

# **Ofcom broadcast bulletin**

**Issue number 46  
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## Introduction

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

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

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

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

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

*Copies of the full adjudications for Upheld and Not Upheld Fairness and Privacy cases can be found on the Ofcom website: [www.ofcom.org.uk](http://www.ofcom.org.uk)*

## Standards cases

### In Breach

#### **Pulp Fiction**

*BBC2, 7 August 2004, 21:10*

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##### **Introduction**

Nine viewers complained about the transmission of this film. The majority were concerned that its transmission shortly after the 21:00 watershed, when young people watch television, could encourage anti-social behaviour. Overall, viewers felt that the strong content, including graphic violence, seriously offensive swearing and scenes of drug abuse, made the film unsuitable at a time in the evening when young people and children were still part of the audience.

##### **Response**

The BBC believed that, as this film was arguably one of the most influential and best-known films of the last ten years, it was unlikely to surprise or offend BBC2 viewers. The BBC had shown this film on five previous occasions and complaints had steadily declined, with this transmission attracting only one complaint to the BBC.

The BBC said that the film was a serious cultural achievement and deserved to be made available to a wide audience. Through his films Quentin Tarantino had made a significant contribution to contemporary cinematic culture, with his examination of film making and its links to other film genres. The film had an underlying morality. The consequences of drug abuse, for example, were vividly shown.

Even for this fifth BBC screening, the BBC stated that it did not neglect its obligation to alert viewers who were unfamiliar with the film. It had provided written and broadcast warnings about aspects of the content that some viewers might not have found to their taste.

The BBC stated that there was no evidence to support the contention of some complainants that there were any links between the content and perceived social trends. In fact, the violence and drug abuse were depicted as having unpredictable, even terrifying consequences.

##### **Decision**

Ofcom has no issue with the points the BBC wish to make about the editorial and cultural merits of the film.

The film has been shown before on BBC2. However all other transmissions on BBC2 were at 21:45 or later. We acknowledge the steps taken to warn viewers about the content of this film and we know that audience research suggests that viewers are more tolerant of adult content in films, preferring them to be unedited. However, this has to be balanced against the expectations of the general audience, who are available to view terrestrial television at this time and the context of the material, on that evening, within the schedule. On this occasion, the film was shown at 21:10 on a Saturday night. Audience figures show that 8% (124,000) of the audience for this

film were aged 15 years and under.

A combination of seriously offensive language, graphic violence and drug-abuse occurred early in the film, before 21:30. Under the relevant Code, 18 films are not prohibited but the content should be suitable for the time of transmission. Such intense material is not normally expected so soon after the watershed. We believe the scheduling of this film at 21:10 was too early, given the strong, adult content from the start.

**The scheduling of this film was in contravention of the Code**

*Note: This case has been appealed three times by the BBC. This decision was made by the Content Board following the BBC's third and final appeal.*

## **Gangaajal**

*SETmax, 4 August 2005, 17:00*

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### **Introduction**

A viewer complained that the swearing (“motherfucker”, “fuck”, “bitch”) and violence in this Hindi film made it inappropriate for broadcast at 17:00, on a general entertainment channel, during the school holidays.

The film is produced in the Bollywood tradition and deals with the theme of Indian society’s relationship with its police force and the attempts of a new Superintendent of Police to tackle corruption.

### **Response**

SETmax accepted that the scheduling of the film was inappropriate. As the channel was under a test transmission period, it was in the process of training staff and putting compliance procedures in place.

In relation to the swearing used in the film, SETmax said that it did take steps to distort the sound in an attempt to obscure the offensive language.

### **Decision**

While we welcome the broadcaster’s acceptance that the scheduling of this film was a mistake, it is clear that the licensee did not have compliance procedures in place. A licence is granted by Ofcom on the condition that programmes included in the licensed service will comply with the Code.

The film contained a number of violent scenes. These included a stabbing, shootings, headbutting, public beatings, the gouging of eyes followed by an acid attack, a graphic suicide by stabbing and finally a portrayal of a character impaled on spikes. The violence went far beyond what is acceptable on an open access channel before the watershed. While the broadcaster had distorted the soundtrack on certain occasions, there were still several instances of strong swearing in the film.

The pre-watershed scheduling of this film, particularly during school holidays when younger people are more likely to be watching, was inappropriate.

**The scheduling of the film at this time was in breach of Rule 1.3 (appropriate scheduling)**

## **Navy NCIS**

*FX, 1 August 2005, 20:00*

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### **Introduction**

In this drama series, a villain was shown committing suicide by cutting his throat. Afterwards, shots of his bloody body were seen. A viewer complained about scenes of violence and injury, which she felt were unacceptable for broadcast before the watershed.

### **Response**

The broadcaster explained that steps had been taken to edit the majority of episodes to make them suitable for pre-watershed transmission. This had been in response to a previous complaint to Ofcom. Out of the twenty-three episodes in the series, two could not be edited sufficiently to make them suitable for pre-watershed transmission and were only to be shown after the watershed.

