feature, the presenter had disqualified one of the songs and cancelled the vote, allegedly because he suspected the band in question was using the vote for publicity purposes. The complainant considered the presenter’s actions were unfair given that some listeners had already paid to cast their vote.

Ofcom therefore sought comments from Bauer Media (“Bauer”), the owner of Kerrang! Radio, under Rule 2.14 of the Code which states that:

“Broadcasters must ensure that...listeners are not materially misled about...voting.”

Response

Bauer said that the presenter had no authorisation to cancel the vote and when questioned, could offer no justification for doing so. It accepted that this raised compliance issues with regard to Rule 2.14 of the Code.

The broadcaster subsequently took disciplinary action against the presenter and began contacting the 32 listeners who had voted by text message, to arrange a refund and invite them to a future live event by way of apology.

In order to avoid a recurrence, Bauer said that Kerrang! Radio had “since reminded all presenters of the Ofcom Broadcasting Code and their responsibilities and has reiterated the processes to be followed by all presenters on air.”

Decision

Audiences pay to participate in voting exercises on the basis that their vote contributes to determining an outcome. Rule 2.14 requires broadcasters to be transparent when explaining how votes influence the result so that viewers and listeners can make an informed decision about taking part.

On this occasion, listeners were invited to vote on the basis that the song that obtained the most votes would be declared the winner but owing to the presenter’s decision to disqualify one of the songs, this did not happen. As listeners’ votes did not contribute to the outcome as advised, Ofcom considered that those who had paid a premium rate to place their vote were materially misled by the promotion of this exercise.

However, Ofcom accepted that this incident occurred due to the presenter's actions rather than a decision to cancel the vote by the broadcaster's management, and as such, it had not been the broadcaster's intention to deliberately mislead its audience. We also noted the swift remedial action taken to refund listeners who had voted by text message. Ofcom therefore considers the matter resolved.

Resolved

Advertising Scheduling Cases

Resolved

Resolved findings table

Code on the Scheduling of Television Advertising compliance reports

Rule 4b of the Code on the Scheduling of Television Advertising (“COSTA”) states: [On non-PSB channels] “time devoted to television advertising and teleshopping spots must not exceed an average of 12 minutes of television advertising and teleshopping spots for every hour of transmission across the broadcasting day, of which no more than 9 minutes may be television advertising.”

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
Crime & Investigation Network	8 October 2010, 23:00	COSTA Rule 4b	<p>Crime & Investigation Network transmitted seven seconds more advertising than permitted in a single hour.</p> <p>Ofcom recognises that this is the first issue of this type on Crime & Investigation Network, and notes steps the licensee says it has taken to address the failure.</p> <p>Finding: Resolved</p>

Broadcast Licence Condition Cases

In Breach

Non-provision of radio service

Voice of Africa Radio, community radio service for Newham, London, week commencing 11 December 2010 to week commencing 8 January 2011

This finding was originally published on 4 February 2011.

Introduction

On 16 December 2010 Ofcom discovered, via routine monitoring, that Voice of Africa Radio, the company holding a licence to provide a community radio service of the same name for the African community in Newham, London, had ceased broadcasting its licensed service.

Accordingly, Ofcom spoke to a representative of Voice of Africa Radio on 22 December 2010 who confirmed that the station was not broadcasting. Ofcom wrote to Voice of Africa Radio to ask how the licensee was complying with the following two conditions in its licence relating to format delivery.

1. Condition 2(1) contained in Part 2 of the Schedule to the licence, which states that:

“The Licensee shall provide the Licensed Service specified in the Annex¹ for the licence period.”

2. Condition 2(4), contained in Part 2 of the Schedule to the licence, which states that:

“The Licensee shall ensure that the Licensed Service accords with the proposals set out in the Annex* so as to maintain the character of the Licensed Service throughout the licence period.”

Response

Voice of Africa Radio was given the opportunity to make representations to Ofcom on how it considered it was complying with the licence conditions referred to above. Ofcom did not receive formal representations from Voice of Africa Radio by the deadline given.

On 20 January 2010 we again spoke to a representative at Voice of Africa Radio. At this stage the station representative refuted claims that the station had been off air for a considerable amount of time and instead stated that the station had only ceased broadcasting for a few hours on 22 December 2010.

Decision

¹ The annex sets out the radio station's 'key commitments'. Voice of Africa Radio's key commitments can be found here:

<http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr070.pdf>

Spectrum monitoring of the frequency used by the station indicates that Voice of Africa Radio was broadcasting a 'blank carrier' from some point during the week commencing 11 December 2010 to some point during the week commencing 8 January 2011. This means that the station was not transmitting broadcast content and was effectively jamming the frequency, which contravenes the terms of the licensee's Wireless Telegraphy Act Licence.

By ceasing to broadcast its licensed service Voice of Africa Radio was clearly in breach of the above licence conditions. Ofcom has therefore formally recorded this breach by Voice of Africa Radio.

Provision by a Licensee of its licensed service is the fundamental purpose for which a community radio licence is granted. Ofcom has a range of duties in relation to radio broadcasting, including securing a range and diversity of local radio services which are calculated to appeal to a variety of tastes and interests, and the optimal use of the radio spectrum. These matters find expression in, or are linked to, the licence condition requiring the provision of the specified licensed service. Where a licensed service is not being provided in accordance with the licence, none of the required community radio programme output is provided as set out in the Licensee's key commitments. These include 'social gain' (such as opportunities for discussion) and access to and participation in the service (volunteering opportunities, for example). This is to the potential disadvantage of the target community, and in addition, choice for listeners is reduced.

Finally, it is not an optimal use of the radio spectrum to have allocated frequencies not used for the purpose for which they have been allocated. In London in particular demand for FM frequencies is very high. The last round of Community Radio licensing in London at the end of 2009 attracted over 30 applications, with limited opportunity to award licences due to the lack of suitable FM spectrum availability in London.

Ofcom has formally notified the Licensee that we are considering these licence contraventions for the statutory imposition of a statutory sanction in light of their seriousness.

Breach of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by Voice of Africa Radio (licence number CR070).

In Breach

Breach of Licence Condition

Afan FM, 11 to 16 December 2010 and 18 to 20 December 2010

This finding was originally published on 4 February 2011.

Introduction

Afan FM is a community radio station providing a service for young people in Neath and Port Talbot in Wales and has a particular focus on those aged 11 to 25. It has been on air since April 2007 and the output is presented by volunteers. The licence is held by Neath Port Talbot Broadcasting C.I.C. (Since 7 January 2011 the station has been re-named XS.)

The station's licence includes as an annex a 'key commitments' document which sets out what the radio station is required to broadcast (which is based on the promises made by the station in its original application for the licence).

On 23 December 2010 Ofcom received a complaint indicating that the station was "...playing nothing but music. There is no news and no presenters on air. It has been the case since 11th December. I am hearing the same music and adverts every hour..." Accordingly, Ofcom wrote to the licensee, Neath Port Talbot Broadcasting C.I.C., for its comments on this.

The licensee said that the station's IT network failed on 11 December 2010 "rendering our entire infrastructure unable to function, including back office and all studio facilities. As a result of this we were unable to provide the full service programming as stipulated in our Key Commitments." The licensee was advised by its engineer that "the only feasible outcome was that they should carry out an emergency programme of remedial work designed to restore service to the station at the earliest opportunity."

Ofcom wrote to the licensee again on 10 January 2011 to ask how it felt its output complied with the following two licence conditions relating to key commitments delivery.

1. Condition 2(1) contained in Part 2 of the Schedule to the licence, which states that:

"The Licensee shall provide the Licensed Service specified in the Annex¹ for the licence period."

2. Condition 2(4), contained in Part 2 of the Schedule to the licence, which states that:

"The Licensee shall ensure that the Licensed Service accords with the proposals set out in the Annex* so as to maintain the character of the Licensed Service throughout the licence period."

¹ The annex sets out the radio station's 'key commitments'. Afan FM's key commitments can be found here:

<http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr005.pdf>

Response

The licensee stated that after the IT failure on 11 December it broadcast an automated music service for the next ten days. The station representative said this comprised “a three-hour segment followed by a different two-hour segment and in addition several pre-recorded complete shows were inserted into the schedule”. Afan FM provided a live service for the day on 17 December 2010 to “support our listeners through the worst period of winter weather and snow in over 20 years.” The licensee said that, when the station’s playout system ceased operation, it was felt that the station would “better serve our audience to continue providing a very basic music service in preference to ceasing broadcasting and taking the service off air. Regrettably, we did not advise Ofcom of this situation.”

Decision

In mid-November, prior to the complaint under consideration, Ofcom had agreed to a two-week suspension of the full licensed service for the period 26 December 2010 to 7 January 2011, to enable changes to studio and transmission arrangements to be made.

Given this, we were concerned that we were not informed of the problems that arose and the subsequent failure to provide the service over the period 11 to 20 December (with the exception of 17 December). By ceasing to broadcast its licensed service over the period in question, Neath Port Talbot Broadcasting C.I.C was clearly in breach of the above licence conditions. Ofcom has therefore formally recorded this breach by Neath Port Talbot Broadcasting C.I.C.

Provision by a Licensee of its licensed service is the fundamental purpose for which a community radio licence is granted. Ofcom has a range of duties in relation to radio broadcasting, including securing a range and diversity of local radio services which are calculated to appeal to a variety of tastes and interests, and the optimal use of the radio spectrum. These matters find expression in, or are linked to, the licence condition requiring the provision of the specified licensed service. Where a licensed service is not being provided in accordance with the licence, the required community radio programme output is not provided. These include ‘social gain’ (such as opportunities for discussion) and access to and participation in the service (volunteering opportunities, for example). This is to the potential disadvantage of the target community, and in addition, choice for listeners is reduced.

As made clear above, Ofcom may, in exceptional circumstances, agree to a short temporary change to output on the licensed service. The periods from 11 to 16 December and 18 to 20 December were not subject to such an agreement. Because of the prior agreement to suspend normal output from 26 December to 7 January, listeners in Neath and Port Talbot did not have a full service (including all key commitment promises) for a period of around four weeks.

Ofcom has formally notified the Licensee that we are considering these licence contraventions for the imposition of a statutory sanction in light of their seriousness.

Breach of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by Neath Port Talbot Broadcasting C.I.C (licence number CR005).

