

# **Ofcom Broadcast Bulletin**

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## Contents

Introduction	3
<b>Standards cases</b>	
In Breach	4
Not in breach	12
<b>Fairness &amp; Privacy cases</b>	
Upheld in part	14
Not Upheld	44
Other programmes not in breach/outside remit	73

## Introduction

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

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

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

## Standards cases

### In Breach

#### House of Fun

7/8 May 2007, around midnight

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#### Introduction

*House of Fun* is a free-to-air adult entertainment channel featuring female presenters - known as “babes” – who invite viewers to call them on premium rate phone lines for sexual conversation.

A complainant said the output broadcast around midnight on 7/8 May 2007 was too sexually explicit for un-encrypted transmission, particularly in a segment at 00:27.

Rule 1.24 of the Code says premium subscription services and pay-per view/night services may broadcast ‘adult-sex’ material between 22:00 and 05:30 - provided there is a mandatory PIN protection system, or equivalent protections, to restrict access to those authorised to view.

Rule 2.1 says generally accepted standards must be applied to ensure the public is protected from harmful and/or offensive material.

Rule 2.3 says broadcasters must ensure that material which may cause offence is justified by its context.

#### Response

The broadcaster, *House of Fun*, said the output did not represent the “more explicit images of sexual activity” as defined in the Code as ‘adult-sex’ material, and so did not come into the category of programme requiring mandatory encryption and PIN protections. The representations of sexual intercourse were simulated; they did not involve the use of sexual toys; and the presenters wore underwear at all times. Further, the content was justified by its context in an adult show, on an adult channel, and within the adult section of the Sky electronic programme guide (EPG).

The broadcaster added that viewers cannot stumble across the adult section of the EPG. It has to be a conscious decision. Sky has put systems in place to allow viewers to block adult material via PIN protection, if they choose. There is a further option available allowing for the entire adult section of the EPG to be removed from the visible EPG.

#### Decision

In deciding what is ‘adult-sex’ material, Ofcom guidance for broadcasters refers to definitions used by the British Board of Film Classification (BBFC) for ‘sex works at 18’. These are defined as “works... whose primary purpose is sexual arousal or stimulation”.

The output of *House of Fun* featured two topless women apparently engaging in masturbation inside their underwear, and then simulating oral sex. A third woman,

apparently naked, was later presented in a separate window on screen with her legs spread and appearing to engage in masturbation, obscured by pixellation of her genital area. There was however no sound transmitted, except for a music track and an occasional voice-over urging viewers to call the “babes” on premium rate lines.

Images featuring simulated sexual acts that are not justified by context (such as the editorial content of the programme) will be considered ‘adult-sex’ material by Ofcom if one of their primary purposes appears to be sexual arousal or stimulation.

Ofcom considers that this output went beyond acceptable limits for free-to-air broadcast, in spite of the presence of underwear and pixellation, because of its explicit sexual content, and so amounted to ‘adult-sex’ material. One of its primary purposes was to provoke sexual arousal or stimulation as part of a commercial offer linking the on-screen sex acts with chat on premium rate sex lines.

The Code makes it clear that such ‘adult-sex’ material should be secured behind a mandatory PIN protection system. This requirement is not met by the *voluntary* system available through the satellite PIN system, which requires viewers to apply the protection themselves.

It follows that this material was therefore inconsistent with the application of generally accepted standards to ensure protections from harm and/or offence.

This was a serious breach of the Code. Ofcom considered whether the matter should be referred to the Content Sanctions Committee for consideration of a statutory sanction. However, Ofcom noted that on this occasion that there was pixellation of the more explicit images; no explicit sexual language was transmitted; and, the late time of broadcast. Nevertheless, any similar breach in future is likely to result in the consideration of a statutory sanction.

### **Breach of Rules 1.24, 2.1 and 2.3**

## **FHM Teeny Bikinis - Junior Jack, Stupidisco**

*QTV, 3 June 2007, 12:00*

## **Allstars Day - N.E.R.D, Lapdance**

*Kiss TV, 16 June 2007, 16:30*

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### **Introduction**

QTV is a pop music video channel owned and operated by Emap Performance TV. Three viewers, all of whom were watching with young children, complained about the inappropriate scheduling of this music video which showed skimpily dressed females writhing around in an erotic fashion in a wrestling ring. Ofcom asked the broadcaster to comment in relation to Rules 1.4, 1.17 and 1.18 of the Code. The rules in this section require that people under eighteen are protected from material that is unsuitable for them.

Kiss TV is a pop music video channel owned and operated by Emap Performance TV. Three viewers complained about the inappropriate scheduling of a video by N.E.R.D called 'Lapdance'. Two of the viewers were watching with their young children and objected to the sexually explicit material and offensive language. The video contained scenes showing topless lap dancers and the lyrics contained offensive language such as, 'motherfucker' and 'nigger'.

Ofcom asked the broadcaster to comment on the broadcast in relation to Rules 1.4, 1.14, 1.17 and 1.18 of the Ofcom Broadcasting Code.

### **Response**

Emap Performance TV said that they were disturbed that these incidents had occurred and totally accepted that they were inappropriate and unsuitable to broadcast pre-watershed. An immediate investigation was launched as to how late night versions of these videos had made it past a usually stringent series of checks to be broadcast in these time slots. Their internal rule for the watershed was later than that stipulated in the Code. No content suitable for 'adults only' should be aired before 22:00.

The investigation revealed that some weeks before these videos were broadcast, one of the media storage drives had been found to be corrupt and material was lost, including the videos in question. In the haste to load a large quantity of music back onto their systems, certain videos that were not intended for immediate transmission were left for the compliance team to check later. But in the case of videos complained of, these compliance checks were not carried out. As a result of these incidents, the programming and presentation teams had been reminded of the need to comply with the Code.

The broadcaster assured Ofcom that the matter was not being treated lightly and all versions of these music tracks have now been deleted. Following these incidents, compliance procedures had been tightened. Emap Performance TV apologised to all who had been offended by the material.

## Decision

Ofcom welcomes the broadcaster's assurances of improved compliance and its apology regarding these incidents. However, it remains the licensee's responsibility to ensure that effective and robust compliance procedures are in place to prevent such incidents. As the licensee acknowledged, it remained the responsibility of its compliance staff to check that the videos were suitable for broadcast. This compliance process was not completed. In view of the explicit and erotic nature of the material and the inclusion of offensive language in these broadcasts before the watershed, we consider that both of these broadcasts are in serious breach of the Code.

Ofcom notes that these are the second and third breaches of the Code it has recorded in 2007 against music channels owned and operated by Emap Performance TV for broadcasting inappropriate material pre-watershed. In Bulletin 86 a breach of 1.14 (most offensive language) and 1.16 (offensive language) was recorded against The Hits Channel for 'The Wheel of Love', a text to screen game that included offensive language being broadcast in text form on screen. Any similar breach in future is likely to result in the consideration of a statutory sanction.

Junior Jack, Stupidisco - **Breach of Rules 1.4, 1.17 and 1.18**

N.E.R.D., Lapdance - **Breach of Rules 1.4, 1.14, 1.17 and 1.18**

## **Midsomer Murders**

*ITV1, 7 February 2007, 16:00 (repeated 30 May, 16:00) and 29 May, 16:00*

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### **Introduction**

*Midsomer Murders* is a long-running drama, usually scheduled between 20:00 and 21:00, and set in a seemingly idyllic rural setting where murders which regularly occur in the community are investigated by police detective Tom Barnaby. This finding concerns two separate episodes, one broadcast on 7 February 2007 (and repeated on 30 May) and the other on 29 May.

#### 7 February, 16:00

Two viewers complained about the programme containing scenes of strangulation and an apparent shotgun suicide, as well as the use of bad language ('bastard' and 'bloody').

Ofcom wrote to Channel Television, who comply this programme on behalf of ITV1, for their comments in relation to Rule 1.3 (children must be protected by appropriate scheduling), Rule 1.11 (violence must be appropriately limited if shown before the watershed), Rule 1.16 (offensive language must not be broadcast before the watershed, unless justified by context), and Rule 2.3 (generally accepted standards).

#### 30 May, 16:00

The broadcaster repeated the episode which prompted a further four complaints from viewers concerned about scenes of violence being viewed by children.

#### 29 May, 16:00

This separate episode attracted six complaints, with viewers disturbed about swearing ('bastard' and 'shit') and a scene where a character dies after cutting his throat with a barber's razor during the performance of a play.

### **Response**

#### 7 February, 16:00

Channel Television said it felt the programme was appropriately scheduled between a cookery programme and the evening news, making it unlikely to attract a child audience. It noted, that according to BARB data, this specific episode attracted a child audience of nil. It argued the violence was appropriately limited, as edits had been made to particular scenes with the intention of making the programme suitable for a daytime transmission. It went on to say that this episode had originally been given a '12' certificate by the British Board of Film Classification when released in full on DVD. It also noted that the series is suitably well established for viewers to know exactly what to expect when tuning in.

With regard to the use of offensive language, Channel Television believed the usage was consistent with Ofcom's research on this issue, and that none of the terms used was inappropriate for the transmission time.

#### 29 May, 16:00

Channel Television regarded the uses of 'shit', 'frigging' and 'bastard' in one scene as justified by the context of that scene. The lead actor in the play had dumped his pregnant mistress – herself in the play – and on-stage she loses control, calls him a 'shit' twice and slaps his face. In response, he throws the woman to the ground,

causing her to curse off stage to another actor. The channel also noted Ofcom's own research into the use of the term 'bastard', which is regarded as "fairly middling" bad language, and 'shit' which is deemed to be a "mild, toilet word".

In the scene where the actor cut his own throat – after a prop razor had been replaced with a real one – Channel Television maintained that nothing unduly explicit was portrayed on screen. No blood was visible and only the reaction from an actress on stage informed the audience the death was not an act.

Channel Television pointed out that this episode was previously shown in two parts on 15 and 18 September 2006 at 14:00 without any "regulatory interest".

## **Decision**

### Violence

Rule 1.11 states that "Violence, its after-effects and descriptions of violence, whether verbal or physical, must be appropriately limited in programmes broadcast before the watershed and must also be justified by the context". Ofcom has made clear in Broadcast Bulletin 87 that, in deciding whether material is appropriately scheduled, it must consider "the likely number and age range of children in the audience". Broadcasters must decide *before* a programme is broadcast whether it has been scheduled appropriately.

While *Midsomer Murders* is a crime drama aimed at adults, its scheduling in the afternoon at 16:00 on ITV1 means there is a reasonable likelihood of it being seen by children, some of them unaccompanied. We also noted that many schools were on half-term holidays on 29 May, which may have influenced children's viewing habits.

Ofcom believes that material which has been originally aired after 20:00 can be broadcast during the day in compliance with the Code provided suitable edits have been made to ensure it is appropriate for a daytime audience, which may include children. It notes that when *Midsomer Murders* had been shown previously in afternoon slots, the programme remained compliant with the Code.

Although, in its response, Channel Television outlined the cuts it had made to make the programme suitable for a daytime transmission, Ofcom believes the violence shown in this programme was not appropriately limited and justified by the context. In the episode shown on 7 February, and repeated on 30 May, the children were directly complicit in the murders. This gave the programme a greater potential to cause offence and shock. Further, there was a cumulative effect of steadily more graphic murders being featured on the programme (successive deaths made to appear as a shotgun suicide and a suicide by hanging) deliberately carried out by children. This culminated in the final sequence where two sisters dressed as majorettes were seen to delight in the murder of the victim being strangled by their brother. It was these factors together which caused Ofcom concern.

With regard to the edition of *Midsomer Murders* shown on 29 May 2007, while Ofcom notes that there was no blood shown during the scene of the character's death, a frontal view of his face (but not showing his throat) filled the screen at the moment he cut his throat, and the sound of his throat being cut was clearly audible as was the rasping gasp of the actor's final moments. This, combined with the tension of the build up to the murder with shots of the cutthroat razor, made the scene disturbing to view. Overall, it was not appropriate material to be aired during an afternoon timeslot.

Ofcom believes here also the violence was not appropriately limited and justified by context for the transmission of a programme at 16:00.

### Offensive Language

Rule 1.16 states: "Offensive language must not be broadcast before the watershed, or when children are particularly likely to be listening, unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed."

Channel Television has sought to defend the use of bad language across both programmes, referred to Ofcom's own research on how audiences regard terms such as 'bastard', 'bloody', 'pissed off' and 'shit' and suggested the language was justified in the context of the drama. Although the isolated use of such terms might be justifiable, Ofcom has previously upheld complaints about the frequent uses of such language (e.g. in Broadcast Bulletin 20, against *Rosemary & Thyme*) in the afternoon on ITV1.

Ofcom received two complaints about the programme previously transmitted at 14:00. However, it determined that the material was not in breach in that instance, given that the drama was shown during the school term (which appears to have started on 4 and 5 September 2006). Therefore the particular likelihood of children being available to view this material was significantly reduced.

Research is clear that this language can be offensive to a number of viewers, especially if they are watching with children. However, we note this could have been a particular likelihood on 29 and 30 May when many schools were on half term holidays. Overall, Ofcom concludes that the frequent use of the bad language complained of was offensive and not justified by the context.

As these broadcasts were in breach of Rules 1.11 and 1.16, the material was clearly not suitable for children and was therefore inappropriately scheduled, in breach of Rule 1.3.

