

Ofcom Broadcast Bulletin

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Contents

Introduction	3
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Standards cases

Statement	4
In Breach	8
Not Upheld	12
Resolved	15

Fairness & Privacy cases

Upheld in Part	16
Not Upheld	66
Other programmes not in breach/outside remit	79

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>

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).

Standards cases

Statement on Star Date TV broadcasting as Babestar+ on Sky channel 960

Summary

Babestar+ was a channel, situated in the adult section of the Sky platform, that promoted adult chat. The licence for the channel was held by TV Commerce Ltd (“the Licensee”) and authorised the Licensee to operate a teleshopping service under the channel name ‘Star Date TV’.

The Licence for this service was surrendered by the Licensee on 1 March 2007. At the time the Licence was surrendered, the Licensee was aware that Ofcom was in the process of considering imposing a statutory sanction against it for breaches of the BCAP TV Advertising Standards Code and the terms of its Broadcasting Licence. In view of the Licensee’s surrender of the Licence, Ofcom has discontinued its consideration of a statutory sanction for this service.

However, it is a requirement of the Broadcasting Acts (as amended) that Ofcom does not grant a Broadcasting Licence(s) to any person unless Ofcom is satisfied that that person is a ‘fit and proper person’ to hold it and is not otherwise disqualified from holding such a licence. Similarly, Ofcom is required to do all that it can to secure that a person does not remain the holder of a Licence if it ceases to be satisfied that that person is a ‘fit and proper person’ under the Acts.

Moreover, in the case of Television Licenseable Content Services, Ofcom is entitled to refuse to grant a Licence if it is satisfied that the provision of the service would be likely to involve contraventions of standards set under section 319 of the Communications Act or the provisions of a code of practice in force under Part 5 of the 1996 Broadcasting Act (as amended).

Accordingly, in light of its statutory duties, Ofcom reserves its right to consider whether to grant Broadcasting Licences in the future to the Licensee (including any person controlling or managing the Licensee or otherwise responsible for it).

Background

Babestar+ was a channel broadcasting unencrypted material in the adult section of the Sky Electronic Programme Guide (EPG number 960). The Ofcom Licence (TLCS 769) for this channel was held by TV Commerce Ltd (“the Licensee”). The Licence authorised the Licensee to operate a teleshopping service under the channel name ‘Star Date TV’.

The Licensee surrendered the Licence, and all others it held, on 1 March 2007.

Issue

Compliance with the Broadcast Committee of Advertising Practice (BCAP) TV Advertising Standards Code

As a teleshopping service, the content on the channel was subject to the Broadcast Committee of Advertising Practice (BCAP) TV Advertising Standards Code ("the Advertising Code"), which is enforced by the Advertising Standards Authority (ASA). One of the rules in the Advertising Code prohibits the advertising of premium rate services of a sexually explicit nature on unencrypted channels.

In November 2006, the BCAP monitoring team contacted the Licensee about the channel's advertising of a premium rate service of a sexually explicit nature. The Licensee was asked to remove the advertising with immediate effect. The Licensee responded stating that the content had been removed and been replaced with a new show and service.

In January 2007, the BCAP monitoring team again contacted the Licensee about the promotion, on 15 January 2007, of premium rate services of a sexually explicit nature. This advertising featured two women wearing underwear, using crude and explicit language and acting in an extremely sexual manner (masturbating, simulating oral sex etc.). On 7 February 2007, the ASA published details of the following breaches by the Licensee of the Advertising Code in respect of the material broadcast on 15 January 2007:

- the advertising of premium rate services of a sexually explicit nature;
- the broadcast of advertising that would have a harmful influence on children; and
- the broadcast of advertising that would cause both serious and widespread offence to adults

The full adjudication can be found at:

http://www.asa.org.uk/asa/adjudications/non_broadcast/Adjudication+Details.htm?Adjudication_id=42211

Because of the seriousness and apparent repeated nature of the Code breaches, the ASA referred the Licensee to Ofcom for the consideration of a statutory sanction¹.

Compliance with the terms of the Ofcom Licence

During the ASA investigation, the Licensee claimed that the channel was not subject to the Advertising Code as the material it broadcast was editorial and not advertising. In the light of this claim, Ofcom contacted BSkyB, the EPG Services provider, who confirmed that according to their records the channel listed in the Sky EPG at programme no. 960 as "Babestar+" was operating under Licence number TLCS 769.

Licence number TLCS 769 was issued to TV Commerce Ltd and authorised it to operate a teleshopping service under the name Star Date TV. The Licence was originally issued to the Advert Channel Ltd in June 2004 for an editorial service broadcasting general entertainment programming under the name The Advert Channel. The Licensee later changed the company name from the Advert Channel Ltd to TV Commerce Ltd (January 2005). In February 2005 the channel name was changed to Your TV (an editorial service showing general entertainment programming) and in January 2006 to Broadband UK 2 and the nature of the service to teleshopping.

¹ In 2004 Ofcom transferred the responsibility for the Television Advertising Standards Code to the Advertising Standards Authority, including the functions of complaints handling and code policy development. Under this co-regulatory scheme Ofcom retains ultimate responsibility for all television advertising standards as the backstop regulator under the terms of the Communications Act 2003.

In October 2006 the Licensee requested the channel name change from 'Broadband UK 2' to 'Star Date TV'. This request was granted by Ofcom on the understanding that the nature of the service would remain teleshopping. At the time of the name change, the Licensee assured Ofcom that the channel would not promote adult/sexual services.

In November 2006, the Licensee contacted Ofcom with a request to change the channel name again, this time from 'Star Date TV' to 'Babestar +' and to also change the nature of the service from teleshopping to editorial, showing "babe" style content.

Ofcom requested further information about the proposed content and noted that 'Star Date TV' had been broadcasting adult content, despite the Licensee's assurances to the contrary. The Licensee replied with assurances that it would comply with Ofcom Codes and guidance and stated that the channel had not been showing adult content. Ofcom replied requesting recordings of the channel's output for two specific dates between 14:00-02:00 and advised the Licensee on 12 December 2006 that the request to change the name and nature of the service was still under consideration.

The Licensee provided recordings for the dates requested, but these covered the channel's output until 21:00 only. From the recordings provided, it was clear that the channel contained content of an adult/sexual nature. The output consisted of female presenters repeatedly asking viewers to call a premium rate number and text on-screen stated that the service was "18+ only". The presenters were dressed in revealing outfits and used suggestive language and gestures that, Ofcom believed, clearly indicated the content was intended to elicit adult calls.

Ofcom wrote to the Licensee on 24 January 2007 clarifying that the service broadcasting on EPG no. 960 under the name of Babestar+ was operating under Ofcom Broadcasting Licence TLCS 769 and that this Licence authorised a teleshopping service called Star Date TV. The letter made clear that Ofcom had serious concerns about the Licensee's activities: there was no Licence issued for a service called Babestar+ and the requested change in name and nature of the Star Date TV service to Babestar + had not been agreed. Ofcom expressed concern that the Licensee appeared to have provided false assurances about the service not promoting adult/sexual services. Also, the Licensee had failed to provide complete recordings of the channel's output when requested to do.

The Licensee responded that it held a separate Licence, TLCS926, under the name of Babestar.tv, which authorised the transmission of an adult chat service. The Licensee also said that it thought that the requested name change of TLCS769 from Star Date TV to Babestar + had been agreed on 12 December 2006.

Ofcom responded that there was no licence issued for a service called Babestar+. Ofcom said that the name change request from Star Date TV to Babestar+ had not been agreed, and that this had been clear from an email from Ofcom to the Licensee of 12 December 2006 which stated that "*Your request is still under consideration and we will get back to you in due course*". Ofcom said that it was not aware of the Babestar.tv service being provided and that Ofcom continued to believe that the Licensee was using the licence for Star Date TV (TLCS769) to provide the unauthorised Babestar+ service.

Ofcom expressed its most serious concerns that the Licensee appeared to have been less than transparent in its dealings with Ofcom and appeared to have repeatedly provided Ofcom with information that was not wholly accurate in relation

to its assurances about the content of the Star Date TV service. Condition 12 of the channel's Licence required the Licensee to provide Ofcom with such information as Ofcom may require for the purpose of exercising its functions. The letter advised the Licensee that the provision of false information or the withholding of information with the intention of causing Ofcom to be misled was grounds for revocation (Condition 29(2)(b) and (c)) and that Ofcom reserved the right to consider revocation of the Licence(s) held by TV Commerce Ltd and the Advert Channel Ltd on this ground.

In relation to the service Star Date TV, which the Licensee was using to broadcast the service 'Babestar+', it was noted that the Licensee had changed the name and nature of the service without Ofcom's agreement. Ofcom advised that the provision of a licensable service without the appropriate licence is a criminal offence, which can be prosecuted by (or with the consent of) the Director of Public Prosecutions under section 13 of the Broadcasting Act 1990 (as amended).

Ofcom also noted that the failure to provide recordings as requested by Ofcom was a breach of Condition 11 of the TLCS licence and failure to comply with a direction given by the ASA can be grounds for revocation under Condition 29(1)(a) of the TLCS licence.

Decision

In view of these breaches, Ofcom advised the Licensee that it had commenced the process of the consideration of a statutory sanction.

Because the Licensee has surrendered the Licence, Ofcom has discontinued its consideration of a statutory sanction for this service. However, the serious and repeated nature of the Licensee's breaches of the Advertising Code and the terms of its Licence appear to Ofcom to indicate an inability by the Licensee (including the persons managing and/or controlling the Licensee or otherwise responsible for it) to ensure compliance with the Conditions of the Licence and the relevant Codes and Rules.

Under the Communications Act 2003, Ofcom is entitled to refuse an application for a Television Licensable Content Service where, amongst other things, Ofcom is satisfied that if the Licence were granted, the provision of the service would be likely to involve contraventions of the Ofcom's codes and rules. Ofcom is required by the Broadcasting Act (as amended) to do all it can to secure that both potential and existing licensees are fit and proper to hold a licence and are not otherwise disqualified by the legislation from holding a Broadcasting Licence.

Accordingly Ofcom reserves its right to consider whether to grant broadcasting Licenses in the future to the Licensee (including any person controlling or managing the Licensee or otherwise responsible for it).

In Breach

The X Factor and The Xtra Factor

ITV, 23 September 2006, 19:20 and ITV2, 24 September 2006, 21:00

Introduction

Both programmes were sponsored by Nokia, the mobile phone manufacturer. Two viewers complained about *The X Factor* programme shown on 23 September 2006 in which a Motorola mobile phone used by Sharon Osbourne was obscured. One of the complainants also referred to a sketch entitled 'The Text Factor', shown during *The Xtra Factor* on 24 September 2006, in which the face of a Nokia-branded mobile phone was clearly visible. The viewers questioned whether the programme sponsor had inappropriately influenced the content of the programmes.

Channel Television, the ITV company responsible for ensuring the series complied with the Broadcasting Code, was asked for its comments on the references to the programme sponsor under Rules 9.5 ("A sponsor must not influence the content of a programme in such a way as to impair the responsibility and editorial independence of the broadcaster") and 9.6 (sponsor references in programmes).

Response

Channel Television explained that the programmes share the same Executive Producers, but the production teams are separate. Because of the demands of their fast-moving production schedules, the team working on *The X Factor* have very little contact with the one working on *The Xtra Factor*. The teams make a rough edit of each programme and the Executive Producers then decide on the final content of *The X Factor*. This in turn often necessitates changes to *The Xtra Factor*. Because both programmes are delivered to ITV for transmission on the actual date of broadcast, edits are often made late into the evening.

Channel Television said that during the late-night edit for *The X Factor* concerns were raised about a shot in which Sharon Osbourne was shown on her mobile phone receiving the news that she was the mentor for the 'Over 25' group of contestants. The shot was somewhat prolonged and featured an identifiable branded mobile phone (Motorola) centre-screen for a total of 14 seconds. Under pressure to complete the edit, the decision was taken to blur the picture of the phone slightly so that the brand was not easily discernible. Channel Television said that with the benefit of hindsight, however, showing this picture without any blurring was completely defensible.

Channel Television stressed that the decision to obscure the brand resulted from pressure to complete the editing and not through ill will towards Motorola. It also stated that that Nokia was not involved in any way in the decision making process.

Regarding the use of a Nokia-branded phone in 'The Text Factor' sketch, Channel Television said that this humorous item had first been shown in Episode 1 of *The Xtra Factor*. The sketch involved two of the judges, Simon Cowell and Louis Walsh, apparently trading childish insults via text messages. The texts were created by the production team who simply used phones that were to hand when filming the item. In the case of the first episode, these happened to be Motorola handsets. Channel Television provided footage of this sketch.

Because the first sketch proved successful, more sketches were shot when the crew were on location in Dublin. This time, purely by chance, the production team used Nokia handsets. On re-viewing the sketch, Channel Television's compliance staff noticed the Nokia branding but as both the Nokia name and the handsets were in silver, considered they blended into each other, diminishing the impact of the Nokia marque. Channel Television said they hoped viewers' attention would focus on the text messages displayed on-screen rather than the branding on the phone.

In conclusion, Channel Television did not believe that the brief references to Nokia during *The Xtra Factor* were promotional and gave an assurance that the sponsor did not influence the programmes.

Decision

We compared the footage, provided by Channel Television, of the mobile phones used during the first episode of the 'The Text Factor' with the episode shown on 24 September 2006. We noted that during the original episode there were 13 close-up shots of a mobile phone screen. During one of these shots, the first four letters of the brand of the phone (Motorola) were discernible. No branding was visible on the remaining shots. In contrast, the later episode was shot from a wider angle and the phone brand (Nokia) was clearly visible in all 13 shots.

In relation to the blurring of Sharon Osbourne's Motorola mobile phone during *The X Factor*, we recognise that there is a fine line to be drawn between allowing references to products within programmes that are justified editorially and those that are likely to be considered unduly prominent. We understand that, when facing tight deadlines, broadcasters are likely to err on the side of caution.

While we understand that the decision to obscure a product made by a competitor of the sponsor during *The X Factor*, coupled with references to the sponsor during *The Xtra Factor*, could lead viewers to infer that the sponsorship arrangement had influenced the content of the programmes, we note the broadcaster's assurances that the editorial decisions in each case were made independently and not influenced by the sponsorship arrangement. As such, we consider the programmes were not in breach of Rule 9.5.

However, we judged that the references to the sponsor during 'The Text Factor' sketch were in breach of Rule 9.6. This Rule prohibits promotional references to the sponsor in a programme it is sponsoring and requires non-promotional references to be incidental and editorially justified. 'The Text Factor' sketch was specifically filmed for use on the programme. The references were therefore not incidental. Further, as demonstrated by the original sketch, they could have easily been avoided and, as such, they were not editorially justified.

Breach of Rule 9.6 (*The Xtra Factor*)

Real Talk

Bangla TV, 9 November 2006, 19:45

Introduction

A viewer complained about footage of street riots in Bangladesh shown on this current affairs discussion programme. The complainant was particularly disturbed by one episode of a prolonged beating of an individual by a mob wielding wooden sticks.

Ofcom asked the broadcaster to comment on the programme in relation to Rule 1.11 of the Broadcasting Code (violence before the watershed) and Rule 2.3 (offensive material to be justified by the context).

Response

The broadcaster said that it had been a mistake to show the clip featuring the beating without any warning. It said that a warning for under-age viewers had been prepared but due to technical difficulties was not shown on the screen. It said that it would be more alert to this sort of material in the future.

Decision

While Ofcom welcomes the Bangla TV's acknowledgment of its error in this instance, the footage which was the subject of the complaint was particularly disturbing and graphic. The violence in the piece was not appropriately limited as required by Rule 1.11.

Furthermore, we believe that even if the pre-prepared warning the broadcaster referred to in its response had been transmitted, the broadcast of this unedited footage before the watershed was not justified by the context. It contained scenes of extreme violence and violation of human dignity which went beyond the generally accepted standards for a channel of this nature at this time of day.

Breach of Rules 1.11 and 2.3

News bulletins

Meridian FM (Restricted Service Licence), December 2006

Introduction

A listener complained that the news on Meridian FM was sponsored by a local business.

Rule 9.1 of Ofcom's Broadcasting Code states that news bulletins and news desk presentations on radio may not be sponsored.

Ofcom therefore requested the broadcaster's comments.

Response

Meridian FM admitted that, until it was contacted by Ofcom, it had not been aware, that sponsorship of news was prohibited. It explained that when the restricted service licence ('RSL') was granted there was limited radio experience and knowledge within the team and that dealing with the everyday practical issues in the run-up to transmission had left it short in terms of learning and training.

It apologised for its error, and assured Ofcom that it now had policies in place to ensure that there would be no recurrence.

Decision

From the recordings supplied to Ofcom, it was clear that news output on Meridian FM had been sponsored over a period of several weeks. This was clearly in breach of Rule 9.1. Ofcom welcomed the broadcaster's acknowledgement of its mistake and efforts to prevent a recurrence. It pointed out to the broadcaster that the finding of a breach would be a factor to be taken into account by Ofcom in considering any future application for an RSL by the current licence holders.

It is important that all holders of RSLs, which are often issued for specific events and limited periods of time, appreciate that the Rules in Section 9 (sponsorship) and 10 (commercial references) of the Broadcasting Code apply to them fully. They must at all times have in place appropriate resources and procedures to ensure compliance.

Breach of Rule 9.1

Not Upheld

Coverage of the Execution of Saddam Hussein *BBC News 24, Sky News*

Introduction

The execution of Saddam Hussein on 30 December 2006 attracted worldwide attention. The former head of state was executed after judicial process and officially released footage of the execution, by the Iraqi government, was made available for broadcast. Many broadcasters chose to show extracts of these pictures and this was done at different times of the day and in different ways by individual broadcasters. The execution dominated news headlines for at least the first two weeks of January 2007, as unofficial mobile phone footage of the event came into the public domain (some of which was also broadcast on UK television).

Ofcom received 70 complaints from viewers who found some of the images broadcast to be offensive. Many complainants also expressed concern at the effect such images may have had on younger viewers. The complaints related to coverage on several channels and programmes. Ofcom viewed all of the material complained of and concluded that in most cases, the use of the footage was justified in context given the huge public interest there was in the news and that, for example, warnings were given to viewers about the nature of the material they were about to see and what was shown was appropriately limited. There was therefore no need, in these cases, to seek a response from the broadcasters.

However, we did ask two broadcasters to comment on the following two news bulletins in particular.

BBC News 24 coverage on 30 December 2006 between 12:15 and 12:35

BBC News 24 extensively reported the execution in its immediate aftermath (in common with most other broadcasters). However, we were concerned that no specific warning was given about the nature of the images before the report containing the images was broadcast. We also noted that this particular broadcast was at lunchtime during the school holidays.

In the second report, *BBC News 24* ‘floated’ the footage over the audio of a telephone interview.

Sky News coverage on 2 January 2007 at 17:00.

The Sky News report was broadcast 3 days later when unofficial mobile phone images had come to light. The context of this report was the Deputy Prime Minister’s reaction to the mobile telephone footage. This footage was ‘floated’ over the audio of John Prescott’s comments – taken from an earlier interview. Although the footage was not of particularly good quality, it was graphic and highly revelatory. No specific warning had been given and the broadcast occurred during the day and during school holidays.

We asked the two broadcasters to comment in relation to Rules 1.11 (violence to be appropriately limited in pre-watershed programmes) and 2.3 (generally accepted standards) of the Broadcasting Code (“the Code”).

Response

In the case of *BBC News 24*, the BBC said that the judgement was made in principle that, on the day of the execution itself, all the available footage could be used as occasion warranted it. In particular, the BBC bore in mind that audience research demonstrated that children form only a very small proportion of the audience for *BBC News 24*, and that many of them view in the presence of adults who can be expected to make judgements about whether it is appropriate to continue watching.

In this particular bulletin, footage of the moments leading to the execution was shown twice. Firstly, at 12:17, the noose was shown being put round Saddam Hussein’s neck, followed by a shot of his shrouded body. In relation to these shots, the BBC pointed to statements about the subject matter by the newsreader and by the unambiguous on-screen captions stating, for example “*Hanging filmed as proof of execution*”. The BBC said these constituted (in the context of a continuous news service) the kind of “appropriate information” called for in Rule 2.3 and appropriate justification envisaged in Rule 1.11 of the Code.

In relation to the second, lengthier shots used between 12:22 and 12:25, the BBC explained that these accompanied an interview with Bassam al Husseini, an adviser to the Iraqi Prime Minister. The BBC indicated that there were differences of view within the BBC about whether this was an appropriate use of the material, as the justification for showing such unusually sensitive pictures depends to a great extent on their relevance to what is being said at the time. The relevance of the footage to this interview with Bassam al Husseini was less direct than the relevance of the footage to the earlier content of the bulletin. However it was still justified in a continuous news service like *BBC News 24*, in the hours immediately following the event.

The bulletin that *Sky News* was asked to comment on reported reaction to the mobile phone footage that had come to light in the days following the execution. The broadcaster dealt first with the question of whether children were adequately protected from unsuitable material. It said that although the bulletin was broadcast at a time when children could have been watching, it was material which had already been seen widely and therefore would have been unlikely to be a new exposure to such material.

It also pointed to the introduction to the item which contained information anticipating the story about mobile phone footage of the hanging of Saddam and the fact that it was considered “deplorable” by the Deputy Prime Minister. This provided the necessary context for the pictures and was also a very strong clue to what would follow in the report. Sky also highlighted that the phone footage was indistinct and so was not a very graphic or close-up depiction of the moments before execution. It did not broadcast the actual hanging.

In relation to Rule 2.3, Sky News said that while it accepted that the material may cause offence to some people, this was a very strong example of the context justifying its use. The leaking of the mobile phone footage and the Deputy Prime Minister’s comments on it were precisely what the news story was about. The broadcaster also pointed out that it is a 24-hour news channel and those watching it

choose to do so. The chances of people coming across the coverage “unawares”, as defined by the Code, are therefore reduced.

Decision

The Broadcasting Code recognises the broadcasters and the audience’s right to freedom of expression (particularly, in this case, the right to receive and impart information and ideas). The issue Ofcom had to consider here was whether that right was exercised responsibly and therefore in accordance with the Code. The execution of Saddam Hussein had been widely anticipated. Further, the execution was clearly a matter of public interest. Nevertheless, many people found the footage leading up to the execution disturbing. We do not consider that the images themselves were too offensive for broadcast – provided they were properly justified in context.

