

Ofcom Broadcast Bulletin

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Introduction

The Broadcast Bulletin reports on the outcome of investigations into alleged breaches of those Ofcom codes which broadcasting licensees are required to comply. These include:

- a) Ofcom's Broadcasting Code ("the Code") which took effect on 25 July 2005 (with the exception of Rule 10.17 which came into effect on 1 July 2005). This Code is used to assess the compliance of all programmes broadcast on or after 25 July 2005. The Broadcasting Code can be found at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>
- b) the Code on the Scheduling of Television Advertising ("COSTA") which came into effect on 1 September 2008 and contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken. COSTA can be found at http://www.ofcom.org.uk/tv/ifi/codes/code_adv/tacode.pdf.
- c) other codes and requirements that 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://www.ofcom.org.uk/tv/ifi/codes/>

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

It is Ofcom policy to state the full language used on air by broadcasters who are the subject of a complaint where it is relevant to the case. Some of the language used in Ofcom Broadcast Bulletins may therefore cause offence.

Standards cases

In Breach

The Classic 9 at 9

Radio Hartlepool, 20 June, 27 June, 4 July and 11 July 2009, 09:00

Introduction

Radio Hartlepool is a Community Radio music station run by and for the people of Hartlepool, providing a locally produced popular music, news and information service.

The Classic 9 at 9 is a regular Saturday late breakfast show feature in which nine music tracks from the same unidentified year are broadcast. Listeners can try to guess which year the music comes from as the presenter reveals information and events about the relevant year in question. *The Classic 9 at 9* is not a listener competition feature. Occasionally, however, the presenter encourages listeners to send a text stating what they believe to be the featured year, and also reveals some responses on air. The text number promoted by the presenter is charged at a premium rate of 25p per message (contact by phone call is not available).

A listener believed that some of *The Classic 9 at 9* features had been pre-recorded, and broadcast 'as live'. On such occasions, he was concerned that, when listeners were asked to text the broadcaster, respondents had no chance of their texts being acknowledged on air.

We therefore sought the broadcaster's comments with regard to Rule 2.2 of the Code, which states:

"Factual ... items or portrayals of factual matters must not materially mislead the audience."

Response

Radio Hartlepool said that four of the six broadcasts of *The Classic 9 at 9* that it held on record¹ had been pre-recorded. It added that, when these were broadcast, it had been "unable to interact with feedback listeners were sending the particular shows..." and that, on these occasions, the presenter's references to named listeners and the contents of their text messages had been fictitious.

The broadcaster noted that:

- texts were solicited on air in two of the four pre-recorded features – three times on 20 June 2009 and once on 27 June 2009;
- references to fictitious respondents were broadcast in the same pre-recorded features – once on 20 June 2009 and three times on 27 June 2009; and
- a total of nine text messages from listeners were received across the four pre-recorded features, five of which occurred in the broadcasts on 4 July 2009 or 11 July 2009, when texts had not been solicited or acknowledged on air.

¹ Ofcom radio licensees are obliged to retain recordings of their output (as transmitted) for a period of 42 days after broadcast.

Radio Hartlepool admitted that the broadcasts had therefore breached Rule 2.2 of the Code and apologised to “any listeners that have been affected by the matter of the pre-recording of *The Classic 9 at 9*.” The broadcaster added that, to avoid recurrence, all pre-recording now required prior approval by station management and all its presenters had been advised to solicit and acknowledge listener feedback only “during live programming where the presenter can directly receive the feedback.”

Decision

Pre-recorded programming, broadcast ‘as live’, is common in radio broadcasting and does not, in itself, raise issues under the Code. However, broadcasters must be aware of the potential risk of misleading listeners if audience interaction is encouraged or solicited on air during pre-recorded programming.

On two of the four occasions when *The Classic 9 at 9* was known to be pre-recorded, audience interaction was not only actively solicited by the presenter, but listeners were asked to contact the programme via a premium rate text service. Listeners were therefore asked to pay a premium rate to interact with a pre-recorded programme in which such interaction could not occur.

Further, on each of the four occasions that the feature was pre-recorded, between one and three listeners attempted to interact with the programme. Ofcom noted that *The Classic 9 at 9* is a regular feature and listeners had attempted to contact the programme during two pre-recorded broadcasts, even when texts had not been actively solicited by the presenter. It therefore appeared that listener interaction had become part of the feature’s established format.

Broadcasters should be aware that if listener interaction has become part of the established format of a regular feature, as in this case, it is unlikely to be sufficient simply to avoid direct calls to action in a pre-recorded version of that feature. This is clearly evidenced in this case by the attempts of listeners on two of the four occasions to submit texts in the absence of calls to action.

Ofcom was also particularly concerned that, on all four occasions when *The Classic 9 at 9* was known to be pre-recorded, fictitious references were made on air to listeners who had supposedly contacted the programme. This was a severe and unacceptable breach of listeners’ trust. In particular, Ofcom noted that Radio Hartlepool is a community radio station, with key commitments (part of its licence) that describe it as “a not for profit voluntary organisation with charitable aims and objectives that positively promotes the communities of Hartlepool ... Radio Hartlepool is a project run by and for the people of Hartlepool”. The trust and involvement of the community is therefore of prime importance and this incident appears to have put that at risk.

The four pre-recorded broadcasts of *The Classic 9 at 9* therefore materially misled listeners, who believed they could pay to interact with the programme when they could not (as it had been pre-recorded), in breach of Rule 2.2 of the Code.