### **Breach of Rules 1.3, 1.11 and 1.16**

## **My God, I'm My Dad**

*Ftn, 2 June 2007, 20:00*

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### **Introduction**

*My God, I'm My Dad* is an entertainment series broadcast at 20:00 on Ftn and includes interviews and lighthearted comment from celebrities. Ftn is one of a number of channels owned by Virgin Media TV and features entertainment content from other Virgin Media TV channels - Living, Bravo, Trouble and Challenge.

Ofcom received a complaint that the word 'fucking' was not 'bleeped' in this pre-watershed programme. It considered this complaint under Rule 1.14 (the most offensive language must not be broadcast before the watershed) of the Code.

### **Response**

Virgin Media TV responded that this incident was a result of human error, and that despite 'bleeping' five instances of the most offensive language in this programme, it failed to notice this particular one aired at around 20:20. Virgin Media TV noted that although this was broadcast close to the watershed, it fully acknowledged that this word should not have been included.

It apologised for any offence that this error had caused and assured Ofcom that it had 'bleeped' this audible use of the word from this programme so that it would not be aired in any future transmissions. It confirmed to Ofcom that the incorrect version of this programme would not be transmitted again.

### **Decision**

Although this series does not generally attract a significant child audience, it may be of interest to children. Rule 1.14 states that "the most offensive language should not be broadcast before the watershed..." It was therefore not acceptable to broadcast the word 'fucking' in this pre-watershed programme.

In this instance, we welcome the apology given by Virgin Media TV and the steps it has taken to ensure this programme is now compliant. However, in light of Ofcom's recent Note to Broadcasters about offensive language before the watershed (see Broadcast Bulletin 89), Ofcom asks broadcasters to note that it will take firm regulatory action if broadcasters do not fulfil their duty to ensure compliance in this area.

### **Breach of Rule 1.14**

## Not in Breach

### **Diana: The Witnesses in the Tunnel**

*Channel 4, 6 June 2007, 21:00*

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#### **Introduction**

*Diana: The Witnesses in the Tunnel* was a history documentary made for Channel 4 by ITN Factual. The programme explored the events leading up to and following the car crash in Paris in 1997 which led to the death of Diana, Princess of Wales. In particular, the programme looked at the role of ‘paparazzi’ photographers in the accident in the Pont d’Alma Tunnel and at the scene in the immediate aftermath of the crash. A number of photographs taken in and around the Tunnel that night were included in the programme.

The first half of the programme dealt with the events leading up to the car crash in the tunnel and events at the scene in the hours following it. It examined, in particular, subsequent claims that the paparazzi had caused the crash, by chasing the car and had hindered medical help and rescue attempts at the scene. It then went on to look at what happened to the photographers and their pictures, taken that night, in the hours and days following the crash. The final section of the programme covered the outcome of the official French investigation into the crash and the impact of the events of the night of the crash on the subsequent lives and careers of the photographers.

Ofcom received 62 complaints from viewers, objecting to the showing of the programme and/or the inclusion of the crash scene photographs. Some found the images used disturbing in themselves. However, others specifically mentioned a request by Princes William and Harry that some of these pictures be removed from the programme and objected to the fact that Channel 4 had not agreed to do so. These complainants believed that Channel 4 had been insensitive and disrespectful to the wishes of the families of the crash victims. Many argued that the controversial images were in any event unnecessary for the programme and indeed that the programme itself added nothing new. A number disputed that it was in the public interest for the programme to be shown at all.

Ofcom considered the programme under Rule 2.3 of the Code (offensive material must be justified by context).

Under the Communications Act 2003 (“the Act”), Ofcom can only consider complaints of infringements of privacy from those directly affected (or those authorised to complain on behalf of those directly affected) by a programme. In the absence of such a complaint Ofcom did not consider issues concerning infringements of privacy.

#### **Decision**

The Act requires Ofcom to ensure that “generally accepted standards” are applied to the content of television programmes so as to provide adequate protection for the public from harmful or offensive material. However, Ofcom must secure these standards in “a manner that best guarantees an appropriate level of freedom of expression”. The appropriate level will vary on a case by case basis and depend on a

number of factors such as the public interest, the potential level of offence or harm as well as the context of the material.

Rule 2.3 of the Code, which reflects the requirements of the Act, deals with the application of generally accepted standards to programmes and requires that material which may cause offence is justified by the context. Context includes such matters as, in this case, the editorial content of the programme, the service on which it is broadcast and the time of broadcast. It also includes the extent to which programme information can help to bring the nature of challenging content to the attention of the potential audience in advance of the programme.

In assessing this programme against this Rule, Ofcom took into account the content of the programme as a whole, including the disputed photographs. It considered that, whilst some viewers might object on principle to the transmission of the programme or particular elements within it, the images and themes it contained were in line with viewer expectations for this type of investigative historical documentary on Channel 4. Furthermore, the programme was transmitted after the watershed and was preceded with detailed information explaining what was in the programme and the fact that it contained carefully selected and edited photographs of the immediate aftermath of the crash.

In relation to the use of the photographs taken by the paparazzi, and those taken by other witnesses at the crash scene, Ofcom noted that these photographs were integral to the nature and editorial narrative of the programme. They were used as evidence to challenge initial reports that the photographers either caused the crash or obstructed those trying to give medical and other help to the crash victims. The programme also explored the wider story relating to the intended use of the crash pictures by the British press, prior to news of Princess Diana's death. Both of these issues were clearly a matter of public interest.

Ofcom also noted that Channel 4 had taken steps to reduce the visual impact of the main photographs of the crashed car. In particular, a photograph showing the first French doctor on the scene leaning into the car assisting Princess Diana had been carefully masked so as not to show her face, injuries or any detail. In the photograph neither the doctor nor Princess Diana were identifiable. This black and white image, which was of poor quality, was used to support the doctor's testimony that although at this stage there were photographers close to the car taking pictures, they did not hamper his attempts to help Princess Diana. Overall the photographs were not used in a gratuitous manner and were not sensationalised.

The subject of this documentary is a highly sensitive issue and such photographs can understandably upset viewers and cause offence. However, this was a serious piece of investigative journalism examining issues and events which remain firmly in the public consciousness. The photographs included in the programme were integral to the credibility of the argument being made and the corroborated first hand testimony. Taking the programme as a whole, Ofcom considered that its contents had been justified by context. The programme was therefore not in breach of the Code.

**Not in breach**

## Fairness and Privacy Cases

### Upheld in part

#### Complaint by Maxwell Hodge solicitors on behalf of European Environmental Controls Ltd

*Old Dogs New Tricks, BBC1, 24 August 2006*

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**Summary:** Ofcom has not upheld, with the exception of one element, Environmental European Controls Ltd's complaint of unfair treatment.

This edition of the consumer programme *Old Dogs New Tricks* investigated a home security company called European Environmental Controls ("EEC"). The programme alleged that EEC: sold overpriced security product; targeted vulnerable elderly people; and employed questionable sales techniques.

EEC complained that it had been treated unfairly in the programme as broadcast in that: the programme made negative unsubstantiated comments about EEC; it had not been given an appropriate opportunity to respond to all of the programme's allegations; the programme makers ignored information provided by EEC prior to broadcast; the programme makers sought an interview with the owner of EEC unannounced and while correspondence about the possibility of an interview with was still ongoing; and the programme misrepresented the company's position with respect to whether it intended to make any changes to its business in the future.

In summary Ofcom found as follows:

- Ofcom found that significant information from various sources had been included in the programme to support the allegations made against EEC. Furthermore, Ofcom found that prior to broadcast, the programme makers had provided EEC with an appropriate opportunity to respond to all of the significant allegations to be made in the programme.
- Ofcom found that the programme as broadcast appropriately reflected all of the relevant information provided by the complainant, with one exception. In this instance, Ofcom found that the programme makers did not accurately describe one aspect of EEC's dealings with one of the customers featured in the programme, and this resulted in unfairness to EEC.
- Ofcom considered that it was reasonable for the programme makers to seek an interview with the owner of EEC unannounced. Ofcom did not believe this resulted in unfairness to the company as it had been provided with all the relevant information pertaining to the allegations prior to the interview, and the programme makers had exhausted, to a reasonable degree, other methods by which to secure an interview.
- Ofcom found that it was not unfair for the programme to state that there had been "no news" from EEC about whether it would change any of its business practices or refund money to the customers featured in the programme. In Ofcom's view this accurately summarised the fact that EEC had not provided details of any specific changes that it intended to make as a result of the programme's investigation.

## Introduction

On 24 August 2006, an edition of *Old Dogs, New Tricks*, an investigative consumer programme presenter by Esther Rantzen and Lynn Faulds Wood, was broadcast on BBC1. This edition investigated a home security company called European Environmental Controls Ltd (“EEC”).

The programme explained that the owner of EEC, Mr John Ball, was the former owner of a company called Fireguard, which had previously been investigated in 2004 by the consumer programme, *Watchdog*. The programme stated that the earlier edition of *Watchdog* had exposed Fireguard as “*pressure selling overpriced and unsuitable fire safety equipment to elderly people*”. The programme posed the question, was John Ball “*at it again?*”

As part of the programme’s investigation, an undercover reporter was placed inside EEC as a call centre operator in order to expose, it was stated, the company’s sales tactics. The reporter was later dismissed by EEC, and secretly recorded footage of his dismissal was included in the programme.

The programme also enlisted the help of security expert Mr Graeme Dow to assess and comment on EEC’s products and services, and the prices EEC charged for them.

The programme interviewed a former employee of EEC, Mr Albert Mitchell, who said he was so shocked by the company’s sales methods that he quit after one week. Mr Mitchell commented that it was “*one of the worst*” companies that he had worked for.

Towards the end of the programme, the presenters ‘doorstepped’ the business premises of EEC and interviewed Mr Ball.

Maxwell Hodge Solicitors (“Maxwell Hodge”) has made a complaint on behalf of EEC of unfair treatment in the programme as broadcast.

## The Complaint

### EEC’s case

In summary, Maxwell Hodge complained that EEC was treated unfairly in the programme as broadcast in that:

- a) The programme statements that EEC products were “*wildly overpriced*”, “*ludicrous*”, “*outrageous*” and that people were “*done over*” by EEC were unfair to EEC. Maxwell Hodge said the comments could not be justified as they had been tainted by the use of expert witness, Mr Dow, and by the failure of the programme makers to deal with valid points made by EEC about its pricing structures. In relation to this complaint:
  - i) Maxwell Hodge said that EEC had informed the programme makers, prior to broadcast, that the programme’s use of Mr Dow as an expert witness caused a conflict of interest. Maxwell Hodge explained that Mr Dow had once provided paid work for EEC and was made privy to confidential information concerning the manner in which EEC operated, its products and pricing structures. Maxwell Hodge complained that despite being informed of this

conflict of interest, the programme makers included Mr Dow's expert opinion that EEC's equipment was "*overpriced*".

- ii) Maxwell Hodge maintained that the programme makers ignored explanations provided by EEC about costings and overheads, which affected the price that EEC could afford to sell its products.
- b) The programme said that Mr Ball's company, Fireguard had been put into "*liquidation*" and that "*out of the ashes*" of Fireguard had come EEC. Maxwell Hodge said the statements were factually incorrect and had created the false impression that something had been done that was wrong, underhand and detrimental to consumers. Maxwell Hodge said that Fireguard had ceased to trade (which is entirely different from being put into liquidation) and its liabilities had been taken over by EEC.
- c) The inclusion of comments by Mr Albert Mitchell, about the sales tactics of EEC, was unfair. Maxwell Hodge said that Mr Mitchell was employed by EEC for one week and was never allocated to a sales team or went out selling on behalf of the company.
- d) The BBC did not fairly present the reasons why the undercover reporter had been dismissed. Maxwell Hodge said the reporter had been dismissed for failing to follow telephone scripts provided by EEC. Maxwell Hodge complained that rather than give the true reasons for the dismissal, the BBC instead intimated that the undercover reporter had been dismissed for asking customers if they had a burglar alarm, which gave viewers the unfair impression that EEC deliberately provided potential customers with limited information about the purpose of the phone call in order to effect a sale and take undue advantage of them.
- e) The programme makers did not properly consider facts provided by EEC prior to broadcast:
  - i) The programme reported that an anonymous customer of EEC, had been "*ripped off*". EEC complained the way the programme dealt with this issue was one-sided and did not provide a balanced consideration of the facts. In reality the customer, as with all customers, would have been given a price for the security product from a specified price list. The price was accepted, paid and the customer would have had 14 days to cancel or change their mind. The customer did not cancel the order, but 12 months later commented that they had been "*ripped off*".
  - ii) The programme misrepresented EEC's customer dealings with a customer named Mrs Pike and failed to accurately describe Mrs Pike's existing agreement with EEC.
  - iii) The programme ignored information provided by EEC, prior to broadcast, about the changes which the company had made since the last Watchdog programme (broadcast in 2004). As a result the programme unfairly portrayed EEC's current trading practices.
  - iv) The BBC did not reflect the extensive and detailed information provided by EEC prior to broadcast. This was evidenced by the programme's use of wording such as: "*ripping people off*", "*done over*", "*how did they get him to*

*fall for that*”, “*big expensive burglar alarms*” and “*overpriced products*”. The use of such wording was therefore unfair.

