

Ofcom broadcast bulletin

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Introduction

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

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

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

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

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

Standards cases

In Breach

Perfect Match,

The Baby Channel, 20 August 2006, 21:00

Introduction

Throughout *Perfect Match*, a programme following the dating experiences of some individuals in the United States, the Baby Channel broadcast a digital on-screen graphic (“DOG”), which alternated between two web addresses, www.babychanneltv.com and www.babychannelshop.com.

A viewer complained that www.babychannelshop.com was the address of a commercial baby-goods shopping operation and the DOG in question was therefore in breach of Ofcom’s rules on promotion of commercial activities within programmes. In addition, the viewer felt that the graphic itself was distracting, being bright and frequently changing, and that it obscured graphics of the screened programme. The viewer also complained that the DOG appeared during an advertisement but not in other breaks. He felt this suggested that the channel condoned or promoted the particular service being advertised.

Section Ten of the Broadcasting Code (“the Code”) contains rules to ensure that:

- ◆ the independence of editorial control over programme content is maintained and that programmes are not distorted for commercial purposes; and,
- ◆ the advertising and programming elements of a service are clearly separated.

Rule 10.3 states: “Products and services must not be promoted in programmes. This rule does not apply to programme-related material.”

Rule 10.4 states: “No undue prominence may be given in any programme to a product or service.”

Response

The broadcaster confirmed that the channel displayed a DOG featuring its “main web addresses during all programmes, 24/7”. It advised that this DOG rotated every ten seconds between www.babychanneltv.com and www.babychannelshop.com.

The broadcaster argued that the mere presence on screen of its web addresses, which it described as its ‘home pages’, could not be defined as promotion of commercial activities within programmes. It said that there was no exhortation to viewers during the programmes to engage in commercial activities, and that it was common practice amongst other broadcasters to display their website addresses during their output.

The broadcaster also said that, in common with other broadcasters, its websites contained retailing and commercial activities as well as content, and that “it would be overly simplistic to draw an artificial distinction between www.babychanneltv.com being a ‘content’ site and www.babychannelshop.com being a ‘retail’ site.” The

broadcaster also pointed out that the content of both websites had changed on 1 September 2006, i.e. after the broadcast of *Perfect Match*.

The broadcaster advised that the DOG was 'off' during advertisements and 'on' during all programmes. It also said that the www.babychannelshop.com address was featured in four TV advertisements selling DVDs for some of the channel's programmes.

The broadcaster said that the DOG referred to by the viewer could not be resized or moved around the screen during individual programmes, and its positioning did occasionally clash with text graphics that appeared in acquired programmes, such as *Perfect Match*.

Decision

One of the fundamental principles of European broadcasting regulation is that advertising and programming (that is editorial content) must be kept separate. This is set out in Article 10 of the Television Without Frontiers Directive which is in turn reflected in the rules in Section Ten (Commercial References in Programmes) of the Code.

Rule 10.3 prohibits the promotion of products and services within programmes. Rule 10.4 prohibits the inclusion of unduly prominent references in programmes to products or services. In deciding whether a reference within a programme to a website, including a website operated by the broadcaster itself, is consistent with the requirements of the Code, broadcasters should consider both the nature of the website itself and the manner in which the reference is made. For example, there may be editorial justification for including a reference within a programme to a website which provides further information about the content of that programme.

Ofcom recognises that broadcasters' websites, as well as providing further content information, often include an element of commercial activity. However, the more commercial a website and the more prominent the references to it within a programme, the greater the risk that such references may appear to be, in effect, promotional selling messages in breach of Rule 10.3, or unduly prominent in breach of Rule 10.4, or indeed both.

In this case, Ofcom noted that www.babychannelshop.com was primarily a commercial website providing online shopping facilities. As such, it did not satisfy the definition of 'programme-related material', the promotion of which is permitted within programmes under Rules 10.3 and 10.6. Ofcom noted that the broadcaster did not raise this as an argument in its response. The reference to the website was prominently displayed throughout *Perfect Match*, the DOG was bright and constantly alternating between the two website addresses and seemed clearly intended to attract viewers' attention. Ofcom did not believe the inclusion of this reference in the programme was editorially justified. Ofcom was also concerned by the broadcaster's advice that the DOG featuring the website address appeared throughout its programming.

Having taken into account both the nature of the website and the prominence of the DOG on screen, Ofcom considered that this reference to www.babychannelshop.com was unduly prominent in breach of Rule 10.4 and, in the circumstances, was also promotional in breach of Rule 10.3.

Insofar as the reference to www.babychanneltv.com was concerned, whilst Ofcom noted the broadcaster's advice that the website had changed since broadcast of

Perfect Match, at the time that Ofcom reviewed its content, the website appeared to comprise mainly information about programmes shown on the channel, including clips of content. It was less clearly focussed on commercial activities than www.babychannelshop.com and the reference in *Perfect Match* therefore appeared to be less clearly promotional. It was also possible to argue that the reference was editorially justified within the programme, although Ofcom nevertheless had concerns about the prominence of the reference on screen. On balance, Ofcom decided that the reference in the programme was not unduly prominent in breach of Rule 10.4.

Ofcom was not aware that it was common practice for broadcasters to display prominent references throughout their programming - and in the absence of clear editorial justification - to websites, either with or without a significant commercial element. DOGs tended to comprise a channel identification logo rather than a web address and Ofcom had no concerns about such logos appearing permanently on screen.

Ofcom noted the broadcaster's advice that the DOG in question did not appear during advertisements and that the www.babychannelshop.com address appeared only in certain advertisements where it was relevant. This seemed a reasonable explanation. Insofar as the viewer's complaint that the DOG obscured text graphics within programmes was concerned, whilst no doubt annoying to viewers, Ofcom did not consider that this raised any issues under the Code (other than the question of undue prominence as discussed above). Ofcom considered that the question of where to place graphics on screen was one for the broadcaster's discretion.

The reference to www.babychannelshop.com was, therefore, in breach of Rules 10.3 and 10.4.

Breach of Rules 10.3 and 10.4

Geo News

Geo UK, 20 July 2006, 21:00

Introduction

Geo UK is a general entertainment and news channels broadcasting to an Urdu speaking audience. A viewer complained that the news on the channel was sponsored and was regularly interrupted by advertisements for the sponsor, which the viewer believed was contrary to the requirements of Ofcom Codes.

Response

GEO UK said that the sponsorship was not of the news but of the animated hourly clock. The clock was broadcast at the top of each hour and, while it often coincided with the transmission time of the news, it was clearly separate from the news.

In relation to the placing of advertisements during the news, GEO UK said the 21:00 news lasted for one hour and was usually interrupted twice (or a maximum of three times) for commercials with clear identification of breaks (e.g. opening & closing title sequence or an announcement of break by the news presenter). On this occasion, a commercial for the sponsor of the clock was erroneously broadcast after the opening sequence of the news. The matter had been taken seriously by the broadcaster and the following action taken:

- ◆ the broadcaster had conducted sessions reviewing the requirements of the relevant regulatory codes with a number of production and operational teams and there were plans for similar sessions with other teams;
- ◆ steps had been taken to ensure that editorial staff comply with all the updated codes and review cases that appear on Ofcom website; and,
- ◆ steps would be taken to ensure that editorial and advertising material was separated clearly in future.

GEO UK assured Ofcom that the mistake would not occur again.

Decision

Ofcom viewed the output and noted that the running order for the news was as follows:

- ◆ news announced by way of an on-screen graphic;
- ◆ an advertisement for UK Land Investments;
- ◆ opening credits for the news;
- ◆ an animated clock;
- ◆ the announcement “*GEO News* is brought to you by Kit Calling Cards. KIT-keep in touch”;
- ◆ an introduction to the news and a summary of the headlines;
- ◆ an advertisement for Kit Calling Cards (which was broadcast twice); and,
- ◆ the news programme, which was interrupted by advertisements on a further four occasions.

The Broadcasting Code (“the Code”) prohibits the sponsorship of news. Rule 9.1 of the Code states: “The following may not be sponsored: news bulletins and news desk presentations on radio; and news and current affairs programmes on television.”

Despite the broadcaster's claim that the sponsorship was of the animated clock, the statement in the programme was to the contrary: "*GEO News* is brought to you by Kit Calling Cards". Further, the positioning of the credit itself (after both the on-screen graphic announcing the news and the programme title sequence) gave a very clear impression that the news itself was sponsored. The sponsorship was therefore in breach of the Code.

The Rules on the Amount and Distribution of Advertising (RADA) require television advertising to be kept quite separate from other parts of the programme service. Breaks containing advertising must be identified in vision and/or sound (e.g. by station identifications going in and out of breaks). In this case, the advertisements broadcast during the news were not clearly separated from the programme content and there was no identification of advertising breaks. As such, their inclusion was in breach of Rule 3.1 of RADA.

The programme was in breach of rule 9.1 of the Broadcasting Code (news sponsorship) and Rule 3.1 of the Rules on the Amount and Distribution of Advertising.

Breach of Rule 9.1 of the Broadcasting Code and Rule 3.1 of RADA

Carnival FM (Restricted Service Licence)

24 July 2006, 22:00

Introduction

A listener complained that the song *Boom Bye Bye* by Buju Banton, which contains allegedly homophobic lyrics and which the complainant alleged is “banned” from most playlists, was played. Ofcom asked Carnival FM to provide a copy of the programme.

Response

The station was unable to provide Ofcom with a copy of the broadcast as it had experienced problems with its logging system.

Decision

In the absence of a recording Ofcom was unable to consider the complaint. It is a condition of a radio broadcaster’s licence that recordings of its output are retained for 42 days after transmission, and provides Ofcom with any material on request. Failure to supply the recording from 24 July 2006 was a serious and significant breach of Carnival FM’s licence. This will be held on record.

The station was in breach of Condition 8 of its Licence (Retention and production of recordings).

Breach of Condition 8 of its Licence

Resolved

Quiz Call

Five, 2 July 2006, 02:00

Introduction

In a competition called *Piggy Bank*, a photograph of loose change was shown. A number of the coins overlapped. Viewers were invited to “add the pence.” None of the callers who reached the studio gave the correct answer, which was revealed at the end of the competition as 425 pence. Two viewers questioned the validity of the competition. They did not believe 425 was a possible solution.

Rule 2.11 of the Broadcasting Code (“the Code”) requires that: “Competitions should be conducted fairly, prizes should be described accurately and rules should be clear and appropriately made known.”

Response

Five said that the answer announced (425 pence) was incorrect and the correct answer was 626 pence. However, the broadcaster confirmed that no caller who had reached the studio had given the correct answer and, if they had, the programme’s production company would have been able to trace the caller and award the prize in retrospect.

