

Ofcom Broadcast Bulletin

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Contents

Introduction	4
<u>Notice of Sanction</u>	
Playboy TV UK / Just4Us Limited <i>Various 'adult chat' advertisements broadcast on Red Light 1, Red Light 2 and Red Light 3 on various dates between 2 April and 13 April 2011</i>	5
Standards cases	
<u>In Breach</u>	
Jaguar sponsorship of International Cricket <i>Sky Sports 1, 30 July 2011, 15:40</i>	7
Mercedes-Benz's sponsorship of Forth One Travel <i>Forth One, 8 August to 5 September 2011, various times</i>	10
Advertising Scheduling cases	
<u>In Breach</u>	
Breach findings table <i>Code on the Scheduling of Television Advertising compliance reports</i>	13
<u>Resolved</u>	
Advertising Scheduling <i>ITV1, Agatha Christie's Man in the Brown Suit, 6 August 2011, 13:45</i> <i>ITV3, Agatha Christie's Sparkling Cyanide, 6 August 2011, 17:50</i> <i>ITV3, Agatha Christie's Dead Man's Folly, 27 August 2011, 15:55</i> <i>ITV3, Agatha Christie's Dead Man's Folly, 28 August 2011, 12:55</i>	15
Fairness and Privacy cases	
Complaint by Mr Colin Hawkey <i>Motorway Cops: Deadly Distractions, BBC 1, 11 January 2011</i>	17
Complaint by Mrs Mary Beghin made on her own behalf and on behalf of Chancellors Debt Recovery Agency <i>Channel Report, ITV1 (Channel Television), 20 April 2011</i>	27
Complaint by Mrs E <i>Cutting Edge: A Very Dangerous Doctor, Channel 4, 12 May 2011</i>	38

Other programmes not in breach	43
Complaints Assessed, Not Investigated	44
Investigations List	53

Introduction

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives¹, Ofcom must include these standards in a code or codes. These are listed below.

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

- a) Ofcom's Broadcasting Code ("the Code"), which, can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>.
- b) the Code on the Scheduling of Television Advertising ("COSTA") which contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken. COSTA can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/advert-code/>.
- c) certain sections of the BCAP Code: the UK Code of Broadcast Advertising, which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility. These include:
 - the prohibition on 'political' advertising;
 - sponsorship and product placement on television (see Rules 9.13, 9.16 and 9.17 of the Code) and all commercial communications in radio programming (see Rules 10.6 to 10.8 of the Code);
 - 'participation TV' advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including 'adult' chat), 'psychic' readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and 'message board' material where these are broadcast as advertising².

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

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

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

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

¹ The relevant legislation is set out in detail in Annex 1 of the Code.

² BCAP and ASA continue to regulate conventional teleshopping content and spot advertising for these types of services where it is permitted. Ofcom remains responsible for statutory sanctions in all advertising cases

Notice of Sanction

Playboy UK TV Limited/Benelux Limited and Just4Us TV Limited

Various 'adult chat' advertisements broadcast on Red Light 1, Red Light 2 and Red Light 3 on various dates between 2 April and 13 April 2011

Introduction

The services Red Light 1, Red Light 2 and Red Light 3 all carry televised interactive 'adult chat' advertisements broadcast from 21:00. Viewers are invited to contact onscreen female presenters via premium rate telephony services ("PRS").

The licence for Red Light 1 is owned and operated by Just4Us TV Limited ("Just4Us"); and the licences for Red Light 2 and Red Light 3 are owned and operated by Playboy UK TV Limited/Benelux Ltd ("Playboy TV"). Just4Us is a wholly owned subsidiary of Playboy TV. Playboy TV is responsible for the compliance of Red Light 1, Red Light 2 and Red Light 3. These services are available freely without mandatory restricted access and are in the 'adult' section of the Sky Electronic Programme Guide.

Summary of Decision

In Ofcom's finding published on 4 July 2011 in Broadcast Bulletin 185¹, Ofcom found that ten 'adult chat' advertisements broadcast by Just4Us and Playboy breached the following Rules in the UK Code of Broadcast Advertising ("the BCAP Code"):

- 4.2: Advertisements must not cause serious or widespread offence against generally accepted standards.

- 32.3: Relevant timing restrictions must be applied to advertisements that are unsuitable for children.

After considering all the evidence and all the representations made to it by the Licensees, Ofcom decided that the Code breaches were so serious and repeated that a financial penalty should be imposed in accordance with Ofcom's Procedures for the consideration of statutory sanctions in breaches of broadcast licences². Ofcom then also considered the level of the financial penalty to be imposed, in accordance with Ofcom's Penalty Guidelines³.

Having regard to: the serious and repeated nature of the breaches; the Licensee's representations; and Ofcom's Penalty Guidelines, Ofcom decided it was appropriate and proportionate in the circumstances to impose a financial penalty of **£60,000** on

¹ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb185/obb185.pdf>

² <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/854750/statutory-sanctions.pdf>

³ <http://www.ofcom.org.uk/files/2010/06/penguid.pdf>

Just4us and **£50,000** on Playboy TV in respect of the Code breaches (payable to HM Paymaster General).

The full adjudication is available at:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/Just4Us-Sanction.pdf>

Standards cases

In Breach

Jaguar sponsorship of International Cricket

Sky Sports 1, 30 July 2011, 15:40

Introduction

This cricket coverage on Sky Sports 1 was sponsored by Jaguar. A complainant alerted Ofcom to the promotional nature of a sponsorship credit for this coverage.

On viewing the credit, Ofcom noted that it showed a Jaguar car driving on a very wet road accompanied by a voice over by cricket commentator David Lloyd who said:

“Well, that bit of rain hasn’t changed the performance at all.”

Ofcom considered the material raised issues warranting investigation under Rule 9.22(a) of the Code, which states:

“Sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action. Credits must not encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself. Such credits may include explicit reference to the sponsor’s products, services or trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement.”

We therefore sought comments from BSkyB Broadcasting Ltd (“Sky” or “the Licensee”) under this rule.

Response

Sky said that: “The main purpose of this sponsorship credit is to link the sponsor with the programme and make the sponsorship relationship clear.” It said that the voice-over “relates to the programming as much as it does to the car. Cricket is notoriously linked with delays for rain.”

The Licensee did not believe the sponsorship credit constituted an advertising message, but that it “thematically links the sponsor to the programme in an elegant and interesting fashion”. Sky noted that using a Sky cricket presenter as the voice-over artist, and the line: *“Well, that bit of rain hasn’t changed the performance at all”* makes “an obvious and immediate link from the sponsored programme to the sponsor credit.” Sky added that fans watching the cricket “would expect some kind of reference to the effect on players’ and team performances following a break for rain.”

Sky pointed to guidance Ofcom had issued in June 2009¹ in relation to sponsorship credits in which Ofcom explained that credits that focus predominantly on the sponsorship arrangement, rather than the sponsor or its products or services are less likely to be found in breach of the Code. In this guidance, Ofcom also noted the possible use in credits of statements with “...double meanings which communicate

¹ Update on Commercial and Consumer Protection issues within programming, Issue 1, June 2009

something about the sponsored programme or the sponsorship arrangement, but that also allude to the sponsor or its products or services”.

Sky believed that the use of the word ‘performance’ in this credits “.....clearly refers to the performance of the cricketers (batting or bowling) or the field of play (wicket or outfield) as well as the performance of the car suggested in this creative. The use of the word ‘performance’ is not solely linked to the ‘car’ in this context (the credits do not state the ‘car’s performance’ simply ‘performance’). When combined together, this creative achieves the link between programme and sponsor, detailed by Ofcom in its previous advice to broadcasters”.

The Licensee stated the credit contained no call to action or encouragement to purchase. Sky said the line “indirectly relates to the Jaguar brand without constituting a specific advertising claim” and that the “reference to ‘performance’ in this context is more akin to puffery than a solid claim.”

Sky said there “is no measurable claim made about the performance of the Jaguar car in this sponsorship credit and cricket viewers will understand the connection between the line: *“Well, that bit of rain hasn’t changed the performance at all”* and the game of cricket.”

Sky said “one of the key issues when considering this tag line was whether it could be seen as an advertising claim. For this to be advertising there would have to be a specific claim which could be objectively substantiated about the sponsor’s product.” In its view, Sky said, “without stating what the ‘performance’ actually is (we don’t mention ‘Jaguar’s’ performance or the ‘car’s’ performance due to the requirement for it to link to the ‘cricket’ performance), there is no claim”.

Sky also referred to Ofcom Guidance for Section Nine, to support its approach to the use of sponsorship credits, in particular referring to: “the use of a creative approach that thematically links the sponsor to the programme (e.g. by genre or using characters which have similar characteristics to the people/characters in the programme). Such links, when used effectively, highlight the fundamental difference between sponsorship and advertising, i.e. sponsorship is about the sponsor’s association with the programme, not selling the sponsor’s products/services.”²

Sky believed the credit “does exactly what Ofcom requires; a clear link between the sponsor and the sponsored programme” alongside an on-screen graphic which states “International Cricket sponsored on Sky Sports by Jaguar”. This, the Licensee asserted, “is a clear statement to viewers that this is a sponsorship credit and clearly not advertising” and therefore complies with Rule 9.22(a).

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that “the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”.

The EU Audiovisual Media Services (AVMS) Directive limits the amount of advertising a broadcaster can transmit and requires that advertising is kept distinct

² See Guidance to Rule 9.22 (a) available at <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>

from other parts of the programme service. Sponsorship credits are treated as part of the sponsored content and do not count towards the amount of airtime a broadcaster is allowed to use for advertising. To prevent credits effectively becoming advertisements, and therefore increasing the amount of advertising transmitted, broadcasters are required to ensure that sponsorship credits do not contain advertising messages.

Rule 9.22(a) of the Code therefore requires that sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action, and that credits must not encourage the purchase or rental of the products or services of the sponsor or a third party.

Ofcom acknowledged that, in accordance with its guidance, Sky had sought to identify the sponsorship arrangement between Jaguar and International Cricket by creating a thematic link in this sponsorship credit between wet weather and the interruption of cricketing play. Further, Ofcom accepted that the phrase in question did have a potential 'double meaning': it could have been understood as referring to the effect of rain on a cricket team's performance, as well as the effect of rain on a car's performance on the road.

However, simply because a phrase has, or could be argued to have, a double meaning does not necessarily prevent it from also amounting to an advertising message or claim about the sponsor or its products.

In this case, Ofcom considered that the intended double meaning of the phrase was unlikely to have been sufficiently clear to the audience. This was because, in Ofcom's view, there was more emphasis in the credit on the performance of the sponsor's product and its performance, than on cricket. While we took into account that the voiceover stating: "*Well, that bit of rain hasn't changed the performance at all*" was read by a Sky cricket commentator, the visual that accompanied the voiceover was of a Jaguar car driving in extremely wet conditions. There was no cricket imagery and no reference to any specific cricketing term.

Ofcom concluded that viewers were therefore likely to understand the reference to "*performance*" to relate to the way in which the featured car functioned in wet driving conditions. Ofcom did not accept that the statement was "mere puffery": it was a claim about a specific attributes of the sponsor's product, capable of objective substantiation. Such claims are not permitted in sponsorship credits.

The credit was therefore in breach of Rule 9.22(a).

Breach of Rule 9.22(a)

In Breach

Mercedes-Benz's sponsorship of Forth One Travel

Forth One, 8 August to 5 September 2011, various times

Introduction

Forth One is a local commercial radio station providing chart music and information to under 40s in the Edinburgh area. The licence for Forth One is held by Radio Forth Limited, which is owned by Bauer Media ("Bauer").

Forth One Travel, the broadcaster's regular travel bulletin, was sponsored by Mercedes-Benz between 8 August and 5 September 2011, when three different sponsorship credits were broadcast on rotation. One of these credits stated:

"Forth One Travel with Mercedes-Benz of Edinburgh at Willowbrae Road, your Mercedes-Benz dealership in the City with 100% after-sales customer recommendation in 2011."

A listener contacted Ofcom, contesting the garage's claim of "100% after-sales customer recommendation in 2011."

Ofcom considered that this material raised issues warranting investigation under the following Code rule:

Rule 10.7 "Commercial references in programming must comply with the advertising content and scheduling rules that apply to radio broadcasting."

The advertising content and scheduling rules that apply to radio broadcasting are set out in The UK Code of Broadcast Advertising ("the BCAP Code")¹. Ofcom therefore considered that the material also raised issues warranting investigation under the following BCAP Code rules:

Rule 3.1 "Advertisements must not materially mislead or be likely to do so."

Rule 3.9 "Broadcasters must hold documentary evidence to prove claims that the audience is likely to regard as objective and that are capable of objective substantiation. The ASA may regard claims as misleading in the absence of adequate substantiation."

Bauer told Ofcom that Forth One had obtained clearance of the sponsorship credit from the Radio Advertising Clearance Centre ("RACC") – the radio industry body that approves radio advertising before broadcast. We therefore asked Bauer, RACC and the sponsor for their comments on how they considered the sponsorship credit complied with Rule 10.7 of the Code and Rules 3.1 and 3.9 of the BCAP Code. We also asked RACC for the substantiation it held in support of the contested claim.