Fairness and Privacy Cases

Not Upheld

Complaint by Mr Andrew Evan-Jones on his own behalf and on behalf of ATM Spas and Things

The Ferret, ITV1 Wales, 15 March 2010

Summary: Ofcom has not upheld this complaint of unfair treatment and unwarranted infringement of privacy in the programme as broadcast.

ITV Wales broadcast an edition of its consumer affairs programme *The Ferret* in which a report about a contract for Mr Evan-Jones to supply a pool liner to a client (Ms Corns) was included.

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

In summary, Ofcom found that:

- Mr Evan-Jones' contract with Ms Corns was not portrayed unfairly. In addition, Mr Evan-Jones gave informed consent for his contribution to the programme and was offered an appropriate and timely opportunity to respond to the allegation of wrongdoing which was made about him in the programme as broadcast.
- Mr Evan-Jones did not have a legitimate expectation of privacy with regard to the broadcast of his contribution to the programme.

Introduction

On 15 March 2010, ITV1 Wales broadcast an edition of its consumer affairs programme *The Ferret*. This edition featured a report about a glass fibre spa swimming pool lining, which Mr Evan-Jones had been contracted to fit for a customer, Ms Nichola Corns.

The presenter interviewed Ms Corns at her home where she showed him the empty foundation works for the pool for which she had paid another contractor £20,000. She expressed her dissatisfaction that the pool lining had not been fitted by Mr Evan-Jones as agreed. Specifically, she said that initially Mr Evan-Jones had delayed the date on which the pool lining was to be fitted but provided a reason for this delay. She added that after a further delay, he explained that the pool lining was warped and therefore he would need to order another one but that this could not be done for the original price of £8,000 and would now cost around £15,000 and be made of rubber rather than glass fibre. Ms Corns also said that when she told Mr Evan-Jones that this was not acceptable to her he handed back her deposit cheque and refused to do the job.

Mr Evan-Jones, who owns ATM Spas and Things, the company contracted to fit the spa-swimming pool lining, did not appear in the programme. However, part of the report took place outside his business premises and both his name and that of his business was included in the report. In addition, at the end of the report, the presenter explained that when one of the programme makers had telephoned Mr Evan-Jones for a response to the claims which would be made about him in the

programme, he said: *"I can't deal with this now. My father has recently died. Contact me in a couple of months and I'll talk to you then"*.

Mr Evan-Jones complained to Ofcom that he was treated unfairly in the programme as broadcast.

The Complaint

Mr Evan-Jones' case

In summary, Mr Evan-Jones complained that he and his company were treated unfairly in the programme as broadcast in that:

- a) He did not give informed consent for his contribution (namely his explanation of why he did not feel able to respond to the claims to be made about him) to be included in the programme. Specifically, Mr Evan-Jones complained that when the programme makers telephoned him they did not explain to him any of the following: that he was being asked to contribute to the programme; the nature of the programme; and why he was being asked to contribute.

By way of background Mr Evan-Jones said that he had offered to appear in a future programme to discuss these matters but wasn't sure if the broadcaster would take up this offer.

- b) He and his company were unfairly portrayed in that the report did not provide a true and factual account of the events that had occurred during the course of his contractual relationship with Ms Corns from 2008 onwards.
- c) The omission of the pool manufacturer from the programme resulted in unfairness to Mr Evan-Jones and his company because it furthered the false impression given by the programme that he was the pool manufacturer. In fact his company, ATM Spas and Things, was a pool retailer and installer and therefore the manufacturing fault with the pool was outside his and his company's control.

By way of background Mr Evan-Jones added that a project of this nature required products and materials and labour which were supplied via numerous sources. In this case one of the main items was a fibreglass pool shell. He also said that his skills allowed him to install a pool of this kind but not to manufacture it and that the manufacturer was prepared to make a further pool shell but that the customer was not prepared to wait.

- d) He was not given an appropriate and timely opportunity to respond to the claims made about him in the programme in light of the fact that he received a phone call on either a Thursday or Friday in March 2010 asking him to comment on events which took place in 2008.

In summary Mr Evan-Jones complained that his privacy was unwarrantably infringed in the programme as broadcast in that:

- e) The programme included personal information about him (namely that his father had recently died at the time the programme makers asked for a response to the claims which would be made about him in the programme) without his consent. Mr Evan-Jones added these comments were very personal and given to the programme makers only to explain why he was unable to contribute at that time.

ITV's case

In summary, ITV responded to Mr Evan-Jones' complaint that he was unfairly treated as follows:

- a) ITV responded to the complaint that Mr Evan-Jones did not give informed consent for his contribution to the programme in that when the programme makers called him they did not explain: the fact that he was being asked to contribute; the nature of the programme; or why he was being asked to contribute.

The broadcaster said that Mr Evan-Jones had understated the level of detail discussed in this conversation and had omitted to mention that at the time of the call the programme makers had already contacted him twice in writing to seek his contribution.

ITV said that the first contact was by a letter sent on 9 March 2010 (a copy of which was provided to Ofcom) which set out the nature of the programme, summarized Ms Corns concerns, and sought Mr Evan-Jones' side of the story. The second contact was by an email sent via the 'contact us' link on Mr Evan-Jones' website. ITV said that because messages sent via such links do not leave the author with a copy it did not have one of this email but that it understood the content to be the same as the letter.

The broadcaster said that having received no response to either the letter or email the programme makers rang Mr Evan-Jones on the afternoon of 11 March 2010. It also said that the journalist who made this call told Mr Evan-Jones: who she was; that she was calling about the problems associated with Ms Corns' pool liner; and that she was seeking his comments in order to be able to present both sides of the story. ITV added that in response Mr Evan-Jones told her that his father had recently died; that he did not wish to speak to her at the moment; and that he suggested that she contact him again in a couple of months.

ITV argued that in light of these contacts Mr Evan-Jones would have understood the purpose for which his comment was being sought. It also added that although Mr Evan-Jones had said in his complaint that he was not aware of the nature of the programme he had contacted *The Ferret* in 2006 regarding a proposed story about another Spa company.

- b) In response to this head of complaint ITV argued that the programme did provide a true and factual account of the events which had occurred during the course of Mr Evan-Jones' contractual relationship with Ms Corns. It also said that in the absence of further details of the ways in which Mr Evan-Jones felt the report had failed to do this (other than that specified in and responded to under head c) of the complaint) it could not add anything further.
- c) ITV denied that the report was unfair to Mr Evan-Jones or his company with respect to the omission of the pool manufacturer. It said that Ms Corns had understood that Mr Evan-Jones' company was both supplying and manufacturing the pool but that even if the construction of the pool was subcontracted to another party (Mr Steven Cutler) Ms Corns had contracted solely with Mr Evan-Jones for both construction and installation of the pool liner and therefore he was liable for any defects in the manufacture of the pool liner.

ITV added that its letter to Mr Evan-Jones inviting a response to the report made it clear that Ms Corns believed that Mr Evan-Jones was building the pool in that it included the following statements: "... you told her that you (could) no longer make and deliver the pool for the price agreed" and "... you have told her that you can only make and deliver a pool for a higher quote".

In response to Mr Evan-Jones' complaint that the manufacturer was prepared to make a further pool shell but that the customer was not prepared to wait, ITV said that Ms Corns had told the programme makers that Mr Evan-Jones had told her that he was unable to build another pool shell for the same price but could do so for a significantly higher price and, that she could not agree to that higher price.

- d) In response to Mr Evan-Jones' complaint that he was not given an appropriate and timely opportunity to respond, ITV said that on Tuesday 9 March 2010 he was sent an invitation to respond to the report, sent via both email and post, (a copy of which was provided to Ofcom). It added that when he did not respond a follow-up phone call was made to him on Thursday 11 March 2010.

In summary, ITV responded to Mr Evan-Jones' complaint that his privacy was unwarrantably infringed in the programme as broadcast as follows:

- e) ITV responded to Mr Evan-Jones' complaint that his privacy was infringed in that the programme included the information that his father had recently died at the time he had been asked for a response to the item about him without his consent. It said that Mr Evan-Jones would have understood that the call during which he told one of the programme makers that he did not wish to speak at the moment because his father had recently died was a follow-up to the earlier written requests for a response. It added that given that Mr Evan-Jones had no reservation in giving this information to a reporter seeking his comments on the item the programme makers did not feel that he regarded it as private information and noted that he did not ask that it should not be mentioned in the programme. ITV also said that in light of the fact that this information was given to the reporter by Mr Evan-Jones to explain why he did not wish to take part in the programme the programme makers felt it was only fair to reflect it in the programme to avoid the impression that Mr Evan-Jones had unreasonably declined to contribute.

Decision

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

Where there appears to have been unfairness in the making of the programme, this will only result in a finding of unfairness, if Ofcom finds that it has resulted in unfairness to the complainant in the programme as broadcast.

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

In reaching its decision on Mr Evan-Jones' complaint, Ofcom considered all the relevant material provided by both parties. This included a recording of the

programme as broadcast, a transcript of the report on Mr Evan-Jones and both parties' written submissions (including copies of correspondence between them).

In considering Mr Evan-Jones' complaint of unfair treatment in the programme as broadcast Ofcom took account of Rule 7.1 of the Ofcom Broadcasting Code ("the Code"), which provides that broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes.

- a) Ofcom first considered Mr Evan-Jones' complaint that he did not give informed consent for his contribution to the programme.

In relation to this specific head of complaint Ofcom took account of Practice 7.3 which states that "where a person is invited to make a contribution to a programme (except when the subject matter is trivial or their participation minor) they should normally, at an appropriate stage: be told the nature and purpose of the programme, what the programme is about and be given a clear explanation of why they were asked to contribute and when (if known) and where it is likely to be first broadcast".

Ofcom noted that Mr Evan-Jones' contribution to the programme as broadcast consisted of an explanation, given by the reporter, regarding why Mr Evan-Jones had not responded to the programme makers' requests for his comments on the subject of the report (i.e. Mr Evan-Jones' alleged failure to fulfil his contract to supply and fit a pool liner for a cost £8,000).

The reporter said: "*Well it's nearly 18 months now that Nichola [Ms Corns] has been trying to get Andrew Evan-Jones from Spas & Things here on the Bedwas House Industrial Estate near Caerphilly to fix her pool. We wrote to him over a week ago – no reply. So we phoned him last week and this is what he had to say: 'I can't deal with this right now, my father has recently died. Contact me in a couple of months and I'll talk to you then.'*"

Ofcom recognised that in his complaint Mr Evan-Jones said that when one of the programme makers called him they did not explain: the fact that he was being asked to contribute; the nature of the programme; or why he was being asked to contribute. However, Ofcom also recognised that, in its response to the complaint, the broadcaster said that the journalist who made this telephone call recalled telling Mr Evan-Jones: who she was; that she was calling about the problems associated with Ms Corns' pool liner; and that she was seeking his comments in order to be able to present both sides of the story.