The *BBC News 24* bulletin, on the 30 December 2006, was broadcast in the hours immediately following the execution and the focus was on the events of the day. *BBC News 24* prefaced the use of the images with the words “*you’re watching a BBC News special, with extensive coverage of the execution of Saddam Hussein*”. The *Sky News* bulletin, on 2 January 2007, was reporting how the Deputy Prime Minister had described the manner of the execution as deplorable. *Sky News* referred in its introduction to the “*jeering*” in the execution chamber. We, therefore, believe that while there were no specific warnings, the broadcasters - in both cases - did provide “appropriate information” (for news channels) as required by the Code and so viewers would have been aware to a great extent of the nature of the subsequent reports.

Given the unique nature of the events, Ofcom considers in both instances the use of the pictures was justified by the context, so that there was no breach of the Code. At all times the footage was curtailed to events surrounding the execution; the moment of death was never shown. We also bore in mind the fact that both *BBC News 24* and *Sky News* are rolling news channels, the audience for which is overwhelmingly adult and self-selecting.

While we do not consider that there were breaches of the Code in respect of these two bulletins, broadcasters should be aware that footage, such as, this may contain particularly disturbing images (for instance, the jeering and taunting of Saddam Hussein before his execution). Broadcasters therefore need to consider very carefully the use of such strong material as general ‘background’ imagery in, for examples, interviews or live discussions with correspondents. It may be the case that where images are extremely powerful broadcasters will need to give greater context to the pictures (e.g. by careful scripting).

Not Upheld

Resolved

News bulletins

Channel S – Various dates

Introduction

A viewer queried the acceptability of the sponsorship of the money rate exchange section of the broadcaster's evening news programme. The sponsorship was acknowledged during the report by the text "*Courtesy of Hillside Travel*" and "*For more information call Hillside Travel on...*".

Ofcom asked the broadcaster to comment in respect of Rules 9.1 (no sponsorship of TV news and current affairs programmes) and 9.14 of the Broadcasting Code ("the Code") (sponsorship and advertising must be separated).

Response

Channel S said that, as a result of the complaint, it had taken steps to separate the sponsorship of the currency rate report from the rest of the news. It also removed the text inviting viewers to contact the sponsor from the credits.

Decision

The Code prohibits the sponsorship of news (Rule 9.1) but does allow the sponsorship of specialist news reports, such as currency reports. However, if such reports are sponsored, they should be clearly separated from the news programme to avoid the impression that the news itself is sponsored. For all sponsorship arrangements, sponsor credits must not contain advertising messages or 'calls to action' (Rule 9.14).

Ofcom considers that the sponsorship of the currency report had not been adequately separated from the rest of the programme. In addition the content of the credits had included unacceptable 'calls to action'. However, we welcome the steps taken by the broadcaster to remedy the breaches of the Code. In view of the action taken by the channel, we consider the matter resolved.

Resolved

Fairness and Privacy Cases

Upheld in Part

Complaint by Ms Sheri Atherton

Nurseries Undercover: The Real Story, BBC1, 12 August 2004

Summary: Ofcom has upheld part of this complaint of unfair treatment and unwarranted infringement of privacy.

Ms Sheri Atherton complained that she was treated unfairly and that her privacy was unwarrantably infringed in the making and the broadcast of the programme. The programme investigated the care of children in day nurseries and the effectiveness of Ofsted inspections of nurseries. Bank House Day Nursery ("Bank House"), a nursery in Radcliffe, North Manchester, was one of a number of nurseries visited by an undercover reporter. The reporter obtained a placement at Bank House and carried out secret filming there. The programme included a number of criticisms of the nursery and of some members of staff. It included secretly filmed footage of both carers and the children in their care. Ms Atherton is a member of staff at Bank House who was secretly filmed. Footage of her was included in the programme.

Ofcom's Fairness Committee, Ofcom's most senior decision making body, considered the complaint from Ms Atherton and reached a provisional decision on 5 July 2006. It found that parts of the complaint should be upheld. The BBC subsequently asked the Fairness Committee to reconsider its provisional decision in respect of one element of the complaint. Ofcom considered that the BBC had raised points that were material to the substance of the decision and the case was referred back to the Fairness Committee for it to reconsider that head of the complaint, in accordance with Ofcom's published procedures.

Following its reconsideration, Ofcom concluded that:

- a) It was unfair for the programme to make a charge of inappropriate behaviour by Ms Atherton. The inclusion of such a strong allegation by an expert without her having been provided with all material evidence resulted in an unfair presentation of this issue.
- b) No unfairness or unwarranted infringement of privacy resulted from the BBC using an artificial technique when editing footage of Ms Atherton shouting at children in order to protect a carer. In the particular circumstances, it was legitimate for them to do so to avoid an innocent member of staff in the shot appearing to shout.
- c) Secret filming of her at the nursery was an infringement of Ms Atherton's privacy, as it was reasonable for her to expect that she would not be filmed surreptitiously during the course of her work. However, the programme makers had information from two sources, that they said were credible, about inadequate staffing levels at Bank House. There were some legitimate concerns raised by what the reporter saw. The public interest in the care provided to young children generally and in the care provided at Bank House specifically justified the BBC's decision to allow secret filming of staff at the nursery, such as Ms Atherton, and outweighed her right to privacy.

Introduction

The programme, *The Real Story*, investigated the care of children in day nurseries and the effectiveness of Ofsted inspections of nurseries. Bank House Day Nursery (“Bank House”), a nursery in Radcliffe, North Manchester, was one of a number of nurseries visited by an undercover reporter. The reporter obtained a placement at Bank House and carried out secret filming there. The programme included a number of criticisms of the nursery and of some members of staff. It included secretly filmed footage of both carers and the children in their care. Ms Sheri Atherton is a member of staff at Bank House. Footage of her was included in the programme.

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

Complaint

Ms Atherton’s case

In summary, Ms Atherton complained that she was treated unfairly and that her privacy was unwarrantably infringed in the broadcast programme in that:

- a) The programme included a false allegation that she had “manhandled” a child. It was unfair to include this in the programme, since, before it was broadcast, a decision had been taken that the allegation was unfounded and that she could return to work, having been suspended as a result of the footage being shown to the child’s parents. Ms Atherton also claimed that the programme makers had altered the volume of her voice so that appeared to be louder than it actually was.
- b) A false allegation was made about her without proof, in that she was included in a shot used to show that staff shouted at the children, although she was looking at a noticeboard at the time, and the volume was increased. This resulted in her unfairly being portrayed as an uncaring nursery nurse and unwarrantably infringed her privacy in the making of the programme.

In summary, Ms Atherton complained that her privacy was unwarrantably infringed in the making of the programme in that:

- c) She was secretly filmed while at work.

The BBC’s case

In response to the complaint of unfair treatment and unwarranted infringement of privacy in the broadcast, the BBC said in summary:

- a) Ms Atherton was a member of the nursery’s management team and had a leadership role as well as responsibility for the maintenance of standards. There was a public interest justification for including the sequences in which she appeared. There was no allegation in the programme that she “manhandled” a child. The incident was introduced as a boy being “told off for making an ambulance noise” and then being excluded from singing. The incident was one of those assessed by Marion Dowling, the expert who appeared on the programme. She considered that the boy was “manhandled” and that it was an example of bad practice. The programme showed the incident and explained the relevant

national standard, but did not include the interview with Ms Dowling in relation to this. In cases where the programme makers found evidence that nursery standards were not acceptable and a childcare expert confirmed this, they then met with the parents of the children affected. The parents of the boy involved in this incident were given details of what happened and shown the footage. It was following the mother's meeting with the programme makers that the Child Protection Unit at Greater Manchester Police approached the BBC requesting to view the footage. The officer who viewed the footage was concerned with child protection issues and was not viewing as an expert in childcare. Ms Atherton's suspension was a decision made by the nursery and the BBC was not involved with it at any level. Comparison of the original footage with the broadcast sequence does not support the claim that the volume of Ms Atherton's voice was altered so as to give an exaggerated impression.

- b) The untransmitted footage ("rushes") showed that the editing of the sequences involving Ms Atherton was fair and the methods used to obtain the footage proportionate. In one incident when Ms Atherton was shouting at children, as was clear from the rushes, the audio and visuals were shifted slightly. This was because when the programme makers viewed the rushes they found that another member of staff, who was not shouting, was in the foreground. As this member of staff's face would have to be obscured to protect her, so concealing her mouth, the programme makers felt it might look as though she was the person shouting. They felt it fairer to find another way to protect her, so they moved the sound by a few seconds to accompany a more general shot of the room, so there would be no danger of confusion over who was shouting. Although it was unusual to employ a device of this kind, the reasons for using it in this case were valid and did not result in viewers being misled on the point at issue, namely that on occasions staff tried to keep control by shouting. The volume was not altered so as to mislead viewers.

In response to the complaint of unwarranted infringement of privacy in the making of the programme, the BBC said in summary:

- c) There was a strong public interest justification for filming at Bank House. Nurseries are regulated by Ofsted. Parents need to have confidence that the regulatory framework guarantees minimum standards of care for their children. If a nursery falls below the minimum standard and the regulator either does not know, or is otherwise incapable of ensuring that those minimum standards are being maintained, it is in the public interest for that to be exposed, both in terms of the general principle and in specific instances. The programme makers had become aware of failings at Bank House as a result of information from credible sources with personal experience of circumstances at the nursery. After discussion with senior editorial executives, arrangements were made for an undercover reporter to take a secret camera into the nursery. Filming at the nursery confirmed that standards at Bank House had fallen below the minimum acceptable and this was escaping detection. Exposing departures from good practice at Bank House was in the public interest. Any infringement of Ms Atherton's privacy was warranted by the importance of the subject and by the necessity of obtaining clear evidence that Ofsted guidelines were being breached.

Decision

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public and

all other persons from unfair treatment and unwarranted infringements of privacy in programmes included in such services.

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

This case was referred to the Fairness Committee, Ofcom's most senior decision making body, for consideration. The Fairness Committee upheld the complaint in part (head a)) and the provisional decision was sent to both parties. The BBC subsequently requested that the Fairness Committee reconsider its provisional decision in respect of one element of the complaint (head a)). Ofcom considered that the BBC had raised points that were material to the substance of the decision and the case was referred back to the Fairness Committee for it to reconsider head a), in accordance with Ofcom's published procedures.

The Committee had before it a complaint from Ms Atherton and a response from the BBC, with supporting material. It viewed a recording of the programme and a recording of untransmitted footage. With regard to head a), the Committee also considered the BBC's request for reconsideration of the provisional decision and the points made on behalf of Ms Atherton in response.

The Committee's final decision is set out in full below, by reference to each of the heads (heads a) to c)) of Ms Atherton's complaint. As a preliminary point, the Committee noted that documentary making is important in investigating matters of public concern, such as the care provided to children in nurseries. This is an appropriate subject for broadcasters to address in programmes (subject to the conditions of the Ofcom Broadcasting Code). It is, however, essential that programmes are accurate in all material respects so that no unfairness is caused and unwarranted infringements of privacy are avoided. This is necessary for both participants and viewers.

- a) Ms Atherton complained that the inclusion of footage of her handling of a child who was making ambulance noises suggested that her conduct was unacceptable and was unfair to her. She also complained that the volume of her voice appeared to have been increased.

The Committee viewed the rushes of this incident. It did not consider that the volume had been increased and took the view that the impression given in the rushes was the same as in the programme.

At a hearing held to consider a complaint from Bank House, it was explained to the Committee by the BBC that both sets of the reporter's covert recording equipment had failed, resulting in the incident being only partially recorded. The Committee considered that this was particularly unfortunate given that the childcare expert, who was shown the footage of the incident, was asked to provide a professional opinion only on the very limited footage that had been recorded. According to the BBC, the Committee was provided with the same footage the expert had viewed. In considering the critical reaction of the expert (who suggested that Ms Atherton's conduct was unacceptable and contrary to Ofsted guidelines), the Committee noted that the rushes provided were brief, lasting approximately half a minute in total, and that none of the key material leading to or following the incident had been available to the expert or Ofcom.

From the limited footage that was available, it was clear that this was the third warning that was given to the child but the Committee noted that neither of the two previous warnings was included in any available footage. The Committee also noted from the footage they saw that the child did not appear to be distressed by the incident.

In its consideration of this complaint the Committee was very clear that Ofcom's role was not to substitute its own opinion for that of experts and the Committee wished to emphasise that its decision in this case in no way sought to do so. However, it was incumbent on Ofcom to reach a balanced decision based on a critical assessment of the evidence put before it in order to determine whether the broadcaster's actions were consistent with the requirements of the Code.

Broadcasters are required to take all reasonable care to satisfy themselves that all material facts have been considered before transmission and so far as possible fairly presented in the programme.

In this case surprisingly little footage of the incident was available to the expert for her to comment upon and the footage did not show what went before or after the incident. In the circumstances, it did not appear to the Committee that the BBC had presented all the material evidence to Ms Dowling when seeking to obtain her opinion. Since there was also no suggestion that Ms Dowling was responding to anything other than the footage that she had been shown, it was unclear to the Committee on what basis the programme was able to criticise Ms Atherton so heavily by making the strong allegation that her behaviour towards the child was inappropriate and contrary to Ofsted's guidelines.

In the absence of footage of what went before the incident or what followed the incident, Ofcom was not satisfied that the BBC had taken all reasonable care to satisfy themselves that all material facts had been considered prior to transmission. Further, by including such a strong allegation by the expert without providing the expert with all material evidence (or making clear in the programme that her comments were based on very limited footage of the incident which did not include what went before or after the incident) the programme's presentation of this issue was, in the Committee's view, unfair.

The Fairness Committee found that Ms Atherton was treated unfairly in the programme in this respect.

- b) Ms Atherton complained that a false allegation was made that she shouted at children. The Committee noted the BBC's explanation that footage was moved in order to protect the identity of another, entirely innocent, member of staff. Having viewed the relevant rushes, the Committee appreciated why Ms Atherton might not have realised on viewing the programme what was happening in the clip. However, the Committee understood from the rushes that Ms Atherton was shouting at the time of the filming. If the footage had not been edited as it was, it would have appeared that a member of staff who was not shouting was in fact the person shouting. While the BBC used an artificial technique to deal with this, the Committee considered that, in these particular circumstances, it was legitimate to use this device to protect the carer in the shot and this did not result in an unfair portrayal of Ms Atherton's actions as conveyed on the rushes.

The Fairness Committee found no unfairness to Ms Atherton and no infringement of her privacy in this respect.

- c) The complainant felt that the programme makers unwarrantably infringed her privacy by secretly filming her while she was at work. In deciding whether Ms Atherton's privacy was unwarrantably infringed in the making of the programme, the Committee first considered whether there had been a breach of her privacy as a result of the filming. The filming took place while Ms Atherton was at work going about her ordinary duties as a nursery carer. In the Committee's view, it was reasonable for Ms Atherton to expect that she would not be filmed surreptitiously during the course of her work and therefore her privacy was infringed in the making of the programme.

Having decided that there was an infringement of Ms Atherton's privacy, the Committee proceeded to consider whether, in all the circumstances, this was justified in the public interest. In addressing this question, the Committee took account of the fact that the programme makers had decided to film at the nursery on the basis of information they had received from two sources that they said were credible (details of which, in accordance with usual journalistic standards, were not provided to Ofcom) about inadequate staffing levels at Bank House. The Committee accepted that this provided sufficient justification for the BBC to send an undercover reporter to film secretly at the nursery.

Having secured a placement at Bank House, the reporter witnessed some periods of short staffing and other incidents of care that appeared to show a failure to meet Ofsted national standards for under 8s day care. The Committee considered that there were some legitimate concerns raised about the nursery by what the reporter saw. It took the view that the secret filming at the nursery was justified by a legitimate public interest in exposing weaknesses in the regulatory framework for nursery care by seeking to investigate specific instances of lapses of minimum standards at Bank House and that the public interest in the care provided to young children outweighed the nursery's right to privacy.

With regard to Ms Atherton herself, although the Committee found some unfairness to her in the programme (see a) above), it considered that there were some legitimate concerns raised about the nursery by what the reporter saw. The Committee took the view that the public interest justified the secret filming of Ms Atherton at work while the reporter legitimately gathered material for the programme.

The Fairness Committee found no unwarranted infringement of Ms Atherton's privacy.

Accordingly, Ofcom found that Ms Atherton was treated unfairly in the programme in one respect. There was no unwarranted infringement of her privacy in the making of the programme and no infringement of her privacy in the broadcast. Part of her complaint was upheld.

Ofcom has directed the BBC to broadcast a summary of this adjudication.

Complaint by Pannone & Partners on behalf of Bank House Day Nursery

Nurseries Undercover: The Real Story, BBC1, 12 August 2004

Summary: Ofcom has upheld parts of this complaint of unfair treatment and unwarranted infringement of privacy.

Pannone & Partners complained on behalf of Bank House Day Nursery ("Bank House") that it was treated unfairly and that its privacy was unwarrantably infringed in this edition of *The Real Story*. The programme investigated the care provided for children in day nurseries and questioned the effectiveness of Ofsted inspections of nurseries. An undercover reporter spent time at three nurseries and two others were also referred to. One of the nurseries visited was Bank House, a nursery in Radcliffe, North Manchester, which is owned and run by Mrs Frances Rivers and Ms Jenny Rivers. The reporter obtained a placement at Bank House and carried out secret filming there. There were a number of criticisms of the nursery in the programme, in particular in relation to staff to child ratios, and of some members of staff. It included secretly filmed footage of both carers and the children in their care.

Individual complaints by members of staff at the nursery and a parent have been considered and adjudicated on separately.

Ofcom's Fairness Committee, Ofcom's most senior decision making body, considered the complaint from Bank House and reached a provisional decision on 5 July 2006. It found that parts of the complaint should be upheld. The BBC subsequently asked the Fairness Committee to reconsider its provisional decision in respect of four elements of the complaint. Ofcom considered that the BBC had raised points that were material to the substance of the decision and the case was referred back to the Fairness Committee for it to reconsider those four heads of the complaint, in accordance with Ofcom's published procedures.

Following its reconsideration, Ofcom concluded that:

- a) It was unfair for the programme to suggest that nurseries might have spruced themselves up for Ofsted inspections, as this comment was likely to be interpreted by viewers as implicitly referring to Bank House. The programme's presentation of this issue was unfair.
- b) No unfairness was found in relation to Bank House's complaint that the programme failed to balance its criticisms of the nursery with positive commentary. Although an Ofsted report was not referred to in detail, the top rating given to Bank House was mentioned and the programme highlighted examples of good care witnessed by the reporter.
- c) No unfairness resulted to Bank House on the basis that it was not sufficiently distinguished in the programme from the other nurseries featured. Ofcom noted that the criticisms of Bank House were the least serious of all the nurseries featured and that it was therefore important for the BBC to ensure that the separation between the nurseries was clear to viewers. However, Ofcom found that the footage of each nursery was clearly separated in the body of the programme. Therefore Ofcom was satisfied that any initial confusion between the nurseries that might have

arisen as a result of the opening sequence to the programme was likely to have been dispelled by the end of the programme.

- d) It was unfair for the programme to make a charge of inappropriate behaviour by a member of staff at the nursery. The inclusion of such a strong allegation by an expert without her having been provided with all material evidence resulted in an unfair presentation of this issue.
- e) No unfairness resulted from the BBC using an artificial technique to protect a carer, since, in the particular circumstances, it was legitimate for them to do so in order to avoid an innocent member of staff in the shot appearing to shout.
- f) It was unfair for the programme to suggest that the undercover reporter was left entirely on her own to take children to the toilet. This allegation was made in the absence of a definition by Ofsted of "left alone" and the footage provided by the BBC did not support the charge or justify any suggestion that she was unsupervised.
- g) Footage of a little girl was unfairly edited so as to suggest that she was left crying without being comforted. The BBC's untransmitted secretly filmed footage gave a materially different picture of the care the little girl received and unfairness resulted from the BBC's editing of the footage. (Ofcom noted that the BBC had itself upheld a complaint from the individual carer, on the grounds that the sequence, as edited, reflected actual events, but "intensified their impact to a point that introduced an element of unfairness").
- h) It was unfair for the programme to criticise Bank House for failing to carry out a Criminal Records Bureau ("CRB") check on the undercover reporter when she applied for a placement at the nursery. Such a check was only necessary if the reporter was to be charged with taking children to the toilet unsupervised. As noted above, the footage did not support the allegation that the nursery allowed the reporter to do so.
- i) It was not unfair to Bank House for the BBC to use of clips of children playing happily out of doors in the programme. The use of these clips was a device to separate the footage of the different nurseries, rather than a reflection of the care provided at Bank House.
- j) No unfairness resulted to Bank House as a result of the contribution of the expert who appeared on the programme. Her standing was referred to in the programme and she was qualified to comment as an expert on the secretly filmed footage.
- k) No unfairness resulted to the nursery from the BBC's use of a statement provided for the programme. It was unrealistic to expect that a statement of two A4 pages would be read out in full. However, with one exception, the content of the statement was reflected in relation to the specific incidents included in the programme. The tone in which the statement was quoted was not sarcastic.
- l) There was no unfairness to the nursery on the basis that the clips used were intended to be representative of the nursery. Ofcom considered that it

would have been clear to viewers that the footage was not intended to be representative of care at the nursery.

- m) It was not unfair for the programme to show exterior footage of Bank House, with contact details, that was in the public domain and clearly visible from the public road.
- n) Secret filming at the nursery was an infringement of its privacy, as it was reasonable for the nursery to expect that its business of caring for young children would not be filmed surreptitiously. However, the programme makers had information from two sources that they said were credible about inadequate staffing levels at Bank House. There were some legitimate concerns raised by what the reporter saw at the nursery. The public interest in the care provided to young children generally and in the care provided at Bank House specifically justified the BBC's decision to allow secret filming at the nursery and outweighed its right to privacy.
- o) The fact that the identity of Ms Rivers, one of the owners of the nursery, was not obscured, combined with inclusion of the contact details of the nursery in the programme, was an infringement of the nursery's privacy in the broadcast. However this was justified by the public interest in the care provided to children at Bank House, for which, as one of the owners, Ms Rivers was responsible.

Introduction

This edition of the BBC's current affairs series, *The Real Story*, investigated the care provided for children in day nurseries and questioned the effectiveness of Ofsted inspections of nurseries. An undercover reporter spent time at three nurseries and two others were also referred to. One of the nurseries visited was Bank House, a nursery in Radcliffe, North Manchester, which is owned and run by Mrs Frances Rivers and Ms Jenny Rivers. The reporter obtained a placement at Bank House and carried out secret filming there. There were a number of criticisms of the nursery in the programme, in particular in relation to staff to child ratios, and of some members of staff. The programme included secretly filmed footage of both carers and the children in their care.