¹ The Advertising Standards Authority and Broadcast Committee of Advertising Practice ("BCAP") regulate the content of broadcast advertising, under a Memorandum of Understanding with Ofcom. Specifically, BCAP supervises and reviews the codes that govern the regulation of broadcast advertising. The regulation of commercial references on radio, including sponsorship credits, remains with Ofcom, as such references form part of radio broadcasters' editorial content (i.e. they are not spot advertisements).

Response

Bauer said that Forth One considered the sponsorship credit complied with Rule 10.7 of the Code, as the station had obtained RACC-clearance for its broadcast, for which the substantiation provided by the sponsor had been “in the form of a survey which was operated by an independent company on behalf of Mercedes Benz.” It added that such surveys were “used to rate dealerships across the country in order to obtain customer satisfaction levels”, adding that Radio Forth had taken this “in good faith as substantiation of the claim.”

Bauer accepted that “the 100% customer recommendation claim may have been clearer as the substantiation was a sample of the total number of customers.” Nevertheless, Bauer reiterated that it “went through all the appropriate procedures to ensure the advertising copy was cleared by the national body – the RACC – and that [it] ensured any claims were verifiable and accurate.” Further, Bauer added that its “own internal compliance procedures did not highlight an issue”, as “no consumer surveys ever survey 100% of the consumers of a particular product or service”. Bauer said that it was “industry practice to create a robust sample of customers and to use this data as a proxy for the entire customer database.” In this instance, Bauer considered the survey to have been both independent and of sufficient sample size to make it statistically accurate.

RACC provided the substantiation we requested (and to which Bauer referred, above). Ofcom noted that the survey was based on the responses of 70 of the Willowbrae Road dealership customers, out of 247 that had used its workshop in 2011. RACC added that it had understood the substantiation to relate to the entire customer base of Mercedes-Benz’s Willowbrae Road dealership, although it had now established that such material related to only 28% of customers – i.e. those who had responded to Mercedes-Benz’s survey.

Mercedes-Benz (the sponsor) confirmed that the results of its survey were based on the responses of 70 of its Willowbrae Road dealership customers out of 247 who had used its workshop in 2011. However, it considered this independently run survey to be “the most robust and clear measurement” it could use to analyse customer satisfaction, as no individual dealership could “influence the response of the customer from the point they receive the questionnaire through to their response being published.”

The sponsor said that many manufacturers operated similar systems to establish their customer satisfaction index scores, adding that Mercedes-Benz UK used such scores to analyse performance on a regular basis and to compare dealerships across its national network. It therefore concluded that “any Mercedes-Benz retailer making a claim about their customer satisfaction levels would refer to their scores from this data too.”

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that “the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented”.

This is reflected in, among other things, Rule 10.7 of the Code, which requires that commercial references in radio programming comply with the advertising content and scheduling rules that apply to radio broadcasting. Further, Rule 3.1 of the BCAP

Code states that advertisements must not materially mislead or be likely to do so and Rule 3.9 of the BCAP Code requires broadcasters to hold documentary evidence to prove claims that the audience is likely to regard as objective (and that are capable of objective substantiation).

Ofcom noted Mercedes-Benz's assurance concerning the validity of its customer satisfaction index. We also noted that Bauer accepted the claim, "*with 100% after-sales customer recommendation in 2011*", could have been clearer, as the substantiation provided by the sponsor reflected the view of only a sample of customers, and that RACC had originally believed this substantiation related to Willowbrae Road (Mercedes-Benz) dealership's entire customer base.

Ofcom did not question the validity of Mercedes-Benz's customer satisfaction index or how it was compiled. Further, we noted Bauer's view of the survey's independence and appropriateness. Nevertheless, as the relevant data in this instance (i.e. that relating to its Willowbrae Road dealership) were based on a survey of only a sample of customers, we did not consider that it supported the actual claim made on air. "*With 100% after-sales customer recommendation in 2011*" (our emphasis) appeared to us to reflect the view of every customer who had used the Mercedes-Benz Willowbrae Road dealership this year (to date), and not merely a sample of them. Ofcom therefore concluded that the sponsorship credit was likely to have misled Forth One listeners, in breach of Rule 3.1 of the BCAP Code. Further, the material provided by Mercedes-Benz had failed to substantiate the claim. Neither the broadcaster nor RACC had therefore held documentary evidence to prove the claim, in breach of Rule 3.9 of the BCAP Code.

The sponsorship credit was therefore also in breach of Rule 10.7 of the Broadcasting Code, as it had not complied with the advertising content rules that apply to radio broadcasting.

We have instructed Bauer to ensure that the sponsorship credit is not broadcast again without amendment that reflects substantiation held or obtained from the sponsor.

**Breach of Rule 10.7 of the Broadcasting Code
Breaches of Rules 3.1 and 3.9 of the BCAP Code**

Advertising Minutage and Scheduling Findings

In Breach

Breach findings table

Code on the Scheduling of Television Advertising compliance reports

Rule 4 of the Code on the Scheduling of Television Advertising (“COSTA”) states:

“... time devoted to television advertising and teleshopping spots on any channel must not exceed 12 minutes.”

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
Zing	18 August 2011	COSTA Rule 4	Ofcom noted, during monitoring, that Zing exceeded the permitted advertising allowance by 10 seconds in clock hour 19:00 on 18 August 2011. Finding: Breach
Sony TV	22 and 23 August 2011	COSTA Rule 4	Ofcom noted, during monitoring, that on 22 August 2011, Sony TV exceeded the permitted advertising allowance by 30 seconds in clock hour 13:00. Sony TV also exceeded the permitted allowance by 41 seconds in clock hour 02:00 the following day. Finding: Breach

Rule 16 of COSTA states that

“Restrictions apply when inserting advertising breaks during the following programmes;

- a) Films and news programmes may only include one advertising or teleshopping break for each scheduled period of at least 30 minutes.

Additionally, Rule 3 (f) of COSTA states that

“films’ means cinematographic works and films made for television.”

Rule 17 of COSTA stipulates the maximum number of internal breaks programmes (other than those exceptions in Rule 15) may contain:

Scheduled duration of programme (on non-PSB channels)	Number of breaks
< 26 minutes	One
26 – 45 minutes	Two
46 – 65 minutes	Three
66 – 85 minutes	Four
86 – 105 minutes	Five
106 – 125 minutes*	Six

*for every additional 20 minutes of programming, a further break is permitted.

Channel	Transmission date and time	Code and rule / licence condition	Summary finding
Horror Channel	2 June 2011 8 June 2011	COSTA Rule 16(b)	Ofcom noted, during monitoring, that two films broadcast on Horror Channel contained more internal breaks than permitted by Rule 16(b) of COSTA. <i>Beyond Loch Ness</i> broadcast on 2 June 2011 and <i>Cat o'Nine Tails</i> broadcast on 8 June 2011 contained one more internal break than permitted. Finding: Breach
CBS Drama	23 April 2011 24 April 2011	COSTA Rule 16(b)	Ofcom noted, during monitoring, that two films broadcast in CBS Drama contained more internal breaks than permitted by Rule 16(b) of COSTA. <i>Dr Quinn: The Movie</i> broadcast on 23 April 2011 and <i>Dr Quinn: The Heart Within</i> broadcast on 24 April 2011 contained one more internal break than permitted. Finding: Breach

Resolved

Advertising Scheduling

ITV1, Agatha Christie's Man in the Brown Suit, 6 August 2011, 13:45

ITV3, Agatha Christie's Sparkling Cyanide, 6 August 2011, 17:50

ITV3, Agatha Christie's Dead Man's Folly, 27 August 2011, 15:55

ITV3, Agatha Christie's Dead Man's Folly, 28 August 2011, 12:55

Introduction

Rule 17 of the Code on the Scheduling of Television Advertising ("COSTA") stipulates the maximum number of advertising breaks programmes may contain:

Scheduled duration of programme (on non-PSB channels)	Number of breaks
< 26 minutes	One
26 – 45 minutes	Two
46 – 65 minutes	Three
66 – 85 minutes	Four
86 – 105 minutes	Five
106 – 125 minutes*	Six

*for every additional 20 minutes of additional programming, a further break is permitted.

Amongst others, Rule 16 of COSTA lists the following exceptions:

Rule 16(a): "films and news programmes may only include one advertising break or teleshopping break for each scheduled period of at least 30 minutes".

Rule 3(f) of COSTA states that "'films' means cinematographic works and films made for television (including single dramas), but excludes, serials and documentaries".

During monitoring, Ofcom noted that three single "made for television" adaptations of Agatha Christie novels were broadcast on four occasions on ITV1 and ITV3. Each broadcast was approximately 115 minutes in length and contained six internal breaks – two more than are permitted by Rule 16(a) of COSTA for broadcast content that falls within the definition of "films".

Ofcom considered the case raised issues warranting investigation in respect of Rule 16(a) of COSTA and therefore sought formal comments about this incident from ITV Plc (ITV or "the Licensee") in relation to this Rule.

Response

The Licensee said that it had initially "interpreted the Agatha Christie Murder Mysteries (made for TV) as a series of feature length dramas with the Agatha Christie *genre* lending thematic consistency" and therefore applied "drama series break rules" in line with Rule 17 of COSTA. ITV added that it believed "there are certain practical challenges in application of 3(f) when assessing genres such as Agatha Christie as they are relatively ubiquitous and diverse in a production sense."

However, after further internal discussion, ITV said it had concluded that “should the same or similar situation arise in the future, [it] would alter the policy applied to the transmissions in August and schedule single drama breaks.”

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content which it considers are best calculated to secure a number of standards objectives. One of these objectives is that “the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”.

Articles 20 and 23 of the EU Audiovisual Media Services (AVMS) Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has transposed these requirements by means of key rules in COSTA. Ofcom undertakes routine monitoring of all of its licensees’ compliance with COSTA.

In this case, Ofcom noted that the broadcasts were standalone feature-length dramas which, unlike other Agatha Christie adaptations, did not feature regular characters such as Hercule Poirot or Miss Marple. Consequently, Ofcom considered that these broadcasts fell within the COSTA definition of “films” and therefore contained more than the permitted number of internal breaks stipulated by Rule 16(a).

However, Ofcom noted the Licensee’s acknowledgement that the broadcasts in question were more properly defined as single dramas, and its assurance in respect of the future application of Rule 16(a) to broadcasts of this nature. Taking this into account, we consider the matter resolved.

Resolved

Fairness and Privacy Cases

Not Upheld

Complaint by Mr Colin Hawkey

Motorway Cops: Deadly Distractions, BBC 1, 11 January 2011

Summary: Ofcom has not upheld this complaint of unjust or unfair treatment and unwarranted infringement of privacy made by Mr Colin Hawkey.

This programme looked at the work of police officers who patrol the motorway network. It included footage of Mr Hawkey being questioned by the police after being stopped for using a mobile phone while driving a 44-ton lorry. Mr Hawkey was subsequently shown being arrested on suspicion of “drink-driving” and footage was also included of him being breathalysed in the police station and being put into a cell.

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

In summary, Ofcom found the following:

- The programme did not portray Mr Hawkey or the events in which he was involved in a way that was either misleading or unfair to him.
- Mr Hawkey had a legitimate expectation of privacy in the circumstances, however the public interest in filming and subsequently broadcasting footage showing the work of the police outweighed the intrusion into Mr Hawkey’s privacy. His privacy was therefore not unwarrantably infringed in the programme as broadcast.

Introduction

On 11 January 2011, the BBC broadcast an edition of its series *Motorway Cops* on BBC1. The series follows the work of traffic police on motorways around the country. This edition was entitled *Deadly Distractions* and focused on heavy goods vehicle (“HGV”) drivers and the type of incidents involving lorries that the police have to deal with.

One such incident involved the complainant, Mr Colin Hawkey, who was stopped by the police for using his mobile telephone while driving a 44-ton lorry. The footage used in the programme showed Mr Hawkey using a mobile telephone with one hand while at the same time raising his other hand from the steering wheel and giving a “thumbs-up” sign to police officers travelling in an unmarked HGV, who were signalling him to pull over to the hard-shoulder. Mr Hawkey eventually pulled over when a marked police car was called to assist. The programme then included footage of Mr Hawkey getting out of the lorry and talking to one of the police officers. The programme’s voiceover commented that Mr Hawkey’s behaviour appeared to the police officer to be “odd” and that he suspected Mr Hawkey of drinking alcohol while driving.

The programme then showed Mr Hawkey sitting in the back of a police car and being questioned by the police officers about whether or not he had been drinking. The officers had found an open can of super strength lager in the cab of the lorry and

suspected that Mr Hawkley had been drinking while driving. The programme included footage of Mr Hawkley being breathalysed and then being arrested on suspicion of driving under the influence of drink. Mr Hawkley was later shown in the custody area of a police station, being breathalysed again. It was calculated that he was just under twice the legal alcohol limit. The programme concluded by stating that Mr Hawkley was convicted of “*drink-driving*” and that he was fined £115 and disqualified from driving for 18 months.