Having noted this disagreement between the parties Ofcom also noted that its role was not to determine what information was or was not given to Mr Evan-Jones' during this telephone conversation but rather to address itself to the issue of whether the programme makers took reasonable steps to ensure that Mr Evan-Jones' gave informed consent for his contribution to the programme.

In this context, Ofcom observed that while ITV acknowledged that there was no written record of this telephone conversation, the programme makers had sent a letter to Mr Evan-Jones (by post and email) two days before making this call. This letter (a copy of which was provided to Ofcom): explained that *The Ferret* was a consumer programme; set out Ms Corns' position with regard to her contract with Mr Evan-Jones for the supply and fitting of a pool liner; and, invited Mr Evan-Jones "to take part in a television interview so that [he could] explain what has happened and what can be done".

Ofcom also noted that Mr Evan-Jones had emailed the makers of *The Ferret* in October 2006 in relation to a feature on another spa pool/hot tub supplier in the region which he understood would be featured in an edition of the programme. Specifically, he had asked the programme to offer any customers of this other supplier who had paid a deposit but not been supplied with a spa a discount on a spa from his company.

Taking account of the factors noted above, it is Ofcom's view that, prior to telling the journalist from *The Ferret* who called him on 11 March 2010 that he did not wish to speak to her at present and that his father had recently died, Mr Evan-Jones would have understood: the nature of the programme; the fact that he was being asked to comment on his contractual relationship with Ms Corns; and the fact that any comment he might make could well be reflected in the programme as broadcast.

In light of these conclusions, Ofcom considers that Mr Evan-Jones gave informed consent for his contribution to the programme and therefore it found no unfairness to Mr Evan-Jones in this respect.

- b) & c) In Ofcom's view the complaints at heads b) and c) that Mr Evan-Jones was unfairly portrayed (because the report did not provide a true and factual account of events and because it omitted to make clear he was only a pool retailer and installer, rather than a pool manufacturer) were linked in that they were both about the portrayal of Mr Evan-Jones' contractual relationship with Ms Corns in the programme. It therefore considered these heads of complaint together.

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

Ofcom noted that in considering these heads of complaint its role was not to establish conclusively from the broadcast programme or the submissions and supporting material, whether the programme provided a true and factual account of events surrounding Mr Evan-Jones' contractual relationship with Ms Corns but rather to address itself to the issue of whether the programme makers took reasonable care in relation to material facts in order to avoid unfairness.

Ofcom observed that the report informed viewers that in the course of having her own home built Ms Corns decided that she wanted to have an indoor spa pool.

The reporter said:

"When planning her spa pool Nichola did some research and found a local company. The owner, Andrew Evan-Jones, said he could make a glass fibre pool liner for £8,000. This was at a discount because Nichola agreed to allow the custom-made pool to be used for sales promotions. She decided to pay her builder separately to make the foundations."

Ofcom also observed that the report, which included extracts of an interview with Ms Corns, showed her explaining that through her research she had found that these pools *"were originally around £25,000"*. She also said at this cost she would have had to have had the pool on the surface rather than sunk into the ground, that Mr Evan-Jones had told her that *"the pools he was making would*

allow them to be in as well as out [of the ground]” and that she had responded “if the cost would be able to be around the same figure for actually him making the pool and us doing the groundworks that would be best all round”.

The reporter explained that: Ms Corns went ahead with the preparation of the room where the pool was to be fitted and that this work cost her £20,000; she visited Spas and Things on a number of occasions “to see progress” and; that “she was delighted when a delivery date was arranged. But then there was a problem”.

Ofcom noted that Ms Corns was shown saying:

“He explained that he wanted to perfect it a little bit more – that he had taken it off the mould and it had one or two scratches. I went straight down, concerned, to take a look at these scratches. There wasn’t much but I felt that he wanted it perfect. I was happy with that and we re-scheduled a new date.”

The reporter said:

“Nichola’s timetable anxiety was eased a little now. But before the pool liner was delivered Nichola received a phone call to say that it would not be arriving.”

Ms Corns explained that when she had visited him Mr Evan-Jones had said:

“it [the pool] was held for two weeks by chains and it was held in an awkward position, although he assured me it would be fine. When he came apparently, which I don’t even know if I can believe, when he came to load the pool onto the crane he realised that the pool had warped”.

The reporter said:

“Nichola was devastated. She then received a further blow when Andrew Evan-Jones said he could no longer make a replacement swim spa pool for the price he had originally quoted”.

Ofcom also noted that the reporter said:

“Nichola says Andrew Evan-Jones told her he could make a spa swim pool but it would now cost a total of £15,000 and it wouldn’t be glass fibre but rubber. Nichola told him she had no money left to cover the extra cost”.

In addition, Ofcom noted that the reporter also explained that Mr Evan-Jones had repaid Ms Corns deposit and that when Ms Corns had subsequently searched for another company to supply a similar pool “all the quotes were double what she had accepted from Andrew Evan-Jones [and that] with no extra budget left Nichola was stuck with an expensive hole in the ground and Andrew Evan-Jones has terminated their professional relationship”.

It was therefore clear to Ofcom that the viewers would have understood the following:

- that Ms Corns had agreed with Mr Evan-Jones that he would supply and fit a fibre glass pool liner in the ground in a room in her new home at a cost of £8,000;

- that she had gone ahead and spent £20,000 on groundworks on this basis;
- that initially the delivery of the pool liner had been delayed;
- that subsequently Mr Evan-Jones had told Ms Corns that the fibre glass pool liner had been damaged while being hung from a chain and therefore it could not be fitted; and
- that he could no longer supply a fibre glass pool liner for £8,000 but rather could only supply a rubber liner at a cost of £15,000.

It was also clear to Ofcom that viewers would have understood that when Ms Corns had told Mr Evan-Jones that this was not acceptable he had repaid her deposit and ended their contractual relationship.

In light of the above observations, Ofcom considered that the programme had claimed that Mr Evan-Jones had failed to fulfil his contract with Ms Corns to supply and fit a fibre glass pool liner at a cost £8,000. In considering whether it was unfair for the programme to make this claim, Ofcom looked at the source of this information.

Ofcom observed that the programme had based the claim on information supplied to it by Ms Corns and the reporter's own inspection of the room in which the pool liner was to be fitted.

In Ofcom's view, Ms Corns was a credible witness regarding, the contract she had made with Mr Evan-Jones and her contacts with him throughout their contractual relationship. Ofcom also observed that the programme makers had at their disposal the reporter's inspection of the room in which preparatory groundworks had taken place at the time of filming. Ofcom considered that it was reasonable for them to rely on this evidence that the pool liner that Mr Evan-Jones had contracted to supply to Ms Corns had not been supplied and fitted on the terms originally agreed between them.

In addition, Ofcom recognised that, as ITV noted in its response, Mr Evan-Jones did not set out any specific aspects of the way which the programme portrayed his contractual relationship with Ms Corns which he regarded as either not true or not factually correct. Nor did Mr Evan-Jones challenge Ms Corns' position with regard to this contractual relationship as set out in the programme as broadcast.

Ofcom also considered the matter of whether Mr Evan-Jones was unfairly portrayed in that the omission of the pool manufacturer from the report furthered the false impression that he was a pool manufacturer when he was only a pool retailer and installer and therefore the manufacturing fault with the pool was outside his control.

In Ofcom's opinion, viewers would not have been aware that Mr Evan-Jones did not manufacture pool liners himself but rather only supplied and fitted them. However, as already noted above, Ofcom believes that they would have understood the central message of the programme to be that Ms Corns had contracted with Mr Evan-Jones to supply and fit a glass fibre pool liner at a cost of £8,000 and that he had had not done so but had instead offered to supply and fit a rubber pool liner at a cost of £15,000. In this context the fact that programme did not include the manufacturer of the fibre glass pool liner, or explain that Mr Evan-Jones did not manufacture pool linings, would not in Ofcom's view have materially affected viewers' understanding of his contractual relationship with Ms Corns.

In addition, as noted in the decision at head a) above, Mr Evan-Jones was offered an opportunity to respond to the report (the matter of whether it was incumbent upon the broadcaster to offer Mr Evan-Jones an opportunity to respond and, if so, whether it did so in an appropriate and timely manner is considered under head d) below). However, in the context of this complaint of unfair portrayal, Ofcom noted that Mr Evan-Jones was informed about the nature of the programme and Ms Corns' position with regard to her contract with him for the supply and fitting of a pool liner. In light of this Ofcom considers that had Mr Evan-Jones wished to do so he could have made clear to the programme makers that he was not a pool manufacturer and made any other additional points he wished to make with regard to his contractual relationship with Ms Corns.

In light of the factors noted above, namely that:

- the programme makers took reasonable care with material facts in relation to this matter by relying on Ms Corns' account of her contractual relationship with Mr Evan-Jones;
- Mr Evan-Jones provided no information to challenge this account;
- viewers' understanding of Mr Evan-Jones contractual relationship with Ms Corns would not have been affected by the fact that they were not made aware that he did not manufacture pool liners; and
- Mr Evan-Jones was given (although he did not avail himself of) an opportunity to explain to the programme makers that he was not a pool manufacturer or to make any other points he wished to about his contractual relationship with Ms Corns.

Ofcom found no unfairness to Mr Evan-Jones in respect of the complaint that he was unfairly portrayed in the programme as broadcast with regard to his contract with Ms Corns.

- d) Ofcom then considered Mr Evan-Jones' complaint that he was not given an appropriate and timely opportunity to respond to the claims made about him in the programme in that he received a phone call on either a Thursday or Friday in March 2010 asking him to comment on events which took place in 2008.

In considering this head of complaint, Ofcom considered Practice 7.11 of the Code which provides that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

As noted above, in Ofcom's view the programme claimed that Mr Evan-Jones failed to fulfil his contract to supply and fit a fibre glass pool liner at an agreed cost of £8,000 and instead offered to supply and fit a rubber pool liner at a cost of £15,000. It considers that this constitutes an allegation of wrongdoing and that therefore it was incumbent upon the programme makers to offer Mr Evan-Jones an appropriate and timely opportunity to respond to the allegation which would be made in the programme.