- f) The programme made two unsubstantiated allegations about EEC, which EEC had not been given a fair opportunity to respond to. These allegations were:
  - i) “*the company is at the forefront of selling...to customers...more than they need and charging more than they can afford*”, and
  - ii) “*the Police say the survey is designed to make people frightened*”.
- g) The programme makers sought an interview with Mr Ball at his work premises unannounced and whilst correspondence about the possibility of an interview with Mr Ball was still ongoing. Maxwell Hodge said this was unjustified and unfair.
- h) The programme incorrectly and unfairly claimed that there had been no news from Mr Ball as to whether he was prepared to make changes to the EEC business. Maxwell Hodge said the BBC had been advised prior to broadcast that no response could be made until EEC had viewed the programme. Furthermore the BBC had already been informed that changes would be considered by Mr Ball.
- i) The programme’s comment that EEC had been “*ripping people off for 15 years*” was not justified.

### **The BBC’s response to complaint**

The BBC prefaced its response to EEC’s specific complaints by stating that although Fireguard and EEC were separate legal entities, the companies’ underlying interest was identical and that being the case, so too were their moral interests.

- a) Comments about the pricing of EEC products were unjustified and tainted by the use of expert witness Mr Dow

The BBC said Mr Dow was an expert witness listed on the Expert Witness Register used by the courts. In 1999, Mr Dow was retained by the court (at EEC’s request) as a defence expert during a case where eight employees of EEC had been tried for fraud under criminal law. The BBC said that Mr Dow is not and never has been a professional adviser to EEC.

The BBC noted that since 1999 EEC has subsequently changed its equipment, policies and practices. The BBC said that any inside knowledge Mr Dow may have had, therefore, was not only necessarily stale, but rendered obsolete by EEC’s own changes in both its equipment and its policies.

In summary the BBC did not accept that Mr Dow’s necessarily outdated knowledge constituted a conflict of interest, and therefore there was no question of unfairness in broadcasting his opinion in the programme.

- b) The statement that Fireguard had been put into “liquidation” and that “out of the ashes” came EEC

The BBC queried whether comments made about Fireguard could result in unfairness to EEC and noted that to make such a complaint would appear to

suggest that there is no practical difference between the two companies. Notwithstanding this, the BBC said the relevant programme narration did not result in unfairness to the complainant.

The BBC said the relevant part of the programme did not leave viewers with an unfair impression of the company, as complained of by Maxwell Hodge. The BBC said that there was no necessary implication of impropriety by the programme's use of the term "*liquidation*" as the term could include "voluntary liquidation". The BBC explained that during such a procedure the directors of a company would make a statutory declaration of solvency. In relation to the phrase "*out of the ashes*" the BBC said that one clear implication of such a phrase was that there was a link between the two companies. BBC said that EEC's complaint made it clear that EEC took over at least some of Fireguard's liabilities and Mr Ball is or was in control of both companies.

c) The inclusion of comments by Mr Albert Mitchell

The BBC said the programme made clear that Mr Mitchell was an experienced salesman with other companies and was shocked by what he had heard from EEC's senior staff during his training. Mr Mitchell decided to resign rather than put the methods demonstrated during his training into practice.

The BBC said that it did not understand how, had Mr Mitchell been on his own with a sales prospect, he could have learned anything further about EEC's business practices.

d) The undercover reporter's dismissal

The BBC said that the programme had not intimated that the undercover reporter had been fired for asking customers about burglar alarms (as complained of by EEC). The BBC said the programme showed the reporter being told by an EEC supervisor that he was fired for not sticking to the script. The BBC said the point about the burglar alarm had been included because it was one example of the reasons given to the reporter for his dismissal (i.e. an instance when the reporter had asked a potential customer if they had a burglar alarm, had been cited by the EEC supervisor as an example of how the reporter had not kept to the EEC telephone script).

e) The BBC responded to the complaint that the programme makers did not properly consider facts provided by EEC prior to broadcast, as follows:

i) Anonymous customer's allegation of being "ripped off"

The BBC said it took steps to verify how much the anonymous customer had spent on his alarm system from EEC and had had the alarm system examined by security expert, Mr Dow. The programme reported that Mr Dow had found it to be "*very, very overpriced*".

ii) EEC's customer dealings with Mrs Pike

The BBC explained that the programme makers were provided with conflicting information from Mrs Pike's son (who had power of attorney over Mrs Pike's affairs) and from EEC. The BBC said it took due regard of all the information provided and gave a fair summary of the situation in the programme as broadcast when describing that for "*Over 15 years Stella Pike has paid John*

*Ball's companies in excess of eighteen thousand pounds. They've refunded a third of that".*

iii) Unfair portrayal EEC's current trading practices

The BBC said that it accepted that the company had made some minor changes to its operating procedures since it was last featured on *Watchdog* in 2004. However, the BBC maintained that the company did not make any fundamental changes to its business approach, as discovered by the programme research that was carried out three months immediately before transmission.

The BBC said the programme took due account of the changes made by Mr Ball's company to his operating procedures.

iv) Reflection in programme of information provided prior to broadcast

The BBC said that the "extensive and detailed" information that was provided by EEC prior to broadcast was an attempt to bury the producers in excessive paperwork. The BBC stated that it fairly reported clear facts that were provided by the complainant prior to broadcast.

f) Unsubstantiated allegations without fair opportunity to respond

- i) *"the company is at the forefront of selling...to customers...more than they need and charging more than they can afford".*

The BBC said this point was put to EEC at least twice, once in a letter to the company dated 9 June 2006, the other during the programme's interview with Mr Ball. The BBC said that on both occasions an appropriate opportunity to respond was given.

- ii) *"the Police say the survey is designed to make people frightened".*

The BBC said Mr Ball was asked this question directly during his interview. The question was based on Mr Alan McInnes' assessment of EEC's survey (Mr McInnes is a representative of the Association of Chief Police Officers). The BBC said it was a direct question asked during an interview and maintained that Mr Ball had an adequate opportunity to respond to it.

g) Approach and timing of interview with Mr Ball

The BBC stated that it did not understand how the matters complained of might result in unfairness to EEC in the programme as broadcast.

The BBC acknowledged that the presenters called on Mr Ball unannounced, but noted that Mr Ball consented to an interview.

The BBC said the decision to approach Mr Ball was taken after careful consideration. The programme makers wished to ensure Mr Ball was given a full and adequate opportunity to respond to the issues it had uncovered, and the long letters sent by him to the programme makers dwelt on relatively minor points while ignoring the big issues. The BBC said the letters were typical of the pattern of obfuscation often seen in this kind of case.

The BBC said the fact that Mr Ball went ahead with an interview in such circumstances suggested strongly that he recognized it as a fair way to proceed.

h) Presentation of consideration of “changes to business”

The BBC noted that the relevant programme commentary stated:

Commentary: *“There’s no news from John Ball about whether he’ll change any of his business practices or refund money to the customers Lynn and Esther met.”*

The BBC said the programme makers asked Mr Ball in pre-transmission correspondence whether he would refund money to any of the customers featured in the programme and whether, in light of what the programme makers had told him, he would change any of EEC’s business practices. The replies (from EEC and Mr Ball) at no time accepted there were any shortcomings in EEC’s practices. The BBC maintained the script line was factually accurate and therefore fair.

i) “Ripping people off for 15 years”

The BBC stated that the programme demonstrated without a doubt that EEC customers had been sold overpriced equipment. As such the expression “*ripping off*” was entirely appropriate. The BBC said it could be easily demonstrated that this had been happening since the time the company started in 1991. The BBC noted that Mrs Pike had been a customer of EEC for 15 years and for the same period the BBC, Trading Standards and other authorities received related complaints about EEC.

**Complainant’s response to the BBC’s statement**

A summary of Maxwell Hodge’s comments is set out below:

In response to the BBC comments relating to the connection between Fireguard and EEC, Maxwell Hodge said that the broadcaster completely ignored the fact that no Fireguard customer suffered as a result of the decision to cease trading through Fireguard and indeed EEC took over all liabilities and responsibilities of Fireguard.

a) Comments about the pricing of EEC products were unjustified and tainted by the use of expert witness Mr Dow

Maxwell Hodge said the BBC’s statement was factually inaccurate in this regard. Mr Dow was not “retained by the Court” as stated by the BBC. Rather Mr Dow had been engaged and paid by the officers and employees of EEC during litigation proceedings. Maxwell Hodge listed the 17 reports which Mr Dow had been asked to write for the proceedings and maintained that the areas of business covered by the reports overlapped all areas that Mr Dow was asked to comment on by the programme makers of *Old Dogs New Tricks*. Maxwell Hodge said Mr Dow’s independence was clearly an issue which the BBC chose to ignore despite the matter being drawn to their attention.

Maxwell Hodge maintained that the programme makers ignored explanations provided by EEC about costings and overheads, which affected the price at which EEC could afford to sell its products. It was also noted that Mr Dow was made aware when acting on behalf of EEC employees and officers that the

overheads of EEC were very different to the majority of companies selling burglar alarms because of their direct sales costs. Similarly the programme makers ignored the fact that EEC clearly informed its customers of the price involved and provided them with fourteen days in which to cancel their orders.

b) The statement that Fireguard had been put “into liquidation” and that “out of the ashes” came EEC

Maxwell Hodge said the programme reference to putting Fireguard “*into liquidation*” was untrue and designed to show EEC in a bad light. Similarly the reference to EEC coming “*out of the ashes*” was a deliberate attempt to suggest that EEC was a ‘Phoenix’ company, i.e. a company which is known to have a bad reputation.

c) The inclusion of comments by Mr Albert Mitchell

Maxwell Hodge said that EEC was never given an opportunity to comment upon the allegations raised by Mr Albert Mitchell.

d) The undercover reporter’s dismissal

No additional comments.

e) In support of its complaint that the programme makers did not properly consider facts provided by EEC prior to broadcast, Maxwell Hodge made the following comments:

i) Anonymous customer’s allegation of being “ripped off”

No additional comments.

ii) EEC’s customer dealings with Mrs Pike

Maxwell Hodge maintained that the programme makers did not refer to the information provided by EEC about Ms Pike, in the programme as broadcast.

iii) Unfair portrayal EEC’s current trading practices

Maxwell Hodge also commented that the BBC appeared to contradict itself when stating that EEC had “made some minor changes to its operating procedures” since it was last featured on *Watchdog* in 2004, and earlier in the BBC statement, that EEC’s “sales procedures went through a complete re-write some two years ago”.

Maxwell Hodge noted that the final purchases of the two EEC customers examined in the programme pre-dated the last *Watchdog* programme of 2004.

iv) Reflection in programme of information provided prior to broadcast

Maxwell Hodge said the manner in which the BBC responded to this head of complaint implied that most of the paperwork that had been provided by EEC prior to broadcast had been ignored.

f) Unsubstantiated allegations without fair opportunity to respond

- i) *“the company is at the forefront of selling...to customers...more than they need and charging more than they can afford”.*

Maxwell Hodge said EEC responded in full to all allegations put to it, but the BBC chose not to use those replies. EEC requested further information from the BBC in order that it might provide a full and informed response to some of the queries raised but EEC’s response was apparently not to the satisfaction of the BBC.

- ii) *“the Police say the survey is designed to make people frightened”.*

Maxwell Hodge denied that Mr Ball chose to ignore this allegation during the interview and stated that the tone of the interview was such that Mr Ball was not given an opportunity to finish his sentence in response.

- g) Approach and timing of interview with Mr Ball

Maxwell Hodge said the BBC’s statement ignored the fact that Mr Ball had not refused to give an interview prior to broadcast, but was awaiting clarification on information from the BBC which never arrived. The interview was therefore contrived and conducted in a manner which the BBC unilaterally decided upon. By turning up unannounced, they gave Mr Ball no real option but to participate. Had he refused to be interviewed at that stage no doubt the broadcast would have shown that refusal.

- h) Presentation of consideration of “changes to business”

Maxwell Hodge said the BBC’s comment that there had been no news as to whether Mr Ball was prepared to make changes to the EEC business was factually incorrect. A letter from the complainant to the programme makers on 18 July 2006 fully explained that it would be misleading to change the EEC telesales script in the way suggested by the programme’s presenters, as to do so would be misleading. Maxwell Hodge noted that this explanation was not referred to in the programme.

- i) “Ripping people off for 15 years”

Maxwell Hodge did not accept that the programme “demonstrated without a doubt” that EEC had sold over priced equipment, as claimed by the BBC.

### **The BBC’s second statement in response to complaint**

In summary, the BBC responded as follows:

- a) The programme’s use of Mr Dow as an expert witness

Neither the BBC nor Mr Dow accepted that Mr Dow had a duty of confidentiality to Mr Ball and EEC. Mr Dow’s professional code of conduct did not preclude him from giving interviews or evidence that may not be in the interests of his former clients. His comments in the programme reflected his professional judgement in 2006, and what he said in 1999, in a very different context, had no bearing on the matter.