Ofcom has previously highlighted the issue of calls to action in pre-recorded radio programming in our published Findings as follows:

- *Saturday Early Breakfast* (on Dream 100 FM) – Broadcast Bulletin issues 103 (25 February 2008) and 115 (11 August 2008);

- *Overnight Hit Mix* (on Your Radio, West Dunbartonshire...) and *Saturday Night Warm-Up* (on NMG stations, Northern Ireland) – Broadcast Bulletin issue 127 (9 February 2009); and in addition,
- Note to Broadcasters: Calls to action in pre-recorded output broadcast ‘as live’ – Broadcast Bulletin issue 127 (9 February 2009).

These are available at: http://www.ofcom.org.uk/tv/obb/prog_cb/.

While we note the action taken by the broadcaster to avoid recurrence, it was a matter of concern to Ofcom that Radio Hartlepool had failed to note these previous Findings and our Note to Broadcasters in ensuring the compliance of its broadcast content.

As Ofcom has stated on numerous occasions, it expects its licensees to exercise extreme caution in the use of premium rate services, especially where there is the potential for the audience to be misled and suffer material harm in the form of financial loss. In this case, the number of listeners affected was minimal.

Nevertheless, it represents serious and repeated breaches of Rule 2.2, which may have also occurred previously on an unspecified number of occasions. This will be held on Radio Hartlepool’s record. Ofcom will also meet with Radio Hartlepool to discuss the compliance procedures it has in place. Ofcom will also consider further regulatory action in the event of any recurrence.

Breach of Rule 2.2

In Breach

Hit of the Hour

Sunrise Radio, 3 August 2009, 12:35

Introduction

Sunrise Radio offers a music, news and information service for the Asian community in Greater London.

Hit of the Hour is a regular feature sponsored by G&B Windows. On this occasion the presenter credited the sponsor by saying:

{in English:}...and of course that was our Hit of the Hour as well, which is brought to you in association with G&B Windows. And so seven windows and one opening, fully fitted, from only £1,399. {in Hindi:} With that, I'll give you their telephone number, {in English:} which is zero two zero eight, eight six seven, ninety-nine, fifty-five, or then you can also check them out on the web as well, which is GandBwindows.com."

A listener noted that the broadcaster had been found in breach of the Code for broadcasting a similar sponsorship credit.¹

We asked Sunrise Radio for its comments with regard to Rule 9.9 of the Code, relating to sponsorship credits on radio, which states:

"Credits must be short branding statements. However, credits may contain legitimate advertising messages."

The Code also states that one of the Principles of the sponsorship rules is "to maintain a distinction between advertising and sponsorship".

Response

Sunrise Radio said that, following guidance it had received from Ofcom after its previous breach of the Code, the broadcaster had considered its revised sponsor credits acceptable for broadcast. However, having now sought clarification from Ofcom, Sunrise Radio apologised for any misunderstanding on its part, adding that it was confident that its further revised sponsor credits were now compliant with the Code.

The broadcaster said it is "committed to remain both within the letter and the spirit of the rules."

Decision

The primary purpose of a sponsor credit is to inform listeners of the sponsorship arrangement. Nevertheless a sponsor credit on radio should be brief.

Sponsor credits on radio tend to last less than ten seconds. They:

¹ *Hit of the Hour*, Broadcast Bulletin issue number 137 (6 July 2009), at: http://www.ofcom.org.uk/tv/obb/prog_cb/obb137/

- state the name of the sponsor;
- identify the sponsored programming; and
- generally contain no more than two additional messages, both of which may be advertising (e.g. a sales message, contact number or web address).

A sponsor credit should not sound like a full advertisement, as stated in Ofcom's guidance to Rule 9.9.²

We note that, by removing some promotional material, including a direct call to action, Sunrise Radio had revised the content of the sponsor credit that Ofcom had previously found in breach of the Code. Nevertheless, as before, the sponsor credit lasted almost twenty seconds and, in addition to naming the sponsored feature and the sponsor, the information provided comprised:

- full details of a specific window package (i.e. *"seven windows and one opening, fully fitted, from only £1,399"*);
- the sponsor's contact telephone number (*"[in Hindi:] With that, I'll give you their telephone number, [in English:] which is zero two zero eight, eight six seven, ninety-nine, fifty-five"*); and
- the sponsor's website address (*"you can also check them out on the web as well, which is GandBwindows.com"*).

Ofcom took into account the licensee's attempts to revise the credits following the previous finding, but despite this, Ofcom considered that the sponsor credit still sounded more like a full advertisement than a brief branding statement. The sponsor credit was therefore in breach of Rule 9.9 of the Code.

In the light of additional guidance now given to the licensee, Ofcom expects future sponsorship credits broadcast by Sunrise Radio to comply with the Code. We may consider further regulatory action in the event of any recurrence.

Breach of Rule 9.9

² Guidance to Section Nine of the Code, at:
<http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/guidance9.pdf>

In Breach

Promotional messages throughout programmes

AT; 11 July 2009, 19:00, 22 July 2009, 00:00, 23 July 2009, 18:00 and 26 July 2009, 22:25

Introduction

AT provides a general entertainment television service broadcast in Urdu and English.

Three viewers contacted Ofcom about the content of scrolled promotional messages during various programmes on 11, 22 and 26 July 2009. The complainants were concerned that the services promoted on screen appeared to have had no relevance to the programmes in which they were being promoted.

Under condition 11 of its licence to broadcast, a satellite or cable television broadcaster must ensure that recordings of its output are retained for 60 days after transmission and must provide Ofcom with any such material upon request.

The broadcaster was unable to provide recordings of the output required by Ofcom. We therefore sought AT's comments with regard to condition 11 of its licence to broadcast.