Although footage of Mr Hawkley was shown unobscured throughout the programme, he was not referred to by name.

Following the broadcast of the programme, Mr Hawkley complained to Ofcom that he was treated unjustly or unfairly in the programme as broadcast and that his privacy was unwarrantably infringed during the making of the programme and in the programme as broadcast.

The Complaint

Mr Hawkley’s case

Unfair treatment

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

- a) He was harassed by the police officers who were acting up to the cameras in order to humiliate him and to enhance audience interest for when the footage would be shown. Mr Hawkley said that he had specifically requested that the footage of him should not be broadcast, but his request was edited from the broadcast footage. Mr Hawkley also said that he had no previous convictions of any sort and that he was compliant, coherent and in full control of his actions throughout the incident.

Privacy

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

- b) The filming of him was prolonged and particularly aggressive, humiliating and invasive with the camera pushed right up to his face in order to intimidate him. Mr Hawkley also said that the programme makers filmed him “right up to the cell door”. Mr Hawkley said that this was a gross violation of his privacy for which his permission was neither sought nor given.

Mr Hawkley also complained that his privacy was unwarrantably infringed in the programme as broadcast in that:

- c) He was shown using his mobile telephone while driving and being pulled over by the police and subsequently breathalysed. Mr Hawkley was also shown being arrested on suspicion of driving under the influence of drink by the police. Footage of him in the police station was also included in the programme. He said that his face was shown very clearly throughout the broadcast.

By way of background, Mr Hawkley said that the broadcast of the programme had resulted in him being recognised in public places. The programme had caused

him and his family extreme distress and the prospect of future repeats of the programme threatened to ruin his life. Mr Hawkley said that his driving ban was coming to an end and that he had paid his “debt to society”. However, a year after his conviction he said that he was still being hounded as a result of the programme.

The BBC’s case

Unfair treatment

In summary and in response to Mr Hawkley’s complaint that he was unfairly treated in the programme as broadcast, the BBC said that:

- a) It was not responsible for the behaviour of police officers and that it was a matter for them to decide what was appropriate behaviour in dealing with an offender such as Mr Hawkley. However, the BBC said that it did not believe that there was anything in the programme as broadcast which suggested that Mr Hawkley was treated other than in an entirely polite, considerate and professional manner by the police officers concerned.

The BBC said that the cameraman who filmed the incident had no recollection of Mr Hawkley having requested that the footage should not be used. In any case, it said that the omission of such a request from the programme as broadcast, could only give rise to unfairness if, in response to such a request, an undertaking were given that the material would not be used which was subsequently broken. The BBC said that this was not the case and that Mr Hawkley had not claimed that such an undertaking was ever given.

The BBC accepted that Mr Hawkley had no previous convictions and was compliant and coherent, although it was not immediately apparent how this supported his complaint of unfairness. It said that it could not comment as to whether Mr Hawkley was in full control of his actions, although it pointed out that his conviction for having twice the legal limit of alcohol in his blood was predicated upon the assumption that it was highly likely he was not.

Privacy

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

- b) It believed that examination of the material in the programme showed clearly that there was nothing aggressive, humiliating or invasive in the way that the interaction between Mr Hawkley and the police was filmed. The camera was inevitably in close proximity to him in the rear seat of the police car, but it was clear from the broadcast footage that it was not pushed close to his face, nor was any attempt made to intimidate him. However, the BBC said that any breach of Mr Hawkley’s privacy would arise from the fact of his being filmed, not from the manner of filming.

The BBC accepted that Mr Hawkley may have had some expectation of privacy in some of the situations in which he found himself, for instance in the police station custody area. However, the BBC said that any expectation of privacy was significantly reduced by Mr Hawkley’s own reckless and dangerous behaviour and that any residual breach was warranted by the public interest in making programmes such as this and the need, if such programmes were to be made, for

programme-makers to continue filming in circumstances where it might not immediately be clear that any breach would be warranted. The BBC recognised that in such circumstances there was a responsibility upon programme makers to ensure that any breach of privacy involved in the broadcast of the programme must be warranted.

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

- c) It accepted that some of the situations in which Mr Hawkley was filmed were such that he may have had a certain expectation of privacy. However, the BBC believed that any expectation of privacy would have been considerably reduced by Mr Hawkley's own reprehensible behaviour, which placed other road users in danger. It noted that one of the police officers involved in his arrest described Mr Hawkley, intoxicated and driving a 44-ton lorry, as "*a killing machine*". The BBC said that it believed that any expectation of privacy attaching to the circumstances of Mr Hawkley's arrest as broadcast would have been so reduced as to be nugatory, particularly given that his behaviour and subsequent arrest and conviction were now matters of public record. Any residual breach of Mr Hawkley's privacy was justified by the public interest in making programmes such as this and exposing dangerous anti-social behaviour.

Decision

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

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

In reaching its decision on Mr Hawkley's complaint, Ofcom considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and a transcript of it along with written submissions provided by both parties. It also included the unedited footage of Mr Hawkley in the police car and in the police station.

Unfair treatment

- a) Ofcom considered Mr Hawkley's complaint that he was treated unfairly in that his request not to be included in the programme was edited out and that the police officers had acted towards him in a way to enhance audience interest.

Ofcom had particular regard to whether the programme makers' actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals, as set out in Rule 7.1 of the Code, and whether they had taken reasonable care to satisfy themselves that material facts had not been presented, disregarded or omitted in a way that was unfair to an individual or organisation (as outlined in Practice 7.9 of the Code). It also had regard to Practice 7.6 of the Code which states that when a programme is edited, contributions should be represented fairly.

Ofcom noted that the programme set out to demonstrate the work of police officers who patrol the motorways and highways of the United Kingdom and the type of incidents and offences they come across. In particular, this edition focused on HGVs and other large vehicles and the particular problems these can cause to the police and other motorists.

Ofcom examined the parts of the programme in which Mr Hawkey appeared and read a transcript of the exchanges between him and the police officers. In particular, Ofcom noted the following example of the exchange that occurred between Mr Hawkey and the police officers. The following exchange took place after Mr Hawkey was breathalysed in the police car and found to be over the limit:

Mr Hawkey: *"Bloody hellfire. I would never have believed it".*

Police officer: *"You drive a 44 ton lorry at 56 miles an hour and don't react quick enough and go into the back of a car there is going to be damage. There is going to be injury. There's a good chance there's going to be a fatality".*

Mr Hawkey: *"Oh well".*

Police officer: *"It's alright tutting mate, but at the end of the day you're the one that's been drinking innit?"*

Mr Hawkey: *"I didn't think it was that much. I didn't, I honestly didn't".*

Police officer: *"Well, I'm not going to sit here and call you a liar".*

In Ofcom's view, it was clear from Mr Hawkey's behaviour in this extract (and the rest of the footage included in the programme) that he had been drinking alcohol while driving his lorry. It was also clear that the police officers treated his account of his behaviour, namely that he did not think he had had that much to drink, suspiciously. Ofcom noted that the police officers remained polite but firm towards Mr Hawkey and were robust in explaining to him the seriousness of driving a 44-ton lorry on a motorway, not only using a mobile phone, but also under the influence of alcohol. Ofcom acknowledged that it was not the responsibility of the broadcaster to dictate or influence the way police officers conduct their duties, but to present the incidents fairly and as they happened. Ofcom considered that the broadcaster had fulfilled its responsibility in this regard and that the incident involving Mr Hawkey had been presented in the programme as it happened and that it had not been embellished in a way to "enhance audience interest".

Taking all the factors referred to above into account, Ofcom was satisfied that the programme did not portray Mr Hawkey or the events in which he was involved in a way that was either misleading or unfair to him. Ofcom considered that the broadcaster took reasonable care to satisfy itself that the programme presented the incident in which Mr Hawkey was involved in fairly and as they happened.

Ofcom, therefore, found no unfairness to Mr Hawkey in this regard.

Privacy

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

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

This is reflected in how Ofcom applies Rule 8.1 of Ofcom's Broadcasting Code ("the Code") which states that any infringement of privacy in programmes or in connection with obtaining material included in programmes must be warranted.

b) Ofcom considered Mr Hawkley's complaint that his privacy was unwarrantably infringed in the making of the programme.

Ofcom took into consideration Practice 8.5 of the Code, which states that any infringement of privacy in the making of a programme should be with the person's consent or be otherwise warranted. It also had regard to Practice 8.7 of the Code which provides that if an individual's privacy is being infringed and they ask that the filming be stopped, the broadcaster should do so, unless it is warranted to continue.

Ofcom noted from the footage included in the programme that Mr Hawkley was filmed when being stopped by the police for driving his lorry whilst using a mobile phone and then again inside a police car. He was filmed being questioned by the police officers about whether he had been drinking alcohol whilst driving, being breathalysed and subsequently being arrested on suspicion of drink-driving. Ofcom also noted that Mr Hawkley was filmed in the custody area of a police station and being breathalysed again before being put into a cell. Ofcom noted that Mr Hawkley was filmed openly throughout his involvement with the police. Ofcom took the view that the programme makers had filmed Mr Hawkley while he was in a vulnerable state and in circumstances that were sensitive.

Taking all the factors given above into account, Ofcom concluded that Mr Hawkley had a legitimate expectation of privacy in relation to being filmed during his involvement with the police.

Given this conclusion, Ofcom then assessed whether the programme makers had secured Mr Hawkley's consent for the footage of him to be filmed. Ofcom acknowledged that the programme makers had the consent of the relevant police force to film police officers in carrying out their duties. It noted that Mr Hawkley had been filmed openly and that the programme makers had not concealed the fact that they were filming him. Having examined the unedited footage, Ofcom noted the following exchanges in the police car between Mr Hawkley, a police officer and one of the camera operators:

Mr Hawkley: "Can you turn that camera off me please?"

Camera operator: "Sorry, I can't".

Mr Hawkley: "What are all these cameras for?"

Police officer: "They're filming a programme about us".

Approximately 30 minutes later, the following exchange occurred:

Mr Hawkley: "What's with the BBC then?"

Police officer: "Like I said earlier on, we take part in a programme called *Motorway Cops*, you've seen it on the telly".

- Mr Hawkey: "Oh right, oh yeah".
- Police officer: "It has to be filmed doesn't it? Unfortunately they are filming us and you're the subject of it".
- Mr Hawkey: "Oh, I'm a TV star then?"
- Police officer: "Possibly, they don't use half the stuff they record. Most of it goes on the cutting room floor".

Ofcom also took note of the following conversation relating to the presence of the cameras between a police officer and Mr Hawkey in the police station:

- Mr Hawkey: "Don't I have some rights about being filmed?"
- Police officer: "The situation with the law is that if you're filmed in a public place, which you were when you were on the motorway, then anyone has the right".
- Mr Hawkey: "What? To carry on in here?"
- Police officer: "Yeah".
- Mr Hawkey: "I don't particularly want it".
- Police officer: "Well, whether you want it or not, unfortunately you just happened upon the wrong crew and you've done the wrong thing, Ok, and they'll just be there. I have to get used to it, unfortunately you'll have to. You've got no redress because you were in a public place when you committed the offence.

They're from the BBC and I'm quite sure, 'cause I've seen the paperwork we have to sign when we commit to these programmes everything is above board. There's nothing stopping you making representations to the BBC, of course, if that's what you want to do".

Ofcom noted that Mr Hawkey had enquired about the nature and purpose of the filming and was informed that it was for the programme "*Motorway Cops*". It also noted that Mr Hawkey had asked the camera operator to turn the camera off him, to which the camera operator replied "sorry, I can't". Ofcom took note that later in the police station Mr Hawkey again raised his concern about being filmed in the police station and whether he had any rights about being filmed. After he had been told by the police officer that the programme makers had the right to film him in the police station, Mr Hawkey said "I don't particularly want it". In Ofcom's view, Mr Hawkey's comments were unequivocal and it was made clear to the programme makers that Mr Hawkey's consent to be filmed had not been given.

Taking all these factors into account, Ofcom considered that Mr Hawkey had a legitimate expectation of privacy in relation to being filmed and that filming took place without the programme makers having secured his consent.

Ofcom then went on to consider the broadcaster's competing right to freedom of expression and the public interest in examining the work of the police and the audience's right to receive information and ideas without unnecessary interference.

In this respect, Ofcom considered whether, in the circumstances there was a sufficient public interest to justify the intrusion into Mr Hawkley's privacy.

In the particular circumstances of this case, Ofcom considered that filming the varied and often difficult incidents experienced by police officers in dealing with traffic offences and in developing the public's understanding of the range of situations dealt with by the police was a matter of public interest. In particular, Ofcom considered that the public interest in filming the work of the police in circumstances which illustrated the challenges faced by police officers when confronted with instances of drink-driving in high speed areas such as a motorway and highlighting awareness to the dangers to the public of this particular type of behaviour, was significant.