Ofcom's Fairness Committee held a hearing to consider the complaint. It was attended by Mrs Frances Rivers, her husband, Mr David Rivers, and Ms Jenny Rivers and representatives of the BBC.

Complaint

Bank House's case

In summary, Pannone & Partners complained on behalf of the Rivers that Bank House was treated unfairly in that:

- a) The programme suggested wrongly that the nursery was able to "spruce itself up" for an Ofsted inspection. In fact an Ofsted inspection took place at the nursery only a few weeks after the secret filming took place. Although Bank House was aware of the month in which the inspection, lasting two and a half days, would take place, it was not aware of the precise date and could not prepare for the inspection as suggested in the programme. At the hearing Mrs Rivers said that part of the inspection involved Ofsted looking at staff and child rotas.

- b) The outcome of the Ofsted inspection regarding the care of the children at Bank House was "good", the highest possible rating. The only legitimate criticism that could be made of Bank House by the programme was very minor, namely that, if a member of staff had to leave a room to get a drink, the staffing ratio, temporarily and for a very short period, fell below the minimum. Mrs Rivers acknowledged at the hearing that on seven occasions, and not for full days, rooms had been short staffed, through staff sickness. At no point did this prejudice or compromise the care of the children. However, the BBC sought to undermine the report and discredit Ofsted. It was unfair of the programme makers not to use the report in the programme so as to create balance. The Ofsted report was also referred to in a sarcastic tone.
- c) The programme featured two other nurseries of which serious criticisms were made. After the programme, a member of staff was dismissed at one of nurseries and Ofsted served a Compliance Notice on the other. The programme also referred to incidents at two further nurseries that resulted in the death of one child and serious injury to another. The inclusion of Bank House in the same programme resulted in the implication that any fault at the nursery was of the same order as the faults at the other nurseries featured, and the suggestion that Bank House was a nursery where such incidents might occur. The opening sequence, a "collage" of all three nurseries featured from which it was impossible to distinguish one from the other, also suggested that criticisms of all three nurseries were of the same level.
- d) In one scene, a carer was shown asking a child to stop making ambulance noises. After warnings, as he was disturbing other children, the child was firmly removed from the table at which he was sitting. The programme suggested that the carer's conduct was unacceptable and resulted in her being suspended from work for five weeks. The footage was shown to the Police Child Protection Officer who was satisfied with the conduct and believed that the volume of the carer's voice had been increased for the programme, thereby distorting the incident. At the hearing Mr Rivers said that, from the rushes provided, it was impossible to tell how long the child had been disruptive before the incident or for how long he was kept away from the table. Mrs Rivers said that the care was appropriate for the child in question.
- e) The programme included a clip in which a carer was heard shouting at children. The carer who was meant to be shouting appeared to be, at the time, looking at and quietly reading a notice board with her back to the children. The dialogue appeared to have been dubbed over the clip. Having viewed the relevant footage at the hearing and heard the BBC's explanation, Mrs Rivers said that it was not acceptable to move footage around even if the aim was to protect an innocent member of staff.
- f) A volume change and unfair editing took place in relation to a sequence in which the undercover reporter was shown taking children to the toilet. The programme suggested that the reporter should not have been asked to take children to the toilet, as she was not qualified. She was not, in fact, asked to take them to the toilet, she was asked to take them to clean their teeth and wash their hands. She instigated the children going to the toilet. The Child Protection Officer saw the footage and confirmed that the undercover reporter was not asked to take the children to the toilet. It was quite clear from untransmitted footage that a member of staff named Elizabeth Dalziel was standing behind the reporter giving her instructions. She could be heard in the programme saying, faintly, "*Make sure*

you put some soap on your hands". The undercover reporter was then heard loudly and clearly saying "*Put some soap on your hands*". On the untransmitted footage, Mrs Dalziel was clearly heard talking to the reporter and the children, but this was not clear on the programme. At the hearing Mrs Rivers said that she did not think the reporter was left alone with children and that there were two other members of staff present who were not on the footage.

- g) The programme included footage of a child apparently being ignored by staff while she cried. It was asserted that she was crying for over 30 minutes, although Bank House was told originally that she was crying for "almost 20 minutes". The voiceover suggested wrongly that the child was new to the nursery. The child's mother had expressed concerns herself that the child would not stop crying. When staff tried to comfort her, she pushed them away. Comforting words were edited out, so as to suggest that the carer was happy to let the child continue crying. The programme also suggested, wrongly, that the child was being ignored, when in fact she was being talked to the whole time by a carer. Ms Rivers said at the hearing that the child was moving around happily and independently for most of the footage and that children should be allowed to play independently. Mrs Rivers said that the care given to the child was appropriate.
- h) The programme criticised Bank House for not carrying out the appropriate identification checks on the undercover reporter. A discussion between Ms Jenny Rivers and the reporter, in which this issue was discussed, was heavily edited, so as to omit a section in which Ms Rivers made it plain to the reporter that if she was to stay any longer, detailed checks would have to be made. The reporter was asked to produce formal identification so that such checks could be initiated: her response was not to return to the nursery. The editing of this conversation resulted in the false impression being given that the nursery did not take the appropriate steps to ascertain the reporter's identity and carry out the appropriate checks. The nursery's policy before the programme was that volunteers were not Criminal Records Bureau ("CRB") checked, in accordance with Ofsted standards, as they were not left unsupervised. However in view of the reaction by parents on discovering that such volunteers did not have to be checked, the nursery's policy was now that no one was allowed to work or volunteer at the nursery until the CRB check was complete.
- i) The use of "Arcadian bucolic idylls" within the programme, showing children playing happily in fields, suggested unfairly that there was a contrast between a utopian ideal and a flawed service provided by Bank House. The scenes used suggested unfairly that Bank House fell far short of the ideal.
- j) It was not made clear what was the expertise of the childcare expert who appeared on the programme to comment on the investigation, nor was it clear which clips she was shown. Her opinions were therefore meaningless and unfair.
- k) Bank House was invited by the programme makers to submit a written statement. However, very little time was given in the programme to the statement provided and it was not read out as the nursery intended and had been led to understand it would be. The extracts that were included in the programme were read sarcastically.
- l) The filming took place over six days, resulting in a few minutes of airplay. The clips shown were portrayed as being representative of the care provided by Bank House, but, in the circumstances, could not have been so. The clips were not put into context, so that viewers were left with the impression that they were

representative of the level of the nursery's care. Ms Rivers said at the hearing that the level of care of the children at the nursery was not jeopardised or chaotic as a result of any brief periods of short staffing.

- m) The programme lingered on the name and telephone numbers of Bank House for an unfairly long period.

In summary, Pannone & Partners complained that the privacy of Bank House was unwarrantably infringed in the making of the programme in that:

- n) Footage was obtained by secret filming, without the owners' consent and without a public interest justification. Had the nursery been aware that the placement was being sought by an undercover BBC reporter, it would not have been granted and the reporter would not have been permitted to film or record on the premises. Mrs Rivers said at the hearing that the nursery accepted that on seven occasions over six days, rather than nine as claimed by the BBC, and not for full days, rooms were short staffed, through staff sickness. She did not accept that this was indicative of a serious problem, as suggested in the programme. It was normal practice for members of staff to leave a room to take a drink or for other duties. Provided such members of staff remained on the premises, the nursery was staffed. This issue did not, however, justify secret filming and including Bank House with the other two nurseries. There was little or no public interest in how Bank House was run.

In summary, Pannone & Partners complained that the privacy of Bank House was unwarrantably infringed in broadcast of the programme in that:

- o) Footage of Ms Rivers, co-owner and manager of the nursery, was shown in the programme and, unlike other members of staff, her face was not blanked out. This, combined with the information revealed about the nursery's name, address and telephone number, meant she was identified to viewers.

The BBC's case

In response to the complaint of unfair treatment, BBC said in summary:

- a) The reference to nurseries being able to "spruce up" for Ofsted inspections appeared in the context of a general discussion about the reliability of Ofsted inspections, which was included at the end of the programme. At the time of the broadcast, nurseries were given advance notice of the month of an Ofsted visit. The programme raised the possibility of nurseries preparing in advance for an inspection. There was no direct allegation that Bank House had done so. This was a legitimate topic for discussion at the conclusion of the programme, 40 minutes after the end of the section about Bank House. Since transmission, Ofsted had changed its procedures to introduce no-warning inspections.
- b) The programme made it clear that the nursery had been approved by Ofsted and that it was given "top marks". Ofsted's findings were presented alongside the programme's findings, which did not concur with what Ofsted reported. The purpose of the programme was not to deal with what Ofsted had found, but what it had not found. The programme makers obtained strong evidence that staffing levels at Bank House fell below national guidelines and that this was not simply on occasions when staff left the room for a drink or to go to the toilet. The programme makers identified nine occasions when there were breaches of DfES

(Department for Education and Skills) national standards. Staff at the nursery also made comments to the effect that they were understaffed. These were failings that would not have been discovered by Ofsted, at a time when notice was given of inspections.

- c) Viewers would not have inferred that the programme was suggesting that children at Bank House faced the risk of accidents. The presenter said in her introduction, "*The children you'll see haven't been put at serious physical risk...*" The programme then had clearly marked sections on the three nurseries, which were separated both visually and through clear narrative and chronology. There could not have been any confusion about the different problems highlighted at each nursery. The introduction to the programme showed brief clips from the three nurseries featured. None of them was named at this point and it was clear to the viewer immediately afterwards that the nurseries would be dealt with separately. Such a montage of material is a familiar technique for establishing the general nature of a programme. Viewers appreciate that such sequences may contain material from diverse sources and form any judgement about those sources from the body of the programme rather than from the opening montage.
- d) The incident with the child making ambulance noises was one of those assessed by Marion Dowling, the childcare expert who appeared on the programme. At the hearing the BBC said that Ms Dowling saw the same rushes of this incident as those provided to Bank House and Ofcom. The reporter had some problems with her equipment and the clip provided to Ofcom was all that was recorded of the incident. Ms Dowling's view was that there had been a breach of acceptable standards. The programme showed the incident and explained the relevant national standard, saying that "*When handling behaviour, it's important to avoid damaging children's self esteem, for example by segregation*". The footage also raised issues about the national standards as they relate to physical intervention. It was clear that the child was being physically removed from his chair, not simply led away by the hand. When the child's parents saw the footage they were upset by what they saw. The programme makers were then approached by the Child Protection Unit at Greater Manchester Police, who requested sight of the footage. The police judgement was about child protection issues and whether an assault had taken place. The officer was not viewing as an expert in childcare. Comparison of the original footage with the sequence broadcast did not support the claim that the volume of the carer's voice was increased in order to give an exaggerated impression.
- e) In an incident in which a carer was heard shouting at children, sound was moved and dubbed over the clip. This was because, when the programme makers viewed the rushes at the point where one carer was shouting, they found another member of staff, who was not shouting, was in the foreground. As the second carer's face would have had to be obscured to protect her, so concealing her mouth, the programme makers felt it might look as if she was the person shouting. Because her hair colour was distinctive, the programme makers felt it fairer to find another way to protect her, so they moved the sound by a few seconds to accompany a more general shot of the room, in which there was no danger of confusion over who had been shouting. Although this was unusual, the reasons for using it on this occasion were sound and it did not result in viewers being misled on the point at issue, namely that "at times... some members of staff tried to keep control by shouting".
- f) There were several sequences in the rushes where the undercover reporter accompanied children to the toilet. In one sequence Mrs Dalziel could be heard

saying to her "*Brush teeth first, toilet, then wash*". Although this was difficult to understand in the programme because the editing team disguised Mrs Dalziel's identity and the viewer could not see her lip movements, the programme makers were in no doubt about what was said. The reporter then asked whether she would "*be alright doing that*" and Mrs Dalziel said "*Yeah, yeah*". It was clear from the rushes that the reporter was left on her own to take children to the toilet. As the camera swung around in the toilet in which the reporter was supervising children, there was no sign of any other carer supervising or giving instructions. The BBC said at the hearing that Mrs Dalziel had said in a statement to Ofcom that the reporter was on her own at the time. The sequence was edited down, but was entirely representative of what happened. The sequence was not distorted through a volume change.

- g) The BBC accepted that editorial choices made in the editing of the footage showing a crying child, although they reflected actual events, intensified their impact to a point that introduced an element of unfairness to the member of staff concerned, Ms Rubina Khan. Although the untransmitted footage did not support the claim that the child was not ignored for considerable periods, it did also show that she was quiet or playing contentedly for substantial periods. The BBC's Head of Editorial Complaints upheld Ms Khan's complaint in that respect. However, a distorted picture was not created through the editing out of comforting words. The original footage showed that there were sustained periods when the child was crying and when her crying was either ignored or commented on critically by Ms Khan. Ms Dowling thought that Ms Khan's conduct as a carer warranted criticism. It was justifiable to draw attention to these failings.
- h) Pannone & Partners confirmed to the programme makers in a letter dated 19 July 2004 that Bank House accepted that they failed to check the undercover reporter and that, although the reporter was not seeking permanent employment, this was an oversight. The programme provided a fair summary of the conversation between Ms Rivers and the reporter. It was clear that the programme was not suggesting that no steps towards the necessary checks were taken. It was also clear in the programme that Ms Rivers was aware of the importance of the CRB check. It is an absolute requirement that any person who is going to be left alone with children has a CRB check before they start. However, the reporter was left alone with children before such a check was made and before preliminary information had been gathered and verified. This was fairly reflected in the programme.
- i) The sequences of children playing in fields were simply intended to reinforce the separation between the different sections of the programme and not as a reflection on the service provided by Bank House and the other nurseries.
- j) Ms Dowling's standing was made clear in the section of the programme where she first appeared: "*Marion Dowling is the President of the British Association for Early Childhood Education. She is also a former Ofsted nursery inspector*". She is an expert in her field and speaks with authority. It was legitimate to show her the incidents recorded at the nursery and seek her assessment. At the hearing the BBC said that Ms Dowling had access to all the secretly filmed footage and viewed about 12 hours of material, including the sequences used in the programme.
- k) It was usual for statements from those criticised or commented on in programmes to be represented by quotation and summary. The statement provided on behalf of Bank House was quoted in a way that fairly represented the

nursery and its staff on the points at issue. There was no criticism made by the programme on which Bank House's position, as set out in the statement was not represented.

- I) The standard of care at Bank House was below acceptable levels and the programme properly reflected the nursery's failings. The programme made it clear that it was showing instances of lapses that occurred while its reporter was working undercover. The clips were not portrayed as representative of conditions at all times, but as illustrative of matters that warranted concern. The programme made it clear that the reporter had witnessed examples of good practice and that some parents had expressed satisfaction with the standard of care at Bank House.
- m) The first use of shots of the nursery nameboard and exterior helped provide the equivalent of a chapter heading, so separating the different nursery sequences. The shots of the board were split up, with a total sequence lasting about 15 seconds. Later shots of the nursery and its name board were used as the programme reported the nursery's comments, in order to emphasise that this was an official statement from the nursery. The duration of these sequences did not exceed television conventions.

In response to the complaint of unwarranted infringement of privacy in the making of the programme, the BBC said, in summary:

- n) There was a strong public interest justification for filming at Bank House. Nurseries are regulated by Ofsted. Parents need to have confidence that the regulatory framework guarantees minimum standards of care for their children. If a nursery falls below the minimum standard and the regulator either does not know or is incapable of ensuring that the minimum standards are being maintained, it is in the public interest for that to be exposed, both in terms of the general principle and in specific instances. The BBC said at the hearing that it was clear from the programme itself that its focus was on the role of Ofsted and that the middle section, featuring particular nurseries, was an exploration of the problems with Ofsted. The programme makers had become aware of failings at Bank House as a result of information from credible sources with personal experience of circumstances at the nursery. At the hearing, the BBC said that these sources indicated that Bank House was consistently understaffed, which could lead to chaos and poor care for the children. Filming at the nursery confirmed that standards at Bank House had fallen below the minimum acceptable and this was escaping detection. The BBC did not accept that the short staffing was at a minor level: they did not suggest children were in danger, but that the level of care was reduced. Exposing the understaffing and other departures from good practice at Bank House was in the public interest. Any infringement of privacy that occurred in the making of the programme was warranted by the importance of the subject and by the necessity of obtaining clear evidence that Ofsted guidelines were being breached.

In response to the complaint of unwarranted infringement of privacy in the broadcast, the BBC said in summary:

- o) Given her role as manager of the nursery, Ms Rivers had a responsibility for the standard of care at the nursery and for ensuring it met national standards. Her name appeared on the nursery nameboard and in publicity material, so was in the public domain. Given her position at the nursery, it was legitimate to show her involvement without concealing her identity. The BBC said at the hearing that

footage of Ms Rivers giving good care to children was also included in the programme.

Decision

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

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

This case was referred to the Fairness Committee, Ofcom's most senior decision making body, for consideration. The Fairness Committee upheld the complaint in part (heads a), d), f), g) and h)) and the provisional decision was sent to both parties. The BBC subsequently requested that the Fairness Committee reconsider its provisional decision in respect of four elements of complaint (heads a), d), f) & h)). Ofcom considered that the BBC raised points that were material to the substance of the decision and the case was referred back to the Fairness Committee for it to reconsider heads a), d), f) and h,) in accordance with Ofcom's published procedures.

The Committee had before it a complaint from Bank House and a response from the BBC, with supporting material. It viewed a recording of the programme and all the recordings of untransmitted footage provided by the BBC. It also held a hearing, attended by representatives of Bank House and of the BBC. With regard to heads a), d), f) & h) the Committee also considered the BBC's request for reconsideration of the provisional decision and the points made by Bank House in response.

The Committee's final decision is set out in full below, by reference to each of the heads (heads a) to o)) of Bank House's complaint. As a preliminary point, the Committee noted that documentary making is important in investigating matters of public concern, such as the care provided for young children in nurseries. This is an appropriate subject for broadcasters to address in programmes (subject to the conditions of the Ofcom Broadcasting Code). It is, however, essential that programmes are accurate in all material respects so that no unfairness is caused and unwarranted infringements of privacy are avoided. This is necessary for both participants and viewers.

The Committee considered that there was a clear public interest in examining the role of Ofsted in regulating nursery care and highlighting nurseries where the programme makers had found a failure to comply with Ofsted standards. The BBC said that the aim of the programme was to investigate whether Ofsted was failing to regulate effectively. The Committee considered that the programme trod a fine line between achieving this aim and targeting individual nurseries, exposing their apparent failings.

- a) Bank House complained that the programme unfairly suggested that it might have spruced itself up for an Ofsted inspection.

The Committee noted that Ms Dowling suggested towards the end of the programme that nurseries could present a particular image to Ofsted inspectors

because, with prior notice of an inspection, “places can spruce up”. This was clearly made as a general concluding remark. There was no specific reference to Bank House or any of the other nurseries featured in the programme. However, as a general remark it implicitly applied to Bank House as well as the other nurseries featured in the programme. Further, the remark also followed a comment, made in narrative accompanying a linking section immediately after Bank House was featured, in which the presenter stated:

“Ofsted told us it can only report on what it sees on the day it inspects. But, even if they don’t know the actual day, nurseries are told in advance which month the inspectors are coming.”

In the Committee’s view, although the section of the programme dealing with Bank House did not immediately precede the comment about sprucing up, it was reasonable to assume that viewers would have taken the comment about sprucing up to have applied equally to all the nurseries referred to in the programme. It was also material that the idea had been implicit from the earlier commentary line which immediately followed the section on Bank House (as quoted above). Furthermore, the programme made particular reference during the section dealing with Bank House to staffing being an area in which they claimed that Bank House fell below Ofsted standards (*“On four of the six days that Lizz was here some of the rooms fell below Ofsted’s minimum staffing quota”*) and also looked at other areas in which the nursery’s practice and procedures were alleged not to have met Ofsted standards.

The Committee also considered it significant that the part of the programme featuring Bank House particularly emphasised Ofsted inspections and that Bank House was the only nursery featured to have been rated as “good” by Ofsted, a point to which the commentary specifically drew the attention of viewers. Notably, this immediately followed a remark that the reporter was used on four out of six days *“to try and make up the numbers, something which Ofsted makes clear shouldn’t happen...”*:

“Ofsted describes Bank House as offering good quality care for children... and applauds it for a stimulating environment. It also says children receive personal attention and continuity of care. But at times in some of the rooms Lizz was in, some staff members tried to keep control by shouting”.

Taking each of these considerations into account, the Committee concluded that, whilst the reference to sprucing up served to cast doubts in a general sense on the validity of Ofsted inspections, it was likely to have been understood by viewers as applying, at least in part, to Bank House - a nursery which the programme had clearly suggested fell short of Ofsted requirements in several areas, despite having received a “good” Ofsted rating. The Committee considered that the comment did, therefore, implicitly allege (as Bank House had complained) that the nursery might have spruced itself up (in order to obtain its “good” rating) and that, in these circumstances, the programme’s presentation of this issue was unfair.

The Fairness Committee found that the programme was unfair in this respect.

- b) The nursery claimed that the fact that it had received the highest possible rating by Ofsted was not used in the programme so as to create balance. The Committee considered that, although the Ofsted report was not referred to in detail, the top rating that Bank House nursery had received was referred to. The

programme also highlighted examples of good care witnessed by the reporter. In the circumstances, the Committee took the view that the criticisms included in the programme were balanced by the inclusion of positive footage and commentary. The Committee noted the complainant's concern that the Ofsted report was referred to in a sarcastic tone, but, having viewed the programme, did not consider this to be the case and took the view that the tone of the commentary throughout the programme was measured.

The Fairness Committee found no unfairness in the programme in this respect.

- c) The complainant claimed that the inclusion of Bank House in the programme and the use of a collage of clips as the opening sequence to the programme failed to distinguish properly between the nurseries featured, and resulted in the false impression being given that the criticisms of all of them were of the same level. The Committee considered that, having found that there were concerns in relation to staffing, where the nursery appeared to be falling short of Ofsted guidelines, it was legitimate for the BBC to include the nursery in the programme. However, as a matter of fact, there were clear distinctions between the seriousness of concerns in the nurseries featured, of which Bank House was the least serious. In these circumstances it was important for the BBC to ensure that the separation between the nurseries was made clear to viewers. The Committee noted that there was only very brief footage in the opening sequence from the filming at Bank House and that Bank House was then the first nursery featured in detail. It was possible that viewers might have thought initially that the range of allegations included in the opening sequence applied to all the nurseries featured. However, watching the programme as a whole, the footage of each nursery was clearly separated, both through visual devices and the commentary, from the other nurseries featured. Any initial confusion between the nurseries was therefore likely to have been dispelled by the end of the programme.