Ofcom also monitored AT's output between 18:00 and 20:30 on 23 July 2009. The programming comprised drama, programme trails, cookery and extended presenter discussion. One or both of the following captions were scrolled throughout this period:

- an advertisement that appeared not to be clearly separated from the programme. A caption stated: *"Off air consultation for Rishta/marriages: 0906 635 8269 Off air consultation for family problems: 0906 635 8269 * (call charged at £1.50 per minute from BT landline, other networks may vary, callers must be 18 or over and have bill payer's permission)"*; and
- an advertisement separated (in a banner) from the programming, which stated: *"* Contribute generously to get sawab or religious mahafilis every month Contact: 07525843113 or 07971923088 * AT Global (Harmony TV) Bank: HSBC Sort Code: 40-08-33 Account #21412841 * For further information contact: 07525843113 or 07971923088 * E-mail: info@atchannel.tv *"*

Rule 10.2 of the Code states that "broadcasters must ensure that the advertising and programme elements of a service are clearly separated."

As the first of the above scrolled advertisements appeared not to be clearly separated from programmes (by, for example, being placed in a banner), we sought the broadcaster's comments on the matter with regard to Rule 10.2 of the Code.

Rule 4 of the Code on the scheduling of television advertising ("COSTA") states, among other things, that: "...time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes..."

As one or both of the above advertisements appeared on screen throughout almost the entire two and a half hour period monitored by Ofcom, we sought AT's comments with regard to Rule 4 of COSTA.

Response

With regard to the retention and supply of recordings required by Ofcom, AT said that a recent employee, which it described as "an expert in [the] technical/broadcasting field", had left the organisation, taking with him the channel's recording equipment and recordings. The broadcaster added that these materials had not been returned to the broadcaster and it had therefore reported the matter to the police.

With regard to the material scrolled throughout the period monitored by Ofcom, AT said that it had now stopped all scrolled promotions and, should it wish to reintroduce the broadcast of such material, it would seek further guidance from Ofcom.

The broadcaster added that the scrolled advertisement for the "*off air consultation for Rishta/marriages*" had been intended for broadcast only during commercial breaks. It believed that the employee, above, may have deliberately broadcast the message over programmes to cause a breach of the Code.

AT said that the scrolled appeal for viewers to "*contribute generously to get sawab or religious mahafils...*" was not an advertisement, but a request for its audience to contribute voluntarily towards a monthly religious event run by the channel.

Decision

It is a condition of an Ofcom licence that broadcasters must ensure they have robust compliance procedures in place. AT did not appear to have done so.

Ofcom notes the circumstances described by the broadcaster and, in particular, the reason for its failure to retain and provide recordings required by Ofcom. However, compliance is a primary function in running a television service licensed by Ofcom and such a failure severely hampers Ofcom in carrying out its statutory duties. The broadcaster was therefore in breach of licence condition 11, which requires it to ensure that recordings of its output are retained for 60 days after transmission and provided to Ofcom upon request.

Ofcom agrees that the scrolled advertisement for the "*off air consultation for Rishta/marriages*" should have been broadcast only in commercial breaks. However, irrespective of whether they may have been deliberately superimposed over programmes by a specific individual, the broadcast of the advertisement in this way had occurred throughout almost two and a quarter of the two and a half hours of the output Ofcom monitored. Also, Ofcom notes that this was the same issue raised by the complainant concerning material broadcast by AT on 26 July 2009, which we had been unable to view. However, on the evidence of Ofcom's monitored output alone, AT appeared to have broadcast a scrolled advertisement (over a sustained period) during programmes, from which it was not clearly separated (by, for example, being placed in a banner), in breach of Rule 10.2.

Ofcom accepts that the scrolled appeal to "*contribute generously to get sawab or religious mahafils*" was a request for viewers to contribute voluntarily towards a monthly event run by the channel. We note AT's view that this was not an advertisement. In programmes, a broadcaster may conduct charity appeals or appeal for funds to produce programmes or run its service. The output in this case was not a

charity appeal or a request by AT for funds to produce programmes or run its service. It was a request for donations to fund a regular religious event that was not connected with AT's broadcast function. The output was therefore an advertisement. However, while it was scrolled for almost an hour and three-quarters of the two and a half hours of the output Ofcom monitored, it was separated from programmes by being placed in a banner across the screen.

One or both of the advertisements under investigation were broadcast throughout almost all the output Ofcom monitored. Rule 4 of COSTA restricts the time devoted to television advertising (and teleshopping spots) to 12 minutes in any hour. AT broadcast a number of brief commercial breaks during the period monitored by Ofcom. However, aside from these, the two scrolled advertisements were each broadcast for periods in excess of 12 minutes in any single clock hour, in breach of Rule 4 of COSTA.

Ofcom notes the action taken by AT to avoid recurrence and will provide the broadcaster with further guidance if required.

Breach of Licence Condition 11 (Retention and production of recordings)
Breach of Rule 10.2 of the Code
Breach of Rule 4 of COSTA

In Breach

Ghosts of the Asylum

The Unexplained, 13 August 2009, 20:00

Introduction

Ghosts of the Asylum is a documentary-style entertainment programme that followed paranormal investigators Karl Beattie and Geoff Adams during their ten-week exploration of a derelict children's asylum and its surrounding estate. During their first night on the site, Karl and Geoff separated to examine the estate's church and nearby grounds. During the programme, Karl used the word "fuck" on three occasions.

Ofcom received two complaints from viewers who were concerned about this language being broadcast before the watershed. Ofcom asked The Unexplained channel for comment with regard to Rule 1.14 (the most offensive language must not be broadcast before the watershed).

Response

The Unexplained apologised for the broadcast of this language before the watershed. It explained that this was a mistake and that the wrong, 'un-bleeped' version of the programme was broadcast instead of one that had been appropriately edited for this time.