Ofcom takes the view that it would be undesirable for programme makers to be unduly constrained in circumstances such as these where they would be unable to obtain consent because it could not (or would not) be gained from those involved prior to filming taking place. In these circumstances, Ofcom considers that what is important is that the broadcaster takes steps to ensure that the subsequent broadcast of material filmed in such circumstances does not result in an unwarranted infringement of privacy. This issue is dealt with at decision head c) below.

Having taken into account all the factors above, Ofcom considered that the broadcaster's right to freedom of expression and to receive and impart information and ideas without interference, in these particular circumstances, outweighed Mr Hawkley's legitimate expectation of privacy in relation to being filmed without his consent.

Ofcom therefore found that there was no unwarranted infringement of Mr Hawkley's privacy in the making of the programme.

- c) Ofcom considered Mr Hawkley's complaint that his privacy was unwarrantably infringed in the broadcast of the programme in that footage of him was shown in the programme.

In considering whether or not there had been an unwarranted infringement of Mr Hawkley's privacy in the broadcast of the programme, Ofcom considered the extent to which Mr Hawkley could have legitimately expected that the footage of his involvement with the police would not be broadcast without his consent. Ofcom had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

Ofcom noted that Mr Hawkley first appeared in the programme in footage of him driving his lorry while using a mobile phone and being stopped by the police. It also noted that some of the footage of Mr Hawkley included in the programme had been filmed by the programme makers inside a police car after he had been stopped by the police. The programme showed footage of him being questioned by the police officers about whether he had been drinking alcohol while driving, being breathalysed and subsequently being arrested on suspicion of drink-driving. The programme also included footage of Mr Hawkley being breathalysed again in the custody area of a police station. Ofcom noted that the footage of Mr Hawkley that was shown in the programme had been filmed openly. Ofcom took the view that the footage of Mr Hawkley in these circumstances showed him in a vulnerable state and in a sensitive situation.

Although Mr Hawkley's name was not disclosed in the programme, Ofcom noted that his face was shown unobscured and his voice was heard. Ofcom considered therefore that Mr Hawkley was identifiable from the footage of him included in the programme.

Taking all the factors above into account, Ofcom considered that Mr Hawkley had a legitimate expectation that footage of his involvement with the police would not be broadcast to a wider audience in a television programme without his consent.

Having found that Mr Hawkley had a legitimate expectation of privacy in that the footage of him would not be broadcast to a wider audience, Ofcom assessed whether his consent had been secured before the footage was broadcast.

Ofcom noted that there was nothing in the unedited footage of the incident involving Mr Hawkley to suggest to Ofcom that he told the programme makers (or the police officers) that the footage of him should not be broadcast. However, Ofcom considered that Mr Hawkley was filmed while in a sensitive situation and in a vulnerable state. As already noted in head b) of the Decision above, Ofcom took the view that Mr Hawkley's comments to the camera operator in the police car and then later to the police officer in the police station were unequivocal and it was made clear to the programme makers that Mr Hawkley's consent to be filmed had not been given.

Ofcom then went on to weigh the broadcaster's competing right to freedom of expression and the public interest in examining the work of the police and the audience's right to receive information and ideas without unnecessary interference. In this respect, Ofcom considered whether, in the circumstances there was a sufficient public interest to justify the intrusion into Mr Hawkley's privacy.

Ofcom noted that at the end of the programme, the commentary confirmed which offences Mr Hawkley was convicted for as follows:

"The trucker who was just under twice the legal limit was convicted of drink-driving, fined £115 and banned for 18 months".

Ofcom also took note of the difficulty in which the police officers' experienced in trying to establish whether Mr Hawkley had been drinking alcohol while driving and the type of vehicle he was driving at speed on the motorway. Ofcom considered that showing the varied and often difficult incidents experienced by police officers in dealing with traffic offences and in developing the public's understanding of the range of situations dealt with by the police was a matter of public interest. In particular, Ofcom considered that the public interest in showing the work of the police in circumstances which illustrated the challenges faced by police officers when confronted with instances of drink-driving in high speed areas such as a motorway and drawing the attention of the to the dangers of this type of behaviour was significant.

Ofcom therefore concluded that the broadcaster's right to freedom of expression and to receive and impart information and ideas without interference, in these particular circumstances, outweighed Mr Hawkley's legitimate expectation of privacy in relation to the broadcast of the footage of him in the programme without his consent. Ofcom found there was no unwarranted infringement of Mr Hawkley's privacy in the broadcast of the programme.

Accordingly, Ofcom has not upheld Mr Hawkley's complaint of unjust or unfair treatment and unwarranted infringement of privacy in the making and broadcast of the programme.

Not Upheld

Complaint by Mrs Mary Beghin made on her own behalf and on behalf of Chancellors Debt Recovery Agency

Channel Report, ITV1 (Channel Television), 20 April 2011

Summary: Ofcom has not upheld this complaint of unfair treatment and unwarranted infringement of privacy made by Mrs Mary Beghin.

ITV1 (Channel Television) broadcast an edition of its news programme, *Channel Report*, which included a report looking at debt collecting in Jersey. The report included an interview with a woman who said that she had been harassed by a local debt collection agency. The report identified the agency as Chancellors Debt Recovery Agency ("Chancellors") and identified Mrs Beghin as a director of Chancellors.

Mrs Beghin complained that she and Chancellors were treated unjustly or unfairly in the programme as broadcast and that her privacy was unwarrantably infringed in the broadcast of the programme.

In summary, Ofcom found the following:

- The programme makers took reasonable care to satisfy themselves that the programme did not present, disregard or omit material facts with regard to Chancellor's working practices in a way that resulted in unfairness to Mrs Beghin or Chancellors. Mrs Beghin was given an appropriate and timely opportunity to respond to the allegation of wrongdoing made about Chancellors in the programme.
- Mrs Beghin's privacy was not unwarrantably infringed in the broadcast of the programme in that, while she had a limited expectation of privacy with regard to the inclusion of footage of a letter she had written in the programme, the intrusion into privacy was warranted by the public interest in examining Chancellors working practices.

Introduction

On 20 April 2011 ITV1 (Channel Television) broadcast an edition of its news programme *Channel Report*. This edition of the programme included a report looking at debt collection companies in Jersey.

The report included an interview with a woman, referred to as 'Anna', (who owed £7,000) talking about being "harassed" by a local debt collection agency and her reaction to the stress of the situation. 'Anna' claimed that she had become suicidal and that people from the agency had shouted, screamed and threatened her on the phone. The report showed mobile phone text messages sent to 'Anna' by "Chancellors", which demanded payment forthwith (as these were shown in the programme the reporter explained that Chancellors was a local debt collection agency). The reporter said that 'Anna' found these demands for payment intimidating and claimed that:

"She doesn't receive statements of how much she owes only letters charging interest and admin fees, plus charges to pay in money".

Footage of a letter to 'Anna' from Chancellors, signed by its Director, was also included in the programme before the reporter was shown standing outside a building saying:

"The Director of Chancellors is refusing to speak to me in person or on camera. Instead over the phone she stated she's doing nothing wrong, her methods of collecting debt, she says, are all above board".

The report included an interview with the head of Jersey's Citizens Advice Bureau ("the CAB") talking about complaints which the CAB had received about Chancellors' debt collectors and suggesting that the solution was to introduce a code of practice. The report also explained that, in contrast to the UK, there was no regulation of debt collection agencies on Jersey and showed footage of the Channel Islands' Economic Development Minister indicating that new legislation was needed.

Following the broadcast of the programme, Mrs Mary Beghin, the owner and sole director of Chancellors, complained to Ofcom that she and Chancellors were treated unjustly or unfairly in the programme as broadcast and that their privacy was unwarrantably infringed during the making of the programme.

The Complaint

Mrs Beghin's case

Unjust or unfair treatment

In summary, Mrs Beghin complained that she and Chancellors were treated unjustly or unfairly in the programme as broadcast in that:

- a) They were unfairly portrayed in the programme. In particular, Mrs Beghin complained that:
 - i) The report singled out Chancellors from the other debt collection agencies in Jersey, despite the fact that they all worked in the same way and applied similar costs. In particular, she said that none of the other companies were named and that the report made no attempt to speak to the directors of the other debt collection companies.
 - ii) The report incorrectly stated that Chancellors' agents shouted and screamed at people on the phone. It made no attempt to verify this claim (for example, by requesting and listening to recordings of specific conversations, which Mrs Beghin said was possible under the Data Protection Act).
 - iii) The programme sought no evidence in support of the claims made by 'Anna' in the report and therefore Mrs Beghin was the subject of a "kangaroo court".

By way of background to these complaints, Mrs Beghin indicated that in light of the fact that costs (i.e. additional fees charged to indebted persons) were not regulated in Jersey, Chancellors was able to charge what it liked and set out the charges which Chancellors applied for payment books. Mrs Beghin also explained that Chancellors had a policy of not speaking to the local CAB because of data protection issues.

Unwarranted infringement of privacy

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

- b) The report included a letter with her name and signature at the bottom. Mrs Beghin added that 'Anna's' name and address details were blanked out.

Channel Television's case

Unjust or unfair treatment

- a) Before responding to the three specific elements of the complaint of unfair portrayal, Channel Television said that the reporter spoke to a number of people who claimed to have felt threatened and intimidated by Chancellors. One of these people, 'Anna', agreed to be interviewed on camera if her identity was disguised. In addition, before contacting Chancellors the reporter spoke to: the director of the CAB, the two other debt collection agencies on Jersey (Collect Services and Cashback); the director of Jersey's Trading Standards Department ("Trading Standards"), and Jersey's Minister for Economic Development.

In summary Channel Television responded to Mrs Beghin's complaint that she and her company were unfairly portrayed as follows:

- i) The broadcaster first responded to the complaint that the report singled out Chancellors from the other debt collection agencies in Jersey, despite the fact that they all worked in the same way and applied similar costs.

Channel Television argued that the report did not "single out" Chancellors, but highlighted the company because the official organisations responsible for handling consumer complaints, namely the CAB, Trading Standards and the State's Economic Development Department all confirmed that complaints had only been received about Chancellors and because Chancellors used different methods from the other two debt collection agencies on the island.

Channel Television said that during an on-camera interview (part of which was included in the report) the director of the CAB told the reporter that his organisation received an average of two complaints every month against Chancellors. He also described the nature of the complaints and substantiated the claims of the debtors to whom the reporter had already spoken. The CAB director also said that Mrs Beghin had refused to discuss her work with the CAB, demanding to know the identity of any complainants, and when this information was not supplied, refused any further discussion with the CAB. Channel Television added that the director said that the CAB enjoyed a "very good" relationship with the other two local debt collection agencies, which worked with the CAB to achieve best practice.

In addition, the director of Jersey's Trading Standards told the reporter that the department had received 22 complaints about Chancellors and the Minister for Economic Development said that all complaints received regarding debt collection practices concerned Chancellors.

- ii) Channel Television responded to the complaint that the report incorrectly stated that Chancellors' agents shouted and screamed at people on the phone but made no attempt to clarify if this claim was true or not.

Channel Television said Mrs Beghin was given every opportunity to refute 'Anna's' claims and argued that the reporter clearly explained the nature of the complaints being made against the company but Mrs Beghin would not answer the reporter's specific questions or offer up any evidence to dispute the claims.

Channel Television said that the reporter called Mrs Beghin on 12 April 2011 to explain the allegations being made against her agency and ask for her comments on them. Mrs Beghin refused the offer of an on camera interview but responded by explaining that, in the absence of regulation in Jersey, she was able to charge debtors what she liked. She said that she used text messages to demand payments because her clients preferred that. She also denied that the use of capital letters in text messages could be interpreted as threatening and said that she used capitals so that her clients could read the messages more easily. Mrs Beghin responded to the reporter's suggestion that she might not be following best practice by asking for the names of debtors who had made complaints and threatening legal action if either she or her company was named in any news report.

After discussion with Channel Television's editorial management team, the reporter contacted Mrs Beghin again later the same day. Mrs Beghin was not prepared to speak, either in person or on camera, or to give a phone interview. At Mrs Beghin's request, the reporter emailed her stating that Channel Television intended to run a report highlighting the concerns of debtors and giving Mrs Beghin an opportunity to state her position. However, Mrs Beghin did not respond to the email (despite previously indicating that she would) and when contacted again on 13 April refused to speak to the reporter.

- iii) Channel Television responded to the complaint that the programme sought no evidence in support of the claims made by the indebted woman shown in the report.

Channel Television said it sought as much evidence as it could to substantiate 'Anna's' claims, including examining letters and texts she received from Chancellors and interviews with the public organisations which had received complaints and which corroborated 'Anna's' claims. The broadcaster said that 'Anna' had agreed to give an on camera interview in order to highlight the need for debt collection agency regulation in Jersey, saying that she did not want other people to experience the same "harassment". She showed the reporter demands for payment she had received by text message. These were written in capital letters with "Chancellors" and the agency's phone number at the bottom. She also showed the reporter letters sent from Chancellors detailing additional charges for administration fees and for paying-in books. She told the reporter that she did not receive any statements from Chancellors and that the agency had made no attempt to work out a repayment plan based on her monthly income. One letter, filmed by Channel Television, stated that her debt would incur interest amounting to 2% above the Bank of England rate and that payment amounts could be varied at Chancellors' request. The broadcaster added that the Office of Fair Trading ("OFT") had confirmed that charging interest to debtors amounted to "unfair practice".