The Committee found no unfairness in the programme in this respect.

- d) Bank House complained that the inclusion of footage of the handling of a child who was making ambulance noises suggested that the carer's conduct was unacceptable and was unfair to the nursery. The nursery also complained that the volume of the carer's voice appeared to have been increased.

The Committee viewed untransmitted footage that had not been edited ("rushes") of this incident. It did not consider that the volume had been increased and took the view that the impression given in the rushes was the same as in the programme.

At the hearing it was explained to the Committee by the BBC that both sets of the reporter's covert recording equipment had failed, resulting in the incident being only partially recorded. The Committee considered that this was particularly unfortunate given that the childcare expert, who was shown the footage of the incident, was asked to provide a professional opinion only on the very limited footage that had been recorded. According to the BBC the Committee was provided with the same footage the expert had viewed. In considering the critical reaction of the expert (who suggested that the carer's conduct was unacceptable and contrary to Ofsted guidelines), the Committee noted that the rushes provided were brief, lasting approximately half a minute in total, and that none of the key material leading to or following the incident had been available to the expert or Ofcom. From the limited footage that was available it was clear that this was the third warning that was given to the child but the Committee noted that neither of

the two previous warnings was included in any available footage. The Committee also noted from the footage they saw that the child did not appear to be distressed by the incident.

In its consideration of this complaint the Committee was very clear that Ofcom's role was not to substitute its own opinion for that of experts. The Committee wished to emphasise that its decision in this case in no way sought to do so. However, it was incumbent on Ofcom to reach a balanced decision based on a critical assessment of the evidence put before it in order to determine whether the broadcaster's actions were consistent with the requirements of the Code.

Broadcasters are required to take all reasonable care to satisfy themselves that all material facts have been considered before transmission and are so far as possible fairly presented in the programme.

In this case surprisingly little footage of the incident was made available to the expert for her to comment upon and the footage did not show what went before or after the incident.

In the circumstances, it did not appear to the Committee that the BBC had presented all the material evidence to Ms Dowling when seeking to obtain her opinion. Since there was also no suggestion that Ms Dowling was responding to anything other than the footage that she had been shown, it was unclear to the Committee on what basis the programme was able to criticise the nursery so heavily by making the strong allegation that the carer's behaviour towards the child was inappropriate and contrary to Ofsted's guidelines.

In the absence of footage of what went before the incident or what followed the incident Ofcom was not satisfied that the BBC had taken all reasonable care to satisfy themselves that all material facts had been considered prior to transmission. Further, by including such a strong allegation by the expert without providing the expert with all material evidence (or making clear in the programme that her comments were based on very limited footage of the incident which did not include what went before or after the incident) the programme's presentation of this issue was, in the Committee's view, unfair.

The Committee found that the programme was unfair to the nursery in this respect.

- e) With regard to the complaint that the voice of a carer shouting was dubbed over different footage, the Committee noted the BBC's explanation that this was done in order to protect the identity of another, entirely innocent, member of staff. Having viewed the relevant rushes, the Committee considered that if the footage had not been edited in this way, it would have appeared that a member of staff who was not shouting was in fact the person shouting. While the BBC used an artificial technique to deal with this, the Committee took the view that, in these particular circumstances, it was legitimate to use this device to protect the carer in the shot.

The Committee found no unfairness in the programme in this respect.

- f) The nursery complained that the programme suggested that the undercover reporter took children to the toilet on her own and without the nursery having carried out a CRB check on the reporter, which would have been contrary to Ofsted requirements. The Committee viewed the rushes relating to this incident.

The Committee took the view that the programme suggested that the undercover reporter was left entirely on her own to take children to the toilet. The Committee noted the supporting criteria in Standard 1.3 of the Surestart National Standards for under 8s day care and childminding, dated September 2001. These standards represent a baseline of quality below which no provider may fall. Standard 1.3 provides that the registered person (in this case, the nursery) should ensure that "*any person who has not been vetted is never left alone with children*". It also noted that the Ofsted guidance to the National Standards, also dated September 2001, includes guidance on the selection of suitable staff, including volunteers, but does not expand on or define "left alone". On the evidence provided to Ofcom it was clear that the allegation in the programme was broadcast in the absence of any guidance having been issued by Ofsted at the time the programme was broadcast on the definition of "left alone".

The Committee noted that the BBC had sought to introduce (in order to support its case) Ofsted guidelines which did not exist at the time the programme was broadcast. The Committee considered that such guidelines were not a relevant consideration and it was unable to take them into account when reaching its decision. The Committee also noted that the BBC had failed to provide Ofcom with any contemporaneous guidelines on the meaning of "left alone" to support its case and inform Ofcom's understanding of the meaning of "left alone" in these particular circumstances. In the absence of any relevant contemporaneous guidelines on the meaning of "left alone" the Committee considered it reasonable to look elsewhere in the guidelines that were available at the time of broadcast and noted that the guidelines did define "supervision" (in relation to the standard on safety of children) as meaning "*within sight or hearing of a member of staff at all times*".

It was clear from the rushes that the undercover reporter was not on her own when she took children to the toilet since throughout the footage that was recorded of this incident there was always a qualified member of staff nearby or within voice range. The Committee did not therefore consider that the footage supported the charge made in the programme that the nursery allowed the reporter to take children to the toilet on her own and the suggestion that the undercover reporter was left alone was not justified and therefore unfair. This also meant that the lack of a CRB check on the reporter was not contrary to Ofsted requirements (see h) below).

Ofcom found unfairness to the nursery in the programme in this respect.

- g) Bank House complained that an allegation that a child was left crying without being comforted was untrue and that the relevant footage was unfairly edited. The BBC upheld a complaint from the individual carer concerned, on the grounds that the sequence, as edited, reflected actual events, but "intensified their impact to a point that introduced an element of unfairness" to the member of staff concerned. The Committee noted the view of the expert who appeared on the programme, who viewed the untransmitted rushes and felt that the girl was "distressed and being ignored". However, the Committee also viewed the rushes and considered that, overall, they gave a materially different picture of the care the little girl received from that portrayed in the programme. It was clear that the girl spent a significant period of time playing happily and received some positive attention from the carer. Although the Committee noted that the programme included positive commentary about the care provided by the carer at other times, this was insufficient to balance the way the footage of the incident was

edited. In all the circumstances, the Committee found that the allegation, coupled with the way the footage was edited, resulted in an unfair portrayal of the care provided.

The Committee found unfairness to the nursery in the programme in this respect.

- h) The nursery complained that the programme wrongly criticised it for not carrying out the proper CRB checks on the undercover reporter. The Committee noted that the nursery had now changed its procedure, in response to parental concerns, so that everyone working at the nursery was CRB checked before they started. This exceeded the Ofsted requirement that anyone left alone with children must be CRB checked. However, having formed the view that the footage did not support the allegation that the nursery allowed the reporter to take children to the toilet on her own or unsupervised (see f) above), the Committee noted that it was not necessary for the reporter to be CRB checked. In view of this, the criticism of Bank House in relation to CRB checks was not justified.

The Committee found unfairness to the nursery in the programme in this respect.

- i) The nursery complained that the use of "Arcadian bucolic idylls" made an unfair contrast between the ideal and the service provided by Bank House. The Committee considered that viewers would have clearly understood that these clips were a device to separate the footage of the different nurseries, rather than a reflection of the care provided at Bank House as one of the individual nurseries featured.

The Committee found no unfairness in the programme in this respect.

- j) Bank House complained that the expertise of the expert, Ms Dowling, was not made clear in the programme and that it was not apparent which clips she saw. The Committee noted that Ms Dowling's standing was referred to in the programme. It also noted that the BBC said at the hearing that Ms Dowling saw 12 hours of footage. She was qualified to comment as an expert on the footage filmed by the undercover reporter (although, as noted in d) above, the Committee considered that the justification for the conclusions which were drawn were dependent on the clarity and extent of the footage that was available for Ms Dowling to comment on). The Committee considered that Ms Dowling was a legitimate participant in the programme and that it was not unfair to the nursery to include her in it.

The Committee found no unfairness in the programme in this respect.

- k) The nursery complained that the statement it provided for the programme was not read out in full and that very little time was given to extracts from it, which were, in any event, read sarcastically. The Committee noted that the statement consisted of two full pages of A4 type. It was unrealistic to expect that it would be read in full. However, with the exception of the "sprucing up" comment dealt with at a) above, the content of the statement was reflected in relation to the specific incidents included in the programme. The Committee did not consider that the tone in which the statement was quoted was sarcastic.

The Committee found no unfairness in the programme in this respect.

- l) Bank House complained that the clips included in the programme were not representative of the care provided at the nursery. The Committee considered that the programme was putting forward an argument that parents could not necessarily rely on Ofsted's inspections of nurseries and, in relation to Bank House, illustrated this by the use of a number of secretly filmed clips. The programme did not claim that these clips were representative of the nursery and it was also stated that the undercover reporter found good practice at the nursery as well. In these circumstances, the Committee considered that it would have been clear to viewers that the footage was not intended to be representative of care at the nursery.

The Committee found no unfairness in the programme in this respect.

- m) The nursery complained that the programme lingered for an unfairly long period on the name and telephone numbers of the nursery. The Committee noted that the programme included more footage of the exterior of Bank House, with contact details, than of the other nurseries, where the problems found were more serious. However, it took the view that the information shown in the programme was in the public domain and clearly visible from the public road. The programme did not, therefore, reveal any information not readily available to the public and it was therefore not unfair to include it.

The Committee found no unfairness in the programme in this respect.

- n) The nursery complained that the programme makers unwarrantably infringed its privacy by secretly filming at the premises while staff were at work caring for children. In deciding whether the nursery's privacy was unwarrantably infringed in the making of the programme, the Committee first considered whether there had been a breach of its privacy as a result of the filming. The filming took place while staff at the nursery were going about their ordinary duties as nursery carers. In the Committee's view, it was reasonable for the nursery to expect that it would not be filmed surreptitiously during the course of the working day and therefore its privacy was infringed in the making of the programme.

Having decided that there was an infringement of the nursery's privacy, the Committee proceeded to consider whether, in all the circumstances, this was justified by the public interest. In addressing this, the Committee took account of the fact that the programme makers had decided to film at the nursery on the basis of information they had received from two sources that they said were credible (details of which, in accordance with usual journalistic standards, were not provided to Ofcom) about inadequate staffing levels at Bank House. The Committee accepted that this provided sufficient justification for the BBC to send an undercover reporter to film secretly at the nursery.

Having secured a placement at Bank House, the reporter witnessed some periods of short staffing and other incidents of care that appeared to show a failure to meet Ofsted national standards for under 8s day care. The Committee considered that, although there was unfairness to the nursery in some respects, there were some legitimate concerns raised about the nursery by what the reporter saw. It took the view that secret filming at the nursery was justified by a legitimate public interest in exposing weaknesses in the regulatory framework for nursery care by seeking to investigate specific instances of lapses of minimum standards at Bank House and that the public interest in the care provided to young children generally outweighed the nursery's right to privacy.

The Committee therefore found that there was no unwarranted infringement of the nursery's privacy in the making of the programme.

- o) Bank House complained that the failure to obscure the identity of Ms Rivers, one of the owners of the nursery, combined with inclusion of the contact details of the nursery in the programme, was an unwarranted infringement of the nursery's privacy in the broadcast. The Committee noted that none of the proprietors of the nurseries included in the programme had their identities obscured. The Committee also noted that Ms Rivers' name and contact details appeared on the board outside the nursery. This, combined with the fact that her face was not obscured, caused the nursery's privacy to be infringed. However the nursery's right to privacy was outweighed by the public interest in the care provided to children at Bank House, for which, as one of the owners, Ms Rivers was responsible.

The Committee therefore found that there was no unwarranted infringement of the nursery's privacy in the programme as broadcast.

Accordingly, Ofcom's Fairness Committee upheld parts of Bank House's complaint of unfair treatment. It did not uphold the nursery's complaints of unwarranted infringement of privacy in the making and the broadcast of the programme.

Ofcom has directed the BBC to broadcast a summary of this adjudication.

Complaint by Mrs Elizabeth Dalziel

Nurseries Undercover: The Real Story, BBC1, 12 August 2004

Summary: Ofcom has upheld parts of this complaint of unfair treatment and unwarranted infringement of privacy.

Mrs Elizabeth Dalziel complained that she was treated unfairly in the programme and that her privacy was unwarrantably infringed in the making and the broadcast of the programme. The programme investigated the care of children in day nurseries and the effectiveness of Ofsted inspections of nurseries. Bank House Day Nursery ("Bank House"), a nursery in Radcliffe, North Manchester, was one of a number of nurseries visited by an undercover reporter. The reporter obtained a placement at Bank House and carried out secret filming there. The programme included a number of criticisms of the nursery and of some members of staff. It included secretly filmed footage of both carers and the children in their care. Mrs Dalziel is a member of staff at Bank House. Secretly filmed footage of her was included in the programme, during which her face was obscured.

Ofcom's Fairness Committee, Ofcom's most senior decision making body, considered Mrs Dalziel's complaint and reached a provisional decision on 5 July 2006. It found that the complaint should be upheld in part. The BBC subsequently asked the Fairness Committee to reconsider its provisional decision in respect of two elements of the complaint. Ofcom considered that the BBC had raised points that were material to the substance of the decision and the case was referred back to the Fairness Committee for it to reconsider those two heads of the complaint, in accordance with Ofcom's published procedures.

Following its reconsideration, Ofcom concluded that:

- a) It was unfair to Mrs Dalziel for the programme to suggest that the undercover reporter was left entirely on her own to take children to the toilet at a time when Mrs Dalziel was in charge of the relevant room. This allegation was made in the absence of a definition by Ofsted of "left alone" and the footage provided by the BBC did not support the charge or justify any suggestion that she was unsupervised.
- b) There was not sufficient conclusive or clearly attributable expert evidence to support the allegation that Mrs Dalziel was shouting at children.
- c) Secret filming of her at the nursery was an infringement of Mrs Dalziel's privacy, as it was reasonable for her to expect that she would not be surreptitiously filmed during the course of her work. However, the programme makers had information from two sources, that they said were credible, about inadequate staffing levels at Bank House. There were some legitimate concerns raised by what the reporter saw. The public interest in the care provided to young children generally and in the care provided at Bank House specifically justified the BBC's decision to allow secret filming of staff at the nursery, including Mrs Dalziel, and outweighed her right to privacy.
- d) There was no infringement of Mrs Dalziel's privacy in the broadcast. Her face was obscured by pixellation when she appeared on screen, so that

nothing was disclosed about her that that people who knew her would not already be aware of. People who did not know her would not have been able to identify her from her appearance in the programme. In the circumstances, the steps taken to obscure her identity were sufficient.

Introduction

The programme, *The Real Story*, investigated the care of children in day nurseries and the effectiveness of Ofsted inspections of nurseries. Bank House Day Nursery (“Bank House”), a nursery in Radcliffe, North Manchester, was one of a number of nurseries visited by an undercover reporter. The reporter obtained a placement at Bank House and carried out secret filming there. The programme included a number of criticisms of the nursery and of some members of staff. It included secretly filmed footage of both carers and the children in their care. Mrs Elizabeth Dalziel was a nursery nurse at Bank House. Secretly filmed footage of her was included in the programme, during which her face was obscured.

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

Complaint

Mrs Dalziel’s case

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

- a) She was used to falsely accuse the nursery of leaving a voluntary worker to take children to the toilet unsupervised. Subtitles were used in the programme for the words she was supposed to be saying, but the Child Protection Officer had informed her that she asked the reporter to wash the children’s hands and brush their teeth and that she was clearly heard and seen in untransmitted footage supervising the reporter and another new member of staff in the adjoining cubicle.
- b) She was falsely accused of shouting. The clip on the programme was unclear as it only showed her saying “No” and “You know what the no means”, but with no children on the clip. She did raise her voice on occasions to make sure the children heard her: this was not shouting.

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

- c) She was secretly filmed while at work, without her consent.

In summary, Mrs Dalziel complained that her privacy was unwarrantably infringed in the broadcast in that:

- d) Secretly filmed footage of her was broadcast without her consent and without her being able to defend herself.

The BBC’s case

In response to the complaint of unfair treatment, the BBC said in summary:

- a) During the reporter's time at Bank House, she was asked to take children to the toilet and to clean their teeth on three occasions. The programme focused on the second incident. There is no doubt that on the first two occasions, the reporter was unsupervised. On the third occasion, Mrs Dalziel was sometimes nearby, but for the vast majority of the time was not supervising the reporter. As a senior member of staff in the team, Mrs Dalziel had a responsibility to ensure the reporter was supervised. If Mrs Dalziel was supervising the reporter as she suggested in her complaint, she would have left a classroom of children. However, in one conversation in the untransmitted footage ("rushes") Mrs Dalziel is heard telling a child he has to show the reporter where his toothbrush is and adds that she will watch his toys for him. This suggests that she always intended to stay behind. Although a brief section of dialogue was cut in the programme, this did not detract from the meaning of what Mrs Dalziel said.
- b) The rushes show that in the minutes leading up to the shouting incident, Mrs Dalziel appears to be having trouble controlling a group of children, two boys in particular. Mrs Dalziel's temper appears to become aroused and she shouts at one of the children and threatens the other with a traffic light sticker (used as a punishment). This incident followed another in which Mrs Dalziel raised her voice to get a child up following a nap. It was fair to say that "some staff members tried to keep control by shouting". Marion Dowling, the childcare expert who appeared on the programme, considered that Mrs Dalziel's treatment of a child was inappropriate. There were no mitigating factors in the rushes that excused harsh shouting.

In response to the complaint of unwarranted infringement of privacy in the making of the programme, the BBC said in summary:

- c) There was a strong public interest justification for filming at Bank House. Nurseries are regulated by Ofsted. Parents need to have confidence that the regulatory framework guarantees minimum standards of care for their children. If a nursery falls below the minimum standard and the regulator either does not know or is incapable of ensuring that the minimum standards are being maintained, it is in the public interest for that to be exposed, both in terms of the general principle and in specific instances. The programme makers had become aware of failings at Bank House as a result of information from credible sources with personal experience of circumstances at the nursery. Filming at the nursery confirmed that standards at Bank House had fallen below the minimum acceptable and this was escaping detection. Exposing the understaffing and other departures from good practice at Bank House was in the public interest. Any infringement of privacy that occurred in the making of the programme was warranted by the importance of the subject and by the necessity of obtaining clear evidence that Ofsted guidelines were being breached. Any infringement of Mrs Dalziel's privacy was warranted by the importance of the subject and by the necessity of obtaining clear evidence that Ofsted guidelines were being breached.

In response to the complaint of unwarranted infringement of privacy in the broadcast, the BBC said in summary:

- d) Mrs Dalziel's identity was obscured in the programme. Throughout the programme, the identities of staff on duty were obscured unless they were culpable through a serious departure from good practice or by seniority. The

nursery was given an opportunity to respond to the programme's allegations on its own behalf and on behalf of members of staff.

Mrs Dalziel's comments

In response to the BBC's statement, Mrs Dalziel said in summary:

- a) At the time of filming, she was not supervising the 'tweenie room': the supervisor/key worker was off sick and someone had to care for the children. It would appear that the reporter did take children to the toilet unsupervised and Mrs Dalziel has apologised to the nursery if that was the case. She would not normally allow this, but they were very busy at the time. There was another member of staff with her in the pre-school room, but they were not visible on the footage and Mrs Dalziel could not remember whether they were in the vicinity of the pre-school toilets supervising. According to the rotas there were three members of nursery staff and the reporter. Two of them were visible on the footage.
- b) The nursery owner told her that her voice on the rushes sounded normal, as she has a loud Scottish accent.

The BBC's comments

In its final response, the BBC said in summary:

- a) Mrs Dalziel's response confirmed that short-staffing had left the remaining staff "very busy". She conceded that it appeared that the reporter took children to the toilet unsupervised, although she could not remember. She also revealed that the qualified supervisor was off sick and that she, an unqualified staff member, was standing in.

Decision

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

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

This case was referred to the Fairness Committee, Ofcom's most senior decision making body, for consideration. The Fairness Committee upheld the complaint in part (heads a) and b)) and the provisional decision was sent to both parties. The BBC subsequently requested that the Fairness Committee reconsider its provisional decision in respect of these two elements of the complaint. Ofcom considered that the BBC raised points that were material to the substance of the decision and the case was referred back to the Fairness Committee for it to reconsider heads a) and b), in accordance with Ofcom's published procedures.

The Committee had before it a complaint from Mrs Dalziel, a response from the BBC, and a further statement from each party, with supporting material. It viewed a

recording of the programme and recordings of the untransmitted footage. With regard to heads a) and b), the Committee also considered the BBC's request for reconsideration of the provisional decision and the points made on behalf of Mrs Dalziel in response.

The Committee's final decision is set out in full below, by reference to each of the heads of Mrs Dalziel's complaint. As a preliminary point, the Committee noted that documentary making is important in investigating matters of public concern, such as the care provided to children in nurseries. This is an appropriate subject for broadcasters to address in programmes (subject to the conditions of the Ofcom Broadcasting Code). It is, however, essential that programmes are accurate in all material respects so that no unfairness is caused and unwarranted infringements of privacy are avoided. This is necessary for both participants and viewers.

- a) Mrs Dalziel complained that she was used to falsely accuse the nursery of leaving a voluntary worker to take children to the toilet on her own. As the nursery had not carried out a Criminal Records Bureau check on the reporter, this would have been contrary to Ofsted requirements. The Committee viewed rushes relating to this incident.

The Committee took the view that the programme suggested that the undercover reporter was left entirely on her own to take children to the toilet. The Committee noted the supporting criteria in Standard 1.3 of the Surestart National Standards for under 8s day care and childminding, dated September 2001. These standards represent a baseline of quality below which no provider may fall. Standard 1.3 provides that the registered person (in this case, the nursery) should ensure that "*any person who has not been vetted is never left alone with children*". It also noted that the Ofsted guidance to the National Standards, also dated September 2001, includes guidance on the selection of suitable staff, including volunteers, but does not expand on or define "left alone". On the evidence provided to Ofcom, it was clear that the allegation in the programme was made in the absence of any guidance having been issued by Ofsted at the time the programme was made on the definition of "left alone".