The Unexplained advised Ofcom that in light of these complaints it planned to introduce new procedures to ensure two individuals from the channel's production team review all programmes prior to transmission to ensure that such an incident is not repeated in the future.

Decision

The Code clearly states that the most offensive language must not be featured before the watershed. Ofcom considers 'fuck' to be one of the most offensive forms of language.

Ofcom acknowledged the broadcaster's apology and that The Unexplained has reviewed its compliance procedure in light of this complaint. However, Ofcom was concerned that the channel's compliance procedure did not effectively identify the strong language before it was broadcast.

Breach of Rule 1.14

In Breach

Radio Mast FM

Radio Mast FM, 20 July 2009, 9:30 and 22 July 2009, 13:40

Introduction

Radio Mast FM (Mast FM) was a temporary radio service (restricted service licence) which broadcast in Bristol from 9 July to 5 August. A listener complained that a presenter's reading of advertisers' messages was in breach of Section 10 of the Ofcom Broadcasting Code (commercial references). Ofcom asked Mast FM for a recording of the programmes to assess the content.

Response

Mast FM explained that it was unable to obtain the recordings from their logging facility. It said its studio output was usually saved automatically, but it was believed that some hours worth of output, including the dates requested, had been deleted due to power interruptions caused by neighbouring building works.

Decision

In the absence of a recording we were unable to consider the complaint. It is a condition of all radio broadcasters' licences that recordings of their output are retained and provided to Ofcom on request "forthwith". The failure of Mast FM to meet these requirements is a serious and significant breach of the conditions of its licence. This breach will be held on record.

Breach of Licence Condition 8 (Part 2 General Conditions) of restricted service licence

Not In Breach

Wife Swap

Channel 4, 21 June 2009 at 20:00

Introduction

Wife Swap is a reality television programme which shows couples from different backgrounds exchanging lives and families for ten days.

This episode featured two women, Kerry Murphy and Kelly Moyston. Kerry Murphy was introduced to viewers as a “37 year old hairdresser” who “lives in Rotherham with her husband Tim and his sixteen year daughter Paige from a previous marriage”. The programme continued that “Kerry is a perfectionist and when she is not at work she is working on her appearance, and when she is not doing that she spends every second making her five bedroom house look perfect”. Kerry described herself as living her life at “110 miles per hour”.

Kelly Moyston was introduced to viewers as a “22 year old mum” who “lives in Bristol with her 39 year old fiancé, Steve, and their 18-month-old daughter, Georgina, in a tiny two bed council maisonette”. Kelly told viewers that she is “lazy” and the programme explained that “although bus driver, Steve, works long shifts, he is expected to do all the housework and she [Kelly] sleeps in most days until lunchtime”.

This episode showed the two women swap their “husband’s, homes and families to find out what they can learn from each other’s lives”. The programme asked:

“What happens when a perfectionist wife learns to fight dirty? How does a lazy mum cope with a punishing routine? And what happens when bringing up baby changes your life?”

During the programme viewers were shown Kerry arriving at Kelly’s home, where she found a dirty microwave, cigarette ends by the bathroom sink and a dirty cat litter tray, which Kerry said “smells really bad”. She is then shown reading from the household manual, which was left by Kelly as a guide on how to run her home and life. This explained that Kelly “hates routine” and “I get up when I want, which is usually between 11:30 and 13:00”. Kerry continued to read that “me [Kelly] and Georgina rarely eat breakfast and when I wake up I just have a fag. If we do it will be a packet of crisps”. During the introduction to the programme, before the swap, Georgina is shown eating crisps and chips given to her by her parents. The first half of the programme shows the swap between the ‘wives’ and Kerry having to live by Kelly’s rules. During this section of the programme Georgina is shown eating chocolate and crisps given to her by her father, Steve, and Kerry is shown trying to stay in bed until lunch time while Georgina is also asleep. When Georgina wakes up at 13:05 Kerry gets up to change her nappy and comments that her nappy is wet.

Ofcom received 55 complaints from viewers who were concerned by what they felt was neglectful treatment of 18-month-old Georgina during the programme. In particular, complainants were concerned that Georgina was left in her cot until midday in a wet nappy; lived in an unhygienic environment; and was fed a poor diet. Some complainants said that Channel 4 had a responsibility of care for the child and

should have intervened during the making of the programme. Complainants also said that Channel 4 should have reported Kelly's family to social services.

Ofcom asked Channel 4 to provide all relevant background information and formally comment on the issues raised with regard to the following rules of the Code:

Rule 1.26: "Due care must be taken over the physical and emotional welfare and the dignity of people under eighteen who take part or are otherwise involved in programmes. This is irrespective of any consent given by the participant or by a parent, guardian or other person over the age of eighteen in loco parentis."

Rule 1.27: "People under eighteen must not be caused unnecessary distress or anxiety by their involvement in programmes or by the broadcast of those programmes."

Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context."

Response

Channel 4 said that "*Wife Swap* is a lifestyle format that examines and contrasts different lifestyles by swapping a key member from each family – the "wife". *Wife Swap* gets right to the heart of the way people live, celebrating and exploring the diverse choices different people make about how to live their lives, including their values; spending priorities; what they expect of their partners and family; how they divide up the parenting and comparative parenting skills, the shopping, the housework; how much or how little they go out; what role food plays in their lives; what they want from their social life; and how they spend their money." It continued that "one of the programme's aims is to better educate households so they might learn something constructive from each other".

Rule 1.26

Channel 4 said that it and RDF Media Limited ("RDF"), the production company who made the programme, took its obligations regarding the welfare of Georgina seriously. It stated that a robust selection process was undertaken before selecting the families for the programme. It said that Kelly Moyston stated she wanted to take part "to experience a change in the way family life is run" and to "get Georgina into a set routine".