Ofcom then went on to assess if the broadcaster gave Mr Evan-Jones such an opportunity.

Ofcom observed that as noted in head a) above, Mr Evan-Jones was invited to respond to the claims in the programme about the pool liner he was contracted to supply and fit via a letter sent to him by the programme makers on 9 March 2010.

It again observed that this letter explained that *The Ferret* was a consumer programme; set out Ms Corns' position with regard to her contract with Mr Evan-Jones for the supply and fitting of a pool liner; and, invited Mr Evan-Jones "to take part in a television interview so that [he could] explain what has happened and what can be done". Ofcom also observed that this was followed up by a telephone call made by one of the programme makers to Mr Evan-Jones on 11 March 2010.

In this context, Ofcom noted that in the letter inviting Mr Evan-Jones to respond to the claims which would be made about him the programme makers indicated that Ms Corns had informed them that Mr Evan-Jones had agreed to fit the pool liner for £8,500. However the programme said that she had told them that Mr Evan-Jones had agreed to fit the pool liner for £8,000.

There is clearly a discrepancy between the figures given in the letter inviting Mr Evan-Jones to respond and the programme. However, in Ofcom's view the extent of this discrepancy is not such that it would materially have affected Mr Evan-Jones' understanding of the allegation being made about his contractual relationship with Ms Corns and therefore his ability to respond to it.

Ofcom recognised that Mr Evan-Jones complained that in March 2010 he was asked to respond to claims which concerned matters that had taken place in 2008. Ofcom noted that these matters concerned Mr Evan-Jones' contractual relationship with a former client. Therefore, notwithstanding the passage of time between the events and the request for a response to the claims being made about them Ofcom considered that Mr Evan-Jones' could reasonably be expected either to remember these events and/or have access to a client file relevant to them.

In light of this conclusion, as well as the other factors noted above, Ofcom considers that Mr Evan-Jones was offered a timely and appropriate opportunity to respond to the programme as broadcast.

In light of the fact that Mr Evan-Jones chose not to respond to the allegation of wrongdoing made about him, Ofcom did not go on to consider whether his response was represented fairly, as required by Practice 7.6 of the Code. However, Ofcom did note that, in its response to the complaint, the broadcaster said that the programme included the information that Mr Evan-Jones' had told the programme makers that he could not respond and that his father had recently died in order to avoid unfairness to him by omitting to explain why he chose not to comment, as Practice 7.12 of the Code requires if such an omission would be unfair.

Given its conclusion that Mr Evan-Jones was offered a timely and appropriate opportunity to respond to the programme as broadcast. Ofcom found that he was not treated unfairly in this respect.

- e) Ofcom went on to consider Mr Evan-Jones' complaint that his privacy was unwarrantably infringed in the programme as broadcast in that it included the information that his father had recently died at the time he had been asked for a response without his consent.

In Ofcom's view, the individual's right to privacy has to be balanced against the competing right of the broadcaster to freedom of expression. Neither right as such has precedence over the other and where there is a conflict between the

two, it is necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

This is reflected in how Ofcom applies Rule 8.1 of Ofcom's Broadcasting Code ("the Code") which states that any infringement of privacy in programmes or in connection with obtaining material included in programmes must be warranted. Ofcom also had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

In considering whether or not there had been an unwarranted infringement of Mr Evan-Jones' privacy in the programme as broadcast, Ofcom first assessed the extent to which he had a legitimate expectation of privacy in respect of the material that was broadcast.

Ofcom observed that the programme included the reporter explaining that during a phone call asking for his response Mr Evan-Jones had said: *"I can't deal with this right now, my father has recently died. Contact me in a couple of months and I'll talk to you then."*

The information that a person's close relation has recently died may give rise to a legitimate expectation of privacy.

However, in the particular circumstances of this case, Ofcom considers that Mr Evan-Jones did not have a legitimate expectation of privacy due to the way in which this information was given to the programme maker.

As noted in the decision at head a) above Ofcom concluded that Mr Evan-Jones gave informed consent for his contribution to the programme (namely his explanation of why he did not feel able to respond to the claims to be made about him) because prior to telling the programme maker that he did not wish to speak to her at present and that his father had recently died, he would have understood: the nature of the programme; the fact that he was being asked to comment on his contractual relationship with Ms Corns; and the fact that any comment he might make could well be reflected in the programme as broadcast.

Taking into account its conclusion that Mr Evan-Jones gave informed consent for his contribution to the programme, Ofcom found that his privacy was not unwarrantably infringed by the inclusion of this contribution in the programme as broadcast.

Accordingly, Ofcom has not upheld Mr Evan-Jones' complaint of unfair treatment and unwarranted infringement of privacy in the broadcast of the programme.

Not Upheld

Complaint by Ms Claudine Hope on behalf of Mr Joe Power

Derren Brown Investigates: The Man Who Contacts the Dead, Channel 4, 10 May 2010

Summary: Ofcom has not upheld this complaint of unfair treatment made by Mr Joe Power.

Derren Brown investigated claims made by Mr Power, a psychic medium from Liverpool, that he was able to communicate with the dead. The programme included footage of Mr Power conducting two one-on-one readings (with Wanda and Roz) and a session with several actors from *Hollyoaks*.

In summary, Ofcom found that:

- Mr Power was provided with sufficient information about the programme before participating in it.
- Material facts concerning the Wanda, *Hollyoaks* and Roz readings were presented fairly.
- Testimony given by Lee, Mr Brown's driver, about the car that belonged to one of the *Hollyoaks* actors, and Mr Power's written statement were edited fairly.

Introduction

On 10 May 2010, Channel 4 broadcast an edition of *Derren Brown Investigates*, a three part series that investigated people who claimed to have paranormal powers. In this programme, *The Man Who Contacts the Dead*, Mr Brown explored the claim made by Mr Joe Power, a psychic medium from Liverpool, that he was able to communicate with the dead. Mr Brown spent five days with Mr Power, footage of which was included in the programme.

The programme included footage of Mr Power conducting two one-on-one readings (with Wanda and Roz) and a session with several actors from *Hollyoaks*.

The Wanda Reading

The first reading was with Wanda, who was chosen by the production team from a list of people who had contacted Mr Power's company. Before the reading began, Wanda confirmed to Mr Brown that she had not disclosed any information to Mr Power in advance. Mr Power correctly identified several facts, such as that Wanda's mother and father-in-law were deceased. Mr Brown described the reading as "*fantastic*" and said that either the reading was proof of Mr Power's abilities or that he had carried out research on Wanda.

At the end of the programme, the narrator said that a few weeks later it had transpired that Wanda lived next door to Mr Power's sister and Mr Power's response that he was surprised to learn that Wanda lived next door to his sister, was read out.

The Hollyoaks Readings

Mr Power attended the studios of *Hollyoaks* to perform “aura” readings, in which he would tap into a person’s energy field to reveal insights into them. During the readings Mr Power told Mr Chris Fountain that he had legal problems with a vehicle (Mr Fountain subsequently revealed he had been issued a parking ticket that morning) and told Miss Claire Cooper that she drove a Mini.

After the session Mr Brown interviewed Lee, his driver, who said he saw Mr Power in the car park while Ms Cooper parked her car before his reading with her. At the end of the programme, Mr Brown put this allegation to Mr Power, who responded by saying, “*You are totally clutching at straws*”.

The Roz Reading

Mr Brown said that in order to test Mr Power properly, the programme makers had independently arranged a reading. The programme makers placed an advertisement in a local newspaper and picked respondent Roz, who was asked to use a fictitious name (“Pam”) and address. Before Mr Power arrived, Mr Brown spoke with Roz in her home. During the reading it appeared that Mr Power was unable to hit upon as many facts as he had done in Wanda’s case, and afterwards Roz said that she was “*disappointed*” in the outcome of the reading. Mr Power expressed annoyance that Mr Brown had spoken with Roz beforehand.

Mr Power complained to Ofcom on his behalf that he was treated unfairly in the programme as broadcast.

The Complaint

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

- a) He was misled as to the nature and purpose of the programme in that he was wrongly told it would be fair and balanced and that it would merely follow him as he went about his work.
- b) The programme makers presented, disregarded or omitted material facts in a way that was unfair to Mr Power. In particular:

The Wanda Reading

- Mr Power had informed the programme makers as he arrived at Wanda’s house that she lived next door to his sister and that he had already done several readings on her street.
- Mr Power had no prior contact with Wanda. The programme makers chose her from a list of people who had recently contacted Mr Power to arrange a reading.

The Hollyoaks Readings

- The programme makers had no proof that Mr Power saw Ms Cooper in her car outside the studios. Off camera Lee had admitted he was unsure about what he saw, but on camera said that he was sure.

- At no point during the time Mr Power and Lee were outside did any car pull alongside in the car park and Mr Power did not see a Mini pull into the car park or drive past him.

The Roz Reading

- The programme makers set up the session which led to an unfair reading. The programme makers asked Roz to use a different name and to switch address. The programme makers unfairly told Roz that Mr Power had got word of her address before the reading, when he had not.
- c) The programme was unfairly edited, for example:
- Lee's less confident account was edited out of the programme.
 - Mr Power's written statement was edited so as to leave out the passage in which he said that he had raised the issue of Wanda living next door to his sister on the day of recording.

Channel 4's statement

- a) Channel 4 said that the programme makers approached Mr Power in November 2008, with a view to him being the central contributor to the programme. It was explained to him that the programme would involve a critical examination of his work and Mr Power made it clear that he understood this. He would not have had the impression that he was merely being followed as he went about his work.

Channel 4 said that the nature and purpose of the programme was explained to Mr Power on a number of occasions and that he acknowledged that. At the start of production Mr Power conducted a filmed interview with the programme's director, who remarked that Mr Brown was a sceptic. Channel 4 said that the programme description at the top of the contributor release form signed by Mr Power stated clearly that the programme would "explore" the unexplained and that Mr Brown would observe the central subject while "trying to understand more about the phenomenon" but that he would also look at it from a "sceptical perspective".

Channel 4 also said that Mr Brown's sceptical position in relation to paranormal phenomena was well established and that it was apparent that Mr Power was aware of this.

- b) Channel 4 said that the programme included footage of various readings carried out by Mr Power. In some of them, Mr Power appeared to be successful. Channel 4 said that a "fair and balanced" programme may not consist entirely of segments which portrayed the programme subject in a positive light. It said that, while the programme did show unsuccessful readings, which portrayed Mr Power less favourably, he was provided with an opportunity to respond to any substantive allegations made within the programme and his responses were fairly reflected within the broadcast programme.