Unfortunately, despite this work, one of the two episodes specified as not suitable pre-watershed was shown on this occasion at 20:00. When it realised its error, the broadcaster took action to correctly categorise the episode as post-watershed in the scheduling system to ensure that the mistake did not reoccur in future.

### **Decision**

Earlier in the year we raised our concerns about the general issue of the suitability of this series before the 21:00 watershed, as some episodes contained scenes of graphic violence and detailed injuries. The broadcaster, as explained above, then took appropriate steps to make episodes suitable for pre-watershed transmission. However, an error clearly had occurred on this occasion. The scenes of violence in this episode were not suitable before the watershed.

We welcome the broadcaster's immediate actions when it realised what had happened. However bearing in mind our discussions with the broadcaster earlier in the year, we are concerned that its scheduling system did not spot this error.

**The scheduling of the programme at this time was in breach of Rule 1.3 (Appropriate scheduling)**

## **Street Crime UK**

*Bravo, 30 April 2005, 14.35*

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### **Introduction**

A viewer complained that an edition of *Street Crime UK* contained offensive language (“fucking”).

### **Response**

Bravo said that it had reviewed the programme and acknowledged that there were two incidents of the word “fucking” that had not been edited. This had subsequently been rectified. An investigation had been undertaken with the company that provides its editing facilities to ascertain why these edits had not been done, despite Bravo providing clear written instructions. The editing company accepted responsibility for the error.

Bravo assured us that it took its compliance responsibilities very seriously and was investing in both training and new digital technologies that would help its compliance viewers to edit the material themselves. Until this transition took place, the company explained that it would be monitoring and randomly carrying out spot checks for future edits carried out by the outside company.

### **Decision**

*Street Crime UK* is an observational series that documents police-work, often in difficult situations, and portrays anti-social behaviour that the police encounter on a day to day basis around the UK. The camera crew observe and film the unruly behaviour exhibited by people encountered by the police on the streets. During one encounter in this edition, “fucking” was heard on two occasions.

This is the second time that the licensee has had a failure in its compliance procedures for this particular series. We reported in our Broadcast Bulletin (Issue 30) that there had been a breach of Section 1.5 (Bad Language) of the (ex-ITC) Code when Bravo transmitted offensive language (“*fuck*”) in an edition of the series broadcast twice on 4 January 2005. On that occasion, Bravo said that the series had two versions, a post watershed version and a ‘PG’ daytime version. Unfortunately the wrong version had been transmitted.

While we understand that the outside facility carrying out the edits failed to make those necessary, it remains the responsibility of the licensee to preview the programme prior to transmission to ensure that the programme is compliant. Given that this is the second code breach for the same issue in the same series, within a four month period, we have concerns about Bravo’s compliance procedures. Ofcom may need to consider what further action is necessary, if further breaches of a similar nature occur.

**The scheduling of the programme at this time was in breach of Section 1.5 (Bad Language) of the (ex-ITC) Programme Code**

## **Rock DJ**

*Flaunt TV, 30 April 2005, 10:26*

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### **Introduction**

Flaunt TV is an interactive music channel operated by Sky. A viewer complained about the inclusion of the 'uncut' version of Robbie Williams' 'Rock DJ' video. The video features special effects whereby Williams appears to strip his skin from his body, revealing veins and muscle, then tears muscles from his body before finally revealing his skeleton. The viewer, who was watching with her seven year old daughter, complained that her daughter was upset by the imagery featured.

### **Response**

Sky explained that the post-watershed version of the video was transmitted in error. The error was discovered on 3 May 2005, the first working day after the Bank Holiday during which the video was broadcast, and the error was corrected. It apologised for the distress caused to the viewer's daughter.

### **Decision**

The 'uncut' version of the video is not suitable for the time of broadcast. The graphic visual of Robbie Williams apparently removing his skin and muscle tissue could understandably distress younger viewers. While we accept that this appeared to be a genuine error, we are concerned that Sky was not aware of the mistake until three days after it was broadcast, during which time the video was repeated a further six times pre-watershed.

**The scheduling of the video at this time breached Section 1.2 of the (ex-ITC) Programme Code (Family viewing and the Watershed)**

## **Top Up TV**

### ***Five, various dates and times in December 2004***

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#### **Introduction**

Sixty four viewers objected to the on-screen appearance of a pop-up banner message, overlaid across programmes, that stated "Your TV may now be able to receive more channels. Press the RED button to find out how." Upon pressing the red button, viewers were taken to a screen advertising Top Up TV, a service offering digital terrestrial television (DTT) viewers the opportunity to subscribe to additional channels.

The viewers considered the promotion of a commercial service in this way inappropriate.

#### **Response**

Five explained that the pop-up screen application appeared when a viewer using a specific type of DTT box tuned into Five. The message was displayed for some 20 seconds against a semi-transparent background, after which it would disappear automatically. It was played out on various dates in December 2004 and last appeared on 12 January 2005.

Five stated that it did not run the application itself but that it was applied by the multiplex operator. Five confirmed however that the application was broadcast as part of its licensed service and with its knowledge and agreement.