Channel 4 continued that, after a home visit by two producer/directors, who are both parents, it was clear that Georgina was a "very loved, happy and well-balanced girl". It said that Kelly and Steve's mothers were regular visitors to the house and Georgina was kept clean at all times and regularly fed. It stated that a report was also given on the family by an experienced and BACP (British Association of Counselling and Psychotherapy) accredited psychotherapist, which indicated that there was no cause for concern for Georgina's welfare. The report also noted that Georgina is a "very outgoing, friendly, happy little girl" and that she "showed no shyness" and would "adapt to a new situation very easily and quickly". Kelly and Steve also confirmed to Channel 4 that social services had not been involved with the family or Georgina. Channel 4 said that based on this information it was decided that the family were suitable to take part and that the programme would be helpful to them.

Before filming took place, Channel 4 said that all members of the production team had background checks and were briefed on issues relating to the Protection of

Under-18s, and internal child protection policies were followed. It continued that a “responsible producer/director who is a mother to young girls was chosen to produce and direct in the Moyston/Jones home as it was felt she would be the most appropriate person to do so”. It also said the cameraman is a father and that Kelly had arranged for her mother to be available during filming.

Channel 4 said that a member of the production team was always present throughout the swap and the Producer/Director spoke to the Series Producer or Executive producer each day to keep them informed of any issues or concerns. It stated that in the event no issues were raised. It continued that a member of the production team stayed at the house over night and a member of the team would have intervened and/or assisted if required. It said that an additional camera was set up in Georgina’s room which ensured that, without needing to disturb her, she could be monitored.

Channel 4 stated that “at no stage was Georgina in any physical danger or risk and emotionally, as was apparent in the programme, Georgina appeared to be a very happy and content baby”. It stated that the producers did not witness any evidence of neglect during the period they filmed with the family and that there has been no intervention by social services following transmission of the programme.

Rule 1.27

Channel 4 said that it did not believe Georgina suffered or experienced any distress or anxiety as a result of her involvement in the programme. It said that it was not necessary or appropriate for the production team to have intervened with the care of Georgina and any intervention would only have been warranted if she had been at real risk of physical or emotional harm, which was not witnessed by the producers.

Rule 2.3

Channel 4 said that *Wife Swap* is a well established programme now in its 11th series in the UK. It said that the series has previously featured a range of social, cultural and personal backgrounds and viewers are familiar with the concept and likely content to be expected. It said that the context of what occurs during the swap is, ultimately, a change for the better.

Channel 4 said that there were numerous references in the programme showing Georgina to be a well loved and cared for child. It continued that six weeks after the end of the swap the families were re-visited and viewers were informed that the family had moved into a bigger flat and were making an effort to keep it “*spic and span*”. Kelly also told viewers that “*Georgina gets up early in the morning now and we get up with her...do her breakfast whether it’s egg on toast or just toast with jam*”.

Channel 4 said that viewers were adequately informed that the child was not in any way at risk and this would have minimised any offence that may have been taken by viewers. It also said that whilst it accepted that aspects of Kelly and Steve’s parenting were likely to attract some disapproval from viewers, it did not accept that this went beyond generally accepted standards and the material was shown in context.

Decision

Ofcom recognises the sensitivities in such issues related to appropriate and safe child care, and understands the offence that may be caused to viewers who witness approaches to parenting that do not accord with their own views and practices.

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for the content of television programmes with which broadcasters must comply. These

standards are set to secure certain objectives set out in the Act including the protection of under eighteens and that generally accepted standards are applied to content so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material.

Ofcom considers the standards it has set for the protection of children to be amongst the most important in the Code. These rules are aimed at preventing children suffering any unnecessary distress or anxiety as a result of being involved in a programme or by its broadcast; requiring that broadcasters take due care over the physical and emotional welfare of children who take part or are otherwise involved in programmes. However, it should be noted that Ofcom's role does not extend to investigating allegations of potential child abuse, which is of course the role of the relevant authorities.

The Communications Act 2003 requires Ofcom to have regard to certain matters when setting the standards in its Code; particularly when applying generally accepted standards so that the public is adequately protected from offensive or harmful material. Ofcom must have regard to the need for standards to be applied in a manner that best guarantees an appropriate level of freedom of expression. This is in terms of both the broadcaster's right to impart information and ideas and the right of the audience to receive them. These rights are enshrined in the European Convention of Human Rights incorporated within the Human Rights Act 1998. Accordingly, Ofcom must exercise its duties in light of these rights and not interfere with the exercise of these rights in broadcast services unless it is satisfied that the restrictions it seeks to apply are required by law and necessary to achieve a legitimate aim.

Rules 1.26 and 1.27

Ofcom appreciates that some of the child care methods shown during the programme may not be considered best practice. Ofcom therefore considered the steps taken by the broadcaster and the programme makers to ensure that due care was taken over the physical and emotional welfare of and dignity of the child involved and that she was not caused any unnecessary distress.

Ofcom notes, in particular, that Channel 4 implemented a number of measures before filming began to ensure that the Moyston/Jones family were suitable for the programme and that Georgina was well cared for. Ofcom notes in particular that an accredited psychotherapist assessed the family before they were selected and indicated there was no cause for concern, and that Georgina was a "very outgoing, friendly, happy little girl". Channel 4 also carried out home visits in order to make its own assessments. In Ofcom's opinion, Channel 4 gave careful consideration towards the choice of the Moyston/Jones family. There was no evidence to suggest that the family should not have taken part in the programme.