Five added that all competitions on *Quiz Call* were subject to assessment by the show’s approvals team and that *Piggy Bank* was categorised as a “difficult mathematics” game. The broadcaster provided details of the methodology it applied to reach the programme’s *Piggy Bank* competition answers. It also detailed how the methodology had been applied in this particular case.

The broadcaster said that *Quiz Call* validated the methodology of every new game. At least two members of its approvals team analysed all draft methodologies, to ensure that they were “not inconsistent with methodologies applied on similar games, that the rules cover every eventuality, that there are no grey areas and that the rules are exhaustive.” After preliminary approval, the producer then created a draft game and attempted to solve it in accordance with the methodology. At least two members of the approvals team also attempted to solve it and at least one of them must not have been involved in the earlier approval process. A methodology was given final approval only if each individual reached the same answer independently.

To verify the application of a methodology for a specific competition prior to broadcast, Five confirmed that the producer and an approvals team member must solve the set problem in accordance with the methodology. In this case, both reached the same incorrect answer independently. The broadcaster assured us that this was a rare instance of individuals making the same error when applying the approved methodology.

Five said that it had met *Quiz Call*’s producers, to ensure that there would be no recurrence. In future the verification process for “difficult mathematics” games of this type must be solved independently by two approvals team members and the producer, one of whom must not have been involved in the original methodology approval process.

Decision

To be run fairly, Ofcom believes that cryptic or difficult competitions in which the presenter appears to seek one specific answer must have only one pre-determined solution. Ofcom also believes that this solution should be arrived at by applying a pre-determined methodology (i.e. set of criteria and/or instructions) that can produce only this solution. Ofcom recognises that a methodology could be commercially sensitive, as a broadcaster may wish to run subsequent similar competitions. However, when necessary, we will request that the broadcaster provide us with the methodology of the competition to ensure that it has been run fairly.

The methodology provided by Five confirmed the correct answer (626 pence), when applied in this case. It appeared to Ofcom capable of producing only the correct answer and was therefore fair to viewers who had decided to participate.

However, as set out in current Ofcom guidance, for a Call TV quiz to be run fairly, “an audience should normally be able to expect the correct solution to be provided on air, with or without its associated methodology, when a competition ends.” In this case, an apparent weakness in the game’s verification process resulted in viewers not knowing the correct answer to the competition when it had ended.

Ofcom therefore welcomed the action concerning the future verification process agreed by Five with *Quiz Call’s* producers, to avoid recurrence. In particular, when applying a predetermined methodology for final approval of a specific game, Ofcom welcomed the inclusion of at least one person who had not been involved in the preliminary approval process of the methodology itself. Given the above and noting that the error had not, in this instance, resulted in any financial harm to viewers, Ofcom concluded that the matter was resolved.

Resolved

Not In Breach

Property Developing Abroad

Five, 13 June 2006, 20:00

Introduction

Property Developing Abroad is a series which follows British property developers as they find, buy, develop, and let or sell property overseas. This edition of *Property Developing Abroad* followed a British couple (Carl and Jayne) seeking to buy property in northern Cyprus.

Ofcom received a number of complaints about this programme before it was broadcast. Ofcom explained that it was not in position to consider whether the programme complied with the Broadcasting Code (“the Code”) before it had been transmitted.

After the programme was broadcast, Ofcom received 57 complaints, mostly from members of the UK’s Greek Cypriot community. The complainants had similar concerns, with the common themes being that the programme:

- ◆ was “deeply insensitive”, “unethical” and “offensive” in both its subject matter (the potential for property development in northern Cyprus) and the way in which this subject matter was presented within the programme;
- ◆ encouraged viewers to purchase property in northern Cyprus, which the complainants considered to be an illegal activity;
- ◆ was inaccurate and partial in its description of the political, legal and economic background; and,
- ◆ may have been made as part of “a hidden agenda” in return for “financial or other incentives” from the “illegal Turkish occupation regime or the government of Turkey”.

Ofcom forwarded copies of all the complaints to Five and requested its comments.

Ofcom also asked Five to clarify what consideration was given to the likelihood of the programme being offensive to the Greek Cypriot community, bearing in mind that both Five and Ofcom had received pre-transmission complaints.

Response

Five said it was very sorry the programme had caused offence to a section of its viewers. However, it considered that that the topic of property development in northern Cyprus was one which was not inappropriate to feature in an episode of a series which examined the growing phenomenon of buying property overseas. It also believed the programme ensured viewers were aware of the moral, legal, and political implications of buying property in northern Cyprus and took steps to advise viewers of the need to obtain their own advice before buying there.

Five’s response is set out in further detail below:

Five explained the basis for deciding on Cyprus as one of the locations featured in the series. It said that the series, whilst not in the style of a ‘fly-on-the-wall’ documentary, was led entirely by the contributors and their search for a property. The programme producers started planning the series without any preconceived

ideas as to which locations they would like to feature. In the early summer of 2005, the producers contacted dozens of estate agents all over Europe asking if they could ask any British people, who were buying abroad as an investment, to contact them. The producers had not set out to feature Cyprus but were led to it by the volume of British people who were buying property there.

Five went on to say that an agent in Cyprus responded with Carl and Jayne's details. The couple had already bought property in northern Cyprus some years earlier, had profited from it, and were about to buy again. The programme's brief was to feature serious buyers who were looking to make a profit. The programme producers chose Carl and Jayne as they were prepared to speculate on property and were well aware of the risks of buying in northern Cyprus, having already bought a property there.

Five said it was contacted by a number of people before the programme's scheduled transmission on 30 May 2006 to express concern over its content. Five said that, sensitive to the nature of the programme, and anxious to ensure viewers' concerns were addressed, it decided to delay transmission to enable the programme's commissioning editor and Five's legal and compliance team to review it in the light of the comments received. It was subsequently contacted by a number of individuals who expressed dismay that the programme had not been shown as billed.

Five said that, having looked at the programme again, in the light of the comments received, it was satisfied the programme addressed the concerns raised in a manner which was proportionate in a programme of this nature, given that it was primarily about the purchase and development of property overseas. It advised that more of this programme was given over to the background of the situation in the location than was done for any of the other programmes in the series, in recognition of the sensitivities of buying property in the north of Cyprus.

Five said it had no wish to offend any of its viewers and therefore considered the programme carefully before broadcasting it. Five advised that Granada, which produced the programme, was also well aware of the sensitivity of making a programme which examined the issue of purchasing property in the north of Cyprus. The issue of the legality of land ownership, the island's troubled history, and the feelings of Greek Cypriots currently residing in the UK and therefore likely to see the programme were all considered throughout the production process.

Five said that, nevertheless, the producers felt it inappropriate to ignore the growing trend of British investors buying property in, and tourists returning to, northern Cyprus. To have done so would have failed in the programme's aim which was to follow investors across Europe in a range of territories from the more traditional, such as Spain and Portugal, to newer, riskier ones such as Bulgaria and Morocco. Five commented that property developers looking for higher returns are usually prepared to take higher risks, and that numerous websites, newspaper adverts and stands at property exhibitions were all promoting northern Cyprus as an investment opportunity at the time the programme was being planned.

Five pointed out that the opening minutes of the programme contained the following commentary which set the programme in context:

"In 1974, Greek Cypriots were forced to flee to the south when Turkey invaded the northern third of the island. Today, only Turkey legally recognises the occupied part of the country as an independent state. This situation means buying property in the area can be a high-risk minefield, with Greek Cypriots claiming ownership of much of the land and property now for sale in the north."

If you are thinking of buying property in northern Cyprus you need to be very careful that the property has a full set of deeds that are legally recognised outside of northern Cyprus. A lot of property here is in dispute as Greek Cypriots demand compensation through the courts for property that they say is still theirs. It's a highly emotive issue for both Greek Cypriots and Turkish Cypriots."

Later in the programme, the following explanation was given as one of the reasons for the low cost of property in the north of the island:

"Buying here is complicated and fraught with emotional, economic and political issues but northern Cyprus is beautiful, unspoilt and in need of the prosperity that the southern part of the island has enjoyed for some time."

The programme concluded with a statement that:

"Buying in northern Cyprus is a risky business. While every effort is being made by both the UN and the EU to stabilise this area and end the political and economic isolation it has experienced for over 30 years that process is still on-going. If you want to develop property in northern Cyprus you must fully acquaint yourself with the issues and problems you will encounter."

Decision

Ofcom fully recognises that the programme evoked deep and genuine concerns amongst members of the Greek Cypriot community.

Ofcom has dealt below with each of the general concerns raised by complainants in relation to the relevant rules in the Code:

Complaint: That the programme was "deeply insensitive", "unethical" and "offensive" in both its subject matter, that is, the potential for property development in northern Cyprus, and the way in which this subject matter was presented within the programme.

- ◆ **Rule 2.1** Generally accepted standards must be applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material.
- ◆ **Rule 2.3:** In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context ... Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence.

Broadcasting and freedom of expression are inextricably linked. Broadcasters are free to make and broadcast programmes about any subject they choose, provided that they do so in a manner that complies with their regulatory responsibilities.

Ofcom understands that many of the complainants found the subject matter distressing and objected to that subject matter in principle. However, whilst Ofcom is sympathetic to these sensitivities, property development in the northern part of Cyprus is a current reality, and Five was entitled to broadcast a programme about it. The question that Ofcom had to consider was whether Five's treatment of the subject matter complied with the Code.

Having viewed the programme, Ofcom considered that care was taken in the manner in which the subject matter was presented. The programme was one of a series exploring the potential for property development overseas and part of Five's established 'lifestyle' genre of programmes, not a documentary or current affairs programme. Nonetheless, there were detailed and repeated references throughout the programme to the history of the region and the implications of buying property. Ofcom considered that the broadcaster and programme makers were sensitive to the potential for distress to certain viewers and that the material was handled responsibly. Taking into consideration the context and the specific content of the programme, Ofcom did not believe that the programme was in breach of the requirement that broadcasters must apply generally accepted standards to provide adequate protection to viewers from harmful or offensive material.

Complaint: That the programme encouraged viewers to purchase property in northern Cyprus, which the complainants considered to be an illegal activity;

- ◆ **Rule 3.1:** Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services.

Ofcom understands that, in addition to the political, cultural and historical sensitivities, the legal position regarding the purchase of property in northern Cyprus is complex. However, Ofcom believes that, even when enthusing about the beauty of the region and the potential investment opportunities, the programme took care to sound a note of caution to viewers throughout.

Ofcom noted that the continuity announcer introduced the programme by saying, "Is buying a house overseas as an investment really a good idea? Well, maybe not for one couple in *Property Developing Abroad*". This indicated to viewers from the outset that the issue was likely to be less than straightforward. This was reinforced by the detailed information provided by the presenter in the first few minutes of the programme, in which he described buying property in the area as a "high-risk minefield", and alerted potential purchasers to the possibility of legal action.