Five considered the material contained in the pop-up banner merely advisory and did not believe it directly advertised a commercial service. There was no requirement for viewers to access the red button. This was merely an option should the interactive viewer decide they wanted to find out how to obtain extra channels. As such, the message was more akin to the on-air inclusion of a website address, from which commercial products or services may be available, but only if the viewer actively clicked through to that part of the site.

Five believed that some kind of comparable viewer advisory application would become increasingly necessary, particularly during the digital switchover process, when existing DTT box owners may need to reset their equipment to receive all channels. Five reiterated that it did not consider the banner an advertisement because it contained no commercial references but was much more akin to a viewer information service.

#### **Decision**

The Programme Code states that commercial products must not be promoted in programmes. The initial banner message inviting viewers to find out how to obtain extra channels appeared on screen simultaneously with programming. While accepting that it may be necessary from time to time to inform DTT customers of new 'free-to-air' channels they can view by resetting their boxes, the purpose of this message was clearly to promote Top Up TV - an additional service which requires a subscription fee to view the extra channels offered. It was not transparent to viewers that the message formed part of an advertising communication until after they had clicked the red button. We consider that the banner message indirectly promoted a

commercial service within programming and was therefore in breach of the Programme Code.

**The inclusion of the banner advertisement during programmes was in breach of Section 8.1 of the (ex-ITC) Programme Code.**

## **Grab a Grand**

*Performance Channel, 7 August 2005, 23:30*

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### **Introduction**

A viewer believed that a competition, in which viewers were asked to call a premium rate telephone number and identify the partly obscured celebrity on screen, was “a crude psychological ploy designed to entice those callers who had made a correct identification to waste £1 on a phone call.”

He believed that, in this case, David Bowie was clearly the featured celebrity and added that callers put to air failed to identify him, citing Cindy Crawford, Shania Twain, Nicole Kidman, Charlotte Church and Kirstie Alley. The complainant objected to a selection procedure which charged £1 for attempting to enter, whether or not one was put through to the studio.

### **Response**

The broadcaster said that it did not have copies of the relevant material. The Performance Channel leases its EPG slot to another company at 23:30 and this company had failed to record the output. The broadcaster provided output transmitted on the preceding and following days, which it claimed was similar.

### **Decision**

It is not, in itself, illegitimate for broadcasters to use premium rate telephone services in quizzes, even if some callers may not be put through to the studio. However, as no recording of output was available, we were unable to view this competition.

Irrespective of any arrangements broadcasters may have with third parties, it is a licence requirement that the licence holder retains, or makes arrangements for the retention by others, of recordings of its output. Failure to do so is a serious breach of licence conditions. Ofcom may need to consider what further action is necessary, if any further breaches of a similar nature occur.

### **Performance Channel was in breach of Condition 11 of its licence**

## **Stash the Cash**

*Life TV, 5 June 2005, 02:30*

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### **Introduction**

A viewer attempted to enter a competition a number of times, via a premium rate telephone line, claiming he had been encouraged to do so by the presenter. After hearing recorded messages, each of which said that his attempt to enter had been unsuccessful, he noticed a caption on-screen which read "pre-recorded." He therefore queried why his calls to enter the competition had been accepted.

### **Response**

Life TV said that the agency it used for logging its output had encountered technical problems. The broadcaster added that it had also ended its agreement with the channel that supplied the programme initially via a live feed. It was therefore unable to provide a recording of the competition.

The broadcaster confirmed that all content broadcast on its channels was now being recorded in-house.

### **Decision**

As no recording of output was available, we were unable to view the competition.

Irrespective of any arrangements broadcasters may have with other parties, it is a licence requirement that the licence holder retains, or makes arrangements for the retention by others, of recordings of its output. Failure to do so is a serious breach of licence conditions. Ofcom may need to consider what further action is necessary, if any further breaches of a similar nature occur.

### **Life TV channel was in breach of Condition 11 of its licence**

## **Additional information**

In September 2005, ICSTIS launched a consultation on the possible introduction of new rules and a 'prior permission' regime for premium rate TV quiz channels and for TV programmes whose dedicated purpose is to run premium rate competitions.

The consultation follows a significant increase in the number of TV quiz channels, together with an increase in the number of complaints it has received.

The proposals mean that those wanting to run premium rate competitions on TV quiz channels will need to consult ICSTIS before running a service and get the regulator's 'prior permission'. ICSTIS is proposing to put new rules in place as competitions on TV quiz channels are a new and rapidly growing area in which premium rate services are used. The move aims to ensure that consumers are protected – and are confident in using – this increasingly popular interactive medium.

The consultation closed on 21 October 2005.

## Resolved

### **The use of premium rate telecommunications services (PRTS) in programming**

*talkSPORT, various dates and times*

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#### **Introduction**

3 complainants were concerned that the broadcaster had failed to detail relevant call charges on air when inviting listeners to submit their views, or participate in competitions, via premium rate short message service (SMS). One complainant also objected to the omission of pricing information on air when listeners were invited to call the station by using a 0870 number translation service (NTS). Although the content of the broadcaster's website does not fall within Ofcom's remit, the listener noted that talkSPORT had referred to NTS as "national rate" on its site.