The Committee noted that the BBC had sought to introduce (in order to support its case) Ofsted guidelines which did not exist at the time the programme was either made or broadcast. The Committee considered that such guidelines were not a relevant consideration and it was unable to take them into account when reaching its decision. The Committee also noted that the BBC had failed to provide Ofcom with any contemporaneous guidelines on the meaning of "left alone" to support its case and inform Ofcom's understanding of the meaning of "left alone" in these particular circumstances. In the absence of any relevant contemporaneous guidelines on the meaning of "left alone" the Committee considered it reasonable to look elsewhere in the guidelines that were available at the time and noted that the guidelines did define "supervision" (in relation to the standard on safety of children) as meaning "*within sight or hearing of a member of staff at all times*".

It was clear from the rushes that the undercover reporter was not on her own when she took children to the toilet since throughout the footage that was recorded of this incident there was always a qualified member of staff nearby or within voice range. The Committee did not therefore consider that the footage supported the charge made in the programme that Mrs Dalziel allowed the reporter to take children to the toilet on her own and the suggestion that the undercover reporter was left alone was not justified and therefore unfair.

The Committee found unfairness to Mrs Dalziel in the programme in this respect.

- b) The complainant felt that she was falsely accused of shouting at children.

The Committee considered the allegation that Mrs Dalziel shouted at children and whether this could fairly be attributed to her in the programme. In doing this, the Committee carefully considered all the evidence provided by the BBC, including the opinion of various experts. The Committee was clear that when considering this evidence, Ofcom's role was not to substitute its own opinion for that of experts, but to afford such opinions, where they have been provided, due weight, when considering whether the broadcaster had taken the necessary steps to avoid unfairness to the complainant in the programme as broadcast

Accordingly, Ofcom carefully considered the representations concerning expert opinion which the BBC had submitted in support of the allegation that Mrs Dalziel was shouting in the programme. The Committee noted in particular the following:

The BBC's 1st Statement

"The filming revealed instances where the standard of care provided by some staff fell below recognised standards. This was confirmed by a childcare expert, currently employed by a local council, who acted as a confidential adviser to the programme and who considered there had been breaches in national guidelines with standards falling below acceptable levels. She has worked with Early Years for 37 years, working directly with children and in managerial roles. She is a NNEB qualified Nursery Nurse and has managed children's centres. She is a former member of the NNEG examining board (widely recognised as one of the leading qualifications for childcare). Among her conclusions were:

- *Shouting at children is very poor practice. There is clearly poor practice within the setting."*

The Committee noted that this was simply a general view given by an unnamed expert that was not clearly attributed to any specific footage included in the programme and in particular did not refer directly to the footage of the incident involving Mrs Dalziel.

The BBC's statement went on to say that the programme consulted a second childcare expert, Marion Dowling, who they explained reached her own independent view and was then interviewed for the programme. The Committee noted that her overall conclusions included in the statement made the following reference to the incident involving Mrs Dalziel.

- *This is quite a powerful piece of footage.*
- *Little Harry could be feeling quite vulnerable after being asleep. He is being entirely ignored and given sharp instructions. We're back to the same point – issuing instructions, which is completely inappropriate.*
- *No one is going up to him, offering help, offering anything, He should be being encouraged to get up, not told. And why the imperative of getting up anyway?*
- *When Harry goes back under the sheets, it is a gesture of withdrawing. He really isn't being dealt with properly, and certainly not the way to deal with a child who's been sound asleep."*

While this referred to inappropriate care, no mention was made of shouting.

The BBC's 2nd Statement in response to Mrs Dalziel's complaint did not refer to shouting.

The Committee was therefore not satisfied that there was clear evidence that the experts' opinion was that Mrs Dalziel was shouting. The Committee noted at this point that Mrs Dalziel had already acknowledged that she had "... a very loud Scottish accent".

The BBC's Request for Reconsideration

"The experts were, and remain, clear that what they heard constituted poor professional practice. Ms Dowling writes that the instances in the programme "*definitely constituted shouting*". She adds "*We can't be scientific about decibels but they did raise their voices considerably. This is not good professional practice with children*".

The Committee acknowledged that Ms Dowling had access to 12 hours of footage and, again, was not seeking to substitute its own opinion for that of the expert but to afford such expert opinion due weight. It noted that this was the first time that the BBC had clearly attributed a specific reference to "shouting" to Mrs Dowling. This opinion was not included in the programme. Further, it was not clear that "instances in the programme" referred specifically to the footage of Mrs Dalziel. The Committee noted that Mrs Dowling herself made no specific reference to Mrs Dalziel or the footage which was the subject of the complaint.

Accordingly, whilst the Committee gave due weight to the expert opinion, including her opinion that shouting at children was poor practice, the Committee was not satisfied, in light of the above, that there was conclusive or clearly attributable expert evidence on the specific footage showing Mrs Dalziel.

In addition to this, the Committee carefully viewed all the untransmitted material provided by the BBC (26 minutes in relation to Mrs Dalziel), as well as the programme as broadcast. The Committee could however find nothing in the untransmitted material that, in its view, assisted it any further in relation to the allegation of shouting.

In the light of all the above and in the absence of conclusive or clearly attributable evidence from the experts that this specific incident showed Mrs Dalziel shouting, and taking into account the untransmitted material, the Committee was not satisfied that the evidence was sufficient to support the allegation in the programme that Mrs Dalziel was shouting at children.

The Committee found that this was unfair to Mrs Dalziel.

- c) The complainant felt that the programme makers unwarrantably infringed her privacy by secretly filming her while she was at work, without her consent. In considering whether Mrs Dalziel's privacy was unwarrantably infringed in the making of the programme, the Committee first considered whether there had been a breach of her privacy as a result of the filming. The filming took place whilst Mrs Dalziel was at work going about her ordinary duties as a nursery carer. In the Committee's view it was reasonable for Mrs Dalziel to expect that she

would not be filmed surreptitiously during the course of her work and therefore, her privacy was infringed in the making of the programme.

Having decided that there was an infringement of Mrs Dalziel's privacy, the Committee proceeded to consider whether, in all the circumstances, this was justified in the public interest. In addressing this question, the Committee took account of the fact that the programme makers had decided to film at the nursery on the basis of information they had received from two sources that they said were credible (details of which, in accordance with usual journalistic standards, were not provided to Ofcom) about inadequate staffing levels at Bank House. In the Committee's opinion, this provided sufficient justification for the BBC to send an undercover reporter to film secretly at the nursery.

Having secured a placement at Bank House, the reporter witnessed some periods of short staffing and other incidents of care that appeared to show a failure to meet Ofsted national standards for under 8's day care. The Committee considered that there were some legitimate concerns raised about the nursery by what the reporter saw. It took the view that the secret filming at the nursery was justified by a legitimate public interest in exposing weaknesses in the regulatory framework for nursery care by seeking to investigate specific instances of lapses of minimum standards at Bank House and that the public interest in the care provided to young children outweighed the nursery's right to privacy.

With regard to Mrs Dalziel herself, although the Committee found some unfairness to her in the programme (see a) and b) above), it considered that there were legitimate concerns raised about the nursery by what the reporter saw. The Committee took the view that the public interest justified the secret filming of Mrs Dalziel at work while the reporter legitimately gathered material for the programme.

The Fairness Committee found no unwarranted infringement of privacy in this respect.

- d) Mrs Dalziel complained that secretly filmed footage of her was broadcast without her consent and without her being able to defend herself. Having decided that there was no unwarranted infringement of Mrs Dalziel's privacy in the making of the programme, the Committee proceeded to consider whether her privacy was unwarrantably infringed in the broadcast. The Committee first noted that Mrs Dalziel's face was obscured by pixellation when she appeared on screen. The Committee considered that the pixellation was sufficient to ensure that she was not identifiable to anyone who was not close to her or did not know her personally. Looking at the footage, it was apparent that nothing was disclosed about her that people who knew her would not already be aware of. People who did not know her would not have been able to identify her from her appearance in the programme. In the circumstances, the steps taken to obscure her identity were sufficient.

The Fairness Committee found no infringement of Mrs Dalziel's privacy in the broadcast.

Accordingly, Ofcom found that there was unfairness to Mrs Dalziel in the programme. It found no unwarranted infringement of her privacy in the making of the programme and no infringement of her privacy in the broadcast. Parts of her complaint were therefore upheld.

Ofcom has directed the BBC to broadcast a summary of this adjudication.

Complaint by Ms Rubina Khan

Nurseries Undercover: The Real Story, BBC1, 12 August 2004

Summary: Ofcom has partly upheld this complaint of unfair treatment and unwarranted infringement of privacy.

Ms Rubina Khan complained that she was treated unfairly in the programme and that her privacy was unwarrantably infringed in the making and the broadcast of the programme. The programme investigated the care of children in day nurseries and the effectiveness of Ofsted inspections of nurseries. Bank House Day Nursery ("Bank House"), a nursery in Radcliffe, North Manchester, was one of a number of nurseries visited by an undercover reporter. The reporter obtained a placement at Bank House and carried out secret filming there. The programme included a number of criticisms of the nursery and of some members of staff. It included secretly filmed footage of both carers and the children in their care. Ms Khan is a nursery nurse at Bank House. Secretly filmed footage of her was included in the programme, during which her face was obscured.

Ofcom's Fairness Committee, Ofcom's most senior decision making body, considered Ms Khan's complaint and reached a provisional decision on 5 July 2006. It found that the complaint should be upheld in part. The BBC subsequently asked the Fairness Committee to reconsider its provisional decision in respect of one element of the complaint. Ofcom considered that the BBC had raised points that were material to the substance of the decision and the case was referred back to the Fairness Committee for it to reconsider head c) of Ms Khan's complaint, in accordance with Ofcom's published procedures.

Following its reconsideration, Ofcom concluded that:

- a) Footage of a little girl was unfairly edited so as to suggest that she was left crying by Ms Khan without being comforted. The BBC's untransmitted secretly filmed footage gave a materially different picture of the care Ms Khan gave to the girl and unfairness arose to her as a result of the editing of the footage. Although the Committee noted that the programme included positive commentary about the care provided by Ms Khan at other times, in the Committee's view this was insufficient to balance the way the footage of this incident was edited. (Ofcom noted that the BBC had upheld a complaint from Ms Khan on the grounds that the sequence, as edited, reflected actual events but "intensified their impact to a point that introduced an element of unfairness").
- b) Secret filming of her at the nursery was an infringement of Ms Khan's privacy, as it was reasonable for her to expect that she would not be surreptitiously filmed during the course of her work. However, the programme makers had information from two sources, that they said were credible, about inadequate staffing levels at Bank House. There were some legitimate concerns raised by what the reporter saw. The public interest in the care provided to young children generally and in the care provided at Bank House specifically justified the BBC's decision to allow secret filming of staff at the nursery, including Ms Khan, and outweighed her right to privacy.
- c) Ms Khan's privacy was unwarrantably infringed in the broadcast. Although the programme makers took steps to obscure her identity and did not intend her

to be identifiable other than to people with a close knowledge of the nursery, her appearance, including her hair, was distinctive and meant that she was likely to be recognisable both to people who knew her and to those with whom she came into contact through her work. There was no public interest that outweighed her right to privacy and justified including her in the programme in a manner that made her identifiable.

Introduction

The programme, *The Real Story*, investigated the care of children in day nurseries and the effectiveness of Ofsted inspections of nurseries. Bank House Day Nursery (“Bank House”), a nursery in Radcliffe, North Manchester, was one of a number of nurseries visited by an undercover reporter. The reporter obtained a placement at Bank House and carried out secret filming there. The programme included a number of criticisms of the nursery and of some members of staff. It included secretly filmed footage of both carers and the children in their care. Ms Rubina Khan is a nursery nurse at Bank House. Secretly filmed footage of her was included in the programme, during which her face was obscured.

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

Complaint

Ms Khan’s case

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

- a) She was unfairly portrayed as not a very caring nursery nurse. The BBC edited footage of her so as to make it appear that she left a little girl crying when she was settling in. It is distressing for carers when a child is upset and carers try different methods to pacify the child.

In summary, Ms Khan complained that her privacy was unwarrantably infringed in the making of the programme in that:

- b) She was secretly filmed while at work, without good reason.

In summary, Ms Khan complained that her privacy was unwarrantably infringed in the broadcast in that:

- c) Secretly filmed footage of her was broadcast without good reason. Although her face was obscured, she has distinctive hair.

The BBC’s case

In response to the complaint of unfair treatment, the BBC said in summary:

- a) Filming on occasions when Ms Khan was in charge of children revealed instances when children who were crying were ignored or told off and where there was little positive interaction. The expert advice provided, following viewing of the untransmitted footage (“rushes”) of these sequences, was that there had been a breach in standards as laid down by Ofsted. There were sustained

periods when a little girl was crying, and when her crying was either ignored or commented on critically by Ms Khan. Marion Dowling, the childcare expert who appeared on the programme, thought the standard of care warranted criticism. However, there were also substantial periods when the child was either quiet or, to all appearances, playing contentedly. The care Ms Khan provided was not beyond criticism, but the programme did not portray her as uncaring and the script referred to her being kind to the little girl at times. The BBC had already accepted that the editing of one sequence intensified the impact of events to the point that it created an unfair impression of the complainant's actions in respect of this child. The BBC had apologised to Ms Khan for this unfair impression. In all but this one regard the programme contained a fair and accurate portrayal of the level of care provided by Ms Khan while the undercover reporter was at the nursery.

In response to the complaint of unwarranted infringement of privacy in the making of the programme, the BBC said in summary:

- b) There was a strong public interest justification for filming at Bank House. Nurseries are regulated by Ofsted. Parents need to have confidence that the regulatory framework guarantees minimum standards of care for their children. If a nursery falls below the minimum standard and the regulator either does not know, or is otherwise incapable of ensuring that those minimum standards are being maintained, it is in the public interest for that to be exposed, both in terms of the general principle and in specific instances. The programme makers had become aware of failings at Bank House as a result of information from credible sources with personal experience of circumstances at the nursery. Filming at the nursery confirmed that standards at Bank House had fallen below the minimum acceptable and this was escaping detection. Exposing understaffing and other departures from good practice at Bank House was in the public interest. Any infringement of Ms Khan's privacy was warranted by the importance of the subject and by the necessity of obtaining clear evidence that Ofsted guidelines were being breached.

In response to the complaint of unwarranted infringement of privacy in the broadcast, the BBC said in summary:

- c) Ms Khan's identity was obscured so only those with a close knowledge of the nursery and her employment there would have been able to identify her.

Ms Khan's comments

In response to the BBC's statement, Ms Khan said in summary:

- a) The rushes showed her soothing a sick child, asking another for a kiss and playing with and talking affectionately to the children. It was clear that the children were happy and playing with the resources in the room. The crying child was only whining, on and off, for about 10 minutes, although the programme said Ms Khan left her for 30 minutes before comforting her. Every time the little girl got upset, staff would speak to her and comfort her and she would stop crying for a while.

The BBC's comments

In its final response, the BBC said in summary:

- a) Two independent experts consulted by the programme makers raised criticisms of Ms Khan's actions, both considering that there was poor care in relation to the little girl who was crying and on a more general level. She chastised the little girl, who had recently joined the nursery and was clearly below par. The girl was grizzling on and off over a period of 30 minutes and there were sustained moments when her crying was either ignored or commented on critically. Ms Khan's complaint to the BBC was upheld in part only, namely in that the editorial choices made in the presenting of this sequence, although they reflected actual events, intensified their impact to the extent of introducing an element of unfairness.

Decision

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

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

This case was referred to the Fairness Committee, Ofcom's most senior decision making body, for consideration. The Fairness Committee upheld the complaint in part (heads a) and c)) and the provisional decision was sent to both parties. The BBC subsequently requested that the Fairness Committee reconsider its provisional decision in respect of one element of the complaint (head c)). Ofcom considered that the BBC raised points that were material to the substance of the decision and the case was referred back to the Fairness Committee for it to reconsider head c), in accordance with Ofcom's published procedures.

The Committee had before it a complaint from Ms Khan, a response from the BBC and a further statement from each party, with supporting material. It viewed a recording of the programme and recordings of the untransmitted footage. With regard to head c), the Committee also considered the BBC's request for reconsideration of the provisional decision and the points made on behalf of Ms Khan in response.

The Committee's final decision is set out below, by reference to each of the heads of Ms Khan's complaint. As a preliminary point, the Committee noted that documentary making is important in investigating matters of public concern, such as the care provided to children in nurseries. This is an appropriate subject for broadcasters to address in programmes (subject to the conditions of the Ofcom Broadcasting Code). It is, however, essential that programmes are accurate in all material respects so that no unfairness is caused and unwarranted infringements of privacy are avoided. This is necessary for both participants and viewers.

- a) Ms Khan complained that a false allegation that she left a child crying and without comfort was included in the programme and that the relevant footage was unfairly edited. The BBC upheld a complaint from Ms Khan on the grounds that the sequence, as edited, reflected actual events, but "intensified their impact to a point that introduced an element of unfairness" to her. The Committee noted the view of the expert who had appeared on the programme, who viewed some untransmitted rushes and felt that the girl was "distressed and being ignored".

However, the Committee also viewed the rushes and considered that, overall, they gave a materially different picture of the care Ms Khan gave the little girl from that portrayed in the programme. It was clear that the girl spent a significant period of time during the filming playing happily and received some positive attention from Ms Khan. Although the Committee noted that the programme included positive commentary about the care provided by Ms Khan at other times, in the Committee's view this was insufficient to balance the way the footage of this incident was edited. In all the circumstances therefore, the Committee found that the allegation, coupled with the way the footage was edited, resulted in an unfair portrayal of Ms Khan.

The Committee found unfairness to Ms Khan in the programme in this respect.

- b) The complainant felt that the programme makers unwarrantably infringed her privacy by secretly filming her while she was at work. In considering whether Ms Khan's privacy was unwarrantably infringed in the making of the programme, the Committee first considered whether there had been a breach of her privacy as a result of the filming. The filming took place whilst Ms Khan was at work going about her ordinary duties as a nursery carer. In the Committee's view it was reasonable for Ms Khan to expect that she would not be filmed surreptitiously during the course of her work and therefore, her privacy was infringed in the making of the programme.

Having decided that there was an infringement of Ms Khan's privacy, the Committee proceeded to consider whether, in all the circumstances, this was justified in the public interest. In addressing this question, the Committee took account of the fact that the programme makers had decided to film at the nursery on the basis of information they had received from two sources that they said were credible (details of which, in accordance with usual journalistic standards, were not provided to Ofcom) about inadequate staffing levels at Bank House. In the Committee's opinion, this provided sufficient justification for the BBC to send an undercover reporter to film secretly at the nursery.

Having secured a placement at Bank House, the reporter witnessed some periods of short staffing and other incidents of care that appeared to show a failure to meet Ofsted national standards for under 8's day care. The Committee considered that there were some legitimate concerns raised about the nursery by what the reporter saw. It took the view that the secret filming at the nursery was justified by a legitimate public interest in exposing weaknesses in the regulatory framework for nursery care, by seeking to investigate specific instances of lapses below minimum standards at Bank House. The public interest in the care provided to young children outweighed the nursery's right to privacy.

With regard to Ms Khan herself, although the Committee found some unfairness to her in the programme (see a) above), it considered that there were legitimate concerns raised about the nursery in what the reporter saw. The Committee took the view that the public interest justified the secret filming of Ms Khan at work while the reporter legitimately gathered material for the programme.

The Fairness Committee found no unwarranted infringement of privacy in this respect.

- c) Ms Khan complained that secretly filmed footage of her was broadcast without good reason. Having decided that there was no unwarranted infringement of Ms

Khan's privacy in the making of the programme, the Committee proceeded to consider whether her privacy was unwarrantably infringed in the broadcast.

The Committee first noted that steps were taken to obscure Ms Khan's identity by blobbing her face and that it was not the BBC's intention that she should be identifiable by people other than those with a close knowledge of the nursery. However the Committee noted that it was clear from the footage that she was Asian. Whether or not she was the only Asian member of staff at the nursery, the Committee also noted that she was the only Asian person evident from the footage that had been provided. In the Committee's view this made her appearance, including her hair, more distinctive and made it more likely that she would be recognisable, despite her face being 'blobbed', both to people who already knew her and to people with whom she was likely to come into contact by virtue of her job, for example prospective parents who had seen the programme. It was reasonable for Ms Khan to expect that secretly filmed footage of her during the course of her work would not be broadcast in such a way as to make her identifiable and therefore her privacy was infringed in the broadcast.

Having decided that there was an infringement of Ms Khan's privacy, the Committee proceeded to consider whether this was warranted (i.e. by an overriding public interest). Having found that the footage of Ms Khan's care of the crying child was unfairly edited (see a) above), the Committee took the view that there was no public interest in including her in the programme in a manner that made her identifiable, and that the steps taken to obscure her identity were insufficient. The Committee therefore found no justification for the infringement of Ms Khan's privacy in the broadcast.

The Fairness Committee found that Ms Khan's privacy was unwarrantably infringed in the programme as broadcast.

Accordingly, Ofcom found that there was unfairness to Ms Khan in the programme and that her privacy was unwarrantably infringed in the broadcast. It found no unwarranted infringement of her privacy in the making of the programme. Parts of her complaint were therefore upheld.

Ofcom has directed the BBC to broadcast a summary of this adjudication.

Complaint by Mrs Kathleen Moorhead

Nurseries Undercover: The Real Story, BBC1, 12 August 2004

Summary: Ofcom has partly upheld this complaint of unfair treatment and unwarranted infringement of privacy.

Mrs Kathleen Moorhead complained that she was treated unfairly and that her privacy was unwarrantably infringed in the making and the broadcast of this edition of *The Real Story*. The programme investigated the care provided for children in day nurseries and questioned the effectiveness of Ofsted inspections of nurseries. An undercover reporter spent time at three nurseries and two others were also referred to. One of the nurseries visited was Bank House Day Nursery ("Bank House"), a nursery in Radcliffe, North Manchester. The reporter obtained a placement at Bank House and carried out secret filming there. The programme included a number of criticisms of the nursery and of some members of staff. It included secretly filmed footage of both carers and the children in their care. Mrs Moorhead is a member of staff at Bank House, who was secretly filmed. Brief footage of her was included in the programme, during which her face was obscured.