Later on in the programme, viewers were given the following advice:

"Firstly, make sure that the property you want to buy is legally owned by the vendor and has a full set of verifiable deeds... Britons are facing legal action in Cyprus for the return of property they thought they owned. You also need to be aware that you could be trying to buy property whose status may be questionable legally. It's important that you check things out, and here in northern Cyprus you must find out if someone could come up and demand the property you want to buy."

In what is a complicated and legally uncertain area, Ofcom believed that the programme sensibly reflected advice provided on the website of the Foreign & Commonwealth Office on the issue of property purchase in northern Cyprus, which includes the following information:

"Property issues are closely linked to the political situation. There are a number of potential practical, financial and legal implications, particularly for those considering buying property in the north... There is also a risk that purchasers would face legal proceedings in the courts of the Republic of Cyprus, as well as attempts to enforce judgements from the courts of the Republic of Cyprus elsewhere in the EU, including the UK..."

Ofcom considered that the programme sufficiently alerted viewers to the possible legal consequences and to the need to obtain proper legal advice before embarking on a venture similar to that undertaken by the British couple featured in the programme. Ofcom also doubted that viewers of any of the programmes in the *Property Developing Series* would attempt to purchase property in any country without conducting some research of their own. In view of these matters, Ofcom did not consider that the programme encouraged illegal activity.

Complaint: That the programme was inaccurate and partial in its description of the political, legal and economic background;

- ◆ **Rule 5.5:** Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service.
- ◆ **Rule 5.7:** Views and facts must not be misrepresented. Views must also be presented with due weight over appropriate timeframes.

The Code does not impose a strict accuracy requirement on non news programmes like *Property Developing Abroad*. We therefore considered the programme and the complaints we received in light of Rules 5.5 and 5.7:

Rule 5.5

Rule 5.5 is intended to ensure that whenever politically controversial matters are dealt with by broadcasters due impartiality is maintained. For example one position should not be propagated to an extent that would have the effect of undermining or excluding any other views that may exist on a particular subject. The rule requires that matters of political controversy, such as the status of the part of the north of Cyprus over which there is a territorial dispute, are treated with due impartiality.

In this programme, Ofcom found that, while references were made to the political dispute surrounding the part of Cyprus in which it was filmed, these remarks were essentially descriptive in nature, setting the location in an historical context. Importantly the remarks were made in the context of a property investment programme and were intended to highlight factors that viewers should take into account before investing in the area. For example the presenter referred to the fact that because there was a territorial dispute, potential investors should take special care to prove legal title to property before purchasing.

It is Ofcom's opinion therefore that the comments on the political status of the area were throughout incidental to the main purpose of the programme which was to give advice about property development. Crucially they did not seek to express an opinion on the merits of either the Cypriot or Turkish position in the current dispute but sought to report the de facto situation on the ground which was a legitimate editorial decision for the broadcaster.

Rule 5.7

As previously discussed, Ofcom considered that the programme made clear that the purchase of property in northern Cyprus was neither straightforward nor risk-free, and that it therefore did not mislead viewers in this regard.

Some complainants suggested that the statement in the programme that "*£92 million pounds of aid to northern Cyprus was agreed by the EU in February this year*" was misleading. Five pointed out that this statement was a reference to the Council of the

European Union's adoption on 27 February 2006 of a regulation establishing an instrument of financial support for encouraging the economic development of the Turkish Cypriot community in the northern part of Cyprus. This was with a view to promoting the economic integration of the island and improving contact between the two communities and with the EU.

Some complainants objected to the term 'northern Cyprus' and argued that the statement about EU aid implied that the money was awarded to *"the illegal Turkish occupation regime"*. Ofcom did not believe that to be the case. On the contrary, the programme stated that *"northern Cyprus has been politically isolated for many years and is still not recognised as a legal nation state by anyone other than Turkey"*. Ofcom interpreted the reference to northern Cyprus as geographical, not political, and do not believe that the programme suggested that the north of the island was an independent state.

- ◆ *Complaint: that the programme may have been made as part of "a hidden agenda" in return for "financial or other incentives" from the "illegal Turkish occupation regime or the government of Turkey"*.
- ◆ **Rule 10.1:** Broadcasters must maintain the independence of editorial control over programme content.

Five's account of the reasons for choosing northern Cyprus as a location for the programme has been set out above (under "Response"). In addition, Five advised Ofcom that the programme was fully funded by Five and there were no financial incentives whatsoever from any third party to either Five or Granada in respect of the content of the programme. Ofcom did not consider that the manner in which the subject matter was presented suggests "a hidden agenda" and, in the absence of evidence to the contrary, has no reason to question Five's assurances in this regard.

Having considered the matter carefully, and for the reasons set out above, Ofcom has not upheld the complaints.

Not in Breach

Fairness and Privacy Cases

Upheld

Complaint by Mrs Taryn Sherwood

Hidden Lives - Middle Aged Mummy's Boys, Five, 17 October 2005

Summary

Ofcom has upheld in part a complaint of unfair treatment and unwarranted infringement of privacy from Mrs Taryn Sherwood.

This programme examined the lives of men who chose to live in their family home past the age of 30 and featured the story of David Sherwood. Mrs Taryn Sherwood is the wife of Mr Sherwood and participated in the programme.

Mrs Sherwood complained of unfair treatment and unwarranted infringement of privacy in both the making of the programme and the programme as broadcast.

Ofcom found as follows:

- a,b,c) Ofcom concluded that the programme as broadcast had been unfair to Mrs Sherwood as she did not give informed consent for the programme to use images of her. These images included her wearing a bikini, on her wedding day and shortly after the birth of her child. In Ofcom's view the consent Mrs Sherwood gave was not informed because the consent form was ambiguous; the consent provided on her behalf by Mr Sherwood was invalid; she was not accurately informed by the producer about the likely content of the programme prior to broadcast; and, was not informed of significant changes to the programme as it developed. Although Ofcom acknowledged the difficulties faced by Five in determining whether the producer had obtained informed consent from Mrs Sherwood, Ofcom found that Five's failure to directly confirm the validity of the consent with Mrs Sherwood in the days leading up to the broadcast of the programme led to the broadcast of a programme which resulted in unfairness to Mrs Sherwood.
- d) The inclusion in the programme of Mrs Sherwood's mother-in-law's statement "I'm left holding the baby again" was unfair to Mrs Sherwood as it misrepresented who was responsible for the care of the baby.
- e) Ofcom found no evidence that the programme makers gave Mrs Sherwood a guarantee that the programme would be presented in good taste. Further, Ofcom found that the overall tone of the programme did not result in unfairness to Mrs Sherwood.
- f) In Ofcom's view the slight variation between the programme makers' summary of events and the events themselves were unlikely to have significantly affected the viewers understanding of Mrs Sherwood in an unfair way.

- g,h,i) Ofcom found that Mrs Sherwood's privacy was not infringed in the making of the programme as the physical obtaining of the images alone did not appear to physically disturb or materially restrict her private and personal life. In relation to the programme as broadcast, Ofcom found that the broadcast of private images of Mrs Sherwood without appropriate consent, unwarrantably infringed her privacy.

Introduction

This documentary examined the lives of three men who chose to live in their family home past the age of 30. In particular, the programme focussed on the relationship each had with his mother. One of the men featured was David Sherwood (referred to in the programme as "David"). In the programme David was shown telling his mother "Alma" that he planned to move out and marry his new girlfriend, Taryn (now Mrs Taryn Sherwood), who was pregnant with their child at that time. The programme included video footage of Taryn's and David's wedding day; the couple in hospital after the birth of their baby; and, Taryn wearing a bikini (seen on a camcorder). A brief interview with Taryn Sherwood was also included. At the end of the programme David returned to his mother's home after being "thrown out" by Taryn. David's mother was shown holding Taryn and David's daughter while stating, "I'm left holding the baby again".

Mrs Taryn Sherwood complained that she was treated unfairly and that her privacy was unwarrantably infringed in both the making of the programme and in the programme as broadcast.

The Complaint

Mrs Sherwood's case

In summary, Mrs Sherwood complained that she was treated unfairly in the programme in that:

- a) The programme makers used private footage of her without her knowledge or consent. She was told by the programme makers when consent was requested, that her permission was required for the use of the interview footage only, which was filmed on 26 June 2005. Mrs Sherwood claimed that the consent form supported her understanding. This was indicated by the fact that under the heading "date of recording/ contribution" it stated "26/5/05" the same date as the interview. She was not consulted on and did not give consent for programme makers to use other personal footage. Mrs Sherwood said that she had been invited to the editing suite once by programme makers and declined.
- b) The programme makers misled her about the use of her personal footage in the programme. Mrs Sherwood provided email correspondence between her and the producer as evidence that she was never told her about the use of her personal footage. Mrs Sherwood said she only became aware that the programme included footage of her wedding when Mr Sherwood told her on the night of 13 October 2005.
- c) Five avoided and ignored her complaints prior to transmission and only contacted her a few hours before the programme was broadcast. Mrs Sherwood said it took Five four days to respond to her after she left numerous messages with them, informing them that the programme contained footage of her which she had not given permission to be used.

- d) Mrs Sherwood said the inclusion of a statement by her mother-in-law that she was “left holding the baby again”, misrepresented who was the baby’s caregiver and portrayed Mrs Sherwood unfairly. Mrs Sherwood said she found the comments defamatory and hurtful.
- e) Mrs Sherwood had been given the impression that the documentary would be carried out in good taste, which it was not;
- f) the programme was inaccurate in that:
 - (i) David did not return to his mother’s home “just in time” for his mother’s birthday. She and David had a falling out in June 2005, and his mother’s birthday was in February.
 - (ii) the programme did not indicate that the scene in which David told his mother about his wedding plans was a re-enactment.

In summary, Mrs Sherwood complained that her privacy had been unwarrantably infringed in both the making of the programme and in the programme as broadcast in that:

- g) the programme showed footage of her in a bikini without her knowledge or consent;
- h) the programme showed footage of her at her wedding without her consent; and
- i) the programme showed footage of her and her daughter hours after giving birth without her knowledge or consent.

Five’s case

Fairness

In summary, Five responded as follows:

- a) Five denied that the programme makers used private footage of Mrs Sherwood without her consent. Mrs Sherwood signed a consent form which gave permission for the programme makers to edit her contribution (as “Dave’s wife”) as they saw fit. Further, the producer kept Mrs Sherwood fully abreast of developments throughout the documentary process and also invited the complainant to the editing suite.