Unwarranted infringement of privacy

In summary, Channel Television responded to Mrs Beghin's complaint that her privacy was unwarrantably infringed in the programme as broadcast in that the report included a letter with her name and signature at the bottom as follows:

- b) Channel Television said that the reporter filmed in front of Chancellors' office after Mrs Beghin refused to make any statement and that the programme broadcast images of a letter sent by Chancellors as evidence of the claims being made in the report. The broadcaster said this was justified in protecting the debtor given her concerns should she be identified. It argued that the reporter was fair in her dealings with Mrs Beghin and with Chancellors and that the case study and issues raised in the report were in the public interest.

Mrs Beghin's comments on Channel Television's statement

In response to Channel Television's statement on her complaint of unfair treatment, Mrs Beghin made the following comments.

- a) Mrs Beghin commented as follows in relation to her complaint of unfair treatment:
- i) Mrs Beghin said that given that Chancellors was the only company named in the report it was singled out from the other debt collection agencies in Jersey. She said that her own research and reported comments by Jersey's Minister for Economic Development indicated that complaints had been received about all the companies. She added that Trading Standards had confirmed that this was the case and that the CAB had said that they had no information on Chancellors. In addition, she argued that although Chancellors may adopt different working practices from the other companies that did not necessarily imply that these were "unfair" trading practices.
 - ii) Mrs Beghin acknowledged that she was asked to comment on the allegations made about Chancellors but said that the reporter failed to report fairly and without bias. She argued that given that the reporter acknowledged that there was a lack of regulation of debt collection agencies in Jersey, the report was without any merit and reflected the reporter's personal perception of unfair business practices.
 - iii) Mrs Beghin said that all the companies sent out letters to debtors and asked if the reporter had examined any of the letters from the other companies or viewed texts used by a variety of companies as reminders.

In response to Channel Television's statement on her complaint of unwarranted infringement of privacy in the broadcast, Mrs Beghin made the following comments.

- b) She said that the broadcaster made every effort to protect 'Anna's' identity, including blanking out her name in the letter from Chancellors which was shown in the report, but that her name was shown clearly.

Channel Television's response to Mrs Beghin's comments

In response to Mrs Beghin's comments about her fairness complaint the broadcaster made the following points:

- a) As regards the complaint of unfair treatment, Channel Television commented as follows:
- i) Channel Television said that the Minister for Economic Development had very clearly informed the reporter that his department was aware, through Trading Standards, of complaints about only one agency, namely Chancellors.

Channel Television also confirmed the information provided to the reporter by both Trading Standards and the CAB on this issue.

Channel Television added that the interviews conducted as part of the report were with credible organisations with appropriate authority and experience to comment on the issues raised.

- ii) Channel Television said that the issues in the report were comprehensively researched and that the report presented factual information regarding complaints received by two consumer organisations – the CAB and Trading Standards – about Chancellors. Channel Television said that the report presented the views of these organisations and the relevant ministerial department regarding this issue. Mrs Beghin was given an appropriate and timely opportunity to respond and the programme made it clear that she had chosen not to make a comment or to appear in the programme.
- iii) With regard to the methods used by the other local debt collection agencies, Channel Television said that both of the other agencies had explained their practices, which differed from those used by Chancellors, and that one of the agencies had confirmed that it did not use text messaging or charge debtors additional fees.

In response to Mrs Beghin's comments about her privacy complaint the broadcaster made the following points.

- b) It said that the programme was justified in protecting 'Anna's' identity, as she was considered to be vulnerable and given the sensitive nature of the circumstances. With regard to Mrs Beghin, Channel Television said that her name was publically listed as the manager of Chancellors and that the filming of a letter from Chancellors to 'Anna' was material to the report and served to illustrate the points about which she had complained.

Decision

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

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

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

Unjust or Unfair treatment

In Ofcom's view the complaints at heads a) i), ii) and iii) were closely connected in that they concerned either the way Chancellors was shown in contrast to other local debt collection agencies or specific claims made about Chancellors. Ofcom therefore considered these sub-heads of the complaint together.

- a) Ofcom considered Mrs Beghin's complaint that she and her company, Chancellors, were unfairly portrayed in the programme as broadcast.

In considering this head of complaint Ofcom had regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of Ofcom's Broadcasting Code ("the Code"). Ofcom also considered Practices 7.9 and 7.11 of the Code. Practice 7.9 provides that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to the individual or organisation and that anyone whose omission could be unfair to an individual or organisation has been offered an opportunity to contribute. Practice 7.11 states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

Ofcom observed that the programme trailed the report with the words:

"Intimidated and harassed, claims that debt collectors in Jersey are using bully boy tactics to make islanders pay up".

The report was then introduced using the following commentary:

"A Channel Television investigation has found that islanders are feeling harassed and intimidated by debt collectors in Jersey. One woman who owes money to one agency claims that threatening payment demands have left her suicidal. But with no regulation of debt recovery businesses in Jersey, there's nothing anyone can do to stop the practice".

Ofcom noted that the report included an interview with 'Anna', who owed £7,000. She was shown discussing her experience of dealing with Chancellors and the stress that this had caused her. In particular, she claimed that it made her suicidal and said that:

"There was no reasoning on how much I could pay, there was numerous phone calls made to me, shouting, screaming, threatening that payments had to be made".

The report included mobile phone text messages that 'Anna' had received from Chancellors, which were in capital letters and read:

"IF PAYMENT IS NOT MADE TODAY YOUR FILE WILL GO TO VISCOUNT, YOU WILL PAY MORE IN COSTS AND INTEREST. CHANCELLORS" and "OVERDUE PAYMENT PLSE [sic] GO IMMEDIATELY TO LLOYDSTSB AND MAKE OYUR [sic] WEEKLY PAYMENT. THANK YOU? [sic] CHANCELLORS".

The reporter said that 'Anna' found these demands for payment intimidating and claimed that:

"She doesn't receive statements of how much she owes, only letters charging interest and admin fees, plus charges to pay in money".

The report also included footage of a letter sent to 'Anna'. The letter was on headed paper which indicated that it was from Chancellors Debt Recovery

Agency Limited and was signed by M Beghin ACH1, Director. The reporter was then shown standing outside a building saying:

“The Director of Chancellors is refusing to speak to me in person or on camera. Instead over the phone she stated she’s doing nothing wrong, her methods of collecting debt, she says, are all above board”.

Ofcom noted that the report also included an interview with the head of the Jersey CAB talking about complaints the CAB had received from people feeling harassed by Chancellors’ debt collectors and suggesting that the solution was to introduce a code of practice. The report then explained that, in contrast to the UK, there was no regulation of debt collection agencies on Jersey. The report then showed part of an interview with Jersey’s Economic Development Minister in which he indicated that new legislation was needed.

In Ofcom’s opinion viewers of this report would have understood that:

- ‘Anna’ had felt harassed and intimidated by the messages she had received from Chancellors to the extent that it had made her feel suicidal.
- She did not receive statements setting out her level of debt from Chancellors.
- She had received letters and/or texts demanding payment of interest on her debt and she had been charged administration fees and fees for paying money in (i.e. for paying part of her debt). She had also been shouted and screamed at by debt collectors working for Chancellors.
- The CAB regularly received complaints from people feeling harassed by Chancellors, ranging from a lack of empathy, to not working out payment plans, compounding debt through levying additional charges and aggressive behaviour and implied threats. The CAB considered that Chancellors’ working practices were often unethical.
- The CAB considered that Jersey needed to adopt a code of best working practices like that set out by the UK’s OFT in order to deal with the problems about which it was receiving complaints.
- The Economic Development Minister was aware of three debt collection agencies in Jersey and he had been told that Trading Standards had received complaints about one of those agencies. The Minister also mentioned that he wanted to introduce new legislation to ensure fair trading practices in this area.

Ofcom also considered that it would have been clear to viewers that none of the actions taken by Chancellors were illegal and that the director considered that she was doing nothing wrong and that her actions were *“all above board”*.

In light of the inclusion of the claims set out above, Ofcom considered that the programme made a specific allegation of wrongdoing on the part of Chancellors; namely that Chancellors did not employ fair working practices.

In order to decide whether or not the inclusion of this allegation resulted in unfairness to Mrs Beghin and Chancellors, Ofcom looked at the source of the claims made about Chancellors.

Ofcom observed that there was a dispute between the parties regarding the claims made about Chancellors in the report. However, Ofcom’s role is not to establish conclusively from the broadcast programme or the submissions and supporting material, whether these claims were false or not but rather to address

itself to the issue of whether the programme makers took reasonable care in relation to material facts.

Ofcom noted Channel Television's submissions regarding the basis for the claims about Chancellors, including 'Anna's' testimony regarding Chancellor's working practices; the programme maker's examination of letters and messages sent by Chancellors to 'Anna' and the reporter's interviews with the CAB, Trading Standards and Jersey's Minister for Economic Development. In Ofcom's view this information amounted to a reasonable foundation for including the claims made about Chancellors in the report.

Given its view that these claims amounted to an allegation of wrongdoing on the part of Chancellors, Ofcom considered that, in accordance with practice 7.11 of the code, it was incumbent upon the programme makers to have offered Chancellors an appropriate and timely opportunity to respond to the claims being made about it.

Ofcom observed that prior to the broadcast Mrs Beghin was given several opportunities to respond to the claims which the programme planned to make about Chancellors. Ofcom noted that having refused an on camera interview, Mrs Beghin indicated that she would comment on the allegations by email and that having received an email from Channel Television stating the allegations and providing Mrs Beghin with an opportunity to respond, Mrs Beghin declined to respond. Ofcom also observed that, following Mrs Beghin's decision not to respond to the programme makers, the report made clear that she contested the claims being made about the company and its working practices.

Ofcom noted that Chancellors was the focus of the report, due to 'Anna's' claims, and therefore acknowledged that it was singled out from the other local debt collection agencies. However, given the evidence on which the claims made about the company were based, that the reporter was informed that the two other established debt collection agencies in Jersey did not use the same working practices (and received independent confirmation of the same) and that the local CAB and Trading Standards had received complaints about Chancellors alone, Ofcom did not consider that this resulted in unfairness.

Taking into account all of these factors, Ofcom considered that the programme makers took reasonable care to satisfy themselves that the programme did not present, disregard or omit material facts with regard to the Chancellor's working practices in a way that resulted in unfairness to Mrs Beghin or Chancellors. Ofcom also considered that they were given an appropriate and timely opportunity to respond to the allegation of wrongdoing made in the programme.

Ofcom therefore found no unfairness in this respect.

Unwarranted infringement of privacy

- b) Ofcom then considered Mrs Beghin's complaint that her privacy was unwarrantably infringed in that the report included a letter with her name and signature at the bottom.

In Ofcom's view, the individual's right to privacy has to be balanced against the competing rights of the broadcasters to freedom of expression. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the

specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

This is reflected in how Ofcom applies Rule 8.1 of the Code which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

Ofcom noted that, as part of this complaint, Mrs Beghin's indicated that 'Anna's' name and address details were blanked out. Ofcom did not consider that the fact that the identity of the recipient of this letter was disguised in the programme was of relevance to the question of whether or not Mrs Beghin's privacy was unwarrantably infringed.

In considering this head of Mrs Beghin's complaint Ofcom paid particular regard to Practice 8.6 of the Code, which states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

In order to establish whether or not Mrs Beghin's privacy was unwarrantably infringed in the programme Ofcom first assessed the extent to which she had a legitimate expectation of privacy in respect of the inclusion of the letter with her name and signature at the bottom in the programme as broadcast.

Ofcom observed that the letter in question was a private communication about a business matter between Mrs Beghin and the woman referred to in the programme as 'Anna'. Ofcom also observed that the image of the letter clearly showed that it was sent by Mrs Beghin, Director of Chancellors Debt Recovery Limited.

Ofcom noted that the letter shown in the programme set out details of additional fees Chancellors was or would be charging the recipient, specifically £20 for a new paying in book which was required for making repayments of debts and a £10 administration fee for all overdue letters sent to her by Chancellors. Ofcom also noted that, while viewers were informed that the letter had been sent to 'Anna', the text of the letter appeared to set out the additional fees Chancellors charged to all the debtors on its books rather those that would be charged to a particular individual (i.e. the recipient) alone.

In addition, Ofcom noted that the information that Mrs Beghin managed Chancellors Debt Recovery Agency was already in the public domain prior to the broadcast (in that she was publicly listed as such). Given this Ofcom did not consider that Mrs Beghin had a legitimate expectation of privacy with regard to the disclosure in the programme of the information that she was the Director of Chancellors Debt Recovery Agency.