The BBC referred to the information provided by EEC prior to broadcast about costings and overheads. The BBC said the information provided was “all bare assertion and was not “backed up by any evidence”.

b) The statement that Fireguard had been put into “liquidation” and that “out of the ashes” came EEC

The BBC maintained that the programme contained no suggestion that any customer had been disadvantaged (beyond being overcharged) by the demise of Fireguard.

c) The inclusion of comments by Mr Albert Mitchell

No additional comments.

d) The undercover reporter’s dismissal

No additional comments.

e) i) Anonymous customer’s allegation of being “ripped off”

The BBC said the programme makers advised Mr Ball of the case of the anonymous caller in its letter of 9 June 2006. Mr Ball responded to the letter, seeking clarification on a number of points, but did not refer to the anonymous caller or ask for details which might enable him to identify the precise case. The BBC said that Mr Ball therefore did not respond appropriately, rather, he simply ignored it.

ii) EEC’s customer dealings with Mrs Pike

No additional comments.

iii) Unfair portrayal EEC’s current trading practices

The BBC said there was no reference in the programme to changes in operating procedures, which were, in any event, not the same as sales procedures.

iv) Reflection in programme of information provided prior to broadcast

No additional comments.

f) Unsubstantiated allegations without fair opportunity to respond

i) *“the company is at the forefront of selling...to customers...more than they need and charging more than they can afford”.*

No additional comments.

ii) *“the Police say the survey is designed to make people frightened”.*

The BBC disagreed that Mr Ball was not allowed to finish his response to the allegation during his interview at the EEC office.

g) Approach and timing of interview with Mr Ball

The BBC said the correspondence between the programme makers and EEC would demonstrate that all the material supplied by EEC was carefully considered. The BBC said that though much time was spent arguing the same points, there were key issues and allegations that were repeatedly not addressed, which was why the programme makers ultimately visited the company's office.

h) Presentation of consideration of "changes to business"

The BBC maintained that the programme's statement that *"There's no news from John Ball about whether he'll change any of his business practices or refund money to the customers Lynn and Ester met"* was accurate and fair, given the correspondence between the programme makers and EEC prior to broadcast.

i) "Ripping people off for 15 years"

No additional comments.

## 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 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.

EEC's complaint was considered by Ofcom's Executive Fairness Group. In reaching its decision, the Group had regard for a copy of the programme, the programme transcript, both parties' written submissions (including supporting documents), and copies of relevant unedited programme recordings.

- a) Ofcom first considered EEC's complaint that the programme statements, that EEC products were *"wildly overpriced"*, *"ludicrous"*, *"outrageous"* and that people were *"done over"* by EEC, were unfair. Maxwell Hodge said the comments could not be justified as they had been tainted: i) by the use of expert witness, Mr Dow; and ii) by the failure of the programme makers to deal with valid points made by EEC about its pricing structures. (It should be noted that Ofcom will consider the description *"done over"* at Head e) iv) below.)

In reaching its decision Ofcom took account of Practice 7.9 of Ofcom's Broadcasting Code which states that 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.

Ofcom considered the two elements of this complaint in turn.

- i) Ofcom noted that EEC had stated that it had informed the programme makers, prior to broadcast, that the programme's use of Mr Dow as an expert witness caused a conflict of interest as he had once provided paid work for EEC, and was made privy to confidential information concerning the manner in which EEC operated, its products and pricing structures. Ofcom also noted from the correspondence between the parties that EEC believed that Mr Dow's advice for this programme contradicted the advice provided by him in 1999 (when he provided his services to EEC).

Ofcom noted that it was agreed in the submissions provided by both parties that Mr Dow is a security consultant who has acted as an expert witness. Also that he has advised the Association of British Insurers and the National Security Inspectorate. In the circumstances, it is Ofcom's opinion that Mr Dow was appropriately qualified to give his opinion as an 'expert' in the field. Ofcom noted that, in the programme as broadcast, Mr Dow was asked to inspect the security equipment which had been sold to the customers featured by the programme, and also to give his opinion about the value of that equipment.

Ofcom considered EEC's submission that Mr Dow had once provided paid work for it, and as such it would be unfair for the programme makers to rely on his "tainted" opinion, and had advised the programme makers as much prior to broadcast.

Ofcom considered that Mr Dow was an expert in his field. His specific knowledge of security matters qualified him to give advice to any individuals or organisations who sought it. In this instance, Ofcom did not see that any past employment with EEC would necessarily hinder his ability to lend his knowledge and expertise to the programme makers. Therefore it is Ofcom's view that Mr Dow's work history did not prevent him from acting as a security expert for the programme makers.

Ofcom also had regard to the complainant's comments that Mr Dow's opinion (as given in the programme as broadcast) appeared to contradict the advice he gave on EEC's behalf in the past. Ofcom considered that it was not relevant that Mr Dow's opinion of EEC's product offering had developed or changed over a time span of seven years, because Mr Dow remained a current expert on security matters and as such was qualified to give his opinion in the programme as broadcast. In Ofcom's view it was therefore not unfair for the programme makers to use Mr Dow's opinion.

Taking these factors into account, Ofcom found that it was not unfair to EEC for the programme to include the expert opinion of Mr Dow.

- ii) Ofcom next turned to EEC's complaint that the programme makers failed to deal with valid points made by EEC about its pricing structures. Specifically that the programme makers ignored explanations provided by EEC about costings and overheads, which affected the price at which EEC could afford to sell its products.

In Ofcom's opinion, the programme's allegation, that EEC's products were overpriced, was based on the assessment that the same products that EEC sold could be purchased for a much cheaper price elsewhere. In Ofcom's opinion, this was a reasonable observation for the programme to make and had been supported by Mr Dow's expert opinion (who estimated that the EEC customers featured in the programme had paid more than double what he

considered to be a fair price for the security systems installed in their homes). Furthermore, Ofcom did not believe that the programme makers' decision not to refer to details about EEC's pricing structures resulted in unfairness. In Ofcom's opinion, the fact that EEC had a pricing structure, which caused it to sell its products and services at a much higher price than other retailers, was unlikely to have given viewers a more favourable opinion of the company. Ofcom therefore found no unfairness regarding the programme's assessment of EEC's pricing structure.

Given the above findings, Ofcom lastly considered whether it was unfair for the programme makers to describe EEC's prices as "*wildly overpriced*", "*ludicrous*", and "*outrageous*". Ofcom found that given Mr Dow's assessment of the prices that EEC charged for its products and servicing agreements, it was not unfair for the programme makers to use these descriptions in the programme as broadcast. In the circumstances, Ofcom found no unfairness to EEC in relation to this head of complaint.

- b) Ofcom next considered EEC's complaint that the programme statement, that Fireguard had been put into "*liquidation*" and that "*out of the ashes*" came EEC, was unfair because it was factually incorrect and had created the false impression that something had been done that was wrong, underhand and detrimental to customers.

In reaching a decision about this complaint Ofcom took into account Practice 7.9 which relates to the proper consideration of facts (detailed above).

Ofcom noted that the programme as broadcast stated that:

Presenter 1:                    "*In 1991 – John Ball the owner put [Fireguard] into liquidation.*"

Presenter 2:                    "*Okay – so that was that – out of the way.*"

Presenter 1:                    "*Out of the ashes came a company called EEC.*"

From the parties' written submissions Ofcom noted that it was agreed that Fireguard ceased to trade in 1994 and its liabilities were taken over by EEC. Fireguard was then struck off the Companies Register on 1 July 2003 on application by the company after it had been dormant for approximately 8 years. Ofcom also noted that the term liquidation is not necessarily pejorative e.g. it can refer to instances such as voluntary liquidation.

Taking these factors into account, it is Ofcom's view that it was not unfair for the programme makers to use the familiar word "liquidation", as doing so did not allege wrongdoing on the part of the company or EEC. Rather the term recognised that the company had ceased trading.

In relation to the phrase "*out of the ashes*", Ofcom similarly noted that the statement was not critical of either company. In Ofcom's view the phrase implied a link between the companies, which was justified, given that Mr Ball's association with both companies, and the fact that EEC took over all of Fireguard's liabilities.

In the circumstances Ofcom found that the programme's use of the word "*liquidation*" and the phrase "*out of the ashes*" did not result in unfairness to EEC.

- c) Ofcom next considered EEC's complaint that it was unfair for the programme to report former EEC employee Mr Mitchell's opinions of EEC in the programme as broadcast as he had never been part of an EEC sales force and his criticisms were incapable of substantiation. EEC also said that it was not given an opportunity to respond to Mr Mitchell's criticisms.

In reaching a decision about this complaint Ofcom took account of Practice 7.9 which relates to the proper consideration of facts. In addition Ofcom took account of Practice 7.11 which states that, if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

From a recording of the programme, Ofcom noted that the programme's commentary made clear that Mr Mitchell was employed by EEC for a short period of time:

Commentary: *"The [presenters] file also has the number of a former EEC employee who was so shocked by their sales methods, he quit after just one week".*

Ofcom also considered Mr Mitchell's unedited interview in which he described that during his week's employment he had been able to listen to calls generated from the EEC call centre.

On the information provided to it, Ofcom considered that the programme as broadcast accurately described Mr Mitchell's employment with EEC, and it was reasonable for the programme makers to include Mr Mitchell's comments in relation to the company's sales methods given that he had witnessed some of them first-hand during his week's employment.

In the programme as broadcast Mr Mitchell criticised EEC for targeting older people:

Mr Mitchell: *"They were sort of pushing a little bit – not too pushy, but most of them were hitting the old dears, the old people".*

Ofcom noted that the programme makers offered EEC an opportunity to respond to the allegation that EEC targeted elderly people on 9 June 2006. This allegation was later followed up again during the presenters' interview with Mr Ball. Ofcom also noted that the company's response to this allegation (that all customers had 14 days in which to cancel their orders), had been reflected in the programme as broadcast: *"One of the things that we need to look at is this, every single person that buys from EEC has 14 days in which to cancel the contract. Statutory requirements say that we have got to give seven days".*

Taking all these factors into consideration, Ofcom found that the programme accurately described Mr Mitchell's work history with EEC and it was reasonable for the programme makers to include Mr Mitchell's comments in relation to EEC. Furthermore, Ofcom found that EEC had been given an appropriate opportunity to respond to Mr Mitchell's allegations and its response was properly reflected in the programme. Accordingly, Ofcom has found no unfairness resulted to EEC in relation to this complaint.

- d) Ofcom considered EEC's complaint that the programme makers did not fairly present the reasons why the undercover reporter had been dismissed, and that

the programme intimated that the undercover reporter had been dismissed because he had failed to follow the EEC sales script. In doing so, and by not detailing the full sales script during the programme, EEC complained that the programme makers gave viewers the impression that EEC deliberately provided potential customers with limited information in order to effect a sale and to take undue advantage of them.

Ofcom considered an unedited recording and transcript of the undercover reporter's dismissal meeting, and a letter of dismissal from EEC, dated 26 May 2007. The letter of dismissal listed two reasons for EEC's decision: the misuse of the EEC sales scripts (which could be misleading to potential clients); and, the undercover reporter's overall level of performance. In support of these reasons, the letter provided a summary of five of the reporter's phone calls which EEC deemed to be a misuse of its scripts. The letter did not give specific details about the reporter's overall level of performance. It was clear to Ofcom from the letter of dismissal, and the unedited recording of the dismissal meeting, that the primary reason for firing the reporter was his misuse of the script.

Ofcom noted that the programme as broadcast described the reasons for the undercover reporter's dismissal as follows:

Commentary: *"...it looks like Ron's been rumbled, and it gets worse, he's been fired.*

*[the presenters] watch the footage of him being sacked. Ron's final despatch shows his sacking. He was told he hadn't stuck to the script".*

In Ofcom's view, the above commentary accurately summarised the reasons for the undercover reporter's dismissal. Ofcom noted that this summary was followed by footage filmed during the dismissal meeting:

EEC Manager: *"And then you cannot ask somebody directly 'do you have a burglar alarm?' Again it's not in the script"*

Presenter: *"Shame on him for mentioning burglar alarms – what do they sell?"*

Ofcom noted that this example was also referred to in the dismissal letter. After comparing this extract with the unedited recording of the meeting and the dismissal letter, Ofcom found that the broadcast material reflected the content of the unedited recording.

In relation to EEC's complaint that the programme gave viewers the impression that EEC deliberately provided potential customers with limited information in order to effect a sale and to take undue advantage of them, it is Ofcom's view that the purpose of the presenter's comment, *"Shame on him for mentioning burglar alarms – what do they sell?"* was to specifically make such a point. Ofcom also considered that in the context of the programme, it was reasonable for the presenter to question why explicitly asking a potential customer if they had a burglar alarm was a breach of EEC company policy.

Ofcom noted that the programme makers put the allegation, that EEC's scripts did not make explicit the purpose of the EEC's visits, to the company in writing on 9

June 2006 and during an interview with Mr Ball. Mr Ball's response at the time was reflected in the programme as broadcast:

Presenter: *"Why don't you say [that you want to sell burglar alarms] to people?"*

Mr Ball: *"We do say. We say we'll show you a range of products and if you see something you'd like to purchase on the day you can make that decision."*

Taking all these factors into consideration, Ofcom found that the programme accurately summarised why the undercover reporter had been dismissed, and provided an example of one of the reasons cited by the company for the dismissal. Furthermore the presenter posed a legitimate query about whether the reason for dismissal implied a lack of clarity in the EEC scripts. Ofcom also found that such an enquiry did not result in unfairness to EEC as it had been given an opportunity to respond to the criticism prior to broadcast and its response had been appropriately represented in the programme as broadcast.

- e) Ofcom considered EEC's complaint that the programme makers did not properly consider facts provided by EEC prior to broadcast.

When considering EEC's complaints under this Head, Ofcom took account of Practice 7.9 of the Code which relates to proper consideration of facts (detailed above). Ofcom also took account of Practice 7.11 which relates to the offering of an appropriate opportunity to respond (detailed above).