Five noted that the consent form which Mrs Sherwood signed clearly outlined the production dates of “*Monday 7th February - Monday 6th June 2005*” and the reason it was dated 26 May 2005 was because that was the date of the signing.

- b) In response to the complaint that Mrs Sherwood was misled about the use of personal footage in the programme, Five said that the so called “personal footage” of their wedding day and the day after the birth of their child was filmed by Mr Sherwood. In support of this, Five provided an email from Mr Sherwood dated 14 October 2005 that gave consent for use of the wedding footage. Mr Sherwood’s email stated that the consent was with the knowledge and authority of his wife. Five suggested that if Mrs Sherwood had been misled it was not by Five or the programme makers but by her husband.

- c) Five said that Mrs Sherwood's complaints prior to transmission were not ignored. The producer spoke to Mrs Sherwood about any concerns she might have both before and after filming and kept in email contact. Five believed it was completely unreasonable for Mrs Sherwood to contact Five a couple of days before the programme was due to air and expect the broadcaster to withdraw the programme given that she had been offered every opportunity to come and view the documentary at the edit stage. Five said that by the time Mrs Sherwood contacted them, three days prior to transmission, the programme had "gone to press".
- d) Five said that the comment "I'm left holding the baby again" was simply a turn of phrase and believed no-one would have inferred any criticism of Mrs Sherwood as a result. Five provided the unedited material of this footage and contended that as Mrs Sherwood was present when this comment was being filmed, she could have raised her concerns at the time.
- e) Five said that although the programme may not have been to Mrs Sherwood's taste, it did not necessarily mean that the programme was not in good taste. Five stated that Mrs Sherwood had been given every opportunity to comment on this aspect when she had been invited to the editing suite, but she had declined. Notwithstanding, the programme was neither harmful nor offensive.
- f) Five maintained that the replaying of certain events for the cameras did not amount to misrepresentation, and fell short of anything approaching a reconstruction within the meaning of the Code.

Privacy

- g) Five did not believe the head and shoulder shot of Mrs Sherwood (wearing a bikini) amounted to an infringement of privacy.
- h) As regards the footage of the wedding, Five referred to the email of consent from Mr Sherwood (noted above). Five maintained that Mr Sherwood had every right to have this footage included in the programme as he is the owner of the copyright. Five did not believe Mrs Sherwood's rights should override Mr Sherwood's rights.
- i) The footage of Mr and Mrs Sherwood's baby was filmed on the same camera supplied by the production company. Five said it would have been obvious to Mrs Sherwood that she was being filmed at the time.

Decision

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

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.

Mrs Sherwood complained that the programme as broadcast was unfair to her and had unwarrantably infringed her privacy in both the making of the programme and the

programme as broadcast. The consideration of this complaint highlighted to Ofcom the difficulties faced by programme makers when dealing with participants who are related (either by marriage or birth) but estranged, or become estranged during the course of the making of the programme. The complaint further emphasised to Ofcom, the need for programme makers to be fair in their dealings with contributors who may be unfamiliar with broadcasting and therefore may not share the assumptions about programme making which broadcasters regard as obvious.

In relation to Mrs Sherwood's specific heads of complaint Ofcom found as follows:

Fairness

a, b ,c) Mrs Sherwood complained that the programme makers unfairly used footage of her without consent and misled her about the inclusion of the footage in the programme as broadcast. In addition, Mrs Sherwood complained that Five ignored her complaints about the use of the footage in the programme, prior to broadcast. Ofcom considered that these heads of complaint ((a), (b) & (c)) all related to whether consent was given by Mrs Sherwood to the programme makers, and if so whether or not that consent was *informed consent*.

Programme makers have a responsibility to ensure that the consent obtained from participants is informed. Measures which can be taken by the producer in this regard include: making the participant aware of the nature and likely content of the programme; informing the participant about the contribution they are expected to make to the programme; and keeping the participant informed about any significant changes to the programme as it develops which might reasonably affect their original consent to participate.

In reaching a decision about these complaints Ofcom considered email correspondence between the programme producer and Mrs Sherwood; Mrs Sherwood's signed consent form dated 26 May 2005; and email consent provided by Mr Dave Sherwood on the 14 October 2005. Ofcom also considered the relevant written submissions from both parties.

Consent

Ofcom considered that the consent form Mrs Sherwood signed was not sufficiently clear and as a result Mrs Sherwood was not adequately informed about the likely content of the programme at the time of signing. In particular, in Ofcom's view Mrs Sherwood would not have been aware that images of her in a bikini, on her wedding day or shortly after the birth of her child would be included in the programme.

Ofcom believed the consent form contained headings which were unclear:

- "*Date of recording/ contribution*" (which the producer intended to indicate the date on which Mrs Sherwood signed the form); and
- "*Date*" (which the producer intended to indicate the entire span of the consent form period).

In Ofcom's view it was very likely that Mrs Sherwood would have believed that the consent form provided permission for the programme makers to use interview footage of her only.

Ofcom also considered the consent provided on behalf of Mrs Sherwood by her husband, Mr Sherwood. This consent was emailed to the programme makers on 14 October 2005:

"This is to confirm that I, David Sherwood shot the video of my marriage to Taryn in the full knowledge and expectation that the said video or portions of that video would be included in the Channel 5 documentary Middle Aged Mummies Boy. I therefore own the copyright to the video and I hereby consent to Channel 5 using the video in the afore-mentioned programme. I can also confirm that my wife, Taryn, also consents to Channel 5 using the video in the afore-mentioned programme."

It was noted that the email from Mr Sherwood providing 'consent' for him and his wife was sent just days before the programme was broadcast and on exactly the same day that Mrs Sherwood informed Five that she did not want this footage to be included in the programme (see below for further details). Ofcom could not establish whether Mr Sherwood was asked to provide this consent on behalf of his wife (by either the producer or the broadcaster) or if he decided to provide this consent of his own volition. Ofcom did not consider the email from Mr Sherwood of 14 October 2005 equated to valid consent for the producer to use footage of Mrs Sherwood in the programme. Although it may be true that Mr Sherwood was the owner of the footage, it still remained that informed consent from Mrs Sherwood would need to be obtained in order for images of her on her wedding day to be included in the programme. Ofcom therefore considered that the consent provided by Mr Sherwood on behalf of his wife was invalid.

Misled by producer

Ofcom found that the producer provided inaccurate information to Mrs Sherwood on three separate occasions. The first occurred on 18 July 2005 when Mrs Sherwood emailed the producer to enquire about whether she could withdraw her consent to participate in the programme:

"I wanted to find out if it would be possible for me to withdraw consent for any footage of myself to be used in your show, considering circumstances; I don't think it would be a true representation"

On 18 July 2005 in response to this enquiry, the producer replied:

"Unfortunately it's not possible to withdraw consent as the film has been delivered to the channel so I physically no longer actually have the film or any tapes to make changes"

Ofcom considered this was not an appropriate response as in some circumstances a participant may be within their rights to withdraw consent. This will depend on factors such as the clarity of the consent form, the manner in which consent was obtained (that is how the consent form was presented to a participant, or the description of the programme given to the participant at the time of signing the consent form) and whether or not there have been significant changes to the programme as it develops which might reasonably affect the participant's original consent to participate. As noted above, it is Ofcom's opinion that the consent form was ambiguous. Further, in Ofcom's view Mrs Sherwood was not informed about significant changes to the programme as it developed which would have affected her original consent to participate. Specifically, it appears from correspondence between the producer and Mrs Sherwood, that the complainant was not aware that her contribution to the programme would be

more than just interview footage. Furthermore, the request by Mrs Sherwood to withdraw consent was made some three months before the broadcast of the programme. For the producer to state that it was “not possible...as the film has been delivered to the channel...” was therefore, in Ofcom’s view, not an adequate response.

In the same email exchange of 18 July 2005 (noted above) the programme makers went on to reassure Mrs Sherwood that her contribution was limited to her interview:

“But I should reassure you that you barely appear in the film - apart from very briefly in part four - when you literally say one line I think...and as you are saying ‘it is not working out like you had planned before you got married’ - I think you will think this is a fair representation.”

Ofcom considered that this description of Mrs Sherwood’s contribution was inaccurate because in the programme, Mrs Sherwood was shown on three more separate occasions, one of which was contained in the second part of the programme. At this point, the producer did not inform Mrs Sherwood that footage from her wedding would be used in the programme (though the producer did confirm this was the case prior to broadcast). In addition the email correspondence at no point indicates that Mrs Sherwood was informed that personal footage of her after the birth of her child or wearing a bikini were also included in the programme.

The producer was less than straightforward about the content of the programme again on 14 October 2005. On this occasion, Mrs Sherwood raised a concern with the producer on 14 October 2005 after seeing a review of the programme on Five’s website (three days before broadcast). The review indicated:

“David is thrown out of the house and he returns to his mother, who now has another baby to look after - David’s latest kid”.

In her email to the programme makers Mrs Sherwood said:

“I would also like to point out the fact that the information given is not correct and when supplying facts they really should be accurate, and I do resent the fact that it has been implied that David’s mother has been landed with the baby who they refer to as ‘Dave’s last kid’ to look after!!!”

Later in an email on 15 October 2005, Mrs Sherwood stated:

“...but you have to acknowledge that the wording in it particularly in the last line referring to David’s mother having another baby to look after which you know is not the case”.

In response to Mrs Sherwood’s concerns, on 15 October 2005, the producer responded:

“The film does not say you dumped the baby on David’s mother - she is cuddling the baby and says how she loves babies because you know where you are with children and animals.”

Ofcom did not consider that this reassurance by the producer correctly summarised the programme sequence in light of Mrs Sherwood’s concerns as in full the quote by David’s mother was:

"I'm left holding the baby again, oh dear, dear, we don't mind though, we don't mind, at least you know where you are with them."

Ofcom had regard for the fact that Mrs Sherwood had been invited to the editing suite by the programme makers on at least one occasion. However Ofcom did not believe that the invitation, or Mrs Sherwood's decision to not view the programme prior to broadcast, removed the programme maker's responsibility to fairly inform Mrs Sherwood about the content of the programme.

In conclusion, Ofcom found Mrs Sherwood did not provide informed consent on the 26 May 2005, and her incorrect understanding at the time of signing, that only interview footage of her would be included in the programme was reinforced by the programme maker's later assurances.

Broadcast of programme

Five confirmed that Mrs Sherwood contacted them (three days prior to the broadcast of the programme) to inform them that footage of her wedding was included in the programme without her consent. Ofcom had regard for the difficulty faced by broadcasters when a participant wishes to withdraw their consent at short notice. In Ofcom's view, Five's decision in this case was made more difficult by the actions of the producer (in failing to accurately inform Mrs Sherwood - as noted above) and Mr Sherwood himself.