Ofcom concluded that:

- a) It was unfair for the programme to include a clip that did not convey accurately what Mrs Moorhead said to the reporter. The BBC accepted that a conversation between Mrs Moorhead and the undercover reporter was edited in such a way as to suggest wrongly that a comment she made about staffing concerns applied to her personally.
- b) Secret filming of her at the nursery was an infringement of Mrs Moorhead's privacy, as it was reasonable for her to expect that she would not be filmed surreptitiously during the course of her work. However, the programme makers had information from two sources that they said were credible about staffing levels at Bank House. There were some legitimate concerns raised by what the reporter saw at the nursery. The public interest in the care provided to young children generally and in the care provided at Bank House specifically justified the BBC's decision to allow secret filming of staff at the nursery, including those, such as Mrs Moorhead, who would not be criticised personally in the programme, and outweighed her right to privacy.
- c) There was no infringement of Mrs Moorhead's privacy in the broadcast. Her face was obscured by pixelation when she appeared on screen, so that nothing was disclosed about her that people who knew her would not already be aware of. People who did not know her would not have been able to identify her from her appearance in the programme. The steps taken by the BBC to obscure her identity were therefore sufficient.

Introduction

The programme, *The Real Story*, investigated the care provided for children in day nurseries and questioned the effectiveness of Ofsted inspections of nurseries. An undercover reporter spent time at three nurseries and two others were also referred to. One of the nurseries visited was Bank House Day Nursery ("Bank House"), a nursery in Radcliffe, North Manchester. The reporter obtained a placement at Bank House and carried out secret filming there. The programme included a number of

criticisms of the nursery and of some members of staff. It included secretly filmed footage of both carers and the children in their care. Mrs Kathleen Moorhead is a member of staff at Bank House. Brief footage of her was included in the programme, during which her face was obscured.

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

Complaint

Mrs Moorhead's case

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

- a) Footage of her discussing staff shortages with the undercover reporter was unfairly edited so as to misrepresent what she said. The clip with her in was subtitled and she was speaking with a block over her face. However the sentences she said in the programme were not those she said in the conversation that was recorded.

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

- b) She was secretly filmed while at work without good reason.

In summary, Mrs Moorhead complained that her privacy was unwarrantably infringed in the broadcast in that:

- c) The blocking used to obscure her identity was insufficient, as everyone who knew her recognised her.

The BBC's case

In response to the complaint of unfair treatment, the BBC said in summary:

- a) Mrs Moorhead's comment on nursery staffing came from a longer conversation during which she said:

"I mean, we take it in turns obviously 'cause if I've got more staff, I mean, I'll probably have Carole in here or somebody else, so whilst one's sat on the floor then the other person does it, you know ... just swap it about, that's it, nappy changes we swap, and meal times we swap. But Carole's been spending more time ... more and more time out of the room at the moment 'cause we're short staffed, so..."

The sound was somewhat indistinct and, in editing, the name "Carole" disappeared. A caption, added later and intended to help viewers understand what was said, mistakenly turned the sentence into:

"We're spending more time out of the room at the moment 'cause we're short staffed..."

The full comment supported the programme's reporting that the nursery was short-staffed. However the caption also gave the impression that the comment

applied to Mrs Moorhead, which was not the case. In its own investigation through its complaints unit, the BBC had accepted that this created an unfairness to Mrs Moorhead and had upheld this aspect of her complaint to them.

In response to the complaint of unwarranted infringement of privacy in the making of the programme, the BBC said:

- b) There was a strong public interest justification for filming at Bank House. Nurseries are regulated by Ofsted. Parents need to have confidence that the regulatory framework guarantees minimum standards of care for their children. If a nursery falls below the minimum standard and the regulator either does not know, or is otherwise incapable of ensuring that those minimum standards are being maintained, it is in the public interest for that to be exposed, both in terms of the general principle and in specific instances. The programme makers had become aware of failings at Bank House as a result of information from credible sources with personal experience of circumstances at the nursery. After discussion with senior editorial executives, arrangements were made for an undercover reporter to take a secret camera into the nursery. Filming at the nursery confirmed that standards at Bank House had fallen below the minimum acceptable and this was escaping detection. Exposing understaffing and other departures from good practice at Bank House was in the public interest. Any infringement of Mrs Moorhead's privacy was warranted by the importance of the subject and by the necessity of obtaining clear evidence that Ofsted guidelines were being breached.

In response to the complaint of unwarranted infringement of privacy in the broadcast, the BBC said:

- c) The decision to obscure the identities of most of the staff at Bank House was taken in line with BBC guidelines, which allow for protection of individuals who are "innocent" or "not sufficiently culpable". The generally accepted level to which someone's identity is obscured is to make them unrecognisable to someone passing them in the street. Mrs Moorhead was obscured to this extent. Only those with a close knowledge of the nursery and her employment there would have been able to identify her.

Decision

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

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

This case was referred to Ofcom's Fairness Committee for consideration. The Committee's decision is set out below, by reference to each of the heads of Mrs Moorhead's complaint. As a preliminary point, the Committee noted that documentary making is important in investigating matters of public concern, such as the care provided to children in nurseries. This is an appropriate subject for broadcasters to address in programmes (subject to the conditions of the Ofcom

Broadcasting Code). It is, however, essential that programmes are accurate in all material respects so that no unfairness is caused and unwarranted infringements of privacy are avoided. This is necessary for both participants and viewers.

- a) Mrs Moorhead complained that footage of her discussing staff shortages with the undercover reporter was edited so as to misrepresent what she said. The Committee noted that the BBC accepted that the conversation was edited in such a way as to suggest wrongly that her comment about staffing concerns applied to her personally. While the Committee considered that it was reasonable for the BBC to use footage of the conversation between Mrs Moorhead and the reporter to illustrate the concerns raised in the programme about staffing levels at Bank House, it was incumbent on the programme makers to ensure that in editing the conversation Mrs Moorhead was not misrepresented. The clip included in the programme did not convey accurately what Mrs Moorhead said to the reporter and implied that she was spending more time out of the room herself because of short staffing.

The Fairness Committee found that Mrs Moorhead was treated unfairly in the programme as broadcast in this respect.

- b) The complainant felt that the programme makers unwarrantably infringed her privacy by secretly filming her while she was at work. In deciding whether Mrs Moorhead's privacy was unwarrantably infringed in the making of the programme, the Committee first considered whether there had been a breach of her privacy as a result of the filming. The filming took place while Mrs Moorhead was going about her ordinary duties as a nursery carer. In the Committee's view, it was reasonable for Mrs Moorhead to expect that she would not be filmed surreptitiously during the course of her work and therefore her privacy was infringed in the making of the programme.

Having decided that there was an infringement of Mrs Moorhead's privacy, the Committee proceeded to consider whether, in all the circumstances, this was justified in the public interest. In addressing this question, the Committee took account of the fact that the programme makers had decided to film at the nursery on the basis of information they had received from two sources that they said were credible (details of which, in accordance with usual journalistic standards, were not provided to Ofcom) about inadequate staffing levels at Bank House. The Committee accepted that this provided sufficient justification for the BBC to send an undercover reporter to film secretly at the nursery.

Having secured a placement at Bank House, the reporter witnessed some periods of short staffing and other incidents of care that appeared to show a failure to meet Ofsted national standards for under 8s day care. The Committee considered that, although there was unfairness to Mrs Moorhead in the way a conversation was edited (see a) above), there were some legitimate concerns raised about the nursery by what the reporter saw. It took the view that the secret filming at the nursery was justified by a legitimate public interest in exposing weaknesses in the regulatory framework for nursery care by seeking to investigate specific instances of lapses of minimum standards at Bank House and that the public interest in the care provided to young children outweighed the nursery's right to privacy.

As regards Mrs Moorhead herself, the Committee noted that, in the circumstances, it was inevitable that members of staff of whom no criticism would be made in the programme would be filmed. Although the BBC did not intend to

criticise Mrs Moorhead, the overriding public interest justified the secret filming of her at work while the reporter legitimately gathered material for the programme.

The Fairness Committee found no unwarranted infringement of Mrs Moorhead's privacy in the making of the programme.

- c) Mrs Moorhead complained that the blocking used to obscure her identity was inadequate. Having decided that there was no unwarranted infringement of Mrs Moorhead's privacy in the making of the programme, the Committee proceeded to consider whether her privacy was unwarrantably infringed in the broadcast. The Committee first noted that Mrs Moorhead's face was obscured by pixelation when she appeared on screen. Although it was apparent from her complaint that Mrs Moorhead was recognisable from the programme to people who know her, the Committee considered that the pixelation was sufficient to ensure that she was not identifiable to anyone who was not close to her or did not know her personally. Looking at the footage, it was apparent that nothing was disclosed about her that people who knew her would not already be aware of. In the Committee's opinion, from her appearance in the programme, she would not be identifiable to people who did not know her. In the circumstances, the steps taken to obscure her identity were sufficient.

The Fairness Committee found no infringement of Mrs Moorhead's privacy in the broadcast programme.

Accordingly, Ofcom found that Mrs Moorhead was treated unfairly in the programme. There was no unwarranted infringement of her privacy in the making of the programme and no infringement of her privacy in the broadcast. The complaint was upheld in part.

Ofcom has directed the BBC to broadcast a summary of this adjudication.

Complaint by Ms Sue Scott

Nurseries Undercover: The Real Story, BBC1, 12 August 2004

Summary: Ofcom has upheld parts of this complaint of unfair treatment and unwarranted infringement of privacy.

Ms Sue Scott complained that she was treated unfairly and that her privacy was unwarrantably infringed in the making and the broadcast of the programme. The programme investigated the care of children in day nurseries and the effectiveness of Ofsted inspections of nurseries. Bank House Day Nursery ("Bank House"), a nursery in Radcliffe, North Manchester, was one of a number of nurseries visited by an undercover reporter. The reporter obtained a placement at Bank House and carried out secret filming there. The programme included a number of criticisms of the nursery and of some members of staff. It included secretly filmed footage of both carers and the children in their care. Ms Scott is the nursery manager at Bank House. She was secretly filmed and her voice was heard in the programme.

Ofcom's Fairness Committee, Ofcom's most senior decision making body, considered Ms Scott's complaint and reached a provisional decision on 5 July 2006. It found that the complaint should be upheld in part. The BBC subsequently asked the Fairness Committee to reconsider its provisional decision in respect of two elements of the complaint. Ofcom considered that the BBC had raised points that were material to the substance of the decision and the case was referred back to the Fairness Committee for it to reconsider heads a) and b) of the complaint, in accordance with Ofcom's published procedures.

Following its reconsideration, Ofcom concluded that:

- a) It was unfair for the programme to criticise the management of the nursery and, therefore, Mrs Scott, as nursery manager, for failing to carry out a Criminal Records Bureau ("CRB") check on the undercover reporter, when it was not necessary for the check to be carried out.
- b) There was not sufficient conclusive or clearly attributable expert evidence to support the allegation that Ms Scott was shouting at children.
- c) Secret filming of her at the nursery was an infringement of Ms Scott's privacy, as it was reasonable for her to expect that she would not be filmed surreptitiously during the course of her work. However, the programme makers had information from two sources, that they said were credible, about inadequate staffing levels at Bank House. There were some legitimate concerns raised by what the reporter saw. The public interest in the care provided to young children generally and in the care provided at Bank House specifically justified the BBC's decision to allow secret filming of staff at the nursery, including Ms Scott, and outweighed her right to privacy.
- d) There was no infringement of Ms Scott's privacy in the broadcast. She did not appear in shot and only her voice was heard. Nothing was disclosed about her that people who knew her would not already be aware of. People who did not know her would not have been able to identify her from her voice in the programme. The steps taken to obscure her identity were sufficient.

Introduction

The programme, *The Real Story*, investigated the care of children in day nurseries and the effectiveness of Ofsted inspections of nurseries. Bank House Day Nursery (“Bank House”), a nursery in Radcliffe, North Manchester, was one of a number of nurseries visited by an undercover reporter. The reporter obtained a placement at Bank House and carried out secret filming there. The programme included a number of criticisms of the nursery and of some members of staff. It included secretly filmed footage of both carers and the children in their care. Ms Sue Scott is the nursery manager at Bank House. Her voice was heard in the programme.

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

Complaint

Ms Scott’s case

In summary, Ms Scott complained that she was treated unfairly in the programme in that:

- a) She was unfairly portrayed as being incompetent, in that the programme said that “the manager” did not complete Criminal Record Bureau (“CRB”) checks or any other checks on the undercover reporter. This misrepresented her position. She had asked the reporter, who she believed to be a voluntary worker wishing to view the nursery and get an insight into the career of nursery nursing, for all her personal details. The reporter subsequently informed the nursery that she would not be returning. Under the government’s national standards, which were omitted from the programme, only the name and address are required of a voluntary worker on a short term placement. The reporter was only attending the nursery for a few weeks.
- b) Her voice was heard on the programme, supposedly shouting at a child to sit on a chair. She was aware from a Child Protection Officer from Greater Manchester Police who viewed some of the footage that there was no shouting at the children and that the staff were only being firm with the children. Her voice was added to a completely different clip, which made it seem that she was being firm with the children for no reason.

In summary, Ms Scott complained that her privacy was unwarrantably infringed in the making of the programme in that:

- c) She was secretly filmed, without a public interest justification.

In summary, Ms Scott complained that her privacy was unwarrantably infringed in the broadcast in that:

- d) Although her face was not shown, her voice was not disguised, despite the fact that the nursery asked that no member of staff should be recognisable on the programme. She was recognisable to friends, family and acquaintances through her voice.

The BBC's case

In response to the complaint of unfair treatment, the BBC said in summary:

- a) The manager or owner of a nursery is obliged under Ofsted guidelines to conduct a CRB check on any member of staff, whether voluntary or employed, if they are to be left alone with children. This was made clear in the programme. Whilst the nursery owner did discuss a CRB check with the reporter on her first day, no check was made into her background and she was left alone to supervise children. For the first four days of the reporter's placement, the only information the nursery had about her was her name and mobile phone number. This was in breach of mandatory standards, as was the fact that she was allowed to take children to the toilet alone, without having been CRB checked. The programme did not say that the manager failed to complete the CRB checks or get the reporter's address. It said that the owner did not do this. Ms Scott was not mentioned in relation to this issue. As the manager of the nursery has a responsibility in this respect, any implied criticism of Ms Scott was wholly justified. Ms Scott did not obtain basic details for nursery records until the reporter's penultimate day. Without such details, no steps could be taken to verify the details with the relevant sources, as required by the national standards.
- b) Ms Scott was only featured in the programme in one clip, in which she is heard, but not seen, shouting at a child to sit on their chair. Ms Scott, as manager of the nursery, would be aware that shouting at small children in your care is considered poor practice. She was shouting, unnecessarily, at a child to sit down and, when the programme team viewed the rushes, her tone was considered sharp and unfriendly. The inclusion of this footage in the programme as an example of poor care was justified. The child protection officer referred to by Ms Scott only saw footage relating to specific incidents and did not see the clip in which Ms Scott was heard. The clip was the third in a montage of clips of Bank House staff shouting at children.

In response to the complaint of unwarranted infringement of privacy in the making of the programme, the BBC said in summary:

- c) There was a strong public interest justification for filming at Bank House. Nurseries are regulated by Ofsted. Parents need to have confidence that the regulatory framework guarantees minimum standards of care for their children. If a nursery falls below the minimum standard and the regulator either does not know or is incapable of ensuring that the minimum standards are being maintained, it is in the public interest for that to be exposed, both in terms of the general principle and in specific instances. The programme makers had become aware of failings at Bank House as a result of information from credible sources with personal experience of circumstances at the nursery. Filming at the nursery confirmed that standards at Bank House had fallen below the minimum acceptable and this was escaping detection. Exposing the understaffing and other departures from good practice at Bank House was in the public interest. Any infringement of privacy that occurred in the making of the programme was warranted by the importance of the subject and by the necessity of obtaining clear evidence that Ofsted guidelines were being breached. Any infringement of Ms Scott's privacy was warranted by the importance of the subject and by the necessity of obtaining clear evidence that Ofsted guidelines were being breached.

In response to the complaint of unwarranted infringement of privacy in the broadcast, the BBC said in summary:

- d) Ms Scott did not appear in shot. She was disguised to a suitable degree to protect her anonymity and make her unrecognisable to anyone passing her in the street.

Ms Scott's comments

In response to the BBC's statement, Ms Scott said in summary:

- a) The CRB check was not requested on the undercover reporter, because, in line with Ofsted requirements, the nursery was not required to carry out the check for temporary/voluntary workers provided they were supervised at all times. As it was the policy of the nursery to supervise all such workers, the management did not initially request the information from her to complete the CRB form. On her first day, the proprietor of the nursery informed the reporter that her details would be needed for the CRB form. However, it could not be completed as she kept avoiding providing the information to start the CRB process. After being asked again to supply the information, she did not return to the nursery. It did appear that the reporter took children to the bathroom, contrary to nursery policy and procedure, although there were two members of staff in close proximity at the time. Since the programme, the nursery has changed its policies and procedures, so that no one is allowed to start work in the nursery unless they have recent CRB clearance.
- b) The clip of Ms Scott shouting was not portrayed correctly. The rushes show that staff were trying to sit the children down for toast and milk. The children were running round and could have hurt themselves. Her voice was raised over the noise in the playroom, so that the children would hear her instructions. She was using her everyday normal tone of voice.

The BBC's comments

In its final response, the BBC said in summary:

- a) Ms Scott correctly pointed out that nurseries do not have to carry out CRB checks on temporary workers or volunteer staff provided they are supervised at all times. The programme did not suggest otherwise, but criticised the nursery for failing to take basic personal details from the reporter and then leaving her unsupervised with children when she had not been CRB checked or otherwise vetted.
- b) Ms Scott's shouting was portrayed fairly. It did not sound like a "normal, everyday tone of voice" to the programme makers or to the childcare experts.

Decision

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

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

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

This case was referred to the Fairness Committee, Ofcom's most senior decision making body, for consideration. The Fairness Committee upheld the complaint in part (heads a) and b)) and the provisional decision was sent to both parties. The BBC subsequently requested that the Fairness Committee reconsider its provisional decision in respect of two elements of the complaint (heads a) and b)). Ofcom considered that the BBC had raised points that were material to the substance of the decision and the case was referred back to the Fairness Committee for it to reconsider heads a) and b), in accordance with Ofcom's published procedures.

The Committee had before it a complaint from Ms Scott, a response from the BBC and a further statement from each party, with supporting material. It viewed a recording of the programme and recordings of untransmitted footage. With regard to heads a) and b), the Committee also considered the BBC's request for reconsideration of the provisional decision and the points made on behalf of Ms Scott in response.

The Committee's final decision is set out in full below, by reference to each of the heads (heads a) to d)) of Ms Scott's complaint. As a preliminary point, the Committee noted that documentary making is important in investigating matters of public concern, such as the care provided to children in nurseries. This is an appropriate subject for broadcasters to address in programmes (subject to the conditions of the Ofcom Broadcasting Code). It is, however, essential that programmes are accurate in all material respects so that no unfairness is caused and unwarranted infringements of privacy are avoided. This is necessary for both participants and viewers.

- a) Ms Scott complained that she was unfairly portrayed as being incompetent in relation to CRB checks on the undercover reporter.

The Committee took the view that the programme suggested that the management in general at the nursery was incompetent in failing to carry out a CRB check on the reporter and that, as nursery manager, Ms Scott was included in this criticism. The Committee found on the complaint made by the nursery that it was unfair for the programme to suggest that the undercover reporter was left to take children to the toilet on her own and that it was therefore unfair for the programme to criticise the nursery for failing to carry out a CRB check, as, in the circumstances, it was not necessary. In view of this, the implication that the management of the nursery was incompetent in failing to carry out the CRB check resulted in unfairness to Ms Scott as manager of the nursery.

The Committee found that this was unfair to Ms Scott.

- b) Ms Scott complained that a sound recording of her shouting was added to a different clip so as to make it appear that she was being firm with children for no reason.

The Committee viewed the rushes that the BBC said supported their claim that Ms Scott was shouting at a child. The programme included three short clips of alleged shouting. Although these were very brief and not easy to distinguish from each other, the Committee was satisfied, having viewed the rushes and the programme itself, that there was no evidence to suggest that the sound recording footage of Ms Scott's voice was used over a different clip. Moreover, they did not

consider that the wording of Ms Scott's complaint amounted to an admission that she was shouting.

The Committee therefore went on to consider the allegation that Ms Scott shouted at children and whether this could fairly be attributed to her in the programme. In doing this, the Committee carefully considered all the evidence provided by the BBC including the opinion of various experts. The Committee was clear that when considering this evidence, Ofcom's role was not to substitute its own opinion for that of experts but to afford such opinions, where they had been provided, due weight when considering whether the broadcaster had taken the necessary steps to avoid unfairness to the complainant in the programme as broadcast.

Accordingly, Ofcom carefully considered the representations which the BBC had submitted concerning expert opinion in support of the allegation that Ms Scott was shouting in the programme. The Committee noted in particular the following:

The BBC's 1st Statement

"The filming revealed instances where the standard of care provided by some staff fell below recognised standards. This was confirmed by a childcare expert, currently employed by a local council, who acted as a confidential adviser to the programme and who considered there had been breaches in national guidelines with standards falling below acceptable levels. She has worked with Early Years for 37 years, working directly with children and in managerial roles. She is a NNEB qualified Nursery Nurse and has managed children's centres. She is a former member of the NNEG examining board (widely recognised as one of the leading qualifications for childcare). Among her conclusions were:

- *Shouting at children is very poor practice. There is clearly poor practice within the setting".*

The Committee noted that this was simply a general view given by an unnamed expert that was not clearly attributed to any specific footage included in the programme and in particular did not refer to the footage of the incident involving Ms Scott.

The BBC's statement went on to say that the programme consulted a second childcare expert, Marion Dowling, who they explained reached her own independent view and was then interviewed for the programme. However, the Committee noted that her overall conclusions included in the statement made no reference to the incident involving Ms Scott and did not refer to shouting.

The BBC's 2nd Statement

"We believe Ms Scott's shouting was portrayed fairly. To the programme-makers and to the childcare experts it did not sound like a "*normal everyday tone of voice*".

The Committee was not satisfied that the words "normal everyday tone of voice" provided clear evidence that the experts' opinion was that Ms Scott was shouting. Furthermore the Committee noted at this point that Ms Scott had already acknowledged that her voice "...was raised over the noise in the playroom, so the children would hear and hopefully follow my instructions".