The Wanda Reading

Channel 4 said that Mr Power had not informed the programme makers that his sister lived next door to Wanda prior to him carrying out a reading with her, but that the information only emerged after filming when the programme makers

carried out various background searches to ensure the thoroughness of their journalism. It said that, in the interests of fairness, it asked Mr Power to clarify if his sister lived next door to Wanda. In response Mr Power said he had told the director that his sister lived next door to Wanda whilst waiting to film the reading with her. Channel 4 said that this was the first time the programme makers had notice of such an assertion and that the director said that Mr Power had not told him this.

Channel 4 also said that, the untransmitted footage of the Wanda reading showed that at no point from his arrival until his departure did Mr Power mention to Mr Brown, to Wanda or to anybody else in the house, that his sister lived next door. Channel 4 provided Ofcom with internal correspondence, which it said provided a strong indication that the programme makers had no idea that Wanda lived next door to Mr Power's sister until after the reading took place.

Channel 4 said that, in light of these discoveries, excerpts of Mr Power's response were included in the programme, for example a comment that "*Joe said that he had been surprised to find out that Wanda lived next door to his sister*".

In relation to Mr Power's complaint that the programme makers selected Wanda from a list of people who had recently contacted him, Channel 4 said that it was made clear in the programme that the programme makers had done this.

The Hollyoaks Reading

Channel 4 said that the programme did not claim to have any proof that Mr Power saw Ms Cooper in her mini in the car park, save for Lee's testimony that Mr Power was in the car park when Ms Cooper pulled up in her Mini. Lee had told the production team what he had seen without prompting, he freely disclosed this information on camera and did not later retract what he said on camera.

Channel 4 said that the programme did not definitively assert that Mr Power saw Ms Cooper in her Mini in the car park, but that, as Lee's testimony was included in the programme, it was put to Mr Power in the final interview. Mr Power denied having seen Ms Cooper in her car and his denial was included in the programme. Channel 4 said that the Lee's response to Mr Power, namely that he could not be certain that he saw Mr Power see Ms Cooper in the Mini, was consistent with the claim made in the programme.

The Roz Reading

Channel 4 said that the programme makers did not do anything which would have had a material effect upon a genuine reading. In order to ensure that Mr Power was treated fairly a significant section of the programme was dedicated to Mr Power's right to reply following this reading.

Channel 4 said that the reason for changing Roz's name and address was in order to remove any suggestion that Mr Power might have found out details of her through prior research and that this was entirely in keeping with the fair and balanced approach of the programme.

- c) As regards the complaint that the programme was unfairly edited, Channel 4 reiterated its response to the complaint at head b) above about the circumstances surrounding Lee's testimony and Mr Power's statement about his sister living next door to Wanda.

Mr Power's comments

- a) Mr Power said that he was told that this documentary would be different from what Mr Brown normally filmed and that it was a serious documentary in which Mr Brown would gain an insight into Mr Power's life as a psychic medium. He said that at no point was it made clear to that the filming was to involve a critical examination.

Mr Power said that the interview in which he noted Mr Brown was a sceptic was no more than a conversation in which he spoke about Mr Brown and his show. Mr Power said that before signing the contributor release form he questioned the term "explore and investigate" and was told that this was "just for legal reasons". Mr Power said he was aware of Mr Brown being a sceptic but did not think the programme would be an investigation into his work. He said that he thought the programme was called "Derren Brown Unexplained" not "Investigates".

- b) Mr Power said that any reading which may have been viewed as in his favour was pulled apart by Mr Brown telling viewers that Mr Power used techniques such as 'cold reading'.

The Wanda Reading

Mr Power repeated that he told the director about Wanda living next door to his sister whilst they were waiting to do the reading. Mr Power said that he told the only person that would need to know this, namely the director, who had told him to carry on.

Mr Power said that it was not fair for the programme makers to edit out the passage in his statement where he stated that he informed the director about his sister, as this left viewers with a false impression of him and of what happened on the day.

The Hollyoaks Reading

Mr Power stated that Lee's testimony included in the programme was an assertion, and not the less confident statement he made off-air, to which Mr Power responded. Mr Power said that Lee stated it was Mr Brown who saw the Mini in the car park, not Mr Power.

The Roz Reading

Mr Power said that he was not told that the reading was to be a test or that the name or address may be changed. He said that such practice was not fair and balanced and not in keeping with how he usually worked. He said that it would have been impossible for him to have done any research on Roz beforehand because the programme makers had arranged the reading, not him.

- c) Mr Power said that all of his statement was relevant, especially the part in which he said he told the director that his sister lived next to Wanda. Mr Power said that he did not know Wanda, did not have any information from Wanda or his sister prior to the reading, did not speak to his sister on the day of filming and had never had a conversation with his sister about her neighbour.

Channel 4's comments

- a) Channel 4 said that Mr Power first received a draft release form on 11 December 2008, a month before filming took place. The original draft included both the full programme description and the reference to testing and, after negotiation of a draft contract, the term "The Company shall be fair and balanced in its portrayal of you and your activities in the Programme" was agreed between the parties. Channel 4 said that the release form was signed in mid-December following a period of considered negotiation.

As regards the interview in which Mr Power discussed Mr Brown's scepticism, Channel 4 said that Mr Power was responding to general questions about what to expect throughout the week of filming and that it was clear from the interview that he understood that the programme would include a sceptical examination of his work.

- b) The Wanda Reading

Channel 4 repeated its assertion that Mr Power did not tell the director that his sister lived next to Wanda.

The Hollyoaks Reading

Channel 4 said that the programme did not assert that Mr Power and Ms Cooper were in the car park at the same time. It said that the programme included Lee's testimony and Mr Power was given an opportunity to respond. Channel 4 said that Lee stood by his account of what he saw.

The Roz Reading

Channel 4 said that Roz's name and address were changed merely as a precaution to rule out the possibility that Mr Power he could have obtained information about her. It said that, apart from the change of name and address, the conditions were exactly the same as for any other reading. Channel 4 said that, given that Mr Power regularly carried out readings at theatres where he did not know the subject's name or address, there was no basis for his claim that this reading was unfair.

- c) As regards the complaint that the programme unfairly edited Mr Power's statement about the Wanda reading, Channel 4 said it was under no obligation to include his statement in its entirety. The discovery that Mr Power's sister lived next door to Wanda was noted at the end of the programme and the relevant part of Mr Power's response that he did not know about this in advance was also appropriately included at the end of the programme.

Decision

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

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard, in all cases, to the

principles under which regulatory activities should be transparent, accountable, proportionate and consistent and targeted only at cases in which action is needed.

In reaching its decision, Ofcom considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript, both parties' written submissions and their supporting materials.

When considering complaints of unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of the Code. Ofcom had regard to Rule 7.1 when reaching its decisions on the individual heads of complaint detailed below.

- a) Ofcom first considered the complaint that Mr Power was misled as to the nature and purpose of the programme in that he was wrongly told it would be fair and balanced and that it would merely follow him as he went about his work.

In considering this part of the complaint, Ofcom took account of Practice 7.3 of the Code which states that in order for potential contributors to a programme to be able to make an informed decision about whether to take part, they should be given sufficient information about: the programme's nature and purpose; their likely contribution; any changes to the programme that might affect their decision to contribute; and the contractual rights and obligations of both parties.

Ofcom cannot adjudicate as to the meaning of the term "fair and balanced" or how it was intended to manifest itself in the programme, but can only determine whether the complainant was treated fairly as required by the Code. When considering complaints about informed consent, Ofcom looks at the information given to the contributor prior to the programme and assess it against the nature and content of the programme itself.

Ofcom examined what information Mr Power had before he agreed to take part in the programme and then considered whether this accorded with the nature and purpose of the programme as broadcast. Ofcom noted that Mr Power had several sources of information about the nature and purpose of the programme namely a contributor release form, dialogue with the programme makers pre-production and what he knew of Mr Brown already.

Contributor Release Form

Ofcom noted that the programme description on the form included the following:

"The idea [...] is that Derren Brown shall spend time with the key subject of the documentary over several days, gaining an insight into the subject matter as Derren observes and talks to the central subject of the film as he/she does about his/her work. Derren is coming to the project with an open and objective outlook, trying to understand more about the phenomenon but also considering it from a sceptical perspective".

Ofcom considered that this description would have informed Mr Power that Mr Brown was to follow him as he went about his work and that the programme would have a sceptical element. In Ofcom's view it was likely that, if a programme was described to a potential contributor as having a sceptical perspective whilst viewing paranormal phenomena, that contributor should expect to be questioned, if not, challenged. Ofcom also noted that Mr Power had sight of the programme

description a month before filming began and signed the release form after negotiations had taken place.

Dialogue with the programme makers

Ofcom noted that there were extensive talks between the programme makers and Mr Power prior to the programme being made. Channel 4 provided Ofcom with a copy of the recording of one of the meetings and Ofcom noted that, when Mr Power was asked about what he intended to show Mr Brown during the week, he said:

“I’m looking forward to his discussions, his battles, his psychological explanations...I’m not; I’m not planning to show Derren nothing. I’m expecting, I’m hoping he’s gonna come around have a look to see what I’m doing erm obviously he’s gonna have an explanation to what I do. Okay I, I, I’m gonna let him enjoy it, I’m going enjoy his company yeah. I mean you know I’m looking forward to a discussion with erm maybe a few fireworks with him and maybe a nice glass of wine and champagne at the end of the week yeah. Erm, Derren will be what he does in life, he won’t change my opinion and I won’t change his opinion. That’s not being psychic, that’s being common sense...Derren does what he does, he’s good. I do what I do. I, I can’t see why two people can’t come and spend time with each other and have disagreements or agreements of some sort”.

Ofcom considered that these comments indicated that Mr Power was aware that Mr Brown was due to observe him performing and that there would be a potential clash of opinion. In particular Ofcom noted that Mr Power anticipated “fireworks” with Mr Brown and acknowledged that they had conflicting opinions.

Mr Power’s knowledge of Mr Brown

Ofcom noted that, in the same recorded interview, Mr Power made a number of comments about Mr Brown’s position on the paranormal, including the following remarks:

“...there’s no getting away from Derren is that he’s a pure sceptic...why can’t a sceptic meet a genuine medium?...Derren is a well known sceptic”.

Ofcom considered that Mr Power clearly understood that Mr Brown was a sceptic.