#### **Response**

talkSPORT assured us that its policy, in line with ICSTIS' requirements, was to inform listeners on air of relevant charges for participating in programming by premium rate text. In light of the complaints, it had contacted all production staff, reminding them of the information that needed to be stated on air, including relevant text charges, when inviting listeners to contact the station using PRTS. It added that all relevant premium rate call charges could also be found on the home page of its website and believed that the effectiveness of its policy was evident in the small number of complaints it has received concerning a lack of aired premium rate charge information.

#### **Decision**

We welcome the assurance and prompt action taken by the broadcaster concerning its use of PRTS and we consider the matter resolved.

While 0870 telephone numbers are not regulated as premium rate services, they can cost considerably more to call than geographic numbers. Guidance issued by Ofcom and by the Advertising Standards Authority makes it clear that these numbers should not be described as "national rate".

#### **Complaints Resolved**

## **Gemini FM**

*Gemini FM, 22 July 2005, 07:15*

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### **Introduction**

The presenter of a morning slot on Gemini FM challenged one of his colleagues on-air to drive to a proposed 'Park and Ride' site where fifty travellers had recently arrived, shout "get a job" at them and then drive off. In clarifying the challenge, the presenter suggested that his colleague should first offer to sell some pegs. The station later broadcast the challenge being carried out.

A listener was concerned that the item incited racial harassment.

### **Response**

Gemini FM said that, having spoken with the presenter, it was confident that the remarks were made in the spirit of harmless fun, rather than with any intent to offend. The presenter said that the arrival of the travellers was a subject of local discussion and he had intended to *"be a bit cheeky and have some harmless fun"*.

However he had subsequently realised why his comments might be offensive and had assured the station that there would be no recurrence. The broadcaster acknowledged that such comments, even in jest, were not acceptable and said that it would work to avoid any recurrence.

In the morning of 2 August 2005, the presenter apologised on-air for the comment and any offence it may have caused.

### **Decision**

Incitement to racial hatred, itself, is covered by the criminal law. However the (ex-Radio Authority) Programme Code (Section 1.5, Bad Taste in Humour) states:

*"Licensees must avoid humour which offends against good taste or decency. There is a danger of offence in the use of humour based on particular characteristics like race, gender or disability..."*

Whilst we accept that the feature was intended to be light-hearted, we agree that trying to taunt travellers as the basis of a 'challenge' was unacceptable. Even though the apology was made after Ofcom contacted the broadcaster, we welcome the fact that the licensee recognised there was a problem and apologised on air of its own volition. We therefore consider the matter resolved

### **Complaint resolved**

## **Jo Whiley**

*BBC Radio 1, 18 March 2005, 12:15*

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### **Introduction**

During an interview and live performance on the *Jo Whiley Show*, the artist 50 Cent was questioned about an incident at a UK Festival where the crowd had thrown missiles at the stage, including bottles of urine. In his description of what happened, 50 Cent twice referred to “piss” in the bottles, and once to people “pissing” into bottles. Later during a live performance of his track ‘In Da Club’ the word “fuck” was used.

One listener complained about the use of strong language.

### **Response**

The BBC said that 50 Cent is a performer who was known for using language like this and, before going on air, was advised by his record company and the production team to cut all strong language when performing his track ‘In Da Club’. It was most regrettable that just one example, early in the song, was left in; others later on were deleted as requested, so the broadcaster believed that the occurrence was no more than an unfortunate error on the singer’s part.

It was also unfortunate that the presenter did not hear that part of the performance. Not realising what had happened, she was unable to apologise to listeners.

The BBC felt that the language used in the preceding interview was milder and was not used as direct abuse which, according to research, is the form most likely to cause offence (and even that was thought strongly offensive by less than one person in five).

Nevertheless, the BBC accepted that an apology should have been offered for both incidents. Radio 1 management had made clear to the production team that should something similar happen in the future, they must respond with an apology at the first opportunity. The BBC offered an apology for the strong language used and regretted any offence caused.

### **Decision**

We welcome the broadcaster’s apology for the incidents and the action subsequently taken. We consider the matter resolved.

### **Complaint Resolved**

## **Daley on the Loose**

*Vibe 101 FM, 9 August 2005, 08:55*

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### **Introduction**

A listener was concerned by the use of the term “poof” to describe men wearing hairbands by one of the presenters of this breakfast show. The complainant felt that, in this context, it was an offensive and homophobic comment and should not have been used when children were available to listen in large numbers.

### **Response**

Vibe 101 FM apologised to the listener and agreed that this language was potentially offensive. It was never its intention to be derogatory to any potential radio listener and the station worked constructively with the lesbian, gay and bi-sexual communities to support their issues.