Mrs Sherwood provided Ofcom with a signed letter from her husband dated 19 February 2006 stating that he did not tell Mrs Sherwood about the inclusion of some images, gave consent for use of these images on Mrs Sherwood's behalf without her knowledge on 14 October 2005 and told his wife (for the first time) that footage of their wedding would be included in the programme on the evening of 13 October 2005.

Ofcom had regard for the date that Mr Sherwood gave the producer consent on behalf of his wife. This consent was given the same day that Mrs Sherwood and her mother began to contact Five to inform them that Mrs Sherwood had not given consent for the wedding footage to be used and the day after Mrs Sherwood apparently became aware that footage of her wedding was included in the programme.

In relation to Mrs Sherwood's complaint that she had been ignored by Five, Ofcom considered that the actions of the producer and Mr Sherwood made it more difficult for Five to establish whether or not the producer had gained appropriate consent from Mrs Sherwood. However in Ofcom's view, given that Mrs Sherwood had attempted to contact them directly prior to broadcast about the validity of her consent, it would have been reasonable for Five to ascertain whether or not Mrs Sherwood's concerns were founded. By failing to confirm the validity of Mrs Sherwood's consent, in the days leading up to the broadcast of the programme, Five broadcast a programme that contained images of Mrs Sherwood, which Ofcom was satisfied she had not given informed consent to use. This was unfair.

In summary, Ofcom found Mrs Sherwood was inadequately informed about the likely content of the programme at the time of signing her consent form. In particular the consent form was ambiguous and she was not made aware that the programme would include images of her wearing a bikini; her wedding day; and, shortly after the birth of her child. She was subsequently misinformed by the

producer who provided inaccurate information about the content of the programme. Finally, Five failed to take sufficient steps to confirm the validity of any consent they believed had been provided by with Mrs Sherwood in the days leading up to the broadcast of the programme and failed to adequately address Mrs Sherwood's concerns about the content of the programme, prior to broadcast.

In all the circumstances, Ofcom considered that the programme makers had failed to be straightforward and fair in their dealings with Mrs Sherwood and Five had failed to ensure that the consent provided by Mrs Sherwood had in fact been informed consent.

Ofcom found unfairness to Mrs Sherwood in these respects. Ofcom upheld heads (a), (b), and (c) of the complaint.

- d) Mrs Sherwood complained that the statement in the programme by Mr Sherwood's mother that she was "left holding the baby again", misrepresented who the baby's caregiver was.

In its submissions to Ofcom, the broadcaster indicated that Mrs Sherwood had been present at the filming of the statement and reasoned that any concerns the complainant may have had could have been raised at the time. Mrs Sherwood said that she was out of earshot of the comment and had been told the filming consisted of Mr Sherwood's mother singing the baby a lullaby. The unedited recordings show that when Mr Sherwood's mother was filmed saying "I'm left holding the baby", Mrs Sherwood stood some distance away and appeared to be in conversation with Mr Sherwood. After Mr Sherwood's mother finished filming the scene, she walked towards Mrs Sherwood and explained how the baby had shut its eyes while she sang a nursery rhyme. The baby was then returned to Mr and Mrs Sherwood who walked away, leaving Mr Sherwood's mother with the programme makers. Ofcom was satisfied that it was likely that at the time of filming, Mrs Sherwood had not heard the statement "I'm left holding the baby" and could not have reasonably been expected to raise her concerns about the comment at the time (though she did raise concerns about this topic in her email to the producer of 14 October 2005 after details of the programme were made available on Five's website - see above).

Ofcom next considered the context in which the statement appeared in the programme as broadcast. Ofcom noted that the phrase appeared at the end of the programme, and acted to summarise the story of David and his mother. Prior to this the programme had explained that David returned to his mother's home after a falling out with Mrs Sherwood. In this context, it is Ofcom's opinion that there was a significant risk that viewers would have been left with the impression that David's mother had to take responsibility for the care of the baby. From both parties written statements it was Ofcom's understanding that Mrs Sherwood was, and remains, responsible for the full time care of her baby, not David's mother. In the circumstances, Ofcom found that the inclusion of the statement "I'm left holding the baby" was capable of misleading viewers about who cared for Mrs Sherwood's baby or might otherwise have unfairly and negatively affected viewers' understanding of Mrs Sherwood as a mother. This impression was unfair to Mrs Sherwood. Accordingly Ofcom has upheld this part of the complaint.

- e) Mrs Sherwood complained that the programme makers gave her the impression that the programme would be carried out in good taste, which it was not. Guarantees given to contributors relating to the content of a programme should normally be honoured, if to do otherwise would result in unfairness. Ofcom was

required to establish whether the programme makers had failed to honour a guarantee given to Mrs Sherwood regarding the tone of the programme, and also whether the programme's tone alone resulted in unfairness to Mrs Sherwood.

Ofcom considered all the material presented by both parties, and found no evidence that the programme makers gave Mrs Sherwood a guarantee that the programme would be presented in a specified way, or that Mrs Sherwood's participation in the programme was secured by an assurance that the programme would be carried out in good taste.

In relation to the tone of the programme itself, it is Ofcom's view that the question of whether a programme is in good taste is relative and varies depending on personal preference. Notwithstanding this, Ofcom did not believe the tone of the programme alone reflected Mrs Sherwood in a negative light or resulted in unfairness to Mrs Sherwood. In the circumstances Ofcom found that the tone of the programme as broadcast, did not break an assurance given to the complainant or result in unfairness to Mrs Sherwood. Ofcom found no unfairness in this respect.

- f) Mrs Sherwood complained that the programme was inaccurate because Mr Sherwood did not return to his mother's home "just in time" for his mother's birthday; and the programme did not indicate that the scene in which Mr Sherwood told his mother about his wedding plans was a re-enactment. After viewing the programme, Ofcom did not consider that the programme's treatment of these events resulted in unfairness to Mrs Sherwood. In Ofcom's view the slight variation between the programme maker's summary of events and the events themselves were unlikely to have significantly affected the viewers understanding that: Mr Sherwood told his mother that he was engaged, or that, Mrs Sherwood and Mrs Sherwood had a falling out after which Mr Sherwood moved back to his mother's home. Ofcom found no unfairness in this respect.

Privacy

- g, h, i) Mrs Sherwood complained that her privacy was unwarrantably infringed in both the making of the programme and the programme as broadcast. Mrs Sherwood said that footage of her wedding day was broadcast without her consent and footage of her in a bikini and shortly after the birth of her child were broadcast without her knowledge or consent.

In Ofcom's view, the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about the unwarranted infringement of privacy, Ofcom will therefore, where necessary, address itself to two distinct questions: First, has there been an infringement of privacy? Second, if so, was it warranted?

The making of the programme

In reaching this decision about whether or not the making of the programme infringed Mrs Sherwood's privacy, Ofcom noted that the images of Mrs Sherwood were not filmed by the programme makers. Further, the footage of Mrs Sherwood had been obtained by the programme makers through Mr Sherwood. Ofcom considered therefore that the obtaining of the images alone did not appear to have physically disturbed or materially interfered with Mrs Sherwood's enjoyment of a private and personal life. In the circumstances of this particular case Ofcom found that the obtaining of the material did not infringe Mrs

Sherwood's privacy. Ofcom did not therefore need to determine whether the obtaining of the footage was warranted.

The programme as broadcast

Ofcom recognised Mr Sherwood's right to freely express his views and share information relating to his own life. However, in Ofcom's view, the images of Mrs Sherwood shortly after the birth of her child and wearing a bikini were of a sufficiently private nature for her to have reasonably expected that the images would not be broadcast to a wide audience. In the circumstances, Ofcom considered that in order for the programme to avoid infringement of Mrs Sherwood's privacy, consent for the broadcast of the images would have been required. As noted above, Ofcom found that Mrs Sherwood had not been informed about the inclusion of these personal images at the time of providing consent and therefore her consent in this regard was invalid. Ofcom found that Mrs Sherwood's privacy had been infringed by the broadcast of images of a private nature without appropriate consent (see above). Ofcom could see no reason for the broadcast of the images without consent and therefore found that the infringement of Mrs Sherwood's privacy was unwarranted in the broadcast of the programme.

Accordingly, Ofcom has upheld in part Mrs Sherwood's complaint of unfair treatment and upheld her complaint of unwarranted infringement of privacy in the broadcast only.

Not Upheld

Complaint by Mr Brian Allan

The World's Strangest UFO Stories, Discovery Channel, 5 and 10 February 2006

Summary

Ofcom has not upheld this complaint of unfair treatment by Mr Brian Allan. Mr Allan participated in this programme that examined why Scotland has recorded a dramatic increase in UFO sightings. During the programme Mr Allan described his experience of discovering an astral doorway inside Rosslyn Chapel, and explained his theory of how to open the doorway. The programme then tested Mr Allan's theory with the help of a Professor from Cambridge University.

Mr Allan complained the programme was unfair in that it: gave the incorrect date for when the astral doorway was discovered; falsely implied the astral doorway was extraterrestrial in nature; made unfair claims about his theory of how to open the doorway; falsely described him as a psychic; repeatedly showed footage of him with his eyes closed and his hand bridged over his eyebrow; presented the subject matter in a "jokey" fashion; and implied that his contribution to the programme was connected to UFOs.

Ofcom found as follows:

- a) Ofcom found that the programme makers' decision to change the date for when Mr Allan said that he had discovered an astral doorway did not result in unfairness. Ofcom considered the date change was unlikely to have materially affected viewers' understanding of the event or Mr Allan's part in it.
- b) Ofcom found it was reasonable and fair for the programme to examine a possible connection between the existence of an alien galaxy and Mr Allan's astral doorway.
- c) Ofcom considered that viewers were likely to have understood the scientific scope of the programme's experiment and were therefore able to give due weight to the findings. Ofcom found no unfairness to Mr Allan in this respect.
- d) Given Mr Allan's own description of his experiences inside Rosslyn Chapel, Ofcom found it was reasonable for the programme makers to describe Mr Allan as a psychic, as meaning a person who is sensitive to things beyond the natural range of perception. Ofcom found no unfairness to Mr Allan in this respect.
- e) Ofcom considered viewers were likely to understand the repeated use of footage, showing Mr Allan with his hand bridged over his eyebrow, was an editing technique used to highlight Mr Allan's key claim that he had sensed something unusual in Rosslyn Chapel. Ofcom did not believe that the editing technique would have impacted upon viewers' understanding of Mr Allan or his theory in an unfair way.
- f) Ofcom found no evidence that Mr Allan was misled about the general nature of the programme or that he had secured a guarantee from the programme makers about the presentation and overall tone of the programme. In Ofcom's opinion, given the nature of the programme, its tone alone was unlikely to have

materially affected viewers understanding of the subject matter or any participants who took part.