- i) Ofcom considered EEC complaint that the programme's treatment of its dealings with an "anonymous customer" was one-sided and did not provide a balanced consideration of facts.

Ofcom noted that prior to broadcast the programme makers advised EEC of their intention to feature the experience of an anonymous customer in its report, and set out the significant allegation to be made in the programme, and sought a response. These related to Mr Dow's assessment that the EEC security system was overpriced and the workmanship of the installation was of a poor standard. In addition, the example of the anonymous customer was put to Mr Ball during his interview.

The response from EEC and Mr Ball at the time was that they did not agree with Mr Dow's opinion that the system was overpriced, and stated that all customers have 14 days in which to cancel their orders. Ofcom noted that the programme included footage of Mr Ball explaining EEC's 14 day cancellation policy and his response to the allegation that he sold overpriced products: *"Hang on one second here...it is not that the customer has come along and spent £7,000. But in a lot of cases that you quoted to me, it's over a number of years..."*

In Ofcom's view, EEC was provided with a fair opportunity to respond to the allegations in relation to the anonymous customer and the company's response was fairly reflected in the programme as broadcast. In these circumstances, Ofcom has not upheld this part of EEC's complaint.

- ii) Ofcom next considered EEC's complaint that the programme misrepresented its customer dealings with Mrs Pike and failed accurately to describe Mrs Pike's existing security agreement.

Ofcom noted that the programme as broadcast described that Mrs Pike had been a customer of EEC and Fireguard, and had spent over £18,000. The programme recounted that in 1998 Mrs Pike had written to EEC, advising that she did not wish to purchase another contract as the charges were far too high for her, and that following this letter, Mrs Pike had been persuaded to spend an additional £1,500 with the company. In addition, the programme included an interview with Mrs Pike's son who explained that *"two years ago, she paid three and a half thousand pounds for a three year service agreement and that doesn't even start till December 2006, so that's not going to finish till she's about 92"*.

Ofcom first considered the total figure spent of £18,000 as given in the programme as broadcast:

*"Over 15 years, Stella Pike has paid John Ball's companies in excess of eighteen thousand pounds. They've refunded a third of that, but Stella's son is still furious"*.

Having considered the paperwork relevant to Mrs Pike's case, it is Ofcom's view that the above summary was fair. In reaching this decision Ofcom found that the summary appropriately attributed the £18,000 to both of Mr Ball's companies (i.e. Fireguard as well as EEC) and explained that a proportion of the total £18,000 had been refunded. In the circumstances, Ofcom was satisfied that when stating the total amount spent by Mrs Pike, the programme makers took reasonable care to satisfy themselves that material facts had not been presented, disregarded or omitted in a way that is unfair to EEC. Ofcom found no unfairness to EEC in this respect.

Ofcom next considered the programme's description of the circumstances surrounding Mrs Pike's letter to EEC in 1998 and the subsequent renewal of her security service contract. Ofcom noted that the relevant segment of the programme stated:

Presenter: *"I've found a letter written by your Mum to the company, to EEC, in 1998. She is saying – I do not want another contract: 'As I suspected' she says 'these charges amounting to £825 a year are far too high for me to consider renewing my contract with EEC'.*

*It makes it quiet clear – that's that's, no more monitoring, no new contracts please. Should be clear enough"*.

Mr Pike: *"But – they sent a salesman round one week later on the pretence of actually doing some service, I think, even though the service agreement had finished – and it was at that point they persuaded my Mum to write out a cheque for £1500."*

Ofcom reviewed the relevant information provided by both parties. While Ofcom noted that the above summary did not list each and every contact that Mrs Pike had with EEC at that time, it is Ofcom's view that the summary fairly represented the material facts of the incident and did not omit or disregard significant pieces of information in a way which would have been unfair to EEC. Accordingly, Ofcom found no unfairness to EEC in this respect.

Ofcom lastly considered the programme's description of Mrs Pike's existing agreement with EEC. Ofcom noted, from the information provided, that when the programme was made (around June 2006) Mrs Pike was not a fee paying customer of EEC. According to the paperwork, in July 2005 Mrs Pike's son intervened on behalf of his mother to secure a refund of all current and future contracts (i.e. contracts which Mrs Pike had purchased but that would not begin until a date in the future). These refunds were given as of 13 June 2007. At the same time EEC also gave Mrs Pike a free two year monitoring service that would end on 27 July 2007. Therefore, at the time that the programme was being made, and when it was broadcast, Mrs Pike was no longer financially committed to EEC, and in fact was receiving a free service.

Ofcom noted that this situation did not correspond with the information that was presented in the programme:

Commentary: *"Stella has short term memory loss and is unaware that in fact she's paid out a lot more, and has been spending money on new contracts with EEC for years. Stella's son Rob only discovered what was going on when it was too late."*

Presenter: *"What your Mum said to me was that she'd only paid for the equipment, she didn't pay for anything after that."*

Mr Pike: *"Yeah well the trouble is my Mum isn't quite, she doesn't quite understand how much money she's been writing these cheques out for."*

Presenter: *"She also said she doesn't use [the security system] now."*

Mr Pike: *"Yeah well that's the other thing – only two years ago she paid three and a half thousand pounds for a three year service agreement and that doesn't even start till December 2006 so that's not going to finish till she's about 92."*

In Ofcom's opinion, viewers were likely to understand from this comment by Mr Pike that Mrs Pike was an ongoing customer of EEC and remained under contract to the company until December 2009. As noted above, this was not the case.

Ofcom noted that following Mr Pike's comment, the programme commentary stated that EEC had refunded a third of Mrs Pike's money: "[EEC] has refunded a third of [the money spent by Mrs Pike] but [Mr Pike] is still furious". However, after this commentary the programme included another comment (by the presenter) which indicated that Mrs Pike remained under contract to EEC (which was not true):

Presenter: *"Actually [Mrs Pike]'s paying for a service contract which doesn't start until the end of the year."*

Taking consideration of the programme sequence as a whole, while Ofcom acknowledged that the programme makers did accurately describe that EEC had refunded a third of Mrs Pike's money, it considered that such a statement did not correct the misleading impression given about Mrs Pike's existing agreement with EEC (i.e. that Mrs Pike was not under contract to EEC any

longer and that EEC had refunded all current and future contracts). Ofcom found that by including the statements by Mr Pike and the presenter (above) and not explaining that the contract had been refunded, viewers were likely to be left with an unfairly negative impression of EEC. In the circumstances, Ofcom has decided that this part of the programme as broadcast resulted in unfairness to EEC.

- iii) Ofcom considered EEC's complaint that the programme makers ignored information provided to them, about the improvements which the company has made since the last *Watchdog* programme in 2004.

Having viewed a recording of the programme, it is Ofcom's opinion that the introduction made it clear that the programme would focus on Mr Ball's company EEC, with a view to investigating whether, over the course of its existence, it had treated its customers fairly. It was not a programme about the company's developments since the last *Watchdog* programme, as the complainant appears to suggest. In Ofcom's view, given the clearly established direction of the programme, the programme makers were entitled to focus on any customers of EEC, provided it presented the relevant customer dealings in a way which did not result in unfairness. Ofcom was not persuaded by the complaint that the programme makers were required to include details about any particular improvements since 2004, if those improvements did not significantly affect the nature of the allegations made in the programme. On the information provided to Ofcom, it considered that the programme's criticisms of EEC, in all but one instance (see Ofcom's finding at Head e) ii) above), were not significantly remedied by any improvements by EEC since 2004. In the circumstances, Ofcom found no unfairness to EEC in relation to this complaint.

- iv) Reflection in programme of information provided prior to broadcast

Ofcom next considered EEC's complaint that the BBC did not reflect the extensive and detailed information provided by EEC prior to broadcast. EEC said this was evidenced by the programme's use of the phrases such as: "*ripping people off*", "*done over*", "*how did he get him to fall for that*", "*big expensive burglar alarms*" and "*over priced products*". EEC said the use of such expressions were unfair.

In considering this complaint Ofcom noted that the quotes referred to above appeared to relate to two types of allegations: first that EEC targets vulnerable people, and secondly that EEC sells overpriced security equipment which is too complex for the needs of their customers. Ofcom's decision in relation to the second allegation can be found at Head a) and Head f) i), which found no unfairness. This head of the decision will therefore focus on the first complaint regarding the targeting of vulnerable people.

In reaching its decision, Ofcom took account of Practice 7.9 relating to proper consideration of material facts (detailed above). Ofcom also took account of Practice 7.11 (detailed above) which relates to the offering of an appropriate opportunity to respond.

Ofcom viewed a recording of the programme and noted that throughout the report, the programme makers provided information to the viewers to support their allegation that EEC targeted elderly people. This information included undercover footage of one of EEC's employees describing the importance of targeting this market:

EEC employee: *“Well your main market is old people that you’re gonna be speaking to, so you can’t feel guilty if they are old.*

*They’re your main market – you’ve got to turn them round.*

*Unfortunately I know it sounds nasty but they’re the easiest ones to turn around as well.”*

The programme makers also interviewed relatives of elderly customers of EEC who believed EEC had taken advantage of their relatives’ vulnerability.

Based on the information provided in the programme, it is Ofcom’s view that the programme makers gathered significant material from a variety of sources to the allegation that EEC targeted elderly people who were vulnerable. Ofcom considered this was a serious allegation and as such merited an opportunity to respond.

Ofcom noted that this allegation was put to EEC in both written correspondence prior to broadcast and during Mr Ball’s interview. Furthermore, Ofcom noted that EEC’s response at the time (that all customers had 14 days in which to cancel their orders, and that EEC’s phone scripts advise prospective customers that they will be shown a range of products when their security advisor arrives at their home to conduct a security survey) was represented in the programme as broadcast.

Taking these factors into account Ofcom found that the programme makers took reasonable care to ensure that material facts were not presented, disregarded or omitted in a way that was unfair to EEC. Ofcom therefore found no unfairness in this respect.

f) Unsubstantiated allegations without fair opportunity to respond

Ofcom next considered EEC’s complaint that the programme included two unsubstantiated allegations to which it was not given a fair opportunity to respond.

In reaching a decision in relation to this complaint Ofcom took account of Practice 7.11 which relates to the offering of an appropriate opportunity to respond (outlined above).

Ofcom considered each allegation separately:

i) The first statement of complaint was:

*“the company is at the forefront of selling...to customers...more than they need and charging more than they can afford”.*

Ofcom considered that this was a significant allegation to which EEC was entitled to respond.

Ofcom considered the pre-broadcast correspondence between EEC and the programme makers. It noted that, on 9 June 2006, the programme makers provided EEC with a list of allegations which it intended to include in the programme and sought the company’s response. The letter stated “We will be talking to customers who feel they have been sold overpriced, inappropriate

and shoddily installed safety equipment and to people who are angry about the high costs and long contracts that their elderly relatives have signed up to". Ofcom also noted that the same allegations were put to Mr Ball during his interview with the presenters: *"How can you possibly think, as a man who runs an £11 million company that an old person needs £7,000 worth or £12,000 or £19,000 worth of security on a small house?"* Ofcom noted that this question along with Mr Ball's response was represented in the programme.

Having viewed a recording of the programme it is Ofcom's opinion that viewers were likely to understand that the comment by the presenter, was a summary of the way that the featured customers (and their relatives) felt about the purchases they had made from EEC. Ofcom considered that EEC had been afforded an opportunity to respond to these allegations and the programme makers were justified in summarising the sentiments of the programme contributors, in this way.

Accordingly Ofcom found no unfairness in this respect.

ii) Ofcom next considered that second comment complained of by EEC:

*"the police say the survey is designed to make people frightened"*.

EEC complained that no such comment was made by the police nor was the allegation put to it prior to broadcast for a response.

As noted by the BBC in its first statement, the comment was based on the comments by Mr Allan McInnes of the Association of Chief police Officers. During his full untransmitted interview, Mr McInnes made the following comments:

Presenter: *"That's a very interesting point. It [the survey] also seemed to us to be a bit intimidating. Because it's really asking you isn't it to think of all the dangers that might be present in your neighbourhood and so on?"*

Mr McInnes: *"Yes. It's asking what your perception of crime is. Now generally asking the public they'll always think crime has gone up, whereas statistics say burglary has in fact gone down in the last 5 to 7 years. But all these questions aim towards - I would say - increasing people's fear, or giving the salesman information about the individual that he can use to lead you into another area"*.

Ofcom considered that based on these comments made during an interview for the programme, by an ACPO representative, it was reasonable for the programme makers to make the comment that *"the police say the survey is designed to make people frightened"*.

Ofcom considered that, given the significance of the allegation, it was appropriate that EEC be given an opportunity to respond.

Ofcom noted that the programme makers had written to EEC prior to Mr Ball's interview that ACPO had reviewed the survey and ACPO had concluded that it was designed to collect information from the consumer in order to sell burglar alarms. Ofcom considered that this information together with the direct

statement by the presenter to Mr Ball during his interview that: *“The police say the survey is designed to make people frightened?”* provided Mr Ball and his company with adequate information to be able to respond to the comment.

Taking these factors into account, Ofcom therefore found no grounds for the complaint that the statement was false or that EEC had not been afforded an opportunity to respond to it. Accordingly, Ofcom found no unfairness in relation to this part of the complaint.

g) Approach and timing of interview with Mr Ball

EEC complained that the programme makers sought an interview with Mr Ball at his work premises unannounced and whilst correspondence about the possibility of an interview with Mr Ball was still ongoing.