The broadcaster explained that the nature of live broadcast can lead to “off-the-cuff” comments, which may not always be in line with the station’s guidelines. In this case, the broadcaster believed that the presenter did not mean any harm or malice towards gay men. However, the broadcaster has reminded all presenters of the station’s policy on acceptable language.

### **Decision**

We welcome the action taken by the broadcaster and consider the matter resolved.

### **Complaint Resolved**

## **Matchmaker**

*TMF (The Music Factory), 10 September 2005, 11:45*

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### **Introduction**

A viewer was concerned to see a sexually explicit caption stating “*A lot of men have much smaller dicks. Katy, use your hands more*”. The complainant did not consider the caption suitable for daytime viewing.

### **Response**

TMF explained that this caption should not have been transmitted in this daytime version of *Matchmaker*. Unfortunately a technical fault had occurred during the late-night version of *Matchmaker* the previous night, and it re-occurred on the morning of the 10 September. The transmission operator had quickly noticed the caption and removed it from the screen.

TMF took the following action as a result of the error:

- it removed the late-night version of *Matchmaker* from its schedules. In future, it would not use any late-night text content formats;
- it removed the pre-watershed version of *Matchmaker* from its schedules and its text messaging software. It would remain off-air until the exact cause of the technical fault was established;
- it broadcast the following apology on 17 September at 11:45:

*“TMF would like to apologise for the broadcast on 10<sup>th</sup> September of a Matchmaker graphic which contained inappropriate language. TMF apologises for any offence that this caused viewers.”*

### **Decision**

We welcome the apology and the steps taken by the broadcaster to prevent any recurrence of this error. We consider that the broadcaster’s actions have been sufficient to consider the case satisfactorily resolved.

### **Complaint Resolved**

## **Top of the Pops**

*BBC1, 18 March 2005, 19:00*

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### **Introduction**

A viewer objected to swearing (“shit”) in a performance by 50 Cent.

### **Response**

The BBC said that, given 50 Cent’s popularity, the artist’s inclusion in a chart-based music show was warranted. As some of the words of the song (as published) could have potentially caused offence to viewers, the programme team asked the artist both at the dress rehearsal and before the live performance to leave out those particular lyrics.

In the event, while 50 Cent had still used the word ‘nigga’ in his performance, the BBC had anticipated this and dipped the sound. The artist also used the word “shit” but because this was not in the published lyrics, the programme team were not expecting it and so it was broadcast. The producer had asked the programme presenter to apologise at the end of the show, which he did.

### **Decision**

The BBC made every effort in this case to ensure that any swear words uttered by 50 Cent were inaudible. The fact that the performer decided to use the word “shit” unexpectedly was beyond the control of the producers. We welcome the apology made during the programme and we believe the BBC dealt with the situation appropriately and consider the matter resolved.

### **Complaint resolved**

## **Glastonbury**

*BBC3, 24 June 2005, 23:00*

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### **Introduction**

The BBC3 coverage of Glastonbury was presented by Edith Bowman and Colin Murray. At one point during the programme Edith Bowman tried on a pair of 3D spectacles and acted foolishly as her co-presenter introduced the next part of the show. In reaction, Colin Murray instructed the audience to ignore her behaviour, stating “she’s autistic”.

One viewer complained about the use of the word “autistic” in this context. They felt as the term was used in front of millions of predominately young people in a careless way, this could undo the previous good work that the BBC had done to raise awareness about autism.

### **Response**

The BBC said that the audience for the show was 284,000 not millions as suggested by the complainant. In addition, the incident happened two hours after the watershed when presenters and producers know they have more freedom in their choice of language than earlier.

The BBC said that it had taken into account in its response audience research which indicated that while some people consider language like this to be inoffensive and jokey, others considered it to be hurtful. Taking this research into consideration, the broadcaster concluded that the use of the term autistic in this context was thoughtless and inappropriate. The matter had been discussed with the presenter, Colin Murray, who had apologised. The BBC said that it would do its best to ensure that such usage was not repeated.

### **Decision**

The use of the term “autistic” in this context was inappropriate. However, given the BBC’s response we consider this matter resolved.

### **Complaint Resolved**

## **The Simpsons**

*Channel 4, 7 September 2005, 18:00*

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### **Introduction**

A viewer complained about this episode entitled "A Streetcar Named Marge" in which a local musical group performed a song about New Orleans containing derogatory remarks about the city. The viewer felt that in view of the devastation caused by Hurricane Katrina the programme was insensitive.

### **Response**

Channel 4 explained that this was the third time it had shown this episode but acknowledged that the recent events in New Orleans should have been taken into account when deciding whether to show it on this occasion.

It explained that programmes are generally viewed by the department responsible before a repeat transmission to ensure that, amongst other things, recent events have not rendered something offensive which was previously innocent.

The reference to New Orleans was incidental to the story, rather than a key part of it and was not picked up on in the review process. The review process focuses on summarising the main content of the storyline and its primary purpose was to signify whether a given programme was suitable for daytime transmission or not. It did not, for example, concentrate on whether a certain place is referred to.