Nonetheless, in light of the fact that the letter shown in the report was between two individuals (Mrs Beghin and 'Anna') and was seemingly not intended for wider dissemination Ofcom concluded that Mrs Beghin had a legitimate expectation of privacy with regard to the inclusion of this letter in the programme. However, her expectation of privacy with regard to this material was limited by the fact that the information in the letter related solely to business rather than personal matters; set out standard terms of business which Chancellors Debt Recovery Agency applied to all debtors on its books; and, included nothing of a sensitive or private nature to Mrs Beghin.

In light of the factors noted above, Ofcom considered that the inclusion of this letter in the programme as broadcast intruded into Mrs Beghin's legitimate, albeit limited, expectation of privacy. Ofcom then went on to consider whether this intrusion was warranted.

The term "warranted" as it relates to privacy has a particular meaning. It means that where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy¹.

With regard to Practice 8.6, Ofcom observed that Mrs Beghin did not give consent for the broadcast of footage of her letter to 'Anna'. However, Ofcom also noted Channel Television's position that broadcasting this case study served the public interest, in that the letter was material to the report and served to illustrate 'Anna's' complaints about Chancellors.

In Ofcom's view this letter was a direct illustration of the way in which Chancellors had dealt with 'Anna'. Given the claims that the programme had made about the company (including those made by 'Anna' herself) and in the context of a report which focused on Chancellor's working practices, Ofcom considered that the inclusion of this direct illustration in the programme clearly served the public interest. Ofcom therefore concluded that the intrusion into Mrs Beghin's privacy by the broadcast of this material was warranted.

Ofcom therefore found that Mrs Beghin's privacy was not unwarrantably infringed in the programme as broadcast.

Accordingly, Ofcom has not upheld Mrs Beghin's complaint of unfair treatment on her own behalf and on behalf of Chancellors or her complaint of unwarranted infringement of her privacy in the broadcast of the programme.

¹ Examples of public interest would include revealing or detecting crime, protecting public health or safety, exposing misleading claims made by individuals or organisations or disclosing incompetence that affects the public.

Not Upheld

Complaint by Mrs E

Cutting Edge: A Very Dangerous Doctor, Channel 4, 12 May 2011

Summary: Ofcom has not upheld this complaint of unwarranted infringement of privacy made by Mrs E.

The programme looked at the story of Dr David Southall, “as one of Britain’s leading paediatricians and an expert in child abuse”. The programme charted Dr Southall’s career, during the course of which he was both respected for his work looking at the causes of cot death and Munchausen’s Syndrome by Proxy and also heavily criticised by some parents whom he accused of abusing their own children. Footage was included of a television chat show, during which cot death was discussed. Mrs E was in the audience and footage of her was included in the programme.

In summary, Ofcom noted that the programme did not include any personal or sensitive information relating to Mrs E and that she had consented to the original broadcast and not placed any restrictions on future use of the footage. In these circumstances, Ofcom found that Mrs E had no legitimate expectation of privacy in the programme as broadcast.

Introduction

On 12 May 2011, Channel 4 broadcast an edition of its current affairs documentary series *Cutting Edge*. This edition looked at the story of Dr David Southall, described in the programme as being recognised “as one of Britain’s leading paediatricians and an expert in child abuse”. The programme charted Dr Southall’s career, during the course of which he was both respected for his work looking at the causes of cot death and Munchausen’s Syndrome by Proxy and also heavily criticised by some parents who he accused of abusing their own children. The programme looked at Dr Southall’s “striking off” the medical register by the General Medical Council, his appeals against the striking off and his later reinstatement. It also examined the stories of some of the mothers he had accused of abusing their children and included extensive interviews with Dr Southall and some of those mothers.

As the programme looked at the beginning of Dr Southall’s research into cot death, footage was included of a television chat show broadcast in 1989, during which the issue was discussed. Mrs E was in the audience for that broadcast and footage of her was included in the 2011 *Cutting Edge* programme, in which she was clearly identifiable.

Mrs E complained to Ofcom that her privacy was unwarrantably infringed in the programme as broadcast.

The Parties’ Representations

Mrs E

Mrs E complained that her privacy was unwarrantably infringed in the programme as broadcast in that footage in which her image was shown on at least four different occasions was included in the programme without her being consulted or her consent sought and without her identity being protected.

Mrs E said that it was irresponsible of the programme makers not to take into account her emotions and to assume that it would be acceptable to her to broadcast the footage in the 2011 documentary without her permission. Mrs E said that the material was sensitive and that due care and attention should have been paid to the programme's content and that obtaining her permission was vital.

She said that she would like the relevant part of the programme to be edited, with her identity protected in order to prevent further infringement of her privacy.

By way of background, Mrs E said that having her past broadcast across the nation and abroad had caused her extreme anxiety and stress. She had been made aware of her appearance in the programme by a colleague, who recognised her but had no idea about her past. She said that, as a college lecturer/assessor, she had contact with learners across Greater London, Surrey and Kent and now had to deal with difficult questions about her past, which she had not shared and did not wish to share with anyone. Mrs E said that she felt deeply saddened that Channel 4 would screen footage of a programme that she had participated in 20 years ago as part of their documentary. She said that the original programme had been made at a very difficult, stressful and grieving period of her life. She was a teenage parent at the time and had attended the show for support and guidance and to hear other stories from of how families had been affected by Sudden Infant Death Syndrome ("SIDS") and how they continued to live their lives having suffered from a child suddenly passing away from cot death, which was a taboo and sensitive subject matter.

Channel 4

Channel 4 said in response to Mrs E's complaint that the programme examined the very public battle between parents whom Dr Southall claimed had abused their children and claims by the same parents that Dr Southall had in fact abused their children and should be struck off the medical register. As the programme introduced one of the mothers Dr Southall had accused of abusing their children, Mrs Dee Hollisey-McLean, footage was included of a television discussion show, in which Mrs E appeared in the audience ("the footage").

Channel 4 said that the footage complained of by Mrs E was taken from a morning television chat show called *The Time and the Place*, which was broadcast in 1989. The footage, which was briefly shown four times in part two of the *Cutting Edge* programme, was used to illustrate how Dr Southall came to the attention of Mrs Hollisey-McLean, who claimed she had been falsely accused of Munchausen's Syndrome by Proxy (now known as fabricated or induced illness).

The chat show featured a filmed audience of around 100 people and the discussion included in the *Cutting Edge* programme focused on the use of baby oxygen monitoring equipment. This was clear from the footage in which Mrs Hollisey-McLean said that she had seen Dr Southall on television one morning and the commentary explained that she sought Dr Southall's help with her chronically ill baby son. Channel 4 said that the footage was included in the programme to illustrate Dr Southall's appearance on the chat show, through which he came to Mrs Hollisey-McLean's attention. The footage of the chat show included in the *Cutting Edge* programme made no reference to SIDS when images of Mrs E appeared and was not therefore sensitive in terms of the content of the original programme. Dr Southall was shown sitting amongst audience members, including Mrs E, who sat two places away from him to his left. Channel 4 said that Mrs E was only shown as an audience member and at no time was she named or shown speaking in the footage, nor was

she referred to, named or singled out in the programme in a way that was critical of her.

Channel 4 said that the footage was fully licensed and commercially available archive footage from ITV Archive. It was passed through their internal clearance process, which did not identify any restriction or prohibition on the use of the footage, before being licensed for inclusion in the programme. The producers understood that the footage was also later licensed, without complaint, to *The London Programme, A Mother's Touch*, a news documentary programme about Dr Southall broadcast in 1994. Channel 4 also said that it was clear that Mrs E consented to appearing in the original chat show and that neither the programme makers nor ITV Archive were aware of any restrictions or prohibition she had placed on the re-use of the footage.

Channel 4 said that on 16 May 2011, Channel 4 informed the producers that Mrs E had contacted Channel 4's Viewer Enquiries Department on 14 May to raise her concerns about the footage. The producers immediately contacted Mrs E and apologised for any distress caused and explained that there was never any intention to cause her any distress. They explained that the footage was commercially available and had been licensed ITV archive footage and used in the programme in good faith. Mrs E said she would like her identity to be protected in any future broadcast. Later the same day, after discussion with Channel 4, it was agreed that Mrs E's face would be blurred in all future repeats of the programme. Mrs E said she was happy with the decision. The producers explained that the process would take a couple of days and the changes would then replace the current version of the programme on 4OD. The changes were made to the master copy on the following day. Unfortunately the producers missed one very brief clip, which was later picked up and immediately blurred in accordance with Mrs E's request. The producers had also taken steps to notify ITV Archive of Mrs E's complaint and to advise them to blur her image from all future use. The producers and Channel 4 were saddened to learn that Mrs E was caused anxiety by the programme. However it was never their intention to cause her any upset and their apology and the prompt action taken to rectify the programme and to alert ITV Archive demonstrated their responsible approach to her complaint.

With reference to Mrs E's complaint that the footage was sensitive and that therefore her identity should have been concealed and her prior consent obtained, Channel 4 said that the footage did not include any discussion of SIDS or any other sensitive issues, other than a contributor in the footage saying that she was a lucky to be under Dr Southall's care at the Royal Brompton. The context in which the footage was used in the programme was not sensitive, as it was simply used to illustrate how Mrs Hollisey-McLean had first seen Dr Southall on television.

Decision

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

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

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

Ofcom considered the complaint that Mrs E's privacy was unwarrantably infringed in the programme as broadcast in that footage in which her image was shown on at least four different occasions was included in the programme without her being consulted or her consent sought and without her identity being protected.

In Ofcom's view, the individual's right to privacy has to be balanced against the competing rights of the broadcasters to freedom of expression. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

This is reflected in how Ofcom applies Rule 8.1 of the Code which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

Ofcom took into consideration Practices 8.6 and 8.10 of the Code. Practice 8.6 states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. Practice 8.10 states that broadcasters should ensure that the re-use of material, i.e. use of material originally filmed or recorded for one purpose and then used in a programme for another purpose or used in a later of different programme, does not create an unwarranted infringement of privacy. This applies to both material obtained from others and the broadcaster's own material.

Ofcom noted Mrs E's point that she wished for the relevant part of the programme to be edited so as to protect her identity and also noted that, once she had raised her concerns with Channel 4 and the producers, the programme was edited so as to blur her image in future broadcasts of the programme and ITV Archive was advised of the situation.

In considering whether Mrs E's privacy was unwarrantably infringed in the programme as broadcast, Ofcom first considered the extent to which she could have legitimately expected that the footage of her in the audience of *The Time and the Place* would not be broadcast again, and therefore whether her consent was required.

Ofcom noted that in the relevant section of the programme, Mrs Hollisey-McLean was explaining how she had found out about and decided to consult Dr Southall. A clip was included from *The Time and the Place*, originally broadcast in 1989, in which a mother in the audience said:

"I'm one of the lucky ones because my baby Angharad is under Dr Southall from the Royal Brompton. I am lucky".

Mrs Hollisey-McLean said that she had seen Dr Southall talking about a monitor that he had designed to record a baby's oxygen levels. The commentary then said:

"Little did she realise her pursuit of a medical specialist was raising suspicions about her behaviour. There was a growing concern that she may be exaggerating Ben's condition to gain attention for herself. Remarkably, she had unwittingly

chosen one of the few men qualified to act on these concerns. Dee believed she'd finally found someone able to help with Ben's chronic illness. But Dr Southall was sceptical whether Ben had any problems in the first place".

Ofcom noted that, during Mrs Hollisey-McLean's explanation and the commentary above, footage of Mrs E was shown briefly on four occasions. She was filmed and included in the original programme as a member of the audience, who was sitting near Dr Southall. Mrs E's face was shown unobscured in the *Cutting Edge* programme, but she was neither named nor identified in any other way.

Ofcom considered that the clip from *The Time and the Place* was relevant to the story in that it demonstrated how Mrs Hollisey-McLean had found out about Dr Southall and his work. Ofcom took the view that the broadcast footage of Mrs E's face did not amount to information that could be regarded as either private or sensitive in nature. This was on the grounds that she was simply an audience member and did not make any contribution in the clip that was included. Ofcom noted the sensitivity surrounding the reasons that Mrs E was in the audience, namely the death of her baby as a result of SIDS, and appreciated that this was a personal and private matter. However, in Ofcom's view there was nothing in the programme as broadcast that would have led viewers to be aware of this background. This was on the grounds that the programme did not explicitly disclose Mrs E's background or her personal interest in the subject. Ofcom noted the brevity of the clips included and the fact that she did not speak. Ofcom also noted that the context in which the footage was used in *Cutting Edge* (namely that Mrs Hollisey-McLean had decided to consult Dr Southall, having heard the woman who spoke positively about him on *The Time The Place*) did not relate to SIDS. Ofcom appreciated that Mrs E was asked questions about her appearance in the *Cutting Edge* programme after it was broadcast, but, taking these factors into account, Ofcom considered that viewers were unlikely to have inferred Mrs E's background from the inclusion of the clips. In these circumstances, there was no requirement for the programme makers to obscure Mrs E's image to protect her identity.