- g) Ofcom was satisfied that Mr Allan was made aware that the programme concerned UFOs and in Ofcom's opinion, by signing the release form for his participation in the programme, Mr Allan gave consent for his contribution to be considered within the context of UFOs

Introduction

This programme reported that Scotland has experienced a dramatic increase in UFO sightings since 1992. According to the programme, many of these sightings have occurred within an area of the country known as the Falkirk Triangle. The programme included a number of theories to explain the high number of UFO sightings.

One of the featured theories suggested that Rosslyn Chapel ("the Chapel") contained a gateway to a parallel universe. To test if the gateway existed, the programme explained that three paranormal investigators had been sent into the Chapel for three hours to see if they could discover any strange phenomena. The programme said that during the visit the investigators discovered a portal in the Chapel's crypt. One of the investigators, Mr Brian Allan, believed that a set of patterned cubes which decorate a doorway of the Chapel contain a code to unlock the portal. According to Mr Allan, when the pattern on the cubes is translated into music, the music will open the portal. Mr Allan believed the pattern on the cubes could be translated into music by using Chladni Theory, which transfers musical vibrations into various visual patterns.

Mr Allan's theory was tested in the programme by Professor Murray Campbell of Edinburgh University. Professor Campbell performed an experiment (based on Chladni Theory) that involved the running of a violin bow against the rim of a metal plate that had been scattered with sand. The vibrations of the bow caused the sand to fall into various visual patterns called Chladni patterns. During the three hour experiment, Professor Campbell was unable to create any Chladni patterns that were similar to the patterns which appeared on the Chapel cubes. The programme stated that "it seems the stone work of Rosslyn Church has nothing to do with Chladni".

Mr Allan complained to Ofcom of unfair treatment in the programme as broadcast.

The Complaint

Mr Allan's case

In summary, Mr Allan complained of unfair treatment in the programme as broadcast in that:

- a) The programme falsely claimed that he visited the Chapel to locate a portal and had been successful in locating one on that occasion. Mr Allan explained that the portal referred to in the programme was discovered by him and his colleagues in 1998.
- b) The programme implied that he believed the portal was extraterrestrial in nature and that it was in some way responsible for the UFO sightings near the Chapel. Mr Allan said that he never said or implied this to the programme makers. Mr Allan said he made it clear to the programme makers that the portal (or as he referred to it an 'astral doorway') was an anomaly discovered by himself and his colleagues in

1998 and it was in no way connected with any real or imagined extraterrestrial phenomena.

- c) The programme stated that the patterned cubes in the Chapel had no relevance. Mr Allan said this negative statement was made with no real evidence other than the fact that a Professor could not instantly reproduce the patterns on the Chapel cubes.
- d) The programme falsely described him as a psychic.
- e) The programme repeatedly showed footage of him with his eyes closed, and his hand bridged over his eyebrow. Mr Allan said that the footage was an attempt to make him appear “utterly ridiculous”.
- f) The programme makers did not inform him that the subject matter would be presented in a “jokey” fashion. Mr Allan said that had he known this, he would not have participated in the programme.
- g) The programme implied that the anomaly was connected to UFOs. Mr Allan said that he did not at any stage say this.

Discovery Channel's statement in response

In summary, Discovery responded to the complaint as follows:

a) Date of astral doorway/portal discovery

Discovery said that for dramatic purposes, the programme implied that Mr Allan's experience in the Chapel occurred recently when, in fact, it had happened some years earlier. Discovery said that it was fair for the programme to state that Mr Allan visited the Chapel and located a portal as Mr Allen described such an occurrence on the website <http://www.thelosthaven.co.uk/Rosslyn.html>.

b) Implication that the doorway/portal was extraterrestrial in nature

Discovery said the programme never stated Mr Allan personally believed in UFOs. Rather the programme was investigating a claim that the portal in the Chapel was somehow connected with UFO sightings in the area. Mr Allan knew that this was the claim under investigation and signed a release form for the programme in which the programme's working title “The Strangest UFO Stories of All Time” was clearly shown.

c) Programme statement that the patterned cubes in the Chapel have no relevance

Discovery said that the programme sought to test Mr Allan's theory that the patterned cubes in the Chapel were significant. The programme makers made a fair attempt to evaluate Mr Allan's theory by employing Edinburgh University's Professor of music, Professor Campbell, to devise and carry out the test.

d) The programme described Mr Allan as a Psychic

Discovery said that the programme captioned and described Mr Allan as a “psychic investigator”. Mr Allan was only referred to as a “psychic” on one occasion in the context of the question “is the psychic right?” Discovery noted that the dictionary defined psychic as “a person apparently sensitive to things beyond the natural range of perception”. Discovery believed that Mr Allan's theory of a

secret musical notation and his reported experiences within the Chapel suggested he was at least arguably sensitive to things beyond the natural range of perception, and therefore, the passing description of him as a psychic was justified.

e) Footage of Mr Allan with hand bridged over eyebrow

Discovery said that the footage complained of exactly represented Mr Allan's experience in the Chapel as he described it to the programme makers. Discovery noted that Mr Allan still described it in this way on the website <http://www.thelosthaven.co.uk/Rosslyn.html>.

f) "Jokey" presentation of subject matter

Discovery said that while the overall tone of the programme was light-hearted, major scientists had been interviewed and the programme experiments had been carried out in a serious attempt to evaluate the facts behind some extraordinary ideas.

g) Implied connection with UFO without Mr Allan's consent

Discovery said that the programme evaluated UFO 'hot spots' and examined whether the UFO sightings were related to Rosslyn Chapel. This led to an evaluation of Mr Allan's theory about a doorway/portal in the Chapel, and whether it had any links to UFOs. Discovery said that the programme did not reach a conclusion about whether the doorway/portal itself was connected to UFOs.

Discovery said that Mr Allan was aware of the programme's subject matter. The broadcaster provided Ofcom with Mr Allan's signed release which indicated that Mr Allan had agreed to participate in a programme entitled "The Strangest UFO Stories of All Time".

Mr Allan's comments in response

In summary, Mr Allan responded to Discovery's statement as follows:

b) Implication that the doorway/portal was extraterrestrial in nature

Mr Allan said that his description of his experiences inside the Chapel (as found on the website <http://www.thelosthaven.co.uk/Rosslyn.html>) referred to an "astral doorway" - the account did not mention or infer anything about UFOs. Mr Allan acknowledged that he had signed the release form, but said that he had assumed the form did not give consent for the programme makers to say (or imply) what they liked.

c) Programme statement that the patterned cubes in the Chapel have no relevance

Mr Allan said that he explained to the programme makers that a variety of Chladni patterns could be created by using metal plates of different shapes. Mr Allan said it was arbitrary for the programme makers to state that there were no Chladni patterns present in the cubes, after the Professor could not reproduce the patterns using only one plate shape.

g) Implied connection with UFO without Mr Allan's consent

Mr Allan said that while the programme did not reach any categorical conclusions about whether his theories were related to UFOs, it did make it abundantly clear that by implication his theories were attached to the flawed hypothesis that UFOs exist. Mr Allan maintained that his theory was unrelated to UFOs.

Discovery's second statement in response

Discovery said that it was sorry that Mr Allan had a negative view of the programme and his depiction in it. Discovery said that it took its responsibility to ensure that contributors were aware of the content of programmes and were represented fairly, very seriously. In summary Discovery responded as follows:

b) Implication that the doorway/portal was extraterrestrial in nature

The programme's introduction to Mr Allan's segment had asked whether or not there was a gateway to another dimension used by aliens or an alien portal. The programme did not state that Mr Allan personally believed in aliens.

c) Programme statement that the patterned cubes in the Chapel have no relevance

Discovery said that the programme had set out in good faith to test Mr Allan's theory that the cubes in the Chapel contained a series of musical scores which could be understood using Chladni patterns. Discovery explained that Mr Allan had been present when the experiment took place. Discovery contended that if Mr Allan had felt that the experiment was not being conducted properly, he could have said so or could have intervened to stop it - neither of which he did.

Discovery said that research carried out by the programme makers prior to the experiment indicated that the creation of Chladni patterns was "a classic undergraduate experiment". There was nothing mysterious about the Chladni experiments and the experiments were repeated thousands and thousands of times in science laboratories across the world. Discovery said that it was a basic science experiment which was why it was so unlikely that Mr Allan had uncovered something new. Notwithstanding this, Discovery highlighted that the most critical thing the programme said about Mr Allan's theory was that it was "probably" not true.

g) Connection to UFOs

Discovery maintained that the programme makers had been clear with Mr Allan about the subject matter of the programmes as evidenced by the information given on the release form and during Mr Allan's interview. From Discovery's point of view, the programme makers treated Mr Allan fairly and did not use his contribution out of context or in a misleading way.

Decision

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

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

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

- a) Mr Allan complained that he was treated unfairly because the programme falsely stated that he and his colleagues had located a 'doorway' or 'portal', during a visit to the Chapel which had been organised at the request of the programme makers. Mr Allan explained that he and his colleagues discovered the astral doorway during a visit to the Chapel in 1998.

In its written response to Mr Allan's complaint, Discovery acknowledged that by changing the date of when Mr Allan and his colleagues discovered the doorway/portal the programme had been misleading to viewers. Discovery stated that:

*"We do however accept Mr Allan's point that the programme claims that he and his team were sent to investigate Rosslyn. This was the original intention. However in the end, the Chapel did not grant the crew access, and Mr Allan and his colleagues instead described a trip they had made some years earlier. **While this was misleading to the audience, and a mistake due to the programme makers desire to make the story feel fresher and more contemporaneous which should not have happened**, we do not believe that it maligns Mr Allan in any way. (emphasis added)"*

Before broadcasting a factual programme, including programmes examining past events broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

It should, be noted however, that an inaccuracy will not automatically result in unfairness. In relation to this complaint, Ofcom was required to determine whether the date of the event was a material fact, which if omitted or disregarded could result in unfairness to the complainant.

Ofcom noted that the programme's description of the event was largely based on quotes from Mr Allan and his colleagues, who were interviewed at length about their experiences. Their claim that they had discovered an astral doorway in the Chapel was also documented by Mr Allan himself in his internet article "Rosslyn: A Psychic Evaluation". Ofcom compared the complainant's own version of events with the one presented in the programme, and found that aside from the date change, the experience had been accurately summarised.

Ofcom noted that the specific date when Mr Allan and his colleagues said that they discovered the astral doorway, did not appear to be significant to the discovery itself as the date was not essential to the understanding or interpretation of Mr Allan's experiences inside the Chapel. In Ofcom's view, the date when Mr Allan and his colleagues said that they discovered the astral doorway was not material to understanding either the events that took place in the Chapel or Mr Allan's part in them.