At present the system was being updated so that further relevant compliance information could be captured by it. The planned changes would enhance the current system to prevent a situation such as this occurring again.

In light of the complaints from viewers, the episode was checked and an on-air apology was made on Friday 9 September, immediately prior to *The Simpsons*.

Channel 4 also directly contacted viewers who had complained about the episode to apologise.

### **Decision**

Given the effects of the recent hurricane, the song referring to New Orleans had the potential to cause offence. However, the speedy apology by Channel 4 was welcomed and appropriate. We also recognise that Channel 4 is updating its processes so that this does not happen again.

In view of this we consider the matter resolved.

### **Complaint resolved**

## Not Upheld

### **Big Brother's Little Brother**

*Channel 4, 5 August 2005, 19:30*

#### **Introduction**

This pre-watershed series reviews recent happenings in the *Big Brother* house, and in various entertainment formats, expands on events found in the main series.

In this episode, a sequence involved a mock-up of a Wild West saloon. Friends and family of *Big Brother* housemates were invited to down a shot of 'alcohol' and, if they managed to do so, were allowed to spend a moment extolling the virtues of the particular housemate they had come to support.

One viewer complained that, when broadcast at this time in the evening and bearing in mind the amount of alcohol present in the *Big Brother* house, this episode condoned the misuse of alcohol.

#### **Response**

Channel 4 said that this programme had been the pre-watershed manifestation of the *Big Brother* project for a number of series. It was a daily, half hour programme, designed to provide an overview of the latest events in the house, couched in appropriate pre-watershed terms. There was a daily discussion of proposed items for that day's show, with a particular view to ensuring that issues were approached in a manner appropriate to the scheduled pre-watershed slot.

In this instance, the cartoon style "Wild West Saloon", with the presenter as the barman wearing an outsized false moustache and sliding drinks down the bar to the interviewees, was designed purely to act as a device or prop for getting the potential housemate evictees' friends to cite reasons why 'their housemate' should stay. The two interviewees both also entered into the "Wild West" theme, wearing cowgirl and cowboy costumes. The shot glasses which were slid down the bar by the presenter were pre-poured and contained a liquid that could not be identified by viewers (it was not, in fact, alcoholic at all). There was no sight of the liquid being poured, nor of any bottles on the set, save for some beer bottles which had been mocked up with "Wanted: Dead or Alive" posters of the two housemates up for eviction. Neither of the interviewees who drank the shots reacted in a way that suggested they were drinking spirits, and they did not pretend to be tipsy. It was merely intended to be a cheesy caricature of a "Wild West Saloon", where the focus was more on the presenter's antics as a barman sliding the drinks along the bar than on drinking an indeterminate liquid.

#### **Decision**

The Wild West saloon type-sketch has been a feature of pre-watershed television entertainment shows for very many years. The nature of the drink in question was not dwelt upon, nor did those drinking it appear to react in any way as if it was alcohol. In these circumstances, we consider that the content did not glamorise, encourage or condone the misuse of alcohol.

#### **The programme was not in breach of the Code**

## **Logos**

*E4, 23 August 2005*

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### **Introduction**

A viewer objected to a promotion that appeared on E4 that stated “*The new channel, Quiz Call, a new interactive quiz channel, is now available on Freeview, PRESS RED for information on how to receive it*”. On pressing red, instructions on how to re-tune digital terrestrial television (DTT) receivers to receive the new ‘free-to-air’ channel were displayed.

### **Response**

Channel 4 said that the promotion was intended to alert viewers to their new 'Quiz Call' channel and to encourage viewers to re-tune their set-top boxes to obtain the new service. The semi-transparent text message appeared at the bottom of viewers' television screens when they first tuned to E4 after switching on the receiver, for around 10 seconds. The initial pop-up appeared only once after the receiver was switched on (or taken out of standby, depending on the receiver). The application was switched off after the launch of the new channel on 30 August 2005.

The broadcaster believed it was acceptable to promote the new channel in this way because it was a service owned by itself and the promotion helped DTT viewers understand how they could receive extra channels.

### **Decision**

Our rules on the promotion of programmes, channels and related services on commercial television allow broadcasters to promote, subject to certain conditions, other channels they provide. In this instance, the purpose of the promotion was to tell existing Freeview customers about another channel, owned by Channel 4, that could be obtained free of charge by simply re-tuning their set-top box. This was a legitimate cross-promotion within the rules and therefore did not breach the Code or the rules on cross promotion.

### **The promotion was not in breach of the Code**

### **Additional Information**

This bulletin records two instances when television broadcasters were unable to provide Ofcom with recordings of their output. It is a licence requirement that a licence holder retains, or makes arrangements for the retention by others, of recordings of its output. Failure to do so is a serious breach of licence conditions.

On this occasion, the breaches have not resulted in the consideration of a statutory sanction. However, this is a matter that we take very seriously and licensees should be fully aware of our concerns.