Further, Ofcom recognises that during filming a number of safeguards were put in place by the broadcaster to ensure the welfare of Georgina. These were set out in detail by Channel 4 in its response and are summarised above. Such safeguards included ensuring that Georgina's grandmother was available to provide additional support and childcare while filming and that an appropriate Producer/Director and cameraman were chosen to direct and film the family. Ofcom notes that the Producer/Director spoke to the Series Producer or Executive producer each day to keep them informed of any concerns they may have had. Ofcom also took into account that a member of the production team was always present throughout the swap and stayed at the house over night, and that a camera was set up in Georgina's room to monitor her behaviour.

With regard to specific aspects of Georgina's care, Ofcom notes that on the occasions when Georgina was left in a wet nappy she did not appear to be distressed. Further, as is not uncommon with babies, Georgina's wet nappy was changed as soon as she woke up. In Ofcom's opinion, given the safeguards in place, she was not at risk of material physical or emotional harm. We also accept that Georgina's diet, although arguably inappropriate at times, did not appear to result in any harm to or distress for Georgina, who came across as a healthy and happy child. The programme also did not encourage, condone or create the circumstances for the diet which Georgina was given. In addition, Georgina was shown a number of times drinking milk from a baby bottle and eating yoghurt and banana for breakfast, which was already in the family fridge. With regard to the conditions of the family's flat, Ofcom took into account that this would have been assessed by the programme and the psychotherapist during the selection process and we did not find any evidence to suggest that the conditions would have been harmful for Georgina.

As part of its considerations, Ofcom also took into account that *Wife Swap* has an observational format, with an editorial purpose of allowing people, such as Kerry, to implement changes which they believe will improve another family's lifestyle. Therefore the intention of the programme was that Kelly and Steve's lifestyle might benefit from Kerry's more structured approach. In Ofcom's view, the programme first 'documented' how Georgina was cared for, so as to then demonstrate what changes might result from the swap. The broadcaster was therefore initially observing the child's *existing* upbringing, as created by her real parents, before the swap occurred. Importantly the broadcaster had not created the environment in which Georgina was living and being filmed. In Ofcom's opinion, the accurate observation and reporting of the Moyston/Jones family lifestyle, before the changes implemented by Kerry, was a fundamental element of the programme and such an approach is not uncommon in documentary programmes or news reports. Given this, Ofcom considered that intervention by Channel 4 regarding the conditions of the house and the routine of the family would only have been necessary if Georgina had been at risk or due care was not being taken over her welfare.

Ofcom also considered that as a result of the programme a number of improvements were made to the lifestyle of the Moyston/Jones family. In particular, changes were made to Kelly and Steve's parenting and the environment they lived in, as set out in further detail below.

In light of the above, Ofcom considered that the broadcaster gave careful and appropriate consideration towards the welfare of Georgina during the making of the programme and sought relevant independent advice. Further, Ofcom notes that Channel 4 confirmed that there has been no intervention by social services either before filming or following transmission of the programme.

Given this, Ofcom has seen no evidence to suggest that due care was not taken over the physical and emotional welfare of Georgina, or that she was caused unnecessary distress or anxiety. Therefore the programme was not in breach of Rules 1.26 and 1.27.

Rule 2.3

Ofcom appreciates that the child care methods shown during the programme could be considered offensive by some and therefore required justification by the context. Ofcom took into account that *Wife Swap* is an established programme that has a well known format of taking two 'wives' who have contrasting lifestyles and swapping their lives in order to learn from one another. It is now well-established that the

programme records the reality of the participant's lives before the swap. This is in order for the audience to understand how the participants live and how their lives might change as a result of the experience. The circumstances in which the families lived were not of the broadcaster's making, but in fact existed before the cameras were there. In this particular episode the two women were complete opposites with regard to how they run their homes. The pre-broadcast information provided by Channel 4 said: "*First on 4, a lazy lump and a super mum clash on Wife Swap*".

Ofcom took into account that throughout the programme Georgina was never shown to be left alone and always had an adult with her or nearby. Further, when Georgina was asleep in her cot there was a camera in her room to monitor her. Georgina also appeared happy during the programme and was not distressed at any point. In Ofcom's view there were a number of other points throughout the programme where the broadcaster clearly indicated that Georgina was being properly cared for. In particular, Ofcom notes that when Georgina had a wet nappy viewers were shown Kerry going to her as soon as she woke up to be changed. During the programme Kerry commented a number of times on the happiness of Georgina, stating that "*she's happy as Lally [sic] and gorgeous. I thought all children just screamed but Georgina's fabulous*". In addition, during the swap Kerry did not agree to feed Georgina crisps for breakfast and she was instead fed yoghurts and fruit already available in the house. This served to emphasise what was a preferable diet for the baby and that; in fact, intervention into Georgina's life had had some positive effects.

Kelly told viewers during the programme that Georgina's father, Steve, does all the cooking in their home. Steve is also shown cooking during the swap and preparing Georgina's dinner in the kitchen. Therefore viewers would have been made aware that the family had home cooked meals. Kelly also stated at the end of the programme that she did not give Georgina a packet of crisps every single morning and that she knew the difference between what is healthy and unhealthy food. Georgina was also shown on a number of occasions being fed milk from a bottle.

Ofcom notes that although the programme focused on the untidiness and clutter of the Moyston/Jones home it also informed viewers that Kelly's fiancé did all the housework and Kelly herself said that "*Steve is the only one who does any cleaning*". Therefore viewers would have been aware that the house was cleaned by a member of the family. Ofcom also took into account that as a result of the swap the house was thoroughly cleaned and organised by Kerry and by Kelly's fiancé, Steve.