In these circumstances, Ofcom found that the programme makers' decision to change the date when Mr Allan says that he and his colleagues discovered an astral doorway did not result in unfairness, as such a change was unlikely to have affected viewers' understanding of the event in a material way. Ofcom found no unfairness to Mr Allan in this respect.

- b) Mr Allan complained that it was unfair for the programme to imply that he believed the astral doorway was in some way extraterrestrial in nature, or responsible for the alleged UFO sightings near the Chapel. Mr Allan said that he never said or implied this to the programme makers.

Ofcom first sought to establish whether the programme implied that Mr Allan believed the astral doorway was extraterrestrial in nature, and secondly, if such an implication was made, whether it resulted in unfairness to Mr Allan in the programme as broadcast.

Ofcom noted that Mr Allan first appeared in the programme during the programme introduction (22 seconds into the programme):

Voice over: *More UFOs are reported by people in Scotland than any other country, and some residents suggest some elaborate theories to explain it...one such theory is about a portal to an **alien galaxy** at the heart of the church made famous by the best-selling novel, *The Da Vinci Code* (emphasis added).*

Mr Allan: *I believe that the secret to unlocking of this doorway exists also in the Chapel.*

Mr Allan's main contribution was then included in part three of the programme. Immediately prior to this section, the programme featured other contributors who explained that the Chapel has been at the heart of many conspiracy theories. The programme commented that:

"...some locals are convinced that something even more potent than the Holygrail is buried at the Chapel. The gateway to another dimension used by aliens".

The programme did not attribute this theory to Mr Allan but to other contributors. Mr Allan and his colleagues were then introduced in the following way:

"So let's test this theory. The obvious place to look for this alien gateway to another galaxy is inside Rosslyn Chapel itself. And the obvious people to investigate, the top local paranormal investigators. They're Brian Allan and mystics Anne-Marie Sneddon and Jim Lochhead."

Presented in this way, Ofcom considered that it would have been clear to viewers that the programme was examining the possible existence of an alien gateway inside the Chapel, and that Mr Allan's discovery of a doorway was being considered as possible evidence of such a gateway.

In his complaint to Ofcom, Mr Allan objected to such a link being made, stating that he did not state or imply that the doorway was extraterrestrial in nature. However, after viewing a recording of Mr Allan's unedited interview, Ofcom noted that Mr Allan indicated to the programme makers that he believed the astral doorway was being used by entities which could be variously described as extraterrestrial entities or astral entities.

During his interview with the programme makers, Mr Allan was asked to clarify the difference between “beings from different dimensions” (i.e. those that would use the doorway discovered by Mr Allan and his colleagues) and “aliens” (i.e. those associated with UFOs).

Interviewer: *“So you mean you believe that **beings** are passing through the...*

Anne Marie: *“Are coming through the doorway”*

Interviewer: *...“I mean the talk of beings and different dimensions and levels... is there a crossover here with what people who think they’ve had alien experiences are experiencing? Is this a similar thing or is it a completely different thing?”*

Brian Allan: *“I would also say with some degree of certainty that ET, extraterrestrial entities are the demons of old. I would tend to say that there is no...the paranormal is a subject that, UFOlogy is part and parcel of the paranormal. It’s not a separate subject. You’re dealing with beings; entities; creatures. **Call them what you like.** They are originating in other realities that run in parallel with ours. Anne Marie calls them astral entities and that’s exactly what they are. They’re existing in other realities. **The only difference between what Anne Marie and Jim are talking about and what I’m talking about is in terms of vocabulary.** They call them one thing I call them another but we’re talking about the same entities OK. That things are seen that are **alleged to come out of spacecraft, well all I can say I that as far as I’m concerned these things are coming out of other dimensions that are existing alongside our own.** Somehow they’re able to do it. (emphasis added)*

Based on Mr Allan’s explanation above, Ofcom considered that it was reasonable for the programme makers to draw a link between those “beings” that were able to travel through doorways to other dimensions, and “aliens” as they were all “coming out of other dimensions that are existing alongside our own”.

Ofcom also noted that the programme attempted to refer to Mr Allan’s theory of the interdimensional nature of the astral doorway by describing it at one point as an “interdimensional stargate”.

Ofcom found viewers were likely to understand that Mr Allan’s claim that he had discovered an astral doorway was being considered as part of the programme’s examination that there may be an alien gateway inside the Chapel. This did not result in unfairness to Mr Allan as in Ofcom’s opinion he had indicated to the programme makers that an “astral doorway” and an “alien gateway” were different ways of describing the same thing.

- c) Mr Allan complained that it was unfair for the programme to state that the patterned cubes in the Chapel had no relevance. Mr Allan said this negative statement was made with no real evidence other than the fact that Professor Campbell could not instantly reproduce the patterns on the cubes.

Before broadcasting a factual programme, including programmes examining past events broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

In this case, it was not for Ofcom to judge whether or not the test results of the programme's experiment were scientifically significant, but rather to assess if the programme as broadcast presented the experiment and the findings of the experiment in a fair way. Ofcom considered that in order for the programme to fairly test and make a conclusion about Mr Allan's theory, it was incumbent on the programme makers to adequately explain to viewers the experiment's methodology so that they could understand the basis of the programme's conclusions.

The programme explained that it planned to test Mr Allan's theory with the help of an expert, Professor Campbell, who was Professor of Music at Edinburgh University. The programme explained the test in the following way:

Voice over: *We asked Professor Campbell to try and repeat the patterns using the Chladni technique. For three hours he tried different substances on his board and different parts of his bow.*

Ofcom considered that this was a reasonable explanation of a relatively simple experiment and would have given viewers a clear indication about the experiment's limited scope.

After conducting the experiment, the programme explained the results and drew this conclusion:

Voice over: *But none of it worked. Professor Campbell could not recreate any of the patterns. It seems the stonework of Rosslyn Church has nothing to do with Chladni.*

The programme went on to acknowledge the possibility that the findings were inconclusive:

"But this doesn't mean that there isn't a portal or a code. Perhaps only the aliens have the technology to decipher the code, or perhaps they use different musical notations from us?"

Ofcom found that the programme adequately explained the experiment's methodology, and in doing so, appropriately informed viewers about how the programme's findings were reached. Ofcom considered that viewers were likely to have understood the scientific scope of the experiment and were therefore able to give due weight to the findings of the experiment. Ofcom found no unfairness to Mr Allan in this respect.

- d) Mr Allan complained that the programme falsely referred to him as a "psychic". Mr Allan said that he is not, nor has he ever claimed to be, a psychic.

In the programme, Ofcom noted that the voice over first described Mr Allan and his colleagues as "paranormal investigators". Programme captions then provided further detail and referred to Mr Allan as "Investigator, Paranormal Encounter Group". Later in the programme Mr Allan and his colleagues were referred to by the voice over as "psychics". Ofcom noted that this last description of Mr Allan and his colleagues was made after they described their discovery of an astral doorway in the Chapel.

While Ofcom acknowledged that Mr Allan may not define himself as being a psychic, Ofcom was required to determine whether or not it was fair for the

programme to use the term when referring to Mr Allan in the programme as broadcast.

In reaching a decision, Ofcom noted the dictionary definition of the word “psychic” as provided by Discovery in their written statement:

“a person apparently sensitive to things beyond the natural range of perception.”

Ofcom also had regard for the Oxford dictionary’s definition of the word:

“A person who is regarded as particularly susceptible to supernatural or paranormal influence.”

In Ofcom’s view, Mr Allan’s description of his experience inside the Chapel in 1998, which occurred to only a handful of people, demonstrated that according to his own testimony he was capable of sensing things outside the range of a normal person’s perception. In the circumstances, Ofcom considered that it was reasonable for the programme makers to describe Mr Allan as a psychic, as the description of a person who is sensitive to things beyond the natural range of perception, was fair. Accordingly, Ofcom has not upheld this part of Mr Allan’s complaint.

- e) Mr Allan complained that the programme used footage of him with his hand bridged over his eyebrow in an unfair way. Mr Allan said that the repeated use of the footage was an attempt to make him look “utterly ridiculous”.

After viewing the unedited recording of Mr Allan’s interview, Ofcom noted that Mr Allan’s action of putting his hand to his eyebrow was originally used by him to help him remember this ‘train of thought’:

“I’ve forgot what the hell I was going to talk about, let me, let me get this back again” eyes closed, hand bridged over eyebrow, slight rocking of the head, speaking to himself.

Ofcom noted that the footage was included three times in the programme, (minus the original audio) in relation to Mr Allan’s theory of how to open the astral doorway using Chladni Theory.

Ofcom acknowledged Discovery’s statement in which it claimed that it did not intend to hold Mr Allan up to ridicule and regretted that the complainant felt this way. Discovery said that the use of the footage was intended to represent Mr Allan’s experience inside the Chapel.

Ofcom noted that Mr Allan had described his physical experience inside the Chapel in his article “Rosslyn: A Psychic Evaluation” as follows:

“I stood with my back to the East wall, extended my arms palms down, closed my eyes and relaxed.”

During the same visit:

“Jim told me to close my eyes, relax and tell him what I could feel. I felt myself begin to gently sway back and forth, the oscillations gradually becoming more pronounced.”

In Ofcom's opinion it was fair to use the footage of Mr Allan - eyes closed, head slightly rocking, with his hand to his eyebrow - to indicate a moment of insight as described by Mr Allan in his article "Rosslyn: A Psychic Evaluation". Ofcom believed it was likely that viewers would have understood the repeat use of the footage was an editing technique used in this case by the programme makers to highlight the key claim that Mr Allan's made - that he himself had sensed something unusual in the Chapel. Given the limited impact of the visual effect Ofcom found it did not result in unfairness to Mr Allan as it would not have been capable of affecting viewers' understanding of the complainant in a material way.

- f) Mr Allan complained that the programme makers did not inform him that the subject matter would be presented in a 'jokey' fashion. Mr Allan said that had he known this, he would not have participated in the programme.

Broadcasters and programme makers should normally be fair in their dealings with potential contributors to programmes unless, exceptionally it is justified to do otherwise. Where a person is invited to make a contribution to a programme, they should normally, at an appropriate stage be told the nature and purpose of the programme, what the programme is about and be given a clear explanation of why they were asked to contribute and when if known and where it is likely to be first broadcast.

Ofcom received limited information from either party about the content of any pre-production conversations or correspondence between the programme makers and Mr Allan. However from the information available including Mr Allan's written statements, his signed release form, and a recording of his unedited interview, Ofcom found no evidence that Mr Allan was either misled about the general nature of the programme or had secured a guarantee from the programme makers about the presentation or overall tone of the programme.