As regards consent, Ofcom noted that Mrs E gave consent to the original programme makers and that no restrictions or prohibitions had been placed on future use of the footage. Ofcom appreciated that Mrs E may not have expected the footage to be used again more than 20 years later, but was satisfied that the makers of the *Cutting Edge* programme had the necessary licence to use the footage. In these circumstances, Ofcom considered that Mrs E's prior consent was not required for the broadcast of the footage.

Taking into account all the factors above, Ofcom therefore did not consider that Mr E had a legitimate expectation of privacy in relation to the broadcast of the footage. Given this conclusion it was not necessary for Ofcom to consider whether any intrusion into Mrs E's privacy was warranted.

In these circumstances, Ofcom found no unwarranted infringement of Mrs E's privacy in the programme as broadcast.

Accordingly, Ofcom has not upheld Mrs E's complaint of unwarranted infringement of privacy in either the making or broadcast of the programme.

Other Programmes Not in Breach

Up to 31 October 2011

Programme	Broadcaster	Transmission Date	Categories
Amader Khober	Channel i	02/07/2011	Due impartiality/bias
The AM Double Trouble Show	3T FM	11/10/2011	Retention and production of recordings
The World's Strictest Parents	BBC 3	14/08/2011	Offensive language

Complaints Assessed, not Investigated

Between 18 and 31 October 2011

This is a list of complaints that, after careful assessment, Ofcom has decided not to pursue because they did not raise issues warranting investigation.

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
118 118's sponsorship of ITV Movies	ITV2	16/10/2011	Scheduling	1
118 118's sponsorship of ITV Movies	Various	n/a	Violence and dangerous behaviour	1
4oD smartphones (promotion)	E4+1/Channel 4	n/a	Materially misleading	4
5 News at 7	Channel 5	14/10/2011	Generally accepted standards	1
71 Degrees North	ITV1	18/10/2011	Religious/Beliefs discrimination/offence	1
A History of Scotland	Yesterday	25/10/2011	Outside of remit / other	1
Adult Smile	Smile TV	19/10/2011	Sexual material	1
Advertising scheduling	ITV1	n/a	Advertising scheduling	1
BBC News	BBC News 24	10/10/2011	Outside of remit / other	1
BBC News	BBC News 24	11/10/2011	Violence and dangerous behaviour	1
BBC News	BBC1	18/10/2011	Outside of remit / other	1
BBC News	BBC News 24	19/10/2011	Outside of remit / other	1
BBC News	BBC1	19/10/2011	Outside of remit / other	1
Bid TV	Freeview	29/10/2011	Outside of remit / Advertising content	1
Big Brother	Channel 5	14/10/2011	Generally accepted standards	1
Big Brother	Channel 5	16/10/2011	Violence and dangerous behaviour	1
Big Brother	Channel 5	17/10/2011	Premium rate services	1
Big Brother	Channel 5	19/10/2011	Generally accepted standards	3
Big Brother	Channel 5	21/10/2011	Generally accepted standards	1
Big Brother	Channel 5	21/10/2011	Materially misleading	1
Big Brother	Channel 5	25/10/2011	Generally accepted standards	2
Big Brother	Channel 5	26/10/2011	Generally accepted standards	2
Big Brother	Channel 5	26/10/2011	Voting	1
Big Brother	Channel 5	n/a	Generally accepted standards	1
Big Brother	Channel 5	n/a	Generally accepted standards	1
Big Brother's Bit on the Side	5*	16/10/2011	Generally accepted standards	1
Big Brother's Bit on the Side	Channel 5	20/10/2011	Generally accepted standards	1
Big Brother's Bit on the Side	5*	n/a	Generally accepted standards	1

Birthdays	Baby TV	n/a	Race discrimination/offence	1
Blue Peter	BBC 1	18/10/2011	Offensive language	1
Border News	ITV1	13/10/2011	Fairness & Privacy	1
Boulton and Co	Sky News	25/10/2011	Due impartiality/bias	9
Capital Breakfast	Capital 95.8 FM	17/10/2011	Generally accepted standards	1
Capital Breakfast With Johnny and Lisa	Capital FM	30/09/2011	Generally accepted standards	1
Capital Breakfast With Johnny and Lisa	Capital FM	17/10/2011	Sexual orientation discrimination/offence	1
Casualty	BBC 1	18/12/2010	Generally accepted standards	1
Celebrity Coach Trip	Channel 4	14/10/2011	Generally accepted standards	1
Celebrity Coach Trip	Channel 4	16/10/2011	Disability discrimination/offence	1
Celebrity Coach Trip	Channel 4	19/10/2011	Nudity	1
Champions League Football	Sky Sports 2	18/10/2011	Generally accepted standards	1
Channel 5 cross promotions	Channel 5	n/a	Cross/self promotions	1
Chris Moyles' Hollywood Stars Quiz Night	Channel 4	23/10/2011	Generally accepted standards	2
Chris Moyles' Hollywood Stars Quiz Night	Channel 4	28/10/2011	Generally accepted standards	1
Clare in the Community	BBC Radio 4	21/10/2011	Gender discrimination/offence	1
Come Dine With Me	More4	18/10/2011	Generally accepted standards	2
Coronation Street	ITV1	14/10/2011	Offensive language	14
Coronation Street	ITV1	21/10/2011	Disability discrimination/offence	2
Coronation Street	ITV1	24/10/2011	Generally accepted standards	2
Coronation Street	ITV1	26/10/2011	Generally accepted standards	1
Coronation Street	ITV1	26/10/2011	Violence and dangerous behaviour	1
Coronation Street	ITV1	28/10/2011	Generally accepted standards	2
Coronation Street	ITV1	28/10/2011	Under 18s in programmes	1
Coronation Street Omnibus	ITV1	15/10/2011	Offensive language	1
Corrie Extra: Just Rosie	ITV2	23/10/2011	Offensive language	1
Countryfile	BBC1	24/07/2011	Fairness & Privacy	1
Criminal Minds	Sky Living	16/09/2011	Violence and dangerous behaviour / Scheduling	1
Dangerous Drivers' School	Channel 5	19/10/2011	Violence and dangerous behaviour	1
Dangerous Drivers' School	Channel 5	26/10/2011	Violence and dangerous behaviour	1
DCI Banks (trailer)	ITV1	12/10/2011	Scheduling	1
Deal or No Deal	Channel 4	12/10/2011	Under 18s in programmes	1
Deal or No Deal	Channel 4	20/10/2011	Offensive language	1
Derren Brown	Channel 4	23/10/2011	Hypnotic and other techniques	1

Derren Brown	Channel 4	28/10/2011	Offensive language	1
Derren Brown: The assassins	Channel 4	21/10/2011	Generally accepted standards	1
Digital Switchover promotion	n/a	n/a	Outside of remit / other	1
Doc Martin	ITV1	10/10/2011	Materially misleading	1
Doctors	BBC 1	20/10/2011	Generally accepted standards	1
Don't Tell the Bride	BBC 3	24/10/2011	Offensive language	1
Embarrassing Bodies	Channel 4	10/10/2011	Nudity	1
Embarrassing Bodies	Channel 4	17/10/2011	Under 18s in programmes	1
Emmerdale	ITV1	17/10/2011	Offensive language	2
Emmerdale	ITV1	27/10/2011	Generally accepted standards	2
Emmerdale	ITV1	n/a	Suicide and self harm	1
Emmerdale	ITV1	n/a	Violence and dangerous behaviour	1
Extraordinary People (trailer)	Channel 5	24/10/2011	Generally accepted standards	1
Fighting on the Front Line	Channel 4	18/10/2011	Violence and dangerous behaviour	1
Fish Town	Sky Atlantic	11/10/2011	Offensive language	1
Forthcoming Films (promotion)	Viva	11/10/2011	Race discrimination/offence	1
Fox News	Fox News	n/a	Due impartiality/bias	1
Foxy Bingo's sponsorship credit for The Jeremy Kyle Show	ITV1	n/a	Sponsorship credits	1
Fresh New Tunes	Chart Show TV	09/10/2011	Sexual material	1
Frozen Planet	BBC 1	26/10/2011	Animal welfare	1
Fry's Planet Word	BBC 2	09/10/2011	Outside of remit / other	1
GEO TV and ARY World News	GEO TV/ARY News	09/09/2011	Generally accepted standards	1
Good Morning	ITV 1	28/10/2011	Advertising minutage	1
Greg James	BBC Radio 1	11/10/2011	Outside of remit / other	1
Hard to Tell	BBC Radio 4	18/10/2011	Offensive language	1
Harry Hill's TV Burp	ITV1 Granada	22/10/2011	Generally accepted standards	1
Harveys' sponsorship of Coronation Street	ITV1	26/10/2011	Violence and dangerous behaviour	1
Headline News	Sky News	18/10/2011	Generally accepted standards	1
Hidden	BBC1	06/10/2011	Generally accepted standards	1
History of Scotland	Yesterday	25/10/2011	Materially misleading	1
Hokey Pokey	Baby TV	n/a	Race discrimination/offence	1
Holy Flying Circus	BBC 4	20/10/2011	Generally accepted standards	1
How Do They Do It?	Discovery Channel	17/10/2011	Animal welfare	1
Ideal Shopping	Ideal Shopping Direct	16/10/2011	Advertising content	1

Inside Gatwick	Sky1	16/10/2011	Gender discrimination/offence	1
Inspector George Gently	BBC1	04/09/2011	Drugs, smoking, solvents or alcohol	1
ITV Morning News	ITV1	28/10/2011	Generally accepted standards	1
ITV News at Ten and Weather	ITV1	13/10/2011	Generally accepted standards	1
ITV News at Ten and Weather	ITV1	18/10/2011	Generally accepted standards	1
Jamie's Great Britain	Channel 4	25/10/2011	Offensive language	2
Jeremy Kyle	ITV 1	28/10/2011	Advertising minutage	1
Jinx	CBBC	18/10/2011	Scheduling	1
Jo Brand's Big Splash	Dave	11/10/2011	Offensive language	1
Johnny Vaughan	Capital Radio	27/09/2011	Offensive language	1
Ken Livingstone and David Mellor	LBC	01/10/2011	Due impartiality/bias	1
Kick the Mould Out	105.9 Bishop FM	22/09/2011	Offensive language	1
Kismet Radio	1035 Medium Wave	18/10/2011	Due accuracy	1
LBC	LBC	23/10/2011	Generally accepted standards	1
Little Red Fowers	Film4	13/10/2011	Nudity	1
Loose Women	ITV1	22/09/2011	Generally accepted standards	1
Loose Women	ITV1	21/10/2011	Gender discrimination/offence	2
Loose Women	ITV1	21/10/2011	Generally accepted standards	2
Loose Women	ITV1	25/10/2011	Due impartiality/bias	1
Loose Women	ITV1	25/10/2011	Race discrimination/offence	1
Loose Women (trailer)	ITV1	22/10/2011	Generally accepted standards	1
Match of the Day 2	BBC2	11/09/2011	Flashing images/risk to viewers who have PSE	1
Mayday Mayday	ITV1	18/10/2011	Offensive language	1
Midsomer Murders	ITV1	12/10/2011	Generally accepted standards	1
Midsomer Murders	ITV1	26/10/2011	Religious/Beliefs discrimination/offence	1
Mike Tulan	Key 103	12/10/2011	Gender discrimination/offence	1
Mission Week	God Channel (channel 279 with Virgin)	17/10/2011	Harm	1
Models, Misfits and Mayhem	ITV2	11/10/2011	Materially misleading	1
Models, Misfits and Mayhem (trailer)	ITV1	16/10/2011	Scheduling	1
Monty Python's Life of Brian	BBC 4	22/10/2011	Religious/Beliefs discrimination/offence	1
Moto GP	BBC iPlayer	23/10/2011	Outside of remit / other	1
Mummifying Alan: Egypt's Last Secret	Channel 4	24/10/2011	Generally accepted standards	1