The BBC's Request for Reconsideration

"The experts were, and remain, clear that what they heard constituted poor professional practice. Ms Dowling writes that the instances in the programme "*definitely constituted shouting*". She adds "*We can't be scientific about decibels but they did raise their voices considerably. This is not good professional practice with children*".

The Committee acknowledged that Ms Dowling had access to 12 hours of footage and, again, was not seeking to substitute its own opinion for that of the expert but to afford such expert opinion due weight. It noted that this was the first time that the BBC had clearly attributed a specific reference to "shouting" to Mrs Dowling. This opinion was not included in the programme. Further, it was not clear that "instances in the programme" referred specifically to the footage of Ms Scott. The Committee noted that Mrs Dowling herself made no specific reference to Ms Scott or to the footage which was the subject of the complaint.

Accordingly, whilst the Committee gave due weight to the expert opinion, including that shouting at children was poor practice, the Committee was not satisfied, in light of the above, that there was conclusive or clearly attributable expert evidence on the specific footage showing Ms Scott.

In addition to this, the Committee carefully viewed all the untransmitted material provided by the BBC (two minutes in relation to the allegation that Ms Scott shouted, although other footage of Ms Scott was included in rushes provided in relation to an allegation of under staffing at the nursery) as well as the programme as broadcast. The Committee could however find nothing in the untransmitted material that in its view assisted it any further in relation to the allegation of shouting.

In the light of all of the above and in the absence of conclusive or clearly attributable evidence from the experts that this specific incident showed Ms Scott shouting, and taking into account the untransmitted material, the Committee was not satisfied, that the evidence was sufficient to support the allegation in the programme that Ms Scott was shouting at children.

The Committee found that this was unfair to Ms Scott.

- c) Ms Scott felt that the programme makers unwarrantably infringed her privacy by secretly filming her while she was at work. In deciding whether Ms Scott's privacy was unwarrantably infringed in the making of the programme, the Committee first considered whether there had been a breach of her privacy as a result of the filming. The filming took place whilst Ms Scott was at work going about her ordinary duties as a nursery carer. In the Committee's view, it was reasonable for Ms Scott to expect that she would not be filmed surreptitiously during the course of her work and therefore her privacy was infringed in the making of the programme.

Having decided that there was an infringement of Ms Scott's privacy, the Committee proceeded to consider whether, in all the circumstances, this was justified in the public interest. In addressing this question, the Committee took account of the fact that the programme makers had decided to film at the nursery on the basis of information they had received from two sources that they said were credible (details of which, in accordance with usual journalistic standards, were not provided to Ofcom) about inadequate staffing levels at Bank House.

The Committee accepted that this provided sufficient justification for the BBC to send an undercover reporter to film secretly at the nursery.

Having secured a placement at Bank House, the reporter witnessed some periods of short staffing and other incidents of care that appeared to show a failure to meet Ofsted national standards for under 8s day care. The Committee considered that there were some legitimate concerns raised about the nursery by what the reporter saw. It took the view that the secret filming at the nursery was justified by a legitimate public interest in exposing weaknesses in the regulatory framework for nursery care by seeking to investigate specific instances of lapses of minimum standards at Bank House and that the public interest in the care provided to young children outweighed the nursery's right to privacy.

With regard to Ms Scott herself, although the Committee found some unfairness to her in the programme (see a) and b) above), it considered that there were legitimate concerns raised about the nursery by what the reporter saw. The Committee took the view that the public interest justified the secret filming of Ms Scott at work while the reporter legitimately gathered material for the programme.

The Committee found no unwarranted infringement of privacy in this respect.

- d) Ms Scott complained that she was recognisable by her voice from the programme to friends, family and acquaintances. Having decided that there was no unwarranted infringement of Ms Scott's privacy in the making of the programme, the Committee proceeded to consider whether her privacy was unwarrantably infringed in the broadcast. The Committee first noted that Ms Scott did not appear in shot and that only her voice was heard. Although it was apparent from her complaint that Ms Scott was recognisable from the programme to people who knew her, the Committee considered that in the circumstances she was not identifiable to anyone who was not close to her or did not know her personally and nothing was disclosed about her that people who knew her would not already be aware of. The steps taken to obscure her identity were sufficient.

The Committee found no infringement of Ms Scott's privacy in the broadcast programme.

Accordingly, Ofcom found that there was unfairness to Ms Scott, that there was no unwarranted infringement of her privacy in the making of the programme and no infringement of her privacy in the broadcast. Parts of her complaint were therefore upheld.

Ofcom has directed the BBC to broadcast a summary of this adjudication.

Not Upheld

Complaint by Mrs Patricia Delaney

Nurseries Undercover: The Real Story, BBC1, 12 August 2004

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

Mrs Patricia Delaney complained that her privacy was unwarrantably infringed in the making of this edition of *The Real Story*. The programme investigated the care provided for children in day nurseries and the questioned the effectiveness of Ofsted inspections of nurseries. An undercover reporter spent time at three nurseries and two others were also referred to. One of the nurseries visited was Bank House Day Nursery ("Bank House"), a nursery in Radcliffe, North Manchester. The reporter obtained a placement at Bank House and carried out secret filming there. The reporter obtained a placement at Bank House and carried out secret filming there. The programme included a number of criticisms of the nursery and of some members of staff. It included secretly filmed footage of both carers and the children in their care. Mrs Delaney is a member of staff at Bank House. Footage of her was secretly filmed by the undercover reporter, but was not used in the programme.

Ofcom concluded that:

- Secret filming of her at the nursery was an infringement of Mrs Delaney's privacy, as it was reasonable for her to expect that she would not be filmed surreptitiously during the course of her work. However, the programme makers had information from two sources that they said were credible about inadequate staffing levels at Bank House. There were some legitimate concerns raised by what the reporter saw at the nursery. The public interest in the care provided to young children generally and in the care provided at Bank House specifically justified the BBC's decision to allow secret filming of staff at the nursery, including those, such as Mrs Delaney, who would not feature in the programme, and outweighed her right to privacy.

Introduction

This edition of the BBC's current affairs series, *The Real Story*, investigated the care provided for children in day nurseries and questioned the effectiveness of Ofsted inspections of nurseries. An undercover reporter spent time at three nurseries and two others were also referred to. One of the nurseries visited was Bank House Day Nursery ("Bank House"), a nursery in Radcliffe, North Manchester. The reporter obtained a placement at Bank House and carried out secret filming there. The programme included secretly filmed footage of both carers and the children in their care. Mrs Patricia Delaney is a member of staff at Bank House. Footage of her was secretly filmed by the undercover reporter, but was not used in the programme.

Mrs Delaney complained that her privacy was unwarrantably infringed in the making of the programme.

Complaint

Mrs Delaney's case

In summary, Mrs Delaney complained that her privacy was unwarrantably infringed in the making of the programme in that she was secretly filmed while at work without good reason.

The BBC's case

In response to the complaint of unwarranted infringement of privacy in the making of the programme, the BBC said that there was a strong public interest justification for filming at Bank House. Nurseries are regulated by Ofsted. Parents need to have confidence that the regulatory framework guarantees minimum standards of care for their children. If a nursery falls below the minimum standard and the regulator either does not know, or is otherwise incapable of ensuring that those minimum standards are being maintained, it is in the public interest for that to be exposed, both in terms of the general principle and in specific instances. The programme makers had become aware of failings at Bank House as a result of information from credible sources with personal experience of circumstances at the nursery. After discussion with senior editorial executives, arrangements were made for an undercover reporter to take a secret camera into the nursery. Filming at the nursery confirmed that standards at Bank House had fallen below the minimum acceptable and this was escaping detection. Exposing understaffing and other departures from good practice at Bank House was in the public interest. Any infringement of Mrs Delaney's privacy was warranted by the importance of the subject and by the necessity of obtaining clear evidence that Ofsted guidelines were being breached.

Decision

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

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

This case was referred to Ofcom's Fairness Committee for consideration. The Committee's decision is set out below by reference to Mrs Delaney's complaint. As a preliminary point, the Committee noted that documentary making is important in investigating matters of public concern, such as the care provided to children in nurseries. This is an appropriate subject for broadcasters to address in programmes (subject to the conditions of the Ofcom Broadcasting Code). It is, however, essential that unwarranted infringements of privacy are avoided. This is necessary for both participants and viewers. The Committee noted that it is possible for a person's privacy to be infringed during the making of a programme, even if the footage obtained is not included in the programme, as happened in Mrs Delaney's case.

The complainant felt that the programme makers unwarrantably infringed her privacy by secretly filming her while she was at work. In deciding whether Mrs Delaney's privacy was unwarrantably infringed in the making of the programme, the Committee first considered whether there had been a breach of her privacy as a result of the

filming. The filming took place whilst Mrs Delaney was at work going about her ordinary duties as a nursery carer. In the Committee's view, it was reasonable for Mrs Delaney to expect that she would not be filmed surreptitiously during the course of her work and therefore her privacy was infringed in the making of the programme.

Having decided that there was an infringement of Mrs Delaney's privacy, the Committee proceeded to consider whether, in all the circumstances, this was justified in the public interest. In addressing this question, the Committee took account of the fact that the programme makers had decided to film at the nursery on the basis of information they had received from two sources that they said were credible (details of which, in accordance with usual journalistic standards, were not provided to Ofcom) about inadequate staffing levels at Bank House. The Committee accepted that this provided sufficient justification for the BBC to send an undercover reporter to film at the nursery.

Having secured a placement at Bank House, the reporter witnessed some periods of short staffing and other incidents of care that appeared to show a failure to meet Ofsted national standards for under 8s day care. The Committee considered that there were some legitimate concerns raised about the nursery by what the reporter saw. It took the view that the secret filming at the nursery was justified by a legitimate public interest in exposing weaknesses in the regulatory framework for nursery care by seeking to investigate specific lapses of minimum standards at Bank House and that the public interest in the care provided to young children outweighed the nursery's right to privacy.

With regard to Mrs Delaney herself, the Committee noted that, in the circumstances, it was inevitable that members of staff of whom no criticism would be made in the programme would be filmed. Although Mrs Delaney was not criticised by the BBC, the overriding public interest justified the secret filming of her at work while the reporter legitimately gathered material for the programme.

The Fairness Committee found no unwarranted infringement of Mrs Delaney's privacy in the making of the programme.

Accordingly, Ofcom found that there was no unwarranted infringement of Mrs Delaney's privacy in the making of the programme. The complaint was not upheld.

Complaint by Mrs Carole Thewlis

Nurseries Undercover: The Real Story, BBC1, 12 August 2004

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

Mrs Carole Thewlis complained that her privacy was unwarrantably infringed in the making and the broadcast of this edition of *The Real Story*. The programme investigated the care provided for children in day nurseries and questioned the effectiveness of Ofsted inspections of nurseries. An undercover reporter spent time at three nurseries and two others were also referred to. One of the nurseries visited was Bank House Day Nursery ("Bank House"), a nursery in Radcliffe, North Manchester, was one of a number of nurseries visited by an undercover reporter. The reporter obtained a placement at Bank House and carried out secret filming there. The programme included a number of criticisms of the nursery and of some members of staff. It included secretly filmed footage of both carers and the children in their care. Mrs Thewlis is a member of staff at Bank House, who was secretly filmed. Brief footage of her was included in the programme, during which her face was obscured.

Ofcom concluded that:

- a) Secret filming of her at the nursery was an infringement of Mrs Thewlis' privacy, as it was reasonable for her to expect that she would not be filmed surreptitiously during the course of her work. However, the programme makers had information from two sources, that they said were credible, about inadequate staffing levels at Bank House. There were some legitimate concerns raised by what the reporter saw. The public interest in the care provided to young children generally and in the care provided at Bank House specifically justified the BBC's decision to allow secret filming of staff at the nursery, including those, such as Mrs Thewlis, who would not be criticised personally in the programme, and outweighed her right to privacy.
- b) There was no infringement of Mrs Thewlis' privacy in the broadcast. She appeared only in the background to a shot and her face was obscured by pixelation when she appeared on screen. Nothing was disclosed about her that people who knew her would not already be aware of and that people who did not know her would not have been able to identify her from her appearance in the programme. Her inclusion in the footage was not, therefore, capable of causing humiliation or embarrassment to her.

Introduction

The programme, *The Real Story*, investigated the care provided for children in day nurseries and questioned the effectiveness of Ofsted inspections of nurseries. An undercover reporter spent time at three nurseries and two others were also referred to. One of the nurseries visited was Bank House Day Nursery ("Bank House"), a nursery in Radcliffe, North Manchester, was one of a number of nurseries visited by an undercover reporter. The reporter obtained a placement at Bank House and carried out secret filming there. The programme included a number of criticisms of the nursery and of some members of staff. It included secretly filmed footage of both carers and the children in their care. Mrs Carole Thewlis is a member of staff at Bank

House. Brief footage of her was included in the programme, during which her face was obscured.

Mrs Thewlis complained that her privacy was unwarrantably infringed in the making and the broadcast of the programme.

Complaint

Mrs Thewlis' case

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

- a) She was secretly filmed while at work.

In summary, Mrs Thewlis complained that her privacy was unwarrantably infringed in the broadcast in that:

- b) Secretly filmed footage of her was broadcast from which she was recognisable to everyone who knew her.

The BBC's case

In response to the complaint of unwarranted infringement of privacy in the making of the programme, the BBC said:

- a) There was a strong public interest justification for filming at Bank House. Nurseries are regulated by Ofsted. Parents need to have confidence that the regulatory framework guarantees minimum standards of care for their children. If a nursery falls below the minimum standard and the regulator either does not know, or is otherwise incapable of ensuring that those minimum standards are being maintained, it is in the public interest for that to be exposed, both in terms of the general principle and in specific instances. The programme makers had become aware of failings at Bank House as a result of information from credible sources with personal experience of circumstances at the nursery. After discussion with senior editorial executives, arrangements were made for an undercover reporter to take a secret camera into the nursery. Filming at the nursery confirmed that standards at Bank House had fallen below the minimum acceptable and this was escaping detection. Exposing understaffing and other departures from good practice at Bank House was in the public interest. Any infringement of Mrs Thewlis' privacy was warranted by the importance of the subject and by the necessity of obtaining clear evidence that Ofsted guidelines were being breached.

In response to the complaint of unwarranted infringement of privacy in the broadcast, the BBC said:

- b) Mrs Thewlis was not shown in the programme as an individual example of poor practice, but was present when rooms were understaffed. The programme included shots when she was in the background in order to illustrate understaffing at the nursery. Mrs Thewlis' identity was obscured so she would not be recognisable by a third party who might see her in the street. There was nothing in the programme that provided incontrovertible proof of Mrs Thewlis'

identity. Any recognition would have required knowledge additional to the broadcast and would have involved an element of speculation.

Decision

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

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

This case was referred to Ofcom's Fairness Committee for consideration. The Committee's decision is set out below, by reference to each of the heads of Mrs Thewlis' complaint. As a preliminary point, the Committee noted that documentary making is important in investigating matters of public concern, such as the care provided to children in nurseries. This is an appropriate subject for broadcasters to address in programmes (subject to the conditions of the Ofcom Broadcasting Code). It is, however, essential that unwarranted infringements of privacy are avoided. This is necessary for both participants and viewers.

- a) The complainant felt that the programme makers unwarrantably infringed her privacy by secretly filming her while she was at work. In deciding whether Mrs Thewlis' privacy was unwarrantably infringed in the making of the programme, the Committee first considered whether there had been a breach of her privacy as a result of the filming. The filming took place whilst Mrs Thewlis was at work going about her ordinary duties as a nursery carer. In the Committee's view, it was reasonable for Mrs Thewlis to expect that she would not be filmed surreptitiously during the course of her work and therefore her privacy was infringed in the making of the programme.

Having decided that there was an infringement of Mrs Thewlis' privacy, the Committee proceeded to consider whether, in all the circumstances, this was justified in the public interest. In addressing this question, the Committee took account of the fact that the programme makers had decided to film at the nursery on the basis of information they had received from two sources that they said were credible (details of which, in accordance with usual journalistic standards, were not provided to Ofcom) about inadequate staffing levels at Bank House. The Committee accepted that this provided sufficient justification for the BBC to send an undercover reporter to film secretly at the nursery.

Having secured a placement at Bank House, the reporter witnessed some periods of short staffing and other incidents of care that appeared to show a failure to meet Ofsted national standards for under 8s day care. The Committee considered that there were some legitimate concerns raised about the nursery by what the reporter saw. It took the view that the secret filming at the nursery was justified by a legitimate public interest in exposing weaknesses in the regulatory framework for nursery care by seeking to investigate specific instances of lapses of minimum standards at Bank House and that the public interest in the care provided to young children outweighed the nursery's right to privacy.

With regard to Mrs Thewlis herself, the Committee noted that, in the circumstances, it was inevitable that members of staff of whom no criticism would be made in the programme would be filmed. Although Mrs Thewlis was not criticised by the BBC, the public interest justified the secret filming of her at work while the reporter legitimately gathered material for the programme.

The Fairness Committee found no unwarranted infringement of Mrs Thewlis' privacy in the making of the programme.

- b) Mrs Thewlis complained that she was recognisable from the programme to everyone who knew her. Having decided that there was no unwarranted infringement of Mrs Thewlis' privacy in the making of the programme, the Committee proceeded to consider whether her privacy was unwarrantably infringed in the broadcast. The Committee first noted that Mrs Thewlis appeared only in the background to a shot and that her face was obscured by pixellation when she appeared on screen. Although it was apparent from her complaint that Mrs Thewlis was recognisable from the programme to people who knew her, the Committee considered that the pixellation was sufficient to ensure that she was not identifiable to anyone who was not close to her or did not know her personally. Looking at the footage, it was apparent that nothing was disclosed about her that people who knew her would not already be aware of. Whilst Mrs Thewlis appeared in the context of footage which was used to show that rooms were short staffed, she was not identified and there was no suggestion that she was in any way connected to the allegations. On the contrary, she simply appeared obscured and in the background going about her ordinary duties as a carer. In this context, the Committee considered that Mrs Thewlis' inclusion in the footage was not capable of causing embarrassment or humiliation to her.

The Fairness Committee found no infringement of Mrs Thewlis' privacy in the broadcast programme.

Accordingly, Ofcom found that there was no unwarranted infringement of Mrs Thewlis' privacy in the making of the programme and no infringement of her privacy in the broadcast. The complaint was not upheld.

Complaint by Mr Terence and Mrs Jacqueline Cox

How Not To Decorate, Five, 27 April 2006

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

This episode of *Colin and Justin's How Not to Decorate* recapped the series' top tips for decorating. During the programme, an empty room was furnished with new household items and the price of each of the new items was listed.

Terence and Jacqueline Cox were the owners of the room and complained that the showing of their room unwarrantably infringed their privacy. Mr and Mrs Cox also complained that the programme had been unfair to them as it falsely stated that three items used to decorate the room had been purchased by the programme's decorators. Mr and Mrs Cox said the items – a jukebox and two pictures – were purchased by them for a greater price than was listed in the programme.

Ofcom found as follows:

- a) The complainants had given informed consent for their home to be filmed in the knowledge that the footage would be used in a television programme. In addition, Ofcom found the programme makers acted reasonably in using images of Mr and Mrs Cox's home in the programme as broadcast, as the consent given by the complainants during the making of the programme remained valid, despite an attempt by the complainants to withdraw their consent to participate. In the circumstances, Ofcom found Mr and Mrs Cox's privacy was not infringed in the programme as broadcast.
- b) Ofcom considered that in the mind of the average viewer, the programme as broadcast was in no way connected to the complainants. In the circumstances Ofcom found the false impression, that the programme decorators purchased three items used to decorate the room, did not result in unfairness to Mr and Mrs Cox.

Introduction

On 27 April 2006, Five broadcast an episode of *How Not to Decorate* that recapped the series' top tips for decorating.

During the programme, viewers were shown an example of how to decorate on a budget. In the example an empty room was furnished with new household items and the price of each of the new items was listed.

Terence and Jacqueline Cox were not shown in the programme but were the owners of the room featured in the programme. Mr and Mrs Cox made a complaint to Ofcom of unwarranted infringement of privacy and unfair treatment.

The Complaint

Mr and Mrs Cox's case

In summary, Mr and Mrs Cox complained that the programme unwarrantably infringed their privacy in the programme as broadcast in that:

- a) The programme showed their property and personal belongings without consent. The complainants said that they had refused to sign a release form for their contribution during the making of the programme.

In summary, Mr and Mrs Cox complained the programme was unfair, in that:

- b) Viewers were led to believe the programme makers had purchased three of the new items shown in the room: a jukebox and two pictures. Mr and Mrs Cox said that they had purchased these items several years before the making of the programme, for a greater price than was listed in the programme.

Five's case

In summary, Five responded to the complaint as follows:

- a) Five explained that Mr and Mrs Cox had replied to an advertisement for contributors to appear in a new series of *How Not to Decorate*, provisionally entitled *Colin and Justin's Junk and Disorderly*. Following preliminary discussions with the couple and a visit to their home, the producers decided they would like to include their home in the programme. In agreeing to take part in the programme Mr and Mrs Cox duly signed a letter, which was sent to them in March 2005, that outlined the nature and purpose of the programme, as well as a location release form, dated 4 March 2005. Five noted that the latter document allowed the producers to: "*film, photograph and record on the property*" and, "*to own the proceeds of such filming, to include any recordings made in the programme, to edit the programme, and to exploit the programme by all means and in all media*". Five provided Ofcom with copies of both documents.

Five explained that following filming of the programme, Mr and Mrs Cox wrote a letter of complaint to the producer which outlined their grievances about the outcome of the redecoration, and the damage caused to their belongings and property during the making of the programme. The producer made a goodwill offer to settle the matter in exchange for their outstanding contributor release forms. Despite a number of verbal and written exchanges between the producer and the complainants, the matter was not resolved and Mr and Mrs Cox did not supply their contributor release forms. Five provided Ofcom with copies of the written correspondence between the producer and the complainants on this matter.

In light of Mr and Mrs Cox's refusal to sign a contributor release form, the programme makers decided not to feature them in the programme. Instead, limited sequences from the original filming were used in the programme with the sole purpose of illustrating how to achieve a certain look for a room for under £500. Five said that these sequences were entirely consistent with the nature of the programme that the complainants agreed to participate in.