## Fairness and Privacy Cases

Where a complaint is not upheld there is only a note of the outcome. For a copy of a full adjudication, whether the complaint is upheld or not, go to Ofcom's website at [www.ofcom.org.uk/bulletins/](http://www.ofcom.org.uk/bulletins/) or send a stamped addressed envelope to: Ofcom, Riverside House, 2a Southwark Bridge Road, London SE1 9HA.

### Upheld in Part

#### Complaint by Mr Steve Moxon

*Let 'Em All In, Channel 4, 7 March 2005*

Ofcom has upheld part of this complaint of unfair treatment from Mr Moxon. The programme was an authored piece in which writer Kenan Malik set out the case for abolishing immigration controls. It included an interview with Mr Moxon.

Mr Moxon complained that he was misled about the nature of the programme and that he was not informed of the identity of the presenter in advance. He also complained that his interview was unfairly conducted, edited and reported in voice-over, and that the programme-makers refused to remove footage of him as he requested.

Ofcom concluded that there was unfairness to Mr Moxon in the information given to him about the nature of the programme, and that in light of this both the conduct of his interview, and the inclusion of footage of him in the programme, resulted in unfairness to Mr Moxon in the programme as broadcast.

Ofcom concluded that the identity of the presenter, the editing of the interview and the use of voice-over did not result in unfairness to Mr Moxon in the programme as broadcast.

Ofcom has directed Channel 4 to broadcast a summary of the adjudication.

### Not Upheld

Complainant	Programme	Date & Broadcaster	Type of complaint
Panone and Partners on behalf of Mrs Primrose Shipman	The Wright Stuff	Five, 18 March 2005	Unfair treatment
Marcher Radio Group	Y Byd Ar Bedwar	S4C, 1 February 2005	Unfair treatment

## Other programmes not in breach/out of remit

21 September – 5 October 2005

Programme	Trans Date	Channel	Category	No of Complaints
7/7 Attack on London	14/09/2005	Five	Offence	1
7/7 Attack on London	19/09/2005	Satellite & Cable	Offence	1
A Touch of Frost	25/09/2005	ITV1	Religious Offence	1
Adult Channels	12/09/2005	Adult Channels	Offence	1
Afterlife	24/09/2005	ITV1	Offence	1
Afterlife	30/09/2005	ITV1	Offence	1
Afterlife	01/10/2005	ITV1	Offence	1
Alpha ETC Punjabi	28/03/2005	Alpha ETC Punjabi	Offence	2
Artsworld	04/06/2005	Artsworld	Scheduling	1
Bad Lads Army	11/08/2005	ITV1	Language	1
Bad Lads Army	25/08/2005	ITV1	Language	3
Baddiel and Skinner Unplanned	05/07/2005	ITV1	Offence	1
BBC News	20/09/2005	BBC1	Offence	1
BBC News	23/09/2005	BBC1	Impartiality	1
BBC News	27/09/2005	BBC1	Impartiality	1
BBC News	30/09/2005	BBC1	Impartiality	2
BBC Radio 5 Live	24/08/2005	BBC1	Offence	1
Bearded Ladies	13/09/2005	BBC1	Offence	1
Bremner, Bird & Fortune	25/09/2005	Channel 4	Offence	3
Bremner, Bird & Fortune	02/10/2005	Channel 4	Offence	2
Carry on Behind	27/08/2005	UK Gold	Offence	1
Casualty	24/09/2005	BBC1	Offence	1
Channel 4 News	07/07/2005	Channel 4	Offence	2
Coronation Street	23/09/2005	ITV1	Offence	1
Coronation Street	20/09/2005	ITV1	Offence	1
Coronation Street Family Album	11/09/2005	ITV1	Violence	1
Emmerdale	28/07/2005	ITV1	Violence	4
Emmerdale	03/08/2005	ITV1	Violence	1
Emmerdale	06/09/2005	ITV1	Violence	1
Emmerdale	08/09/2005	ITV1	Sexual Portrayal	1
Emmerdale	16/09/2005	ITV1	Sexual Portrayal	1
Emmerdale	22/09/2005	ITV1	Offence	1
Extras	25/08/2005	BBC2	Offence	1
Fox News	07/07/2005	Fox News	Offence	1
Fox News	26/09/2005	Fox News	Other	1
GMTV	18/04/2005	ITV1	Offence	1
Goal! - The World Premiere	24/09/2005	ITV1	Offence	1
Hamoudi & Emil	26/08/2005	BBC2	Offence	1
Hardeep Does. . . religion	21/09/2005	Channel 4	Impartiality	1
Heaven and Earth Show	25/09/2005	BBC1	Offence	1