Ofcom took into account that at the end of the programme viewers were informed that the swap had provided a positive effect on the Moyston/Jones family, which was the purpose of the programme. Further, viewers would have seen that the programme resulted in a change for the better with regard to Georgina's upbringing. Kelly said for example that she was "*willing to make a lot of changes*" in terms of her lifestyle and parenting and that she had been "*taught a bit of a lesson*". She was then shown six weeks later having put these changes into practice. For example she: set a routine for Georgina; improved Georgina's diet; kept the house tidy; and ensured more quality family time outside of the house. Steve also said the experience has been "*a good influence on her*".

In light of the above, Ofcom concluded that given the editorial purpose of *Wife Swap*, the programme was justified to highlight the potentially problematic and negative aspects of Kelly's lifestyle and parenting. Ofcom also considered that although not all of the safeguards implemented by the programme to ensure Georgina's welfare were stated to viewers, given the context of this particular programme, there was adequate information provided in the broadcast regarding Georgina's welfare to reassure

viewers that she was being appropriately cared for. Therefore, in Ofcom's view the material broadcast which caused offence to some viewers would not have exceeded the likely expectation of the vast majority of the audience and was justified by the context. Given this, Ofcom considered that generally accepted standards were applied in this instance and the programme did not breach Rule 2.3.

Not in breach of Rules 1.26, 1.27 and 2.3

Other Programmes Not in Breach

Up to 22 September 2009

Programme	Transmission Date	Broadcaster	Categories	Number of complaints
9/11 Conspiracies	06/09/2009	National Geographic	Due Impartiality/Bias	1
9/11: 102 Minutes That Changed America	07/09/2009	Channel 4	Advertising	1
9/11: 102 Minutes that Changed America (trailer)	04/09/2009	More4	Generally Accepted Standards	1
A Room With A View	15/09/2009	Film4	Sex/Nudity	1
Absolution With Tim Shaw	11/09/2009	Absolute Radio	Generally Accepted Standards	1
Agatha Christie's Marple	13/09/2009	ITV1	Advertising	1
All New Generation Sex	02/08/2009	Fiver	Sex/Nudity	1
Are You Smarter Than a Ten-Year-Old?	03/09/2009	Sky Two	Generally Accepted Standards	1
Balls of Steel	30/08/2009	4Music	Dangerous Behaviour	1
BBC News	07/09/2009	BBC News Channel	Crime (incite/encourage)	1
BBC News	15/09/2009	BBC1	Violence	1
Benefit Busters	03/09/2009	Channel 4	Offensive Language	1
Betfair World Series of Poker Europe	29/07/2009	Channel 4	Commercial References	1
Big Brother's Little Brother	02/08/2009	Channel 4	Offensive Language	1
Big Fight Live	05/09/2009	ITV4	Generally Accepted Standards	1
Bin The Banger Competition	28/08/2009	Real Radio NW	Competitions	1
Breakfast	17/09/2009	BBC 1	Offensive Language	1
Breaking Bad	06/09/2009	TV8 Sweden	Advertising	1
Channel 4 News	08/09/2009	Channel 4	Generally Accepted Standards	1
Christian O'Connell Breakfast Show	29/07/2009	Absolute Radio	Offensive Language	20
Coronation Street	24/08/2009	ITV1	Animal Welfare	1
Coronation Street	14/09/2009	ITV1	Animal Welfare	1
Coronation Street	11/09/2009	ITV1	Generally Accepted Standards	1
Coronation Street	14/09/2009	ITV1	Substance Abuse	1
Deadliest Catch	14/09/2009	Discovery Channel	Advertising	1
Derren Brown	09/09/2009	Channel 4	Unconscious influence/hypnosis/subliminal	1
Derren Brown: How to Control The Nation	18/09/2009	Channel 4	Generally Accepted Standards	1
Derren Brown: How To Win The Lottery	11/09/2009	Channel 4	Animal Welfare	1
Derren Brown: How To Win The Lottery	11/09/2009	Channel 4	Generally Accepted Standards	19
Derren Brown: How To Win The Lottery	11/09/2009	Channel 4	Inaccuracy/Misleading	9
Dispatches	07/09/2009	Channel 4	Generally Accepted	1

			Standards	
Doctors	02/09/2009	BBC 1	Generally Accepted Standards	1
Doctors	08/09/2009	BBC 1	Sex/Nudity	2
EastEnders	10/09/2009	BBC 1	Violence	1
Emmerdale	10/09/2009	ITV1	Generally Accepted Standards	1
Emmerdale	16/09/2009	ITV1	Religious Offence	2
Emmerdale	03/09/2009	ITV1	Violence	2
Everybody Hates Chris	28/08/2009	Comedy Central	Offensive Language	1
Fifth Gear	19/09/2009	Five	Sex/Nudity	1
Football	20/09/2009	Sky Sports 1	Due Impartiality/Bias	1
Foxy Bingo sponsorship of The Jeremy Kyle Show	n/a	ITV1	Generally Accepted Standards	1
Fresh Hits	16/09/2009	Brit Asia TV	Dangerous Behaviour	1
GMTV	09/09/2009	ITV1 London	Other	1
Heartbreakers	23/08/2009	Heart 97.1 Ipswich	Undue Prominence	1
Hell's Kitchen USA	14/09/2009	ITV2	Offensive Language	1
Hollyoaks	17/09/2009	Channel 4	Generally Accepted Standards	1
Hollyoaks	14/09/2009	Channel 4	Violence	1
Hollyoaks	16/09/2009	Channel 4	Violence	1
Hollyoaks	n/a	Channel 4 / E4	Violence	1
ITV News	01/09/2009	ITV1	Due Impartiality/Bias	1
ITV News	10/09/2009	ITV1	Violence	1
Jamie's American Road Trip	08/09/2009	Channel 4	Animal Welfare	1
Jamie's American Road Trip	08/09/2009	Channel 4	Generally Accepted Standards	1
Jez Welham	27/08/2009	Kiss 100	Offensive Language	1
Jilly Cooper's Man Who Made Husbands Jealous	23/08/2009	True Entertainment	Offensive Language	1
Katy Brand's Big Ass Show	10/09/2009	ITV2	Generally Accepted Standards	3
Katy Brand's Big Ass Show	12/09/2009	ITV2	Generally Accepted Standards	1
Keith Meets Keith	14/09/2009	Channel 4	Generally Accepted Standards	4
Keith Meets Keith	14/09/2009	Channel 4	Offensive Language	7
Ken Bruce / Jeremy Vine	03/09/2009	BBC Radio 2	Generally Accepted Standards	1
Land Girls	07/09/2009	BBC 1	Violence	1
Land Girls	11/09/2009	BBC 1	Violence	1
Lee Mack Live	19/09/2009	More4	Offensive Language	1
Lily Allen "The Fear"	06/09/2009	4Music	Offensive Language	1
Little Britain	17/11/2005	BBC2	Generally Accepted Standards	1
Live Daytime Chat from 'The Pad'	28/07/2009	Tease Me 3	Sex/Nudity	1
Loose Women	09/09/2009	ITV1	Generally Accepted Standards	1