Mr Allan acknowledged in his written statement to Ofcom that "I was aware that the programme concerned UFOs". Mr Allan also signed a release form that indicated that the working title of the programme was "The Strangest UFO Stories of All Time". After viewing a recording of Mr Allan's unedited interview, Ofcom noted that the programme makers spoke openly about the possible relationship between the portal discovered by Mr Allan and his colleagues and other people's experiences of aliens (see finding B). In Ofcom's opinion, the information provided to Mr Allan during his interview, and on his release form was sufficient for him to be able to understand that: the general premise of the programme was about UFOs; and his contribution would relate to his and his colleague's discovery of a doorway inside the Chapel, and refer to his theory about how to open this doorway. Ofcom noted that the programme as broadcast matched this expectation in that Mr Allan's contribution: was included within the context of a possible UFO connection; focussed largely on his discovery of a doorway inside the Chapel, and an experiment to test his theory about how to open the doorway. In the circumstances, Ofcom concluded that Mr Allan was not misled about the nature or likely content of the programme.

Ofcom next considered the tone of the programme to determine whether it resulted in unfairness to Mr Allan. After viewing the programme, Ofcom noted that while the overall premise of the programme was exploratory, the programme included visual effects relating to UFOs and aliens, and commentary that was sceptical in tone. In Ofcom's opinion, the tone taken by the programme makers signalled to viewers that this was a light feature rather than a serious scientific analysis. However, given the subject under consideration, Ofcom did not believe that this tone resulted in unfairness to Mr Allan. As noted above Ofcom found no

evidence that Mr Allan had been given a guarantee about the tone of the programme, or had been misled by the programme makers about the nature and likely content of the programme. Ofcom concluded that the tone alone did not result in unfairness to Mr Allan in the programme as broadcast, as the viewers' impression of him would not have been materially affected by it.

- g) Mr Allan complained the programme implied that his contribution was connected to UFOs. Mr Allan said he did not give consent for the programme to make this suggestion.

Where a person is invited to make a contribution to a programme they should normally, at an appropriate stage be told the nature and purpose of the programme and what the programme is about.

As noted above (see finding F) Ofcom was satisfied that Mr Allan was not misled about the nature and likely content of the programme. Specifically Mr Allan was made aware that the programme concerned UFOs.

In Ofcom's opinion, by signing the release form for his participation in the programme, Mr Allan gave consent for his contribution to be considered within the context of UFOs. Ofcom concluded that it was fair for the programme to examine a possible connection between the astral doorway and the existence of an alien gateway, and that appropriate consent had been obtained by the programme makers from Mr Allan in respect of such an examination. Ofcom found no unfairness in relation to this complaint.

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

Other Programmes Not in Breach/Out of Remit

4 January 2007 - 18 January 2007

Programme	Trans Date	Channel	Category	No of Complaints
A Girl's Guide to 21st Century Sex	18/12/2006	Five	Sex/Nudity	1
A River Cottage Christmas Feast	19/12/2006	Channel 4	Crime (incite/encourage)	1
A Touch of Frost	19/10/2006	ITV3	Advertising	1
All New You've Been Framed	23/12/2006	ITV1	Animal Welfare	1
Alternative Christmas Message	25/12/2006	Channel 4	Religious Offence	6
Anthea Turner: Perfect Housewife	28/12/2006	BBC2	General Acceptance Standards	1
Bedknobs and Broomsticks	26/12/2006	BBC1	Animal Welfare	1
Big Brothers Little Brother		Channel 4	General Acceptance Standards	1
Breakfast with Helen and James	12/12/2006	Q103 FM	Religious Offence	1
Breakfast with Simon and Jennie	20/11/2006	Reading 107 FM	General Acceptance Standards	1
Britain's Fattest Teenager	07/08/2006	Five	Offensive Language	3
Cash in the Attic	02/01/2007	BBC1	Sex/Nudity	1
Chart Show	24/12/2006	Century 105	Inaccuracy/Misleading	1
Come Dine With Me	05/01/2007	Channel 4	Offensive Language	1
Come Dine With Me	03/01/2007	Channel 4	Offensive Language	1
Coronation Street	11/12/2006	ITV1	General Acceptance Standards	3
Cutting Edge	07/08/2006	Channel 4	General Acceptance Standards	2
Cutting Edge: Pram Face	14/08/2006	Channel 4	Inaccuracy/Misleading	2
Dead Ringers Christmas Special	31/12/2006	BBC2	Scheduling	1
Derren Brown	29/12/2006	Channel 4	Dangerous Behaviour	2
Doc Martin	25/12/2006	ITV1	General Acceptance Standards	1
Doctor Who	25/12/2006	BBC1	Religious Offence	1
Down The Line	20/12/2006	BBC Radio 4	Crime (incite/encourage)	2
Dracula	25/12/2006	BBC1	Scheduling	1
Dream Team	10/12/2006	Sky One	General Acceptance Standards	2
Eastenders	28/11/2006	BBC1	General Acceptance Standards	1
Eastenders	25/12/2006	BBC1	General Acceptance Standards	2
Emmerdale	05/12/2006	ITV1	Religious Offence	1
Emmerdale	22/12/2006	ITV	General Acceptance Standards	1
Emmerdale	05/12/2006	ITV1	Religious Offence	1
Five News	17/12/2006	Five	Inaccuracy/Misleading	1
Fortune: Million Pound Giveaway	02/01/2007	ITV1	Crime (payment)	2

Friday Night With Jonathan Ross	15/12/2006	BBC1	General Acceptance Standards	2
GMTV	20/12/2006	ITV1	General Acceptance Standards	1
GMTV	29/12/2006	ITV1	General Acceptance Standards	1
Galapagos	29/12/2006	BBC2	Animal Welfare	1
Ghosthunting With Girls Aloud	22/12/2006	ITV2	Offensive Language	1
Hollyoaks	23/12/2006	E4	Sex/Nudity	1
Hollyoaks	18/12/2006	Channel 4	Sex/Nudity	1
I'm Sorry I Haven't a Clue	19/11/2006	BBC Radio 4	Religious Offence	1
ITV News	02/01/2007	ITV1	Inaccuracy/Misleading	1
ITV News	27/11/2006	ITV1	Inaccuracy/Misleading	1
Iain Lee	11/12/2006	LBC 97.3FM	Dangerous Behaviour	1
Inventions of War	08/01/2007	Five	Other	2
Late Night Ian Collins With Chessy	13/10/2006	Talksport	Crime (incite/encourage)	1
Late Night Lake with Allan Lake	12/11/2006	Core	Sex/Nudity	1
Lee Mack	06/01/2007	BBC Radio 2	Offensive Language	1
Manhunt - Solving Britain's Crimes	04/12/2006	ITV1	Crime (incite/encourage)	1
Marcus Churchill	19/09/2006	LBC97.3	General Acceptance Standards	1
Mark Lamarr	06/01/2007	BBC Radio 2	Offensive Language	1
Mission Implausible	09/12/2006	Sky One	Offensive Language	1
Monarch by David Starkey	04/12/2006	Channel 4	Inaccuracy/Misleading	1
Monty Python's Life of Brian	01/01/2007	Channel 4	Religious Offence	1
Never Mind the Buzzcocks	29/12/2006	BBC2	Crime (incite/encourage)	2
Never Mind the Buzzcocks	24/12/2006	BBC2	Religious Offence	1
Never Mind the Buzzcocks (trail)	23/12/2006	BBC1	General Acceptance Standards	1
News	14/12/2006	Broadland 102	Crime (incite/encourage)	1
Nick Ferrari	08/12/2006	LBC 97.3FM	U18's in Programmes	1
Oasis: Lock the Box	25/11/2006	ITV2	General Acceptance Standards	1
Off the Ball	09/12/2006	BBC Scotland	Sex/Nudity	1
Popworld	23/12/2006	Channel 4	Sex/Nudity	1
Princess Nikki	20/12/2006	Channel 4	Offensive Language	1
Programme trailer	25/12/2006	BBC1	Sex/Nudity	1
Pulling	30/11/2006	BBC3	General Acceptance Standards	1
Quiz Call	07/12/2006	Quiz Call	Competitions	1
Revenge TV	02/01/2007	ITV1	General Acceptance Standards	3
Ricky Gervais: Politics	25/12/2006	Channel 4	General Acceptance Standards	1
Secretary	14/12/2006	Channel 4	Sex/Nudity	1
Sherlock Holmes: The Sign of Four	28/12/2006	BBC2	Religious Offence	1

Skins (trailer)	06/01/2007	C4	Sex/Nudity	1
Sky News	11/11/2006	Sky News	Due Impartiality/Bias	1
Sky News	13/12/2006	Sky News	Commercial References	1
Sky News	12/12/2006	Sky News	General Acceptance Standards	1
Sports Breakfast	27/11/2006	Talksport	General Acceptance Standards	2
Sports Breakfast	19/12/2006	Talksport	General Acceptance Standards	1
Still Standing	26/11/2006	Trouble TV	Sex/Nudity	1
Strictly Come Dancing - It Takes Two	15/12/2006	BBC2	Sex/Nudity	1
TMi	25/12/2006	BBC1	Violence	1
Taggart	12/12/2006	ITV1	Violence	1
The Big Fat Quiz Of the Year	27/12/2006	Channel 4	General Acceptance Standards	1
The Bush and Troy Show	04/12/2006	GWR Radio	General Acceptance Standards	1
The Great Big Quiz	29/12/2006	Five	Competitions	1
The Lookey Likey Show	14/11/2006	ITV2	General Acceptance Standards	1
The Secret Policeman's Ball	30/12/2006	More 4	General Acceptance Standards	1
The Vicar of Dibley	25/12/2006	BBC1	Offensive Language	1
The X Factor	16/12/2006	ITV1	Competitions	1
The Xtra Factor	16/12/2006	ITV2	General Acceptance Standards	1
Thunderpants	29/12/2006	Channel 4	General Acceptance Standards	1
Tittybangbang	18/12/2006	BBC3	Substance Abuse	1
Totally Boyband	03/01/2007	Channel 4	Offensive Language	1
Toulouse Lautrec: The Full Story	16/12/2006	Channel 4	Sex/Nudity	1
Ugly Betty	07/01/2007	Channel 4	Sex/Nudity	1
Vanessa's Real Lives	11/12/2006	ITV1	Sex/Nudity	4
Watchdog	10/10/2006	BBC1	Dangerous Behaviour	1
When We Were Scouts	02/01/2007	BBC2	General Acceptance Standards	1
You Are What You Eat: Gillian Moves In	09/01/2007	Channel 4	General Acceptance Standards	3
Talksport		Talksport	General Acceptance Standards	1