Taking all of the above factors into account, Ofcom concluded that Mr Power’s understanding was that the programme was to be a documentary, presented by Mr Brown, which would observe Mr Power performing and that it would involve critical questioning of his work given the programme’s “sceptical” description and being presented by a “well known sceptic”.

Ofcom then considered whether the programme as broadcast accorded with what had been represented to Mr Power, namely an observation of his work from a sceptical perspective.

Ofcom examined the first reading included in the programme, the Wanda reading and paid particular attention to how Mr Brown approached the reading. Ofcom noted that Mr Brown followed Mr Power performing a reading for Wanda, who had contacted Mr Power beforehand in order to arrange the reading. As they entered Wanda’s home, Mr Power left the room. Whilst he was away, Mr Brown

asked Wanda whether she had previously given any information to Mr Power and she said she had not. Mr Power then re-entered the room and carried out the reading. Mr Brown did not participate in the reading. Once it had ended, Mr Brown asked Wanda how she was feeling and said that the reading was “*fantastic*”. Mr Brown then interviewed Mr Power and said:

“So I suppose what it comes down to for me is that’s either proof of your abilities and what you do is amazing and fantastic, or you know you’ve got someone to do research on her and it’s horrible”.

Ofcom noted that Mr Brown observed the reading and asked whether there were any other possibilities as to how Mr Power may have come across the information that he produced. He considered the possibility that Mr Power’s paranormal talent was authentic and the possibility that it was not. Ofcom took the view that this approach was consistent with the representations made to Mr Power pre-production, as Mr Brown observed Mr Power’s work and posed sceptical questions both to Wanda and to Mr Power.

Ofcom considered that, with the exception of one of the *Hollyoaks* readings, in which Mr Brown conducted some of the reading (after being invited to do so by Mr Power), the remainder of the programme continued in a similar format. In Ofcom’s view, this format accorded with the information provided about the proposed programme to Mr Power.

Taking all of the above factors into account Ofcom did not consider that Mr Power was misled as to the nature and purpose of the programme.

Ofcom therefore found no unfairness in this regard.

- b) Ofcom then considered whether the programme had presented, disregarded or omitted facts in a way that was unfair to Mr Power.

In considering this part of the complaint, Ofcom had regard to Practice 7.9 of the Code which makes clear that when broadcasting a factual programme broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

The Wanda Reading

Ofcom first noted that there was a dispute of fact between the parties as regards whether Mr Power had told the programme makers that Wanda lived next door to his sister before he carried out the reading with her. Ofcom is not a fact finding tribunal and is therefore unable to adjudicate as to whether or not such a conversation took place. Ofcom will examine the issue of whether Mr Power’s written response on this point was edited fairly in head c) below.

Ofcom considered how the programme presented facts regarding how Wanda was selected to have her reading included in the programme. Ofcom noted that the programme described this as follows:

“So Joe’s manager put forward several suggestions of new clients who had contacted her. From them we chose 46 year old Wanda for Joe to give a reading to”.

Ofcom took the view that this was an accurate reflection of the selection process which matched the description and accorded with the correspondence provided by the complainant. Ofcom therefore took the view that this was a fair representation.

The Hollyoaks Reading

In considering how the programme makers presented the allegation that Mr Power saw Ms Cooper in her car outside the studios without proof, Ofcom first examined whether such an assertion was made in the programme itself.

Ofcom noted that Lee's testimony was included in the programme as follows:

"Well when he was outside with his car, Claire actually drove past in her Mini Cooper and pulled up alongside him, got out of the car and walked past into the building".

Mr Brown then said:

"Now of course Joe may not have seen the mini, so I shall have to ask him".

Ofcom considered that there was no suggestion in the programme that there was any further evidence of Mr Power seeing Ms Cooper in her Mini.

As regards the assertion put forward by Mr Power in his complaint that he "did not see a Mini pull into the car park or drive past him", Ofcom noted that Mr Power was provided with an opportunity to respond to Lee's testimony and said:

"I'm quite disgusted in that you've come to stoop this low which is totally fabrication on your behalf...I've never ever seen her".

Ofcom took the view that Mr Power's response included in the programme was clear, unequivocal and fairly represented his response.

Ofcom concluded that the programme did not assert that it had any proof beyond Lee's testimony and that Mr Power's assertion that he did not see a Mini in the car park was fairly included in the programme.

The Roz Reading

Ofcom first examined whether material facts pertaining to how the programme makers had organised Roz's selection and reading were presented fairly.

Ofcom noted that Roz was selected after she responded to a local newspaper advertisement placed by the programme makers and that she was asked to change her name to Pam and that her address was changed.

Ofcom noted the following introduction to this segment:

"This time I wanted to arrange a reading which was independently organised by us. A woman called Roz answered an ad I put in the local paper and agreed to be read by Joe...I've asked her to use a fictitious name. And an address other than her own".

Ofcom took the view that the context within which the Roz reading was carried out was presented fairly and included all material facts.

Ofcom noted that Mr Power stated, when asked about the reading:

"I'm quite happy, your mum's come through, she's talked about the five kids that are good enough for me".

Further, Mr Power's response to how the Roz reading was carried out by the programme makers, specifically the fact that Mr Brown spoke to Roz privately before Mr Power had arrived, was included in the programme. Mr Power, after the reading, said:

"You shouldn't have gone into the house, it was corruption".

Ofcom took the view that it would have been clear to viewers that Mr Power was unhappy with the way in which the programme makers had organised the session and that he considered that it affected the reading.

Taking all of the above factors into account, Ofcom found that material facts regarding all three readings were presented fairly.

- c) Ofcom then considered the complaint that the programme was unfairly edited.

In considering this part of the complaint Ofcom took account of Practices 7.6 which states that when a programme is edited, contributions should be represented fairly.

Lee's testimony

Ofcom first examined whether a less confident account given by Lee regarding him seeing Mr Power in the car park next to a mini was unfairly edited out of the programme. Ofcom compared what Lee had said in the programme to his account, given during Mr Power's final interview.

In the programme, Lee said that:

"Well when he was outside with his car, Claire actually drove past in her Mini Cooper and pulled up alongside him, got out of the car and walked past into the building".

Mr Brown then said:

"Now of course Joe may not have seen the Mini, so I shall have to ask him".

Ofcom therefore noted that the programme clearly represented what Lee claimed to have seen, and that the narration made clear that Lee was not asserting that Mr Power had seen the Mini.

Ofcom viewed untransmitted footage and noted that, when Lee was confronted by Mr Power about what he claimed to have seen in the car park, he said:

"Erm Claire [Cooper] drives past in her mini, pulls up, gets out and walks into the building. I don't know if you seen her but that happened while you were there".

Ofcom considered that this account, although expressed differently, amounted to the same assertion as the one included in the programme, namely that Mr Power and Ms Cooper, in her Mini, were both in the car park at the same time but that Lee was unsure as to whether Mr Power saw Ms Cooper in her car.

As noted in decision head b) above, Mr Power was given an opportunity to respond to this issue and his response was included in the programme. Ofcom therefore concluded that the conflicting accounts were appropriately presented in the programme. In such circumstances, it was not incumbent on the programme makers to include Lee's second account.

Mr Power's written statement

Ofcom then turned to whether Mr Power's written statement regarding the Wanda reading was unfairly edited, in particular whether his assertion that he had told the programme makers before entering Wanda's house that his sister lived next door and that he had concerns about this.

Ofcom considered that the crux of the allegation was that Mr Power had information about Wanda before her reading and that he dishonestly used that information during the reading to give the false impression that he was psychic.

Ofcom noted that Mr Power's response in the programme refuted this allegation by stating:

"Joe said that he had been surprised to find out that Wanda lived next door to his sister and he went onto say that since he's read for many people in that particular area of Liverpool and that particular street, he put it down to no more than a mere coincidence".

Ofcom took the view that implicit in the surprise expressed by Mr Power was the assertion that he was not aware that Wanda lived next door to his sister until he arrived at Wanda's house for her reading and that, therefore, it would not have been possible for him to acquire any information about her prior to the reading.

Ofcom concluded that Mr Power's position was adequately reflected in the programme, and that the programme makers did not need to broadcast the entirety of Mr Power's statement to achieve fairness.

Ofcom therefore found no unfairness in this regard.

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

Other Programmes Not in Breach

Up to 17 January 2011

Programme	Transmission Date	Broadcaster	Categories	Number of complaints
118 118's sponsorship of ITV Movies	03/01/2011	ITV1	Crime	1
118 118's sponsorship of ITV Movies	27/12/2010	ITV2	Crime	1
118 118's sponsorship of ITV Movies	27/12/2010	ITV2	Generally accepted standards	1
118 118's sponsorship of ITV Movies	27/12/2010	ITV2	Crime	1
118 118's sponsorship of ITV Movies	28/12/2010	ITV3	Generally accepted standards	1
118 118's sponsorship of ITV Movies	31/12/2010	ITV3	Crime	1
118 118's sponsorship of ITV Movies	various	ITV4	Crime	1
3 Minute Wonder	04/01/2011	Channel 4	Race discrimination/offence	1
4thought.tv	29/12/2010	Channel 4	Due impartiality/bias	2
4thought.tv	06/01/2011	Channel 4	Race discrimination/offence	1
50 Greatest Plastic Surgery Shockers	07/12/2010	E4	Sexual material	1
7/7 The Ripple Effect	30/11/2010	Showcase	Due impartiality/bias	1
8 Out of 10 Cats Christmas Special	23/12/2010	Channel 4	Generally accepted standards	5
A Comedy Roast	05/01/2011	Channel 4	Generally accepted standards	1
A Room with a View	31/12/2010	More4	Nudity	3
A Touch of Frost	07/01/2011	ITV3	COSTA	1
Above Suspicion	03/01/2011	ITV1	Offensive language	1
Above Suspicion	03/01/2011	ITV1	Drugs, smoking, solvents or alcohol	1
Accidental Farmer	21/12/2010	BBC 1	Drugs, smoking, solvents or alcohol	1
Accused	22/11/2010	BBC 1	Generally accepted standards	21
Adrian Durham	02/12/2010	Talksport	Race discrimination/offence	95
Alan Carr: Chatty Man	26/12/2010	Channel 4	Disability discrimination/offence	1
Andre Peach Show	03/12/2010	BBC Radio Berkshire	Generally accepted standards	1
Angus, Thongs and Perfect Snogging	09/01/2011	Channel 4	Sexual material	1
Austin Powers: The Spy Who Shagged Me	03/01/2011	Five	Offensive language	2
Batman: Brave and the Bold	04/01/2010	CN Too	Suicide and self harm	1
BBC News	28/12/2010	BBC 1	Sexual orientation discrimination/offence	115
BBC News	13/01/2011	BBC 1	Generally accepted standards	1
BBC News	22/12/2010	BBC News Channel	Generally accepted standards	2