In reaching a decision in relation to this complaint Ofcom took account of Practice 7.11 which states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

Ofcom had regard to the correspondence between the parties prior to Mr Ball's interview. The correspondence occurred between 9 June 2006 and 10 July 2006, and in that time the programme makers wrote to Mr Ball seven times. The written correspondence from the programme makers fully informed EEC of the allegations to be included in the programme and also responded to the questions and requests for further information that had been made by the complainant during the course of the written correspondence.

Ofcom noted from the correspondence that the programme makers made repeated requests for an interview with Mr Ball. While Ofcom accepts that the “possibility of an interview” was never refused outright by the complainant, it is Ofcom's opinion that the company was clearly reluctant to set a firm date for the interview, despite being provided with what Ofcom considered to be sufficient information to be able to respond to the allegations.

In the circumstances, Ofcom considered that it was reasonable for the programme makers to seek an interview with Mr Ball, unannounced, so that he could respond (on behalf of EEC) to the programme allegations. Ofcom did not believe that this resulted in unfairness to the company as it had been provided with all the relevant information pertaining to the allegations prior to the interview, and the programme makers had exhausted, to a reasonable degree, other methods by which to secure an interview.

h) Presentation of consideration of “changes to business”

EEC complained that the programme incorrectly and unfairly claimed that there had been no news from Mr Ball as to whether he was prepared to make changes to the EEC business.

The relevant piece of programme commentary stated that:

*“There's no news from John Ball about whether he'll change any of his business practices or refund money to the customers Lynn and Esther met.”*

In reaching its decision in relation to this complaint Ofcom took account of Practice 7.9 which concerns the proper consideration of facts (as outlined above).

Ofcom noted that during Mr Ball's untransmitted interview the presenters made enquires about whether Mr Ball would refund monies to the EEC customers to be featured in the programme. At that time, Mr Ball responded that he would look over the relevant paperwork.

After the interview, the following written exchanges took place in relation to whether or not EEC would make changes to its business practices or refund any of the customers' monies.

EEC's letter to the programme makers, 18 July 2006

"I have noted the recommendations about provision of a Survey to ACPO and would be happy for Mr Tulip and my training officer to meet with their representative in order to fully work through our survey and its supporting documentation. In common with our existing practices all feedback would be welcomed and all commendations fully evaluated and, where necessary, actioned. As you are fully aware in the past whenever recommendations have been made by the BBC or Trading Standards, these have been taken on board and actioned where appropriate. In that regard I refer you to the content of our letter of 12 July 2006."

The programme makers' letter to EEC, 27 July 2006

"Mr Ball said in the filmed interview that he always makes changes in response to issues raised by BBC programmes. Can he confirm what action he now plans to take, in light of the point we have made? In particular, does he plan to make refunds to Jean Hine and Stella Pike? Does he intend to make the company's scripts clearer to make it obvious to potential customers that the EEC home security survey is in fact about selling burglar alarms?"

Mr Ball may well intend to make further changes to his company's practice. We would of course be interested in hearing about these with a view to reporting them within the programme."

Letter from Maxwell Hodge on behalf of EEC to the programme makers, 31 July 2006:

"If, as you say, Mr Ball has commented in his filmed interview that "...he always makes changes in response to issues raised by BBC programmes" he clearly cannot "respond" at this stage because he has not seen the programme. The matter will be revisited once the programme has been broadcast".

Letter from the programme makers to Maxwell Hodge, 3 August 2006

"Rather than arguing over semantics, we want to reflect in the programme what Mr Ball will be doing as a result of the cases we have already highlighted to him in considerable detail.

In particular, will he refund any money to Mrs Jean Hine...and will he refund any money to Mrs Pike?"

It would obviously be better for all concerned were able to include any decision on that within the programme”.

Ofcom noted that there was no response from either Maxwell Hodge or EEC to this letter.

Taking into account the correspondence between the parties, Ofcom considered that the statement that *“There’s no news from John Ball about whether he’ll change any of his business practices or refund money to the customers Lynn and Esther met”* accurately summarised that EEC had not provided the programme makers with details of any specific changes that the business intended to make, as a result of the programme’s investigation. In the circumstances, Ofcom found no unfairness in this respect.

l) *“Ripping people off for 15 years”*

Ofcom lastly considered EEC’s complaint that it was unfair for the programme to state that EEC had been *“ripping people off for 15 years”*. EEC said the programme only referred to one customer who had been a client of EEC’s for 15 years, and therefore there was no justification for making so broad a statement.

In reaching a decision in relation to this complaint Ofcom took account of Practice 7.9 relating to proper consideration of facts and Practice 7.11 which relates to the offering of an appropriate opportunity to respond (as outlined above).

Ofcom noted that this description was used in the opening sequence. In Ofcom’s opinion, given the positioning of the statement, viewers were likely to understand that the comment was a summary of the programme maker’s findings against EEC.

Throughout the course of the programme, a number of serious allegations were made against EEC. One of the main allegations was that EEC sold overpriced security products. Ofcom noted that this allegation was based on the opinion of EEC’s customers interviewed for the programme and on the expert opinion of Mr Dow. In the programme, Mr Dow explained that he believed that the EEC products, which he had seen, were expensive and overpriced when compared to what other companies in the market were charging (Ofcom also noted that EEC was offered an opportunity to respond to these criticisms prior to broadcast).

Ofcom was not provided with any information to suggest that the security items which Mr Dow examined were not typical of EEC’s product range, nor that the price of the inspected products was out of line with EEC’s overall pricing structure. Furthermore, Ofcom noted that the products examined by Mr Dow had been purchased in different years over the course of EEC’s 15 year existence. In the circumstances, Ofcom considered that Mr Dow’s comments in relation to EEC’s prices were in effect comments about EEC’s pricing strategy in general. As such, Ofcom found that it was not unfair for the programme makers to summarise its allegations against EEC (for which EEC had been given an opportunity to respond) as it did in the programme as broadcast.

**Accordingly, EEC’s complaint of unfair treatment has not been upheld, with the exception of one element.**

## Complaint by Maxwell Hodge Solicitors on behalf of Mr Joseph Tulip

*Old Dogs, New Tricks, BBC1, 24 August 2006*

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**Summary:** Ofcom has upheld Mr Tulip's complaint of unfair treatment. Ofcom has not upheld Mr Tulip's complaint of unwarranted infringement of privacy in the programme as broadcast.

This edition of *Old Dogs, New Tricks* investigated a home security company called European Environmental Controls Ltd ("EEC"), which it alleged sold "overpriced" products to vulnerable people. The programme referred to EEC's use of a Home Security Survey ("the survey") and alleged the survey was not a genuine security survey but rather was used by the company in order to gain access to potential customers and their homes. Ofcom also noted that the programme referred to and criticised the designer of the survey, who it was explained was an ex-police officer with 28 years experience. Footage of the survey (which included the designer's name and image) was briefly shown in the programme.

Mr Tulip, the designer of the survey, complained that the programme as broadcast was unfair to him and unwarrantably infringed his privacy.

Ofcom found as follows:

- a) In Ofcom's opinion, it was incumbent on the programme makers to offer Mr Tulip (who was the subject of direct criticism and visually identified) a specific opportunity to respond to the programme. In the absence of such an offer being made, Ofcom found that the Mr Tulip was not offered an appropriate opportunity to respond, and this resulted in unfairness to him in the programme as broadcast. Ofcom has upheld this part of Mr Tulip's complaint.
- b) It is Ofcom's view that Mr Tulip did not have a legitimate expectation of privacy in respect of the information included about him in the programme. In the circumstances Ofcom found that the programme as broadcast did not infringe Mr Tulip's privacy. Ofcom has not upheld this part of Mr Tulip's complaint.

### Introduction

On 24 August 2006, BBC1 broadcast an edition of *Old Dogs, New Tricks* that investigated a home security company called European Environmental Controls Ltd ("EEC").

The programme explained that the owner of EEC, Mr John Ball, was the former owner of a company called Fireguard UK, which had previously been investigated by the consumer programme, *Watchdog*. The programme stated that *Watchdog* had previously exposed Fireguard UK as "pressure selling" overpriced and unsuitable fire safety equipment to elderly people. The programme questioned whether "*John Ball's sales team is using the same selling tactics his last company did 15 years ago*" and "*Is John Ball at it again?*"

As part of the programme's investigation, an EEC employee was surreptitiously recorded carrying out a free in-home security survey, for an elderly prospective customer (played by an actress). After the EEC home visit, the customer was

provided with a completed survey report which EEC claimed had been designed and endorsed by a former police officer. The survey report was shown in the programme and criticised by Mr Alan McInnes of the Association of Chief Police Officers (“ACPO”). Mr McInnes stated that:

*“I have seen this before and I would say that the flow of this is not actually a crime prevention survey. To me this is an information gathering and softening up process, to lead people into purchasing security devices”.*

Towards the end of the programme, the presenters ‘doorstepped’ the business premises of EEC and were granted an interview with Mr Ball. During the broadcast interview the presenters accused Mr Ball of inventing a phoney home security survey in order to sell elderly people overpriced security products. Mr Ball stated that the survey had been designed by a police officer with 28 years experience, to which one of the presenters responded *“Well he should be ashamed of himself”*.

Mr Tulip is an employee of EEC and was referred to in the programme (albeit not by name) as the former police officer who designed the home security survey. In addition, the programme included footage of the survey report upon which a still photograph of Mr Tulip and his name was visible.

Maxwell Hodge Solicitors (“Maxwell Hodge”) complained on behalf of Mr Tulip that he was treated unfairly and that his privacy was unwarrantably infringed in the programme as broadcast.

## **The Complaint**

### **Mr Tulip’s case**

Maxwell Hodge said that the programme showed an EEC survey report upon which a photograph of Mr Tulip and his name was visible. In addition, one of the programme presenters stated that Mr Tulip should be *“ashamed of himself”* for working for EEC and putting together the survey booklet and training its staff. Maxwell Hodge said that simply because an individual is employed by an organisation which is itself the subject matter of criticism does not justifiably lead to imputations of the nature made in the programme.

- a) Maxwell Hodge complained that Mr Tulip was treated unfairly in the programme as broadcast because the programme criticism, for a police officer with an unblemished service record, was unwarranted and not justified by a legitimate public interest.
- b) In addition, Maxwell Hodge complained that Mr Tulip’s privacy was unwarrantably infringed in the programme as broadcast because as an employee of EEC, rather than an officer of the company, Mr Tulip should be able to expect that his privacy would be respected.

### **The BBC’s case**

In summary the BBC responded to the complaint as follows:

- a) The BBC said that in so far as the programme’s criticisms of EEC’s survey report might be taken as criticism of Mr Tulip this was entirely justified.

In support of this, the BBC referred to the contribution to the programme by Mr McInnes of the Association of Chief Police Officers, who it said was an undoubted expert in the field. The BBC provided Ofcom with an unedited transcript of Mr McInnes' interview and noted that Mr McInnes criticised: the use of the survey as a pretext for gaining entry to the customer's home, the relevance of the information gathered by the survey; and, Mr Tulip's use of 'credentials' such as his membership to the National Association of Retired Police Officers, which Mr McInnes said was the "police equivalent of Friends Reunited" for retired police officers.

The BBC said that based on Mr McInnes' professional opinion, it was entirely justified for the programme's presenter to suggest that Mr Tulip "*should be ashamed of himself*".

The BBC also stated that the presenter's description of the survey as "*only designed to make people frightened, make people nervous and to persuade them to buy your product*" was part of a question put during the interview with Mr Ball, the owner of EEC. The BBC said the comment was no more than a typically pointed question that Mr Ball was invited to rebut if he could.

The BBC said the content of the programme in relation to the survey was both well-founded and fair.

- b) The BBC acknowledged that the survey, which contained Mr Tulip's photograph and CV, was briefly shown at various points in the programme. However, it said that Mr Tulip was "not named in the programme, and the only indication of his identity was in brief shots of the survey". The BBC said it was unlikely that anyone could have recognised Mr Tulip from the material shown in the programme.

The BBC said that Mr Tulip had been paid by EEC to use his name, photograph and employment history as part of their business promotion efforts. Therefore Mr Tulip had put his name and image into the public domain in connection with EEC. The BBC contended that the programme did not reveal inherently private or particularly sensitive information about the complainant.

The BBC said that if Ofcom considered the programme did infringe Mr Tulip's privacy, then it would have been warranted by Mr Tulip's association with a survey that had been strongly criticised by a competent professional.

## **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 unwarranted infringement of privacy in the making and broadcast 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.

Mr Tulip's complaint was considered by Ofcom's Executive Fairness Group. In reaching a decision about this complaint Ofcom considered the parties' written submissions, a recording and transcript of the programme, and Mr McInnes' unedited programme interview.

Ofcom's findings in relation to Mr Tulip's specific heads of complaint are outlined below:

- a) Ofcom first considered Maxwell Hodge's complaint that it was unfair for the programme presenter to state that Mr Tulip should be "*ashamed of himself*" for working for EEC and putting together the survey booklet and training its staff. Maxwell Hodge said that the criticism was unwarranted and not justified by a legitimate public interest. Ofcom also took into consideration Maxwell Hodge's comment that simply because an individual is employed by an organisation which is itself the subject matter of criticism does not justifiably lead to imputations of the nature made in the programme.

In reaching a decision, Ofcom first sought to determine whether or not Mr Tulip had been the subject of criticism in the programme as complained of above.