Hex	21/09/2005	Sky One	Scheduling	1
Holby City	09/08/2005	UK Gold	Offence	1
Holby City	28/09/2005	BBC1	Accuracy	1
Hot Chef	25/07/2005	Adult Channel	Offence	1
Inside The Ultimate Tornado	03/09/2005	Sky One	Scheduling	1
ITV at the Movies	24/09/2005	ITV1	Offence	1
ITV News	08/07/2005	ITV1	Offence	1
ITV News	30/06/2005	ITV1	Offence	1
ITV News	04/09/2005	ITV1	Impartiality	1
ITV News	05/09/2005	ITV1	Impartiality	1
ITV News	13/09/2005	ITV1	Offence	1
ITV's Best Ever Ads	20/09/2005	ITV1	Other	1
Live XXX TV	18/07/2005	Live XXX TV	Offence	1
Loose Women	22/09/2005	ITV1	Offence	1
Martin's Drivetime	11/08/2005	Virgin 105 FM	Other	1
Meridian News	22/09/2005	ITV1	Language	1
Ministry of Mayhem	19/03/2005	ITV1	Offence	1
My Parents Are Aliens	20/09/2005	ITV1	Offence	1
Nighty Night	12/09/2005	BBC3	Religious Offence	1
Nighty Night	13/09/2005	BBC3	Religious Offence	1
Nighty Night	14/09/2005	BBC3	Offence	1
Ocean FM Breakfast Show	05/08/2004	Ocean FM	Sexual Portrayal	1
Pete & Geoff Breakfast	08/09/2005	Virgin Radio	Religious Offence	1
Peter Cook In His Own Words	31/08/2005	BBC Radio 4	Offence	1
Planned Plant	28/07/2005	S4C	Offence	1
Playboy Channel	27/07/2005	Playboy	Offence	1
Quiz Call	02/09/2005	Quiz Call	Other	1
Radio 1	15/09/2005	BBC Radio 1	Offence	1
Ramsay's Kitchen Nightmares - Revisited	05/07/2005	Channel 4	Offence	1
Retro Sexual	23/08/2005	Spice Extreme	Sexual Portrayal	1
Revelation TV	26/09/2005	Revelation TV	Offence	1
Rich Bints	06/09/2005	Adult Channel	Offence	1
Richard and Judy	20/09/2005	Channel 4	Offence	1
Rose & Maloney	12/09/2005	ITV1	Religious Offence	1
Saga 106.6FM	26/09/2005	Saga 106.6FM	Other	1
Sandy Agent Provocateur	25/07/2005	Playboy	Offence	1
Scarlet FM		Scarlet FM	Offence	1
Scrapheap Challenge	25/09/2005	Channel 4	Offence	1
Secrets of the Mistress' Chambers	23/08/2005	Spice Extreme	Sexual Portrayal	1
Shadows	12/08/2005	Spice Extreme	Offence	1
Skillz	18/09/2005	ITV1	Offence	1
Sky News	23/07/2005	Sky News	Offence	1
Sky News	10/09/2005	Sky News	Offence	1
Sky News	22/09/2005	Sky News	Impartiality	1
Sony Entertainment TV Asia	23/09/2005	Sony	Violence	1

			Entertainment TV Asia	
Sophie's Wet Dreams	25/07/2005	Playboy	Offence	1
Squirters and Gushers	23/08/2005	Spice Extreme	Sexual Portrayal	2
Squirters and Gushers	22/08/2005	Spice Extreme	Sexual Portrayal	1
Supernanny	14/09/2005	Channel 4	Offence	2
Taggart	23/09/2005	ITV1	Offence	1
Talksport	22/07/2005	Talksport	Offence	1
Talksport	01/09/2005	Talksport	Offence	1
Talksport	27/09/2005	Talksport	Misleading	1
The Ambassador's Last Stand	21/09/2005	BBC2	Offence	1
The Bigger Picture with Graham Norton	29/08/2005	BBC1	Offence	1
The Bill	27/09/2005	ITV1	Other	1
The Christmas Channel	20/09/2005	The Christmas Channel	Misleading	2
The Gadget Show	17/02/2005	Five	Other	1
The Jeremy Kyle Show	21/09/2005	ITV1	Violence	1
The Simpsons	07/09/2005	Sky One	Offence	1
The Today Programme	20/09/2005	BBC4	Other	1
The X Factor	17/09/2005	ITV1	Offence	1
The Xtra Factor	03/09/2005	ITV2	Language	2
Tittybangbang	20/09/2005	BBC3	Offence	2
Tonight with Trevor McDonald	10/06/2005	ITV1	Accuracy	1
Tonight with Trevor McDonald	19/09/2005	ITV1	Misleading	1
Twenty Thousand Streets under the Sky	16/09/2005	BBC2	Sexual Portrayal	1
UEFA Champions League - Live	13/09/2005	ITV1	Offence	1
UK History	26/09/2005	UK History	Other	1
Waking the Dead	19/09/2005	BBC1	Violence	1
White Knights and Pink Maidens	26/07/2005	Spice Extreme	Offence	2
Wife Swap	19/09/2005	Channel 4	Language	4
World Rally	18/09/2005	ITV1	Offence	1
WWE - Smackdown	09/09/2005	Sky Sports 3	Offence	1
X-Rated: The Films They Tried to Ban	25/09/2005	Channel 4	Sexual Portrayal	1
Xtra Factor	10/09/2005	ITV2	Language	1
Zee TV	14/07/2005	Zee TV	Offence	1