BBC News	08/01/2011	BBC News Channel	Race discrimination/offence	1
BBC News	01/01/2011	BBC Radio 4	Generally accepted standards	1
BBC News	12/01/2011	BBC Radio 4	Generally accepted standards	1
BBC News	08/01/2011	BBC Radio 5 Live	Race discrimination/offence	1
Being Erica	31/12/2010	E4	Sexual material	1
Better off Ted	28/12/2010	FX	Race discrimination/offence	1
Big Fat Quiz of the Year 2010	03/01/2011	Channel 4	Animal welfare	1
Big Fat Quiz of the Year 2010	03/01/2011	Channel 4	Generally accepted standards	2
Big George	22/11/2010	BBC Radio London	Race discrimination/offence	1
Breakfast	06/01/2011	BBC 1	Race discrimination/offence	2
Breakfast	11/01/2011	BBC 1	Generally accepted standards	1
Britain's Fattest Man (trailer)	various	Channel 4	Generally accepted standards	3
British Comedy Awards: The Nominations	15/01/2011	Channel 4	Generally accepted standards	1
Calendar News	21/12/2010	ITV1 Yorkshire	Generally accepted standards	1
Cash in the Celebrity Attic	04/01/2011	BBC 1	Offensive language	1
Celebrity Come Dine with Me	10/01/2011	Channel 4	Sexual material	1
Channel 4 Comedy Gala	31/12/2010	Channel 4	Offensive language	4
Channel 4 News	04/01/2011	Channel 4	Due accuracy	1
Channel promotion	14/12/2010	Dave	Religious/Beliefs discrimination/offence	1
Come Dine with Me	29/12/2010	Channel 4	Sexual material	1
Come Fly with Me	01/01/2011	BBC 1	Generally accepted standards	2
Come Fly with Me	01/01/2011	BBC 1	Race discrimination/offence	1
Come Fly with Me	06/01/2011	BBC 1	Disability discrimination/offence	1
Come Fly with Me	06/01/2011	BBC 1	Generally accepted standards	1
Come Fly with Me	06/01/2011	BBC 1	Sexual orientation discrimination/offence	1
Come Fly with Me	06/01/2011	BBC 1	Generally accepted standards	13
Come Fly with Me	13/01/2011	BBC 1	Race discrimination/offence	1
Come Fly with Me	25/12/2010	BBC 1	Race discrimination/offence	5
Comedy Lab	15/01/2011	Channel 4	Race discrimination/offence	1
Coronation Street	24/12/2010	ITV1	Religious/Beliefs discrimination/offence	2
Coronation Street	24/12/2010	ITV1	Offensive language	1
Coronation Street	25/12/2010	ITV1	Generally accepted standards	4
Coronation Street	30/12/2010	ITV1	Sexual material	5
Coronation Street	31/12/2010	ITV1	Generally accepted standards	1
Coronation Street	31/12/2010	ITV1	Sexual material	14

Coronation Street	03/01/2011	ITV1	Generally accepted standards	1
Coronation Street	03/01/2011	ITV1	Sexual orientation discrimination/offence	1
Coronation Street	03/01/2011	ITV1	Sexual material	68
Coronation Street	06/01/2011	ITV1	Generally accepted standards	1
Coronation Street	07/01/2011	ITV1	Generally accepted standards	2
Coronation Street	10/01/2011	ITV1	Generally accepted standards	1
Coronation Street Omnibus	01/01/2011	ITV1	Sexual material	1
Coronation Street Omnibus	08/01/2011	ITV1	Sexual material	1
Countdown	11/01/2011	Channel 4	Generally accepted standards	1
Cowboy Builders	04/01/2011	Five	Undue prominence	1
Dancing on Ice	09/01/2011	ITV1	Voting	2
Dancing on Ice	09/01/2011	ITV1	Drugs, smoking, solvents or alcohol	1
Dancing on Ice	16/01/2011	ITV1	Offensive language	1
Dancing on Ice	16/01/2011	ITV1	Age discrimination/offence	3
Dancing on Ice	16/01/2011	ITV1	Generally accepted standards	2
Danny Kelly	08/01/2011	Talksport	Generally accepted standards	138
Darts World Championship	03/01/2011	Sky Sports 1	Generally accepted standards	1
David Walliams' Awfully Good	04/01/2011	Channel 4	Race discrimination/offence	1
Daybreak	12/01/2011	ITV1	Generally accepted standards	1
Daybreak	14/01/2011	ITV1	Due accuracy	1
Daybreak	14/01/2011	ITV1	Generally accepted standards	3
Derren Brown: Behind the Mischief	08/01/2011	Channel 4	Generally accepted standards	1
Derren Brown: Viewers' Choice	08/01/2011	Channel 4	Generally accepted standards	1
DFS's sponsorship of Christmas on Five	various	Five	Sponsorship credits	1
DFS's sponsorship of Christmas on ITV	21/12/2010	ITV1	Harm	2
Dispatches	09/01/2011	Channel 4	Generally accepted standards	2
DIY SOS	06/01/2011	BBC 1	Generally accepted standards	1
Doc Martin	11/01/2011	ITV1	Sexual material	1
Doc Martin	13/01/2011	ITV1	Offensive language	1
Doctor Who	25/12/2010	BBC 1	Flashing images/risk to viewers who have PSE	1
Downton Abbey	01/01/2011	ITV1	Generally accepted standards	1
Drive with Rizwan Khan	21/12/2010	Asian Sound Radio	Competitions	1
Drivetime	05/01/2011	Talksport	Due impartiality/bias	1
EastEnders	25/12/2010	BBC 1	Suicide and self harm	4

EastEnders	27/12/2010	BBC 1	Suicide and self harm	5
EastEnders	13/01/2011	BBC 1	Generally accepted standards	1
Edinburgh Comedy Festival Live	06/01/2011	BBC 3	Generally accepted standards	1
Emmerdale	06/01/2011	ITV1	Generally accepted standards	31
Emmerdale	12/01/2011	ITV1	Harm	1
Emmerdale	13/01/2011	ITV1	Crime	1
FA Cup Football	08/01/2011	ESPN	Harm	1
FA Cup Highlights	08/01/2011	ITV1	Generally accepted standards	2
FA Cup Live	09/01/2011	ITV1	Gender discrimination/offence	1
Famous and Fearless	05/01/2011	Channel 4	Generally accepted standards	1
Famous and Fearless	06/01/2011	Channel 4	Crime	1
Famous and Fearless	07/01/2011	Channel 4	Harm	1
Famous and Fearless	05/01/2011	Channel 4	Materially misleading	2
Famous and Fearless (trailer)	various	Channel 4	Materially misleading	1
Fighting Talk	08/01/2011	BBC Radio 5 Live	Generally accepted standards	1
Film 4 promotion	06/01/2011	E4	Religious/Beliefs discrimination/offence	1
Five News	06/01/2011	Five	Due impartiality/bias	1
Forgetting Sarah Marshall	01/01/2011	ITV1	Nudity	1
Forgetting Sarah Marshall	01/01/2011	ITV1	Generally accepted standards	1
Glee	31/12/2010	Channel 4	Generally accepted standards	1
Gordon's Great Escape (trailer)	21/12/2010	More4	Animal welfare	1
Greatest Christmas Adverts	25/12/2010	Five	Disability discrimination/offence	1
Harry Hill's Best of Christmas TV Burp	31/12/2010	ITV2	Generally accepted standards	1
Harry Hill's the Best of TV Burp	15/01/2011	ITV1	Generally accepted standards	4
Holby City	04/01/2011	BBC 1	Race discrimination/offence	1
Holiday Showdown	15/01/2011	ITV2	Nudity	1
Hollyoaks	01/12/2010	Channel 4	Violence and dangerous behaviour	2
Hollyoaks	17/12/2010	Channel 4	Scheduling	1
Hollyoaks	23/12/2010	Channel 4	Generally accepted standards	1
Hollyoaks	27/12/2010	Channel 4	Scheduling	6
Hollyoaks	28/12/2010	Channel 4	Violence and dangerous behaviour	1
Hollyoaks	29/12/2010	Channel 4	Scheduling	5
Hollyoaks	30/12/2010	Channel 4	Generally accepted standards	2
Hollyoaks Omnibus	26/12/2010	Channel 4	Scheduling	2
Honey	13/12/2010	Filth	Participation TV - Harm	1
Hot Shots!	13/01/2011	Channel 4	Scheduling	1

How to Look Good Naked	08/01/2011	E4	Nudity	1
Hugh's Big Fish Fight	11/01/2011	Channel 4	Materially misleading	1
Huw Stephens	05/01/2011	BBC Radio 1	Sexual material	1
Hyundai's sponsorship of Five Movies	25/12/2010	Five	Disability discrimination/offence	1
I Now Pronounce You Chuck and Larry	15/01/2011	ITV1	Sexual orientation discrimination/offence	1
Indiana Jones and the Kingdom of the Crystal Skull	01/01/2011	BBC 1	Offensive language	4
Inside Britain's Fattest Man	05/01/2011	Channel 4	Due impartiality/bias	1
Inside Out	10/01/2011	BBC 1	Generally accepted standards	1
It's Paul Burling	22/12/2010	ITV1	Generally accepted standards	3
ITV News	23/12/2010	ITV1	Generally accepted standards	1
ITV News	03/01/2011	ITV1	Due accuracy	1
ITV News	04/01/2011	ITV1	Due accuracy	1
ITV News	08/01/2011	ITV1	Due impartiality/bias	1
ITV News	13/01/2011	ITV1	Generally accepted standards	3
ITV News	13/01/2011	ITV1	Generally accepted standards	1
Kerry Katona: The Next Chapter	04/01/2011	ITV2	Harm	2
Kerry Katona: The Next Chapter	11/01/2011	ITV2	Harm	1
Kidnap and Ransom trailer	03/01/2011	ITV1	Violence and dangerous behaviour	1
King James Bible Readings	09/01/2011	BBC Radio 4	Sexual orientation discrimination/offence	1
Kirstie and Phil's Embarrassing Bits	30/12/2010	Channel 4	Offensive language	3
Kohinoor Radio	10/10/2010	Kohinoor Radio	Generally accepted standards	1
Kohinoor Radio	10/10/2010	Kohinoor Radio	Religious/Beliefs discrimination/offence	10
Legally Blonde	16/01/2011	BBC 2	Offensive language	1
Les Kelly's Heroes	26/12/2010	BBC Radio 4	Disability discrimination/offence	1
Libya: The Stolen Children	05/11/2010	Sky News	Due impartiality/bias	1
Live at Five	21/12/2010	Sky News	Due impartiality/bias	1
Live at the Apollo	01/01/2011	BBC 1	Gender discrimination/offence	1
London Tonight	27/12/2010	ITV1 London	Animal welfare	1
Look North	21/12/2010	BBC 1	Generally accepted standards	1
Loose Women	10/01/2011	ITV1	Religious/Beliefs discrimination/offence	1
Loose Women	10/01/2011	ITV1	Generally accepted standards	1
Loose Women	10/01/2011	ITV1	Promotion of products/services	1
Mantracker	21/12/2010	Extreme Sports	Offensive language	1