Ofcom noted that the programme as broadcast alleged that the EEC survey was not a genuine security survey and was used by the company in order to gain access to potential customers and their homes. Ofcom also noted that the programme referred to and criticised the designer of the survey, who it was explained was an ex-police officer with 28 years experience:

Commentary: "*Esther has EEC's completed home survey...it says it's been designed and endorsed by a former police officer [brief footage of the cover of the survey containing a picture of Mr Tulip and his name]. She takes it to the Chief Police Officers to see what they make of it*".

ACPO: "*I have seen this before and I would say that the flow of this is not actually a crime prevention survey. To me this is information gathering and softening up process, to lead people into purchasing security devices*".

Presenter: "*In other words it's designed to sell burglar alarms*".

The survey designer was also referred to during an interview with the owner of EEC, Mr Ball:

Presenter: "*This is not a real survey, this is bogus, to get you into people's home*".

Mr Ball: "*This is a survey put together by a police officer with 20 years or 28 years experience*".

Presenter: "*Right, he should be ashamed of himself*".

As noted above, although Mr Tulip was not named orally in the programme, a copy of the survey containing Mr Tulip's photo and name was briefly shown on screen. While Ofcom accepted that the brief image of the survey was unlikely to identify him to a large number of viewers, it is Ofcom's view that footage of the survey was sufficient to make Mr Tulip identifiable to those who knew him. As

such, the criticism directed at the designer of the survey could be connected to Mr Tulip.

Ofcom considered that the programme's criticism of the survey had been directed at both EEC and Mr Tulip and in its view such an examination was legitimate and in the public interest. Ofcom also considered that the criticism amounted to a significant allegation of wrongdoing by both EEC and Mr Tulip. As such, Ofcom considered that both were entitled to an opportunity to respond to the allegation (this is in line with Practice 7.9 of the Code which states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond).

Ofcom noted that prior to broadcast the programme's allegations were put to EEC in a letter from the programme makers dated 26 June 2006 as well as during an interview with Mr Ball. The letter of 26 June 2006 stated:

"We have also spoken to Alan McInnes, of the Crime Prevention Initiative at the Association of Chief Police Officers. He has examined the EEC Home Security Survey and concluded that... it is in fact designed to sell burglar alarms and nothing else... In the opinion of the Association of Chief Police Officers, the survey provides little information to the consumer. Rather it collects information from the consumer in order to determine the specification of the burglar alarm EEC intends to sell.

Mr McInnes also expressed his surprise and is disappointment that an ex-police officer is involved with the EEC Home Security Survey".

EEC responded to this point on 6 July 2007:

"Your assertions...are incorrect. Our survey/risk assessment for the home, and 39 page training booklet were devised by an ex-police officer with 28 years service in the police force, Mr Joseph Tulip. This procedure was introduced into our business in October 2004 and Mr Tulip is still responsible for training on property surveying for the purposes for our advisors are invited [sic], which our staff are trained on over an ongoing period..."

Ofcom noted, however, that the programme makers did not approach Mr Tulip directly in order to offer him an opportunity to respond. From the information presented to Ofcom, it appeared that only EEC had been advised that the programme would include criticism of Mr Tulip. In Ofcom's opinion, although Mr Tulip worked in some capacity for EEC, it was incumbent on the programme makers to offer Mr Tulip (who was the subject of direct criticism and had been visually identified) a specific opportunity to respond to programme. In the absence of such an offer being made, Ofcom found that the Mr Tulip was not offered an appropriate opportunity to respond to the programme allegations.

Ofcom next assessed whether the programme makers' failure to offer Mr Tulip an opportunity to respond resulted in unfairness to Mr Tulip in the programme as broadcast. Ofcom noted that the programme included the following comments by Mr Ball in defence of his decision to use the survey "*This is a survey put together by a police officer with 20 years or 28 years experience...*". In response to these comments, the presenters stated that the designer of the survey "*should be ashamed of himself*". In Ofcom's view, Mr Ball's comments about Mr Tulip's credentials were only EEC's response to the company's decision to use the

survey: they did not offer any response on behalf of Mr Tulip as to why he, as an ex-police officer, had designed the survey. In the circumstances Ofcom found that by not offering Mr Tulip an appropriate opportunity to respond to the allegations to be made against him, the programme as broadcast resulted in unfairness to him.

Accordingly Ofcom has upheld this part of Mr Tulip's complaint.

- b) Ofcom then turned to Maxwell Hodge's complaint that Mr Tulip's privacy was unwarrantably infringed in the programme as broadcast because, as an employee of EEC rather than an officer of the company, he should be able to expect that his privacy would be respected.

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 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? (Rule 8.1 of the Code). In reaching a decision about whether the programme as broadcast infringed Mr Tulip's privacy, Ofcom sought to determine whether, in the circumstances of the complaint, Mr Tulip had a legitimate expectation of privacy.

Ofcom had regard for the nature of the information revealed. As noted above, the programme as broadcast included brief footage of Mr Tulip's name and image, as it appears on the EEC Home Security Survey, and he was referred to as the survey's designer.

Ofcom noted that Mr Tulip had willingly lent his name, image and credentials to EEC, for inclusion in the survey, which would be used by EEC in its dealings with the public. Taking these factors into consideration, it is Ofcom's view that Mr Tulip did not have a legitimate expectation of privacy in respect of the information included about him in the programme in the context of his work for EEC. Therefore Ofcom found that there was no infringement of his privacy in the programme as broadcast. In the circumstances it was not necessary for Ofcom to go on to consider whether or not any infringement was warranted. Ofcom has not upheld this part of Mr Tulip's complaint.

**Ofcom has upheld Mr Tulip's complaint unfair treatment. However, Mr Tulip's complaint of unwarranted infringement of privacy in the programme as broadcast has not been upheld. The BBC was therefore found to be in breach of Rule 7.1.**

## Not Upheld

### Complaint by Maxwell Hodge Solicitors on behalf of Mr John Ball

*Old Dogs, New Tricks, BBC1, 24 August 2006*

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**Summary:** Ofcom has not upheld Mr John Ball's complaint of unwarranted infringement of privacy in the making and broadcast of the programme.

This edition of *Old Dogs, New Tricks* investigated a home security company called European Environmental Controls Ltd ("EEC"), which it alleged sold "overpriced" products to vulnerable people. Mr Ball is the owner of EEC and was featured in the programme.

During an interview with Mr Ball the programme makers focused on his wrist-watch. The programme later revealed that a watch like Mr Ball's would cost £12,600. The programme also included footage of the exterior of Mr Ball's home and business premises.

Ofcom found as follows:

- a) It is Ofcom's view that Mr Ball had no legitimate expectation of privacy in relation to either the image of his watch or its value. Further, Ofcom was satisfied that the programme makers' actions in gaining information about Mr Ball's watch did not infringe upon Mr Ball's person nor materially restrict his private life. Ofcom has not upheld Mr Ball's complaint in this respect.
- b) Mr Ball's home

Ofcom considered that Mr Ball did have a legitimate expectation in relation to the location of his home. However, Ofcom found that neither the making of the programme nor its broadcast infringed Mr Ball's privacy as there was no evidence to suggest that the programme makers had encroached on Mr Ball's property when filming the exterior his home and the broadcast did not disclose the location of his home. Ofcom has not upheld this part of Mr Ball's complaint.

#### Mr Ball's work premises

Ofcom considered that Mr Ball did not have a legitimate expectation in relation to the exterior of his business premises as this information was already in the public domain and was currently being used by Mr Ball to promote his company on its website. Furthermore no evidence was presented to Ofcom to suggest that the filming of the exterior of Mr Ball's business premises restricted or impacted on his private life. In addition, Ofcom found no infringement of Mr Ball's privacy in either the making or broadcast of the programme. Accordingly Ofcom has not upheld this part of Mr Ball's complaint.

### Introduction

On 24 August 2006, BBC One broadcast an edition of *Old Dogs, New Tricks* that investigated a home security company called European Environmental Controls Ltd ("EEC").

The programme explained that the owner of EEC, Mr John Ball, was the former owner of a company called Fireguard UK, which had previously been investigated by the consumer programme, *Watchdog*. The programme stated that *Watchdog* had previously exposed Fireguard UK for “pressure selling” overpriced and unsuitable fire safety equipment to elderly people. The programme questioned whether “*John Ball’s sales team is using the same selling tactics his last company did 15 years ago*” and “*Is John Ball at it again?*”

The programme included footage of the exterior of Mr Ball’s house and EEC’s business premises.

Towards the end of the programme, the presenters visited the business premises of EEC and interviewed Mr Ball. During the interview the presenters enquired how much Mr Ball’s wrist-watch cost. Mr Ball explained that he did not know as the watch was a gift. The programme later stated that “*if you want a watch like John Ball’s you will need £12,600*”.

Maxwell Hodge Solicitors (“Maxwell Hodge”) complained to Ofcom on behalf of Mr Ball that his privacy had been unwarrantably infringed in both the making and broadcast of the programme.

## **The Complaint**

### **Mr Ball’s case**

In summary, Maxwell Hodge complained that Mr Ball’s privacy had been unwarrantably infringed in both the making and broadcast of the programme in that:

- a) The programme presenter asked a number of questions about the watch (specifically, its value) and later stated “*if you want a watch like John Ball’s you will need £12,600*”. Maxwell Hodge complained that this observation unwarrantably infringed Mr Ball’s privacy.
- b) The programme filmed the exterior of Mr Ball’s home and business premises and disclosed the location of both.

### **The BBC’s case**

In summary, the BBC responded as follows:

- a) The BBC said it was Mr Ball’s choice to wear an ostentatiously expensive watch and exhibit it by wearing a short sleeve shirt. The BBC did not accept that the showing of something worn by Mr Ball as part of his normal dress revealed information that was inherently private or sensitive. The BBC noted from the interview recordings that after meeting the programme presenters in the corridors of his office building, Mr Ball left them while they set up the camera in the boardroom, and joined them for the interview later.

The BBC said that if Ofcom considered that the showing of Mr Ball’s watch infringed the complainant’s privacy, then it would have been warranted by evidence the programme uncovered about Mr Ball’s financial affairs. The BBC believed that viewers were entitled to a glimpse of the kind of lifestyle that Mr Ball afforded as a result of his business which the programme contended overcharged its clients.

b) Mr Ball's home

The BBC said that while filming outside Mr Ball's home, the programme makers were photographed. The photographer told the programme makers that he had been tipped off by Mr Ball himself. The photographs, of the programme makers outside Mr Ball's home, were later published on a local news website. In addition to these photographs, previous programmes such as BBC's *Rogue Traders* (broadcast on 29 March 2002) also included pictures of Mr Ball's house. Given that pictures of, and information about, Mr Ball's home had already been in the public domain (some published at the instigation of Mr Ball himself), the BBC contended that there was no breach of privacy in using further pictures of the house in the programme as broadcast.

The BBC said that if the showing of Mr Ball's home was considered by Ofcom to have infringed the complainant's privacy, then it would have been justified as evidence of his opulent lifestyle which had been funded by his questionable approach to business.

Mr Ball's business premises

As regards the showing of Mr Ball's business premises, the BBC said the complainant had published and exploited information about the appearance and location of his business premises prior to broadcast of the programme. The BBC noted that the local website (referred to above) showed a photograph of Mr Ball outside his business premises. In addition, EEC's own website showed photographs of the company's exterior, its address and a map giving its precise location.

The BBC said that the programme did not put any more information into the public domain than Mr Ball had already placed there himself. As such there was no breach of privacy.

The BBC said that if the showing of Mr Ball's business premises was considered by Ofcom to have infringed the complainant's privacy, then it would have been justified by the complainant's own use of such pictures to promote his business.

## **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 unwarranted infringement of privacy in the making and broadcast of programmes included in such services.

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

In reaching a decision about this complaint Ofcom considered the written submissions from the parties, a recording and transcript of the programme, and a recording and transcript of Mr Ball's unedited programme interview.

Mr Ball complained that the programme unwarrantably infringed his privacy in both the making and broadcast of the programme. 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? (Rule 8.1 of the Code).

In reaching a decision about whether there was an infringement of Mr Ball's privacy, Ofcom first sought to determine in the circumstances of the complaints (below), whether Mr Ball had a legitimate expectation of privacy.

- a) Ofcom considered Mr Ball's complaint that the showing of his watch, along with the statement about how much the watch was worth, unwarrantably infringed his privacy both in the making and broadcast of the programme.

Ofcom considered Mr Ball's expectation of privacy in relation to his watch in both the making and broadcast of the programme.

In relation to the making of the programme, Ofcom noted that the programme makers filmed Mr Ball's watch during an interview that was given with Mr Ball's consent. While Ofcom acknowledged that the filming of Mr Ball's watch may have captured personal information (i.e. the type of watch he wears), it did not consider that such information was of a private or sensitive nature.

As regards the programme as broadcast, Ofcom noted that in addition to showing images of Mr Ball's watch, the programme also stated that "*If you'd like a watch like John Ball's all you need is £12,600*". As noted above, Ofcom considered that while a watch may be personal to the wearer, an image of a person's watch, which is worn in public, is not information that is private. Similarly Ofcom did not consider that product information that is widely available to the public (e.g. design features or price) is of a private nature.