Five maintained neither the complainants nor their property were identified in the programme - the only information disclosed by the programme was the contents and layout of a room that had been put together by the producers for the purpose of inclusion in a television programme. Five reasoned that a programme which includes pictures of a room, where the owners or occupants of the room are not identified, would not infringe the privacy of the owners. In addition neither the room itself, nor anything contained within it, could be described as private in nature.

- b) In relation to Mr and Mrs Cox's complaint of unfair treatment, Five said the purpose of the relevant programme sequence, was to illustrate how to put together a look in a room on a budget. Five said the programme could not identify the complainants as the owners of the items that were used to decorate the room, as they were not included in the programme. In order for the viewers to understand how the look for the room had been achieved the producers researched how much such items could typically be acquired for on the high street, from online auction sites such as eBay, and junk and specialty shops. These were presented as the price paid for the items to indicate the amount viewers could reasonably expect to pay for similar items.

Five said that Mr and Mrs Cox were not identified as the purchasers or owners of the items, and maintained therefore, that the programme's suggestion that the items had been acquired for less than what the complainants originally paid did not result in unfairness to them.

Decision

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

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

Ofcom's findings in relation to the complainants' specific heads of complaint are outlined below:

- a) Mr and Mrs Cox complained their privacy was unwarrantably infringed in the programme as broadcast in that the programme showed their property and personal belongings without consent. Mr and Mrs Cox explained that they had refused to sign a release form for their contribution after a dispute with the programme makers.

When determining whether or not an infringement of privacy has occurred, Ofcom will assess whether the complainant, in the circumstances, had a reasonable expectation of privacy. In this case, Ofcom was required to determine whether Mr and Mrs Cox had a reasonable expectation of privacy in respect of footage of their home that was included in the programme as broadcast.

It is generally accepted by Ofcom that information relating to the inside of person's home is of a very personal nature, and such information, would reasonably attract a right to privacy.

However it is important to note, that when someone gives informed consent for a programme to reveal information about them that is of a private nature, the contributor normally waives their rights to privacy in relation to that information.

In relation to this complaint, Ofcom was required to determine whether the complainant gave *informed consent* for the programme makers to use footage of the inside of their home, with the view to deciding whether the privacy of Mr and Mrs Cox was therefore infringed.

In reaching a decision Ofcom noted from the complainants' written submission that they had agreed to participate in the programme and had been involved in the programme making process. Mr and Mrs Cox's agreement to participate in the programme was formally recorded by their signatures on two production documents: a letter from the programme maker to the complainants, that was sent during the month of March 2005, and signed by the complainants on 12 March 2005; and a location release form dated 4 March 2005.

Ofcom noted that the letter from the programme makers explained to Mr and Mrs Cox: the purpose of the programme; the programme schedule; the programme makers' expectations of them; and the fact that their home would be left in the hands of the programme decorators. Ofcom also had regard for the location release form dated 4 March 2005. This document gave express permission for the programme makers to film Mr and Mrs Cox's home and belongings, and also provided exclusive rights to the programme makers to edit and exploit the footage thereafter.

Based on this information, Ofcom was satisfied that when the complainants took part in the making of the programme, they had been properly informed about the programme's likely nature and content. In the circumstances, Ofcom considered that Mr and Mrs Cox had given the programme makers *informed consent* for them to decorate their home, and were aware that footage of the redecoration would appear in a television programme.

Ofcom acknowledged however that after filming finished, Mr and Mrs Cox wrote to the programme makers to complain about some aspects of the redecoration. Ofcom noted, from the correspondence between the parties at the time, that attempts to resolve the issues were unsuccessful, as summarised by the programme maker in a letter to the complainant dated 18 July 2005:

"Unfortunately it appears from [Mr and Mrs Cox's letter of 18 July 2005] that the phone discussions I've had with both of you to try to resolve this matter seem to have been either misunderstood or ignored...Once again, for the final time, I repeat our offer, without prejudice, of £1000 as full and final settlement to cover all your outstanding grievances. A cheque will be posted on receipt of your outstanding contributor release forms being signed and returned to our office".

The release forms were not returned to the programme makers, which as Mr and Mrs Cox explained in their complaint to Ofcom, they believed, meant that they had effectively withdrawn their consent to participate, thereby preventing the programme from using footage of their home's redecoration.

Ofcom was required to determine whether it was reasonable for the programme makers to broadcast images of Mr and Mrs Cox's home i.e. was it reasonable for the programme makers to refuse Mr and Mrs Cox's attempts to withdraw their consent to participate.

Ofcom considered whether there were any factors or events which might reasonably have affected the complainant's original consent to participate (for example, a significant change in the programme's nature or likely content). Ofcom examined the correspondence between the parties after filming had been completed, and was not persuaded that Mr and Mrs Cox's stated grievances (which unless resolved, would cause them to withhold their personal release forms) indicated that they had been misled about the programme they had originally agreed to participate in. In the circumstances, it is Ofcom's view that the consent given by the complainants during the making of the programme, remained valid.

Ofcom further noted that the programme makers took steps to limit any potential infringement of the complainants' privacy by heavily editing footage of the redecoration. The footage which was used in the programme consisted almost entirely of a bare room of the Cox family home, which was then decorated during the course of the programme. Ofcom noted that the room itself revealed nothing of a sensitive nature about the owners of the home, and Mr and Mrs Cox were not shown or referred to once throughout the programme - their personal contribution to the programme had been completely removed. In the circumstances, Ofcom considered that viewers would not have linked Mr and Mrs Cox to the room featured in the programme. By editing the programme this way, the programme makers had effectively rendered Mr and Mrs Cox and their home unidentifiable to all but those who knew them well.

Taking all the factors outlined above into consideration, Ofcom concluded that Mr and Mrs Cox's privacy was not infringed in the programme as broadcast. Ofcom found the complainants had given informed consent for their home to be filmed in the knowledge that the footage would be used in a television programme. In addition, Ofcom found the programme makers acted reasonably in using images of Mr and Mrs Cox's home in the programme as broadcast, as the consent given by the complainants during the making of the programme remained valid.

Accordingly, Ofcom has not upheld this part of Mr and Mrs Cox's complaint.

- b) Mr and Mrs Cox complained that it was unfair to them that viewers were led to believe the programme makers had purchased three of the items shown in the room: a jukebox and two pictures. Mr and Mrs Cox said that they had purchased these items several years before the making of the programme. The complainants also noted that the original purchase price of the items was more than the programme makers claimed they cost.

Programmes should not portray facts, events, individuals or organisations in a way which is unfair to an individual or organisation. However it is important to note that an inaccuracy in a programme will not automatically result in unfairness. In relation to this complaint Ofcom was required to determine whether the false impression, that the programme decorators had sourced and purchased items used to decorate the room, resulted in unfairness to Mr and Mrs Cox in the programme as broadcast.

In reaching a decision Ofcom considered a recording of the programme and the submissions of both parties.

Ofcom noted that the complainants were at no time shown or referred to in the programme as broadcast. In addition, the room featured in the programme did not disclose any identifying information about the owners of the house. In the circumstances Ofcom considered that the programme gave no information that

would have linked Mr and Mrs Cox to the room featured in the programme or any subsequent decoration of the room in question.

Taking the above factors into consideration, it is Ofcom's view that any impression viewers might have gained about the purchase of the items used to decorate the room, would not have been associated with Mr and Mrs Cox. Ofcom therefore found that the programme as broadcast was not capable of leaving viewers with an unfair impression of Mr and Mrs Cox, as it was in no way connected to the complainants in the viewer's mind.

Accordingly Ofcom has not upheld Mr and Mrs Cox's complaint of unwarranted infringement of privacy and unfair treatment.

Other Programmes Not in Breach/Out of Remit

4 – 18 April 2007

Programme	Trans Date	Channel	Category	No of Complaints
100 Greatest Sex Symbols	24/02/2007	Channel 4	Sex/Nudity	3
3 Minute Wonder - Rufftoon Zoo	08/02/2007	Channel 4	Offensive Language	1
3 Minute Wonder: War Torn	01/03/2007	Channel 4	Violence	1
Airline	06/04/2007	ITV1	Offensive Language	1
All New You've Been Framed	10/02/2007	ITV1	Animal Welfare	2
American Idol	21/01/2007	ITV1	Generally Accepted Standards	2
American Dad	10/04/2007	BBC3	Generally Accepted Standards	1
American Idol 2	21/01/2007	ITV2	Generally Accepted Standards	1
BBC Breakfast	12/03/2007	BBC1	Offensive Language	1
BBC Look North	27/02/2007	BBC1	Crime (incite/encourage)	1
BBC News	08/03/2007	BBC1	Offensive Language	3
BBC News	02/03/2007	BBC1	Generally Accepted Standards	1
Balls of Steel	09/03/2007	Channel 4	Generally Accepted Standards	3
Balls of Steel	30/03/2007	Channel 4	Generally Accepted Standards	1
Balls of Steel	06/04/2007	Channel 4	Dangerous Behaviour	2
Balls of Steel	09/03/2007	Channel 4	Sex/Nudity	1
Bob and Big Black (trail)	01/02/2007	Paramount Comedy	Crime (incite/encourage)	1
Bremner, Bird and Fortune	24/03/2007	Channel 4	Generally Accepted Standards	2
Bremner, Bird and Fortune	31/03/2007	Channel 4	Generally Accepted Standards	1
British National Party Broadcast (PPB)	-	Channel 4	Elections/Referendums	1
Calendar News	26/02/2007	ITV1	Crime (incite/encourage)	1
Channel 4 News	29/01/2007	Channel 4	Generally Accepted Standards	1
Channel 4 News	30/03/2007	Channel 4	Inaccuracy/Misleading	1
Channel 4 News	24/01/2007	Channel 4	Due Impartiality/Bias	1
Channel 4 News	13/02/2007	Channel 4	Violence	1
Channel 4 Promotion	13/04/2007	Channel 4	Generally Accepted Standards	1
Channel M	15/03/2007	Channel M	Sex/Nudity	1
Chris Moyles Show	27/03/2007	BBC Radio 1	Generally Accepted Standards	1
Chris and Angie	24/02/2007	Broadland 102	Sex/Nudity	1
Cocktail	11/02/2007	Five	Scheduling	1
Comic Relief - The Big One	16/03/2007	BBC1	Information/Warnings	1

Comic Relief - The Big One	16/03/2007	BBC1	Sex/Nudity	1
Comic Relief - The Big One	16/03/2007	BBC1	Generally Accepted Standards	5
Comic Relief - The Big One	16/03/2007	BBC1	Use of Premium Rate Numbers	1
Comic Relief Does The Apprentice	15/03/2007	BBC1	Generally Accepted Standards	1
Cops with Cameras	14/03/2007	ITV1	Dangerous Behaviour	1
Coronation Street	04/03/2007	ITV1	Generally Accepted Standards	1
Coronation Street	26/02/2007	ITV1	Generally Accepted Standards	1
Coronation Street	29/01/2007	ITV1	Generally Accepted Standards	1
Coronation Street	11/02/2007	ITV1	Harm/Food	1
Coronation Street	12/03/2007	ITV1	Generally Accepted Standards	1
Coronation Street	04/03/2007	ITV1	Generally Accepted Standards	1
Coronation Street	25/02/2007	ITV1	Inaccuracy/Misleading	1
Coronation Street	29/01/2007	ITV1	Generally Accepted Standards	2
Coronation Street	04/04/2007	ITV1	Substance Abuse	1
Crash Test Dummies	24/02/2007	Sky Two	Violence	1
Crash Test Dummies	16/02/2007	Sky One	Violence	1
Dancing on Ice	10/02/2007	ITV1	Advertising	1
Danny & Nicky in the Morning	12/03/2007	Southern FM	Generally Accepted Standards	1
Deal Or No Deal	-	Channel 4	Use of Premium Rate Numbers	1
Deal or No Deal	09/03/2007	Channel 4	Generally Accepted Standards	1
Dispatches: Charles the Meddling Prince	12/03/2007	Channel 4	Due Impartiality/Bias	7
Dispatches: Charles the Meddling Prince	12/03/2007	Channel 4	Inaccuracy/Misleading	4
Dog Borstal	01/03/2007	BBC3	Offensive Language	1
Dog Borstal	26/02/2007	BBC3	Offensive Language	1
Dog Borstal	08/02/2007	BBC3	Offensive Language	1
Dog Borstal	05/02/2007	BBC3	Offensive Language	1
Dominic Diamond's Breakfast Show	16/03/2007	XFM Scotland	Dangerous Behaviour	1
Eastenders	12/04/2007	BBC1	Undue Prominence	1
Eastenders	09/04/2007	BBC1	Dangerous Behaviour	1
Edith Bowman	10/04/2007	BBC Radio 1	Other	1
Election Special	07/03/2007	BBC NI	Harm/Food	1
Emmerdale	09/04/2007	ITV1	Crime (incite/encourage)	1
Emmerdale	12/03/2007	ITV1	Generally Accepted Standards	1
Eunuchs	03/04/2007	Channel 4	Generally Accepted Standards	1
Eurovision: Making Your Mind Up	17/03/2007	BBC1	Generally Accepted Standards	2
Fallen Angel	12/03/2007	ITV1	Animal Welfare	2
Fat Men Can't Hunt	05/02/2007	BBC3	Animal Welfare	4

Fat Men Can't Hunt	29/01/2007	BBC3	Animal Welfare	1
Faye's Story: A Tonight Special	09/04/2007	ITV1	Other	2
Five News	14/03/2007	Five	Other	1
Fortune: Million Pound Giveaway	13/02/2007	ITV1	Other	1
Friday Night With Jonathan Ross	23/03/2007	BBC1	Generally Accepted Standards	6
GMTV	27/02/2007	ITV1	Generally Accepted Standards	1
George Galloway	21/01/2007	Talksport	Generally Accepted Standards	1
Gotcha Call	13/04/2007	Fox Radio	Generally Accepted Standards	1
Graham Norton Uncut	04/03/2007	BBC2	Religious Offence	2
Graham Norton Uncut	11/03/2007	BBC2	Sex/Nudity	1
Granada Reports	16/03/2007	ITV1	U18 - Coverage of Sexual/ Other	1
Great Food Live	27/02/2007	UKTV Food	Generally Accepted Standards	1
HTV News	16/01/2007	ITV1	Generally Accepted Standards	1
HTV West News	23/01/2007	HTV	Crime (incite/encourage)	1
Homemade	17/02/2007	Channel 4	Generally Accepted Standards	1
ITV News	08/02/2007	ITV1	Religious Issues	1
ITV News	08/02/2007	ITV1	Generally Accepted Standards	1
ITV News	08/11/2006	ITV1	Generally Accepted Standards	1
ITV News	18/01/2007	ITV1	Generally Accepted Standards	1
ITV News	12/03/2007	ITV1	Crime (incite/encourage)	1
ITV News	14/03/2007	ITV1	Inaccuracy/Misleading	1
ITV News	11/03/2007	ITV1	Violence	1
ITV News	08/02/2007	ITV1	Generally Accepted Standards	6
ITV News	24/01/2007	ITV1	Due Impartiality/Bias	1
ITV News	08/02/2007	ITV1	Generally Accepted Standards	1
James Whale	11/02/2007	Talksport	Generally Accepted Standards	1
Jo & Twiggy	16/01/2007	Trent FM	Generally Accepted Standards	3
Jo & Twiggy	15/01/2007	Trent FM	Generally Accepted Standards	1
Jo & Twiggy	25/01/2007	Trent FM	Generally Accepted Standards	1
Jon Gaunt	01/03/2007	Talksport	Generally Accepted Standards	1
Jon Gaunt	08/03/2007	Talksport	Generally Accepted Standards	1
Juice 107.2	13/02/2007	Juice 107.2	Sex/Nudity	1
Kill It, Cook It, Eat It	19/02/2007	BBC1	Animal Welfare	2
Kill It, Cook It, Eat It	26/02/2007	BBC1	Generally Accepted Standards	3

Kill It, Cook It, Eat It	02/03/2007	BBC1	Generally Accepted Standards	2
Kill It, Cook It, Eat It	19/02/2007	BBC1	Generally Accepted Standards	2
Kitchen	28/02/2007	Five	Substance Abuse	2
Lady Vengeance	06/10/2006	FilmFour +1	Advertising	1
Lemur Island	14/03/2007	Five	Animal Welfare	1
Look North	13/02/2007	BBC1	Generally Accepted Standards	3
Loose Women	22/02/2007	ITV1	Generally Accepted Standards	1
Make Your Play	07/04/2007	ITV1	Offensive Language	2
Mark Watson Makes the World Substantially Better	20/03/2007	BBC Radio 4	Offensive Language	1
Mark Watson Makes the World Substantially Better	06/03/2007	BBC Radio 4	Offensive Language	1
Murder at the Vicarage	17/03/2007	UKTV Drama	Generally Accepted Standards	1
My Famous Family	06/02/2007	UKTV History	Generally Accepted Standards	1
Nation on Film	05/03/2007	BBC2	Sex/Nudity	1
Neighbours	02/03/2007	BBC1	Sex/Nudity	2
Newsnight	05/04/2007	BBC2	Inaccuracy/Misleading	1
Nick Baker's Weird Creatures	12/01/2007	Five	Animal Welfare	3
No Girls Allowed	10/03/2007	Five	Animal Welfare	2
No Girls Allowed	10/03/2007	Five	Dangerous Behaviour	1
No Girls Allowed	10/03/2007	Five	Crime (incite/encourage)	1
Our House	19/03/2007	UKTV Bright Ideas	Generally Accepted Standards	1
Paramount Comedy 1	27/02/2007	Paramount Comedy	Offensive Language	1
Peugeot sponsorship of Five movies	-	Five	Dangerous Behaviour	1
Play DJ	25/01/2007	ITV Play	Generally Accepted Standards	1
Poirot	15/03/2007	ITV1	Generally Accepted Standards	1
Project Catwalk	12/03/2007	Sky One	Generally Accepted Standards	1
Promotion for Red Hot	28/02/2007	CBBC	Sex/Nudity	1
Public Demand	19/12/2006	Venus TV	Offensive Language	1
Pyromania	06/02/2007	Channel 4	Dangerous Behaviour	1
Quiz Call	23/02/2007	Five US	Competitions	2
Quiz Call	31/03/2007	Five	Competitions	1
Quiz Call	21/01/2007	Five	Competitions	3
Quiz Call	20/01/2007	Five	Competitions	1
Quiz Call	23/02/2007	Five US	Competitions	1
Radio Asian Fever Leeds	24/02/2007	Radio Asian Fever	Due Impartiality/Bias	1
Ready Steady Cook	01/03/2007	BBC2	Crime (incite/encourage)	1
Richard and Judy	12/03/2007	Channel 4	Generally Accepted Standards	1

Road Wars	05/03/2007	Sky Three	Generally Accepted Standards	1
Shabash India	27/01/2007	Zee TV	Generally Accepted Standards	1
Sky News	19/02/2007	Sky News	Generally Accepted Standards	1
Sky News Sunrise	08/02/2007	Sky News	Crime (incite/encourage)	1
Sky Sports News	14/10/2006	Sky Sports	Commercial References	1
South Park (Trailer)	01/02/2007	Paramount Comedy	Generally Accepted Standards	1
Sports Breakfast	12/12/2006	Talksport	Generally Accepted Standards	1
Sports Breakfast	13/12/2006	Talksport	Generally Accepted Standards	1
Supernatural	25/02/2007	ITV2	Other	1
T4	06/04/2007	Channel 4	Generally Accepted Standards	1
Taste	10/03/2007	Sky three	Offensive Language	1
Teletext P537/5	28/02/2007	Channel 4	Inaccuracy/Misleading	1
The Boston Strangler: The True Story	27/02/2007	Five	Violence	1
The Charlotte Church Show	09/03/2007	Channel 4	Generally Accepted Standards	1
The Charlotte Church Show	30/03/2007	Channel 4	Offensive Language	1
The Charlotte Church Show	09/03/2007	Channel 4	Generally Accepted Standards	1
The Charlotte Church Show	02/03/2007	Channel 4	Generally Accepted Standards	1
The Charlotte Church Show	06/04/2007	Channel 4	Religious Offence	1
The Gadget Show	02/04/2007	Five	Competitions	1
The General's War	28/02/2007	BBC2	Offensive Language	1
The Graham Norton Show	22/02/2007	BBC2	Offensive Language	1
The Great Big Quiz	04/04/2007	Living TV2	Generally Accepted Standards	1
The Grumpy Guide to Art	14/03/2007	BBC2	Offensive Language	1
The Hallmark Channel Quiz	26/03/2007	Hallmark Channel	Competitions	1
The Jeremy Kyle Show	07/03/2007	ITV1	U18's in Programmes	1
The Mark of Cain	12/04/2007	Channel 4	Generally Accepted Standards	1
The Passion of Christ	08/04/2007	Channel 4	Other	1
The Planet's Funniest Animals	11/03/2007	ITV1	Animal Welfare	1
The Play's the Thing	09/03/2007	Channel 4	Offensive Language	1
The Truth About Size Zero	07/03/2007	ITV1	Harm/Food	3
The Two Ronnies	27/01/2007	ITV3	Generally Accepted Standards	1
The Wright Stuff	20/03/2007	Five	Generally Accepted Standards	1
The Wright Stuff	23/01/2007	Five	Offensive Language	1
The Wright Stuff	23/01/2007	Five	Generally Accepted Standards	3

The Wright Stuff	01/03/2007	Five	Generally Accepted Standards	1
The Wright Stuff	08/02/2007	Five	Religious Offence	1
The Zoo	14/03/2007	Sky 3	Offensive Language	1
This Morning	07/02/2007	ITV1	Due Impartiality/Bias	1
This Morning	07/02/2007	ITV1	Inaccuracy/Misleading	1
This Morning	18/01/2007	ITV1	Inaccuracy/Misleading	1
Top Gear	04/03/2007	BBC2	Generally Accepted Standards	5
Top Gear	05/03/2007	BBC2	Generally Accepted Standards	1
Top Gear	11/02/2007	BBC2	Generally Accepted Standards	1
UTV Live	05/02/2007	UTV	Harm/Food	1
Video Justice	26/02/2007	ITV4	Violence	1
Waking the Dead	05/02/2007	BBC1	Violence	2
When Will I Be Famous?	17/02/2007	BBC1	Generally Accepted Standards	3
Wild At Heart	25/02/2007	ITV1	Dangerous Behaviour	2
Wild at Heart	11/03/2007	ITV1	Violence	2
You've Been Framed	14/04/2007	ITV1	Dangerous Behaviour	1
You've Been Framed	06/04/2007	ITV1	Animal Welfare	1