Mummifying Alan: Egypt's Last Secret	Channel 4	24/10/2011	Generally accepted standards	1
Mummifying Alan: Egypt's Last Secret (trailer)	Channel 4	23/10/2011	Generally accepted standards	1
New You've Been Framed!	ITV2	19/10/2011	Generally accepted standards	1
Newsnight	BBC 2	18/10/2011	Due impartiality/bias	1
Newsnight	BBC 2	19/10/2011	Due impartiality/bias	1
Newsnight	BBC 2	19/10/2011	Due impartiality/bias	1
Nick Ferrari	LBC	04/10/2011	Due accuracy	1
Nicky Campbell	BBC Radio 5 Live	19/10/2011	Outside of remit / other	1
Nina and the Neurons	CBeebies	14/10/2011	Scheduling	1
Only Connect	BBC 4	10/10/2011	Generally accepted standards	1
Panorama	BBC 1	14/10/2011	Outside of remit / other	1
Paranormal Activity 3 (advertisement)	Various	n/a	Outside of remit / Advertising content	1
Party Political Broadcast by the Conservative Party	ITV1	05/10/2011	Political advertising	2
Peppa Pig/Olive the Ostrich	Nick Jr	16/10/2011	Advertising minutage	1
Peter Popoff	The Gospel Channel (Sky channel 590)	19/10/2011	Harm	1
Phones 4U (advertisement)	n/a	13/10/2011	Outside of remit / other	1
Phones 4U's sponsorship of Harry Hill's TV Burp	ITV1	08/10/2011	Scheduling	6
Phones 4U's sponsorship of Harry Hill's TV Burp	ITV1	15/10/2011	Scheduling	3
Phones 4U's sponsorship of Harry Hill's TV Burp	ITV1	22/10/2011	Scheduling	2
Phones 4U's sponsorship of Harry Hill's TV Burp	ITV1	29/10/2011	Scheduling	1
Piers Morgan Life Stories (trailer)	ITV1	22/10/2011	Generally accepted standards	1
Planet Dinosaur	BBC 1	23/10/2011	Violence and dangerous behaviour	1
Political Programming	BBC channels	19/10/2011	Outside of remit / other	1
Pressure FM	Pressure FM 96.7FM	19/10/2011	Outside of remit / other	1
Pretty Baby	Sky DramaRom	04/10/2010	Under 18s in programmes	1
Price Drop TV	Price Drop TV	29/10/2011	Outside of remit / Advertising content	1
Programme Idents	Various	n/a	Outside of remit / other	1
Programme Idents	Really TV	n/a	Violence and dangerous behaviour	1
Q Radio Network	Q102.9 FM	n/a	Format	1
Question of Sport	BBC 1	21/10/2011	Disability discrimination/offence	1
Real Radio Breakfast Show	Real Radio Yorkshire	19/10/2011	Animal welfare	1
Real Radio Home Time	Real Radio North West	20/10/2011	Violence and dangerous behaviour	1
Reality With Mahee	Channel S	22/09/2011	Religious/Beliefs discrimination/offence	1

Red Light Lounge	Red Light 3	14/10/2011	Sexual material	1
Regional broadcasting	n/a	n/a	Outside of remit / other	1
Ricky Gervais	Channel 4	14/10/2011	Generally accepted standards	1
Ricky Gervais	Channel 4	14/10/2011	Generally accepted standards	1
Rugby World Cup 2011	ITV1	15/10/2011	Race discrimination/offence	3
Rugby World Cup 2011	ITV1	23/10/2011	Advertising scheduling	1
Russell Howard's Good News	BBC 3	22/10/2011	Generally accepted standards	1
Sadie Nine	BBC Radio Essex	26/09/2011	Generally accepted standards	1
Scott Mills	Radio 1	13/10/2011	Disability discrimination/offence	1
Secret Agent	Channel 4	28/10/2011	Advertising minutage	1
Secret Pakistan	BBC 2	26/10/2011	Outside of remit / other	2
Sex and the City	Comedy Central	20/10/2011	Generally accepted standards	1
Shallow Hal	Channel 5	02/10/2011	Advertising content	1
Shop Swiss	The V Channel	08/10/2011	Generally accepted standards	1
Signed by Katie Price	Sky Living	10/10/2011	Generally accepted standards	1
Signed by Katie Price	Sky Living	17/10/2011	Materially misleading	1
Sky News	Sky News	14/10/2011	Due impartiality/bias	1
Sky News	Sky News	17/10/2011	Materially misleading	1
Sky News	Sky News	18/10/2011	Due impartiality/bias	1
Sky News	Sky News	19/10/2011	Due impartiality/bias	1
Sky News	Sky News	19/10/2011	Offensive language	1
Sky News Android application content	n/a	18/10/2011	Outside of remit / other	1
Sky News with Lorna Dunkley	Sky News	23/10/2011	Disability discrimination/offence	1
Songs of Praise: 50th Birthday Celebration	BBC 1	02/10/2011	Outside of remit / other	1
Sorry, I've Got No Head	BBC 1	28/08/2011	Generally accepted standards	1
Sorry, I've Got No Head	BBC 2	22/10/2011	Race discrimination/offence	1
South Park (trailer)	Comedy Central	n/a	Offensive language	1
Sponsorship credit for The Jonathan Ross Show	ITV1	06/10/2011	Sponsorship credits	1
Steve Berry	Talksport	31/10/2011	Generally accepted standards	1
Strictly Come Dancing	BBC 1	08/10/2011	Generally accepted standards	1
Strictly Come Dancing	BBC 1	15/10/2011	Generally accepted standards	1
Strictly Come Dancing	BBC 1	22/10/2011	Generally accepted standards	1
Strictly Come Dancing	BBC 1	22/10/2011	Sexual orientation discrimination/offence	3
Strictly Come Dancing	BBC 1	23/10/2011	Generally accepted standards	1

Strictly Come Dancing	BBC 1	30/10/2011	Generally accepted standards	1
Strike Back Project Dawn	Sky1	27/10/2011	Competition	1
Swamp People	History Channel	05/10/2011	Offensive language	1
Taking Control of the Classroom: Tonight	ITV1	13/10/2011	Materially misleading	1
Taro Naw	S4C	26/09/2011	Due impartiality/bias	2
Team America: World Police	E4	26/10/2011	Race discrimination/offence	1
Tennents' sponsorship of Batman	ITV4	17/10/2011	Sponsorship credits	1
The Daily Politics	BBC 2	19/10/2011	Violence and dangerous behaviour	1
The Future State of Welfare with John Humphrys	BBC 2	27/10/2011	Outside of remit / other	1
The Gadget Show	Channel 5	17/10/2011	Violence and dangerous behaviour	1
The Impressions Show	BBC 1	29/10/2011	Generally accepted standards	1
The Jeremy Kyle Show	ITV1	18/10/2011	Disability discrimination/offence	1
The Jeremy Kyle Show	ITV1	18/10/2011	Materially misleading	1
The Jonathan Ross Show	ITV1	15/10/2011	Drugs, smoking, solvents or alcohol	2
The Jonathan Ross Show	ITV1	15/10/2011	Generally accepted standards	1
The Jonathan Ross Show	ITV1	22/10/2011	Religious/Beliefs discrimination/offence	1
The Joy of Teen Sex	Channel 4	27/10/2011	Outside of remit / other	4
The Joy of Teen Sex (trailer)	Channel 4	20/10/2011	Scheduling	1
The Joy of Teen Sex (trailer)	Channel 4	23/10/2011	Generally accepted standards	1
The Middle	Sky1	28/10/2011	Nudity	1
The Ming Voyages	BBC Radio 4	13/10/2011	Outside of remit / other	1
The Restoration Man	Channel 4	20/10/2011	Offensive language	1
The Sarah Jane Adventures	CBBC	17/10/2011	Scheduling	1
The Simpsons	Sky1	11/10/2011	Generally accepted standards	1
The Simpsons	Sky1	13/10/2011	Scheduling	1
The Simpsons	Channel 4	25/10/2011	Offensive language	3
The Simpsons	Sky1	26/10/2011	Offensive language	1
The Simpsons	Channel 4	27/10/2011	Offensive language	1
The Watch Commander	The V Channel	16/09/2011	Generally accepted standards	1
The World's Strictest Parents	Watch	13/10/2011	Offensive language	1
The Wright Stuff	Channel 5	18/10/2011	Generally accepted standards	1
The Wright Stuff	Channel 5	20/10/2011	Materially misleading	1
The Wright Stuff	Channel 5	26/10/2011	Violence and dangerous behaviour	1
The Wright Stuff	Channel 5	28/10/2011	Age discrimination/offence	1

The X Factor	ITV1	15/10/2011	Generally accepted standards	5
The X Factor	ITV1	15/10/2011	Harm	1
The X Factor	ITV1	15/10/2011	Materially misleading	1
The X Factor	ITV1	15/10/2011	Materially misleading	1
The X Factor	ITV1	15/10/2011	Offensive language	8
The X Factor	ITV1	16/10/2011	Generally accepted standards	1
The X Factor	ITV1	22/10/2011	Competition/Sponsorship	1
The X Factor	ITV1	22/10/2011	Drugs, smoking, solvents or alcohol	1
The X Factor	ITV1	22/10/2011	Generally accepted standards	37
The X Factor	ITV1	22/10/2011	Offensive language	23
The X Factor	UTV	22/10/2011	Outside of remit / other	1
The X Factor	ITV1	22/10/2011	Programme-related material	1
The X Factor	ITV1	22/10/2011	Religious/Beliefs discrimination/offence	2
The X Factor	ITV1	23/10/2011	Offensive language	1
The X Factor	ITV1	23/10/2011	Promotion of products/services	1
The X Factor	ITV1	29/10/2011	Sexual material	1
The X Factor	ITV1	30/10/2011	Sexual material	1
The X Factor Results Show	ITV1	16/10/2011	Advertising minutage	2
The X Factor Results Show	ITV1	16/10/2011	Generally accepted standards	3
The X Factor Results Show	ITV1	23/10/2011	Generally accepted standards	1
The X Factor Results Show	ITV1	23/10/2011	Offensive language	2
The X Factor Results Show	ITV1	30/10/2011	Generally accepted standards	1
The X Factor Results Show	ITV1	30/10/2011	Materially misleading	2
The X Factor Results Show	ITV1	30/10/2011	Voting	1
This Morning	ITV1	17/10/2011	Generally accepted standards	4
This Morning	ITV1	18/10/2011	Harm	9
This Morning	ITV1	25/10/2011	Generally accepted standards	4
This Week's Fresh Top 20	4Music	08/10/2011	Scheduling	1
Tim Minchin: Ready for This?	Channel 4	21/10/2011	Religious/Beliefs discrimination/offence	1
Tool Academy (trailer)	E4	24/10/2011	Scheduling	1
Tough Love	Really	08/10/2011	Offensive language	1
Trailer during River Cottage	Channel 4	16/10/2011	Animal welfare	1
Trailer during Stormchasers	Quest	28/08/2011	Scheduling	1
Transformers: Revenge of the Fallen	Channel 4	09/10/2011	Violence and dangerous behaviour	1
True 2's sponsorship of Sex and the City	5*	04/09/2011	Advertising content	1
TV Licensing Advertisement	BBC 1	16/10/2011	Harm	1
TV Licensing Advertisement	BBC	n/a	Generally accepted	1

			standards	
UCKG: Finding Answers Live	My Channel	13/10/2011	Generally accepted standards	1
UEFA Europa League	ITV4	20/10/2011	Generally accepted standards	1
UEFA Europa League	ITV4	20/10/2011	Generally accepted standards	1
Various	Various	n/a	Advertising scheduling	1
Various	BBC	n/a	Outside of remit / Product Placement	1
Various	ITV	n/a	Subtitles	1
Waterloo Road	BBC 1	26/10/2011	Offensive language	1
Waybuloo	CBeebies	15/10/2011	Generally accepted standards	1
Westcountry Tonight	ITV1+1	n/a	Outside of remit / other	1
Winx Club (trailer)	Pop	13/10/2011	Scheduling	1
You've Been Framed!	ITV2	05/10/2011	Generally accepted standards	1
You've Been Framed!	ITV1	22/10/2011	Disability discrimination/offence	2

Investigations List

If Ofcom considers that a broadcast may have breached its codes, it will start an investigation.

Here is an alphabetical list of new investigations launched between 3 and 16 November 2011

Programme	Broadcaster	Transmission Date
Aces 'N' Eights	Channel 5	02 November 2011
Advertising minutage	E!	Various
Advertising minutage	MPL	06 September 2011
Advertising minutage	Vintage TV	19 September 2011
Advertising minutage	Wedding TV	22 September 2011
Advertising scheduling	Clubland TV	Various
Advertising scheduling	Wedding TV	15 September 2011
Beauty Simplified	Sunrise TV	13 July 2011
Candy Bar Girls	Channel 5	14 July 2011
Dispatches: Undercover Hospital	Channel 4	11 April 2011
EastEnders	BBC 1	10 November 2011
Good Morning Pakistan	Ary Entertainment	20 October 2011
Laugh Laugh	Sun Music	06 September 2011
Nightmare in Suburbia: Two Stolen Lives	Crime & Investigation Network	04 October 2011
North West Tonight	BBC1 (North West)	04 August 2011
Charity Appeal	Sabras Radio	Various
Sol, fest och oroliga föräldrar	Kanal 5	16 September 2011
The Chris Moyles Show	BBC Radio 1	09 November 2011
The Dukes of Hazzard	Comedy Central	23 October 2011
The X Factor Results	ITV1	06 November 2011
The X Factor	ITV1	12 November 2011
The Xtra Factor	ITV2	29 October 2011
Various programmes	BBC World News	Various
Various programmes	CNBC	Various

It is important to note that an investigation by Ofcom does not necessarily mean the broadcaster has done anything wrong. Not all investigations result in breaches of the Codes being recorded.

For more information about how Ofcom assesses complaints and conducts investigations go to:

<http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>.

For fairness and privacy complaints go to:

<http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/fairness/>.