Loose Women	14/09/2009	ITV1	Sex/Nudity	1
Lunchtime Show	11/09/2009	Pennine FM 107.9	Sex/Nudity	1
Maltesers sponsorship of Loose Women	15/09/2009	ITV1	Generally Accepted Standards	1
Mars sponsorship of Friends	n/a	E4	Sex/Nudity	1
Matthew Bannister	20/08/2009	BBC Radio 2	Generally Accepted Standards	1
Mike Graham	05/09/2009	Talksport	Due Impartiality/Bias	1
Nasheed	01/09/2009	Hidayat TV	Violence	1
News at Ten	10/09/2009	ITV1	Violence	1
Phineas and Ferb	15/09/2009	Disney Channel	Offensive Language	1
Project Runway (trailer)	15/09/2009	Sky1	Offensive Language	1
Quest on Business	03/06/2009	CNN	Commercial References	1
Red Hot Amateurs	07/09/2009	Red Hot TV	Sex/Nudity	1
Reno 911!	04/09/2009	E4	Generally Accepted Standards	1
Rosemary and Thyme	16/09/2009	ITV1	Offensive Language	5
Rough Guide to Cities	15/09/2009	Five	Dangerous Behaviour	1
Saathiya	28/08/2009	SET MAX	Undue Prominence	1
Sarah Silverman: Jesus Is Magic	03/09/2009	Channel 4	Generally Accepted Standards	1
Sex in the Ancient World (trailer)	19/09/2009	History	Sex/Nudity	1
Skins	17/02/2009	E4	Dangerous Behaviour	1
Skins	22/01/2009	E4	Generally Accepted Standards	1
Skins	18/02/2009	Channel 4	Substance Abuse	1
Skins (trailer)	11/02/2008	Channel 4	Generally Accepted Standards	1
Skins (trailer)	n/a	Channel 4	Substance Abuse	1
Star Plus	n/a	Star Plus	Advertising	1
Steve Wright in the Afternoon	11/09/2009	BBC Radio 2	Generally Accepted Standards	1
The Big Questions	13/09/2009	BBC 1	Generally Accepted Standards	1
The Breakfast Show	07/08/2009	BBC Radio London	Generally Accepted Standards	1
The Fixer	15/09/2009	ITV1	Violence	1
The Inbetweeners	08/05/2009	Channel 4	Generally Accepted Standards	2
The Inbetweeners	09/04/2009	E4	Generally Accepted Standards	1
The Inbetweeners	01/05/2009	E4	Generally Accepted Standards	1
The Jeremy Kyle Show	14/09/2009	ITV1	Generally Accepted Standards	1
The Jeremy Kyle Show	18/09/2009	ITV1	Generally Accepted Standards	1
The Jerry Springer Show	09/09/2009	Living2	Generally Accepted Standards	1
The One Show	18/09/2009	BBC 1	Generally Accepted Standards	1

The Sex Life of Twins	13/09/2009	Living 2	Generally Accepted Standards	1
The Wright Stuff	21/09/2009	Five	Generally Accepted Standards	1
The Wright Stuff	11/09/2009	Five	Sex/Nudity	1
The X Factor	20/09/2009	ITV1	Crime (payment)	1
The X Factor	12/09/2009	ITV1	Generally Accepted Standards	1
The Xtra Factor	12/09/2009	ITV2	Generally Accepted Standards	1
This Morning	10/09/2009	ITV1	Generally Accepted Standards	5
Tough Guy or Chicken?	10/09/2009	BBC 3	Substance Abuse	1
Trailers	19/09/2009	ITV1	Violence	1
True Stories: Nursery University (trailer)	07/09/2009	Channel 4	Generally Accepted Standards	1
UEFA Champions League Live	26/08/2009	ITV1	Crime (incite/encourage)	1
Watchdog	17/09/2009	BBC 1	Generally Accepted Standards	1
Waybuloo	04/09/2009	CBeebies	Sex/Nudity	1
Welcome to Yorkshire sponsors ITV3 Peak	03/09/2009	ITV3	Violence	1
Westwood with Goldfinger	05/09/2009	BBC Radio 1	Offensive Language	1
What Katie Did Next	10/09/2009	ITV2	Dangerous Behaviour	1
World Cup Qualifier	09/09/2009	ITV1	Generally Accepted Standards	1
Wuthering Heights	30/08/2009	ITV1	Advertising	1
Wuthering Heights	31/08/2009	ITV1	Advertising	2