Masters Snooker	10/01/2011	BBC 2	Flashing images/risk to viewers who have PSE	1
Masters Snooker	16/01/2011	BBC 2	Offensive language	1
Meet the Fockers	04/01/2011	BBC 3	Offensive language	1
Meet the Parents Little Fockers' sponsorship of Most Shocking Celebrity Moments	29/12/2010	Five	Offensive language	4
Midsomer Murders	12/01/2011	ITV1	Violence and dangerous behaviour	2
Misfits	09/12/2010	E4	Generally accepted standards	1
Monk	02/12/2010	Quest	Scheduling	1
Never Mind the Buzzcocks	03/01/2011	BBC 2	Generally accepted standards	1
Newsnight	07/01/2011	BBC 2	Generally accepted standards	2
Nivea's sponsorship of This Morning	various	ITV1	Harm	1
Not Going Out	06/01/2011	BBC 1	Offensive language	1
Not Going Out	06/01/2011	BBC 1	Generally accepted standards	1
Not Going Out	13/01/2011	BBC 1	Generally accepted standards	1
Obama's Visit to India	11/11/2010	PTV Global	Due impartiality/bias	1
Old Harry's Game	30/12/2010	BBC Radio 4	Generally accepted standards	1
One Born at Christmas (trailer)	24/12/2010	Channel 4	Scheduling	1
One Born Every Minute (trailer)	12/01/2011	Channel 4	Generally accepted standards	1
Paper Review	03/01/2011	Sky News	Generally accepted standards	2
Peppa Pig	01/01/2011	Nick Jr	Gender discrimination/offence	1
Piers Morgan's Life Stories	02/01/2011	ITV3	COSTA	1
Pissed and Pregnant	03/01/2011	Living	Offensive language	4
Police, Camera, Action!	04/01/2011	ITV4	Sexual material	1
Press TV	04/01/2011	Press TV	Due accuracy	1
Primeval	08/01/2011	ITV1	Violence and dangerous behaviour	2
QI	07/01/2011	BBC 1	Religious/Beliefs discrimination/offence	1
Rangers v Celtic	02/01/2011	Sky Sports 4	Due impartiality/bias	1
Road Wars	05/01/2011	Sky3	Generally accepted standards	1
Roshni		DM Digital	Religious/Beliefs discrimination/offence	1
Saturday Kitchen	01/01/2011	BBC 1	Generally accepted standards	1
Scott Mills	11/01/2011	BBC Radio 1	Animal welfare	1
Scratch 'n' Sniff's Den Of Doom	09/01/2011	CITV	Generally accepted standards	1
Scrubs	30/12/2010	Comedy Central	Sexual material	1
Sexcetera	16/01/2011	Channel One	Sexual material	1

Shameless	10/01/2011	Channel 4	Generally accepted standards	2
Shameless	12/01/2011	Channel 4	Religious/Beliefs discrimination/offence	1
Shameless	14/01/2011	Channel 4	Generally accepted standards	1
Shameless (trailer)	05/01/2011	Channel 4	Generally accepted standards	1
Shappi Talk	29/12/2010	BBC Radio 4	Generally accepted standards	1
Shooting Stars	30/12/2010	BBC 2	Animal welfare	1
Silent Witness	03/01/2011	BBC 1	Generally accepted standards	2
Sky News	18/12/2010	Sky News	Materially misleading	1
Sky News	13/01/2011	Sky News	Generally accepted standards	4
Soccer AM	01/01/2011	Sky Sports 2	Sexual orientation discrimination/offence	1
Soccer AM	01/01/2011	Sky1	Race discrimination/offence	1
Something Special	02/01/2011	CBeebies	Nudity	1
South Park (trailer)	28/12/2010	Comedy Central Extra	Generally accepted standards	1
Spy Kids	26/12/2010	BBC 1	Violence and dangerous behaviour	1
Star Wars The Clone Wars	31/12/2010	Cartoon Network	Violence and dangerous behaviour	1
Stargazing Live	05/01/2011	BBC 2	Religious/Beliefs discrimination/offence	1
Stu Smith	29/12/2010	Metro Radio	Offensive language	1
Sunrise	04/01/2011	Sky News	Due impartiality/bias	1
Taggart	11/01/2011	ITV1	Violence and dangerous behaviour	7
Take Me Out	08/01/2011	ITV1	Race discrimination/offence	2
Teens That Tie the Knot	10/01/2011	Living	Generally accepted standards	1
Tetley Bitter's sponsorship of The Prisoner	11/01/2011	ITV4	Sponsorship	1
That Sunday Night Show	09/01/2011	ITV1	Generally accepted standards	1
That Sunday Night Show (trailer)	07/01/2011	ITV1	Harm	1
The Alan Brazil Sports Breakfast	07/01/2011	Talksport	Race discrimination/offence	1
The Comedy Annual 2010	22/12/2010	ITV1	Religious/Beliefs discrimination/offence	1
The Idiot Awards	14/12/2010	E4	Offensive language	2
The Increasingly Poor Decisions of Todd Margaret	12/12/2010	More4	Generally accepted standards	1
The Increasingly Poor Decisions of Todd Margaret	19/12/2010	More4	Race discrimination/offence	1
The Jeremy Kyle Show	07/01/2011	ITV1	Race discrimination/offence	2
The Jeremy Kyle Show	11/01/2011	ITV1	Generally accepted standards	1
The Joy of Teen Sex (trailer)	various	Channel 4	Religious/Beliefs discrimination/offence	1
The Lakes	03/01/2011	ITV1	Materially misleading	1

The Lakes	03/01/2011	ITV1	Animal welfare	2
The Magicians	08/01/2011	BBC 1	Violence and dangerous behaviour	2
The Middle: Access All Areas	31/12/2010	Sky1	Promotion of products/services	1
The Million Pound Drop Live	17/12/2010	Channel 4	Competitions	1
The Nativity	21/12/2010	BBC 1	Animal welfare	1
The One Show	10/01/2011	BBC 1	Gender discrimination/offence	1
The Simpsons	04/01/2011	Sky1	Sexual material	1
The Today Programme	07/01/2011	BBC Radio 4	Generally accepted standards	1
The Vanessa Show	11/01/2011	Five	Sexual material	1
The War You Don't See	14/12/2010	ITV1	Race discrimination/offence	1
The War You Don't See	14/12/2010	ITV1	Due impartiality/bias	1
The Weakest Link	12/01/2011	BBC 1	Generally accepted standards	1
The World Tonight	11/01/2011	BBC Radio 4	Gender discrimination/offence	1
The X Factor	n/a	ITV1	Voting	1
The X Factor	07/11/2010	ITV1	Premium rate Services	1,462 ¹
The X Factor	13/11/2010	ITV1	Generally accepted standards	13
The X Factor	14/11/2010	ITV1	Premium rate services	308
The X Factor	20/11/2010	ITV1	Generally accepted standards	204
The X Factor	21/11/2010	ITV1	Competitions	37
The X Factor	27/11/2010	ITV1	Flashing images/risk to viewers who have PSE	1
The X Factor	28/11/2010	ITV1	Premium rate services	46
The X Factor	28/11/2010	ITV1	Premium rate services	14
The X Factor	05/12/2010	ITV1	Materially misleading	785 ²
The X Factor	11/12/2010	ITV1	Voting	1
The X Factor	11/12/2010	ITV1	Voting	1
The X Factor	11/12/2010	ITV1	Voting	14
The X Factor	11/12/2010	ITV1	Voting	5
The X Factor	11/12/2010	ITV1	Voting	3
The X Factor	11/12/2010	ITV1	Voting	2
This Morning	09/11/2010	ITV1	Generally accepted standards	1

¹ These complaints relate to Cheryl Cole's decision not to name which act, out of the two that received the fewest viewers' votes, she wished to leave the contest. This matter did not raise issues under the Code, as the format of the contest is made transparent to viewers, and they vote in the knowledge that the ultimate decision to eliminate contestants at this stage (irrespective of how it is reached) rests with the judges.

² These complaints relate to the judges' involvement in the semi-final elimination process. This matter did not raise issues under the Code, given that the published terms and conditions concerning the programme's voting process listed a number of ways in which the outcome of any particular heat could be determined, that would be "at the discretion of ITV or the producer."

This Morning	08/01/2011	ITV1	Sexual material	1
This Morning	12/01/2011	ITV1	Sexual material	1
This Morning	13/01/2011	ITV1	Sexual material	1
Top Gear	25/12/2010	BBC 2	Generally accepted standards	1
Top Gear	11/01/2011	Dave	Offensive language	1
Top Gear Special	26/12/2010	BBC 2	Religious/Beliefs discrimination/offence	18
Top Gear Special	26/12/2010	BBC 2	Religious/Beliefs discrimination/offence	4
Top Gear Special	26/12/2010	BBC 2	Religious/Beliefs discrimination/offence	2
Top Gear Special	27/12/2010	BBC 2	Offensive language	1
Toyota RAV4's sponsorship of ITV Movies	01/01/2011	ITV1	Harm	1
UK Border Force	24/12/2010	Sky3	Product placement	1
UK Border Force	14/01/2011	Sky3	Generally accepted standards	1
World Darts	22/12/2010	Sky Sports 1	Materially misleading	1
You've Been Framed!	09/01/2011	ITV1	Religious/Beliefs discrimination/offence	1