Taking these factors into account Ofcom found that Mr Ball had no legitimate expectation of privacy in relation to either the image of his watch or its value, and there was therefore no infringement of Mr Ball's privacy in either the making or broadcast of the programme. In these circumstances, it was not necessary for Ofcom to go on to consider whether or not any infringement was warranted. Ofcom has not upheld this part of Mr Ball's complaint.

- b) Mr Ball complained that his privacy was unwarrantably infringed in both the making and broadcast of the programme because the programme makers filmed and broadcast images of the exterior of his home and business premises and disclosed the location of both.

#### Mr Ball's home

In reaching a decision Ofcom took account of Practice 8.2 of the Code which states that information which discloses the location of a person's home or family should not be revealed without permission, unless it is warranted. Ofcom therefore considered that Mr Ball did have a legitimate expectation of privacy in relation to the disclosure of the location of his home.

Ofcom next assessed whether or not the making of the programme or its broadcast infringed Mr Ball's right to privacy.

In relation to the making of the programme, Ofcom noted that the footage of the exterior of Mr Ball's home had been taken from a public footpath. Based on the information provided by the parties, there is no evidence that the programme makers encroached on Mr Ball's property or attempted to restrict his private life.

As regards the programme as broadcast, Ofcom noted that while the programme did include footage of Mr Ball's home, the only information provided about its location was that Mr Ball lived in Southport. Given the amount of information revealed in the programme, Ofcom considered that it was likely that the location of Mr Ball's home would have only been identifiable to a small proportion of viewers, namely those who knew Mr Ball or those who lived in the immediate vicinity of Mr Ball's home. Therefore, it is Ofcom's view that the programme did not disclose the location of Mr Ball's home to a wider audience.

Taking the above information into account, Ofcom found that neither the filming of Mr Ball's house nor the broadcast of the footage infringed Mr Ball's privacy. In these circumstances, it was not necessary for Ofcom to go on to consider whether or not any infringement was warranted. Ofcom has not upheld this part of Mr Ball's complaint.

### Work

Ofcom next turned to Mr Ball's expectation of privacy in relation to the filming and broadcast of images of his business premises and considered whether Mr Ball had a legitimate expectation of privacy in relation to the disclosure of the location of his work.

Ofcom noted that there was no evidence to suggest that the filming of the exterior of Mr Ball's business premises restricted or impacted on Mr Ball's private life.

In relation to the programme as broadcast, Ofcom noted that the programme included footage of EEC's business premises and indicated that the office was located in Southport. In Ofcom's view, from the information provided by the broadcaster, similar information was widely available on the internet at the company's own website, and previously at a local news website (as highlighted by the BBC). Ofcom also noted that on both websites, Mr Ball is clearly identified as the owner of the company. Given this, it is Ofcom's view that the information revealed in the programme about Mr Ball in relation to his business was already in the public domain and was publicised by the company's website. Furthermore it did not reveal any information about Mr Ball which was confidential or inherently private.

Taking these factors into account, it is Ofcom's view that Mr Ball did not have a legitimate expectation of privacy in respect of the information provided about his business. Ofcom therefore found no infringement of Mr Ball's privacy in either the making or broadcast of the programme and in the circumstances, it was not necessary for Ofcom to go on to consider whether or not any infringement was warranted. Ofcom has not upheld this part of Mr Ball's complaint.

**Accordingly Ofcom has not upheld Mr Ball's complaint of unwarranted infringement of privacy in the making and broadcast of the programme.**

## **Complaint by Mr Anthony Scott** *The Xtra Factor, ITV2, 24 September 2006*

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**Summary:** Ofcom has not upheld this complaint by Mr Anthony Scott of unfair treatment in the programme as broadcast and of unwarranted infringement of privacy in the making of the programme.

Mr Scott accompanied his daughter Miss Scott when she attended *The X Factor* auditions in Bristol. A short clip showing Mr Scott becoming upset about the judges' decision, not to put his daughter through to the next round, was included in this edition of *The Xtra Factor*.

Mr Scott complained that he was treated unfairly in the programme as broadcast in that the programme makers: unfairly edited his contribution; did not advise him that footage of him would be edited or that they would take no account of his disabilities; and ignored his request to withdraw his contribution prior to broadcast.

Mr Scott also complained that his privacy was unwarrantably infringed during the making of the programme in that the programme makers chased him to appear on camera.

Ofcom found as follows:

- a) In Ofcom's view the editing of Mr Scott's contribution fairly represented his dissatisfaction with the judges' response to his daughter's audition. Ofcom found no unfairness in respect of this complaint.
- b) Ofcom considered that there was adequate information provided to Mr Scott to enable him to make an informed decision about whether or not he wished to take part in the programme. In the circumstances, Ofcom considered that the consent that Mr Scott voluntarily gave for his contribution was 'informed consent'. Given this, Ofcom found no unfairness to Mr Scott in relation to this complaint.
- c) Ofcom found that there had not been any significant changes which might have affected Mr Scott's consent to participate and concluded that it was not unfair for the programme makers to refuse Mr Scott's request to withdraw his contribution. Ofcom found no unfairness in relation to this complaint.
- d) Ofcom found that Mr Scott freely participated in and consented to the filming of the programme. Furthermore the events captured by the programme makers were not of a private nature. In the circumstances, Ofcom found that Mr Scott did not have a legitimate expectation of privacy. Ofcom found no infringement of privacy in the making of the programme.

### **Introduction**

This episode of *The Xtra Factor* broadcast by ITV2 on 24 September 2006, revisited the most memorable auditions from the entertainment programme, *The X Factor*.

When revisiting the Bristol auditions, the presenters stated that the city "*Had a bit of aggro*" from a contestant referred to as "*Rachel and her old man*". The programme

included footage of Rachel's father loudly stating (in reference to one of the *X Factor* judges), "How dare he. How dare the man. I'm absolutely disgusted."

Mr Anthony Scott referred to above as "Rachel's old man", complained to Ofcom that he was treated unfairly in the programme as broadcast and that his privacy was unwarrantably infringed in the making of the programme.

## **The Complaint**

### **Mr Scott's case**

In summary, Mr Scott complained that he had been treated unfairly in the programme as broadcast in that:

- a) The editing of Mr Scott's contribution did not allow the audience to understand why he was so upset about the judges' decision not to put his daughter through to the next round of *The X Factor* auditions. Mr Scott stated that the programme as broadcast portrayed him as an idiot.
- b) The programme makers did not advise him that:
  - i) they would take no account of his disability. (In his complaint to Ofcom, Mr Scott detailed a number of physical disabilities and medical conditions); or that,
  - ii) footage of him would be edited.
- c) The programme makers ignored his written request to withdraw his contribution, prior to the broadcast of the programme.

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

- d) Mr Scott had not wanted any footage of him to be on television, but had been chased by the programme makers to appear on camera.

### **Channel Television's case**

Channel Television ("Channel TV") is responsible for the compliance obligations of both *The X Factor* and *The Xtra Factor*. In summary Channel TV responded to the complaint as follows:

- a) In response to Mr Scott's complaint that the programme portrayed him unfairly, Channel TV said that the programme as broadcast had shown the complainant's behaviour exactly as he had conducted himself on the day of filming. The section of the programme which featured Mr Scott, gave a 'whirlwind tour' of the audition locations, and background was not given for any of the contributors shown. Mr Scott's story was considered interesting because Mr Scott had stood up to Simon Cowell and not many people had done so.
- b) In relation to the complaint that Mr Scott was not advised that the programme makers would take no account of his disabilities or that his contribution would be edited, Channel TV said that:

- i) Mr Scott did not advise any of the production staff about his disabilities and maintained that the complainant's disabilities were not evident from the footage so there was no reason for them to assume he had a disability.
- i) Given the programme was not being transmitted live, Mr Scott must have been aware at the time of filming that his contribution would be edited. In addition, at the time that Mr Scott signed his release form, it was made clear to him that his contribution might be included in the finished programme and afterwards.
- c) The programme makers felt they had no reason not to include brief shots of Mr Scott's story in the programme, given that the complainant had signed a release form for his contribution.
- d) In response to Mr Scott's complaint that his privacy was unwarrantably infringed during the making of the programme, Channel TV denied that Mr Scott was chased by any of the programme makers to appear in the programme. Channel TV said Mr Scott was asked if he would like to speak to the judge, Simon Cowell, given his strong feelings about his daughter failed audition, and he accepted the offer to do so.

## 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 the making and broadcast 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, consistent and targeted only at cases in which action is needed.

The complaint was considered by Ofcom's Executive Fairness Group. In reaching its decision, the Group considered a copy of the programme, the programme transcript, both parties' written submissions, recordings of the unedited footage of Mr Scott's contribution and the full *X Factor* programme from which the 'highlight' had been taken.

- a) Ofcom first considered the complaint that the editing of Mr Scott's contribution did not allow the audience to understand why he was so upset about the outcome of his daughter's audition and portrayed him as an idiot.

In reaching a decision about this complaint Ofcom took account of Practice 7.6 which states that when a programme is edited, contributions should be represented fairly. Ofcom also noted that an earlier edition of the programme *Xtra Factor* had featured the audition of Mr Scott's daughter, in greater detail. Given this, Ofcom had regard for this earlier *Xtra Factor* programme as well as all of the untransmitted material relating to Mr Scott's contribution.

The full highlight, as it was included in the programme, was as follows:

Ben Shephard: *"We had a bit of aggro – Rachel and her old man. It all kicked off"*.

Mr Scott: (Footage of Mr Scott during an interview on the day of the audition with Xtra Factor presenter, Ben Shephard)

*"How dare he, how dare the man, I'm absolutely disgusted with him"*.

(Footage of Mr Scott and Ben Shephard interview ends)

Ben Shephard: *"That was a bit scary"*.

Ofcom noted that the segment of the programme in which Mr Scott appeared, was clearly described as highlights from the "best bits" of the *X Factor* auditions. Taking this into consideration, it is Ofcom's opinion that viewers were likely to understand from the presenters' commentary and the preceding trailers that the segment was intended to briefly 'recap' rather than fully feature, the *X Factor* auditions.

Ofcom viewed the relevant programme recordings and acknowledged that the highlight that was included in the programme as broadcast was the most emotional part of Mr Scott's response to his daughter's audition. However, it is also Ofcom's view that the highlight that was shown was representative of Mr Scott's great dissatisfaction with the outcome of the audition, as expressed by him during a number of interviews on the day of the audition.

Taking these factors into account, Ofcom found that the programme makers' editing of Mr Scott's contribution fairly represented his dissatisfaction with the judges' response to his daughter's audition. In the circumstances, Ofcom found no unfairness in respect of this complaint.

- b) Ofcom next considered Mr Scott's complaint that the programme makers did not advise him that they would take no account of his disability; or that footage of him would be edited.

It is important to note that when handling complaints of this nature, Ofcom will not seek to determine what specific pieces of information should have been given to a contributor. Rather Ofcom will assess whether the programme makers provided adequate information to the contributor to enable him/her to make an informed decision about their participation in the programme (as per Practice 7.3 of the Code). In determining whether adequate information had been provided to Mr Scott, Ofcom also had regard for the fact that Mr Scott has a number of physical disabilities, and medical conditions.

Ofcom noted that *The X Factor* contributors volunteer themselves as participants in a competition. It was also noted by Ofcom that Mr Scott's daughter, Miss Scott, had voluntarily applied to take part in the auditions having previously applied for the first and second series of *The X Factor*, and that the family therefore had prior knowledge of the nature of the programme. Further, *X Factor* is a well-established series where the interaction between those auditioning and those judging is well-known.

In addition to this, Ofcom noted that on the day of the audition, the programme makers gave Mr Scott additional information in the form of a release form, which he was asked to sign. The form explained that by signing it, Mr Scott was giving consent to the filming and recording of his contribution to, and participation in, the programme. The form also explained that the programme makers were entitled to alter, adapt, add to and delete from the contributor's appearance in the programme at its discretion.

When taking Mr Scott's signed release form into consideration, Ofcom had regard for Mr Scott's submission that he had not been told the purpose of the form and that he did not have his reading glasses with him at the time of signing. Ofcom also noted that the name and address sections of some of the family's consent forms had not been completed. In addition, Ofcom sought to assess whether the programme makers took appropriate account of Mr Scott's disabilities when asking him to sign the release form.

Ofcom is not a fact finding tribunal, and it was not possible for it to determine what accompanying verbal information was given to Mr Scott by the programme makers when asked to sign the release form. Notwithstanding this, it is Ofcom's view that it is reasonable to expect that participants of a programme will read (or where necessary ask someone to read for them), forms which they have been asked to sign. Ofcom considered that if Mr Scott was unsure about the purpose of the release form he could have sought clarification, from either the programme makers, or his family members who attended the audition with him, before signing the document.

In relation to whether or not the programme makers took appropriate account of Mr Scott's disabilities, Ofcom was provided with no evidence that Mr Scott made the fact of his disabilities known to the programme makers at the time of signing the consent form. Furthermore, Ofcom also noted that the complainant did not provide any information to suggest that as a result of his disabilities, he was not capable of either understanding the release form or freely giving his consent to participate in the programme. In the circumstances it is Ofcom's view that it was not incumbent on the programme makers to provide additional information (than was provided) in order to allow Mr Scott to give informed consent for his participation.

On the information available to it, having taking account of the consent form, and Mr Scott's voluntary and active participation in a programme where the nature, purpose and format were well established, Ofcom found that there was adequate information provided to Mr Scott to enable him to make an informed decision about whether or not he wished to take part in the programme. In the circumstances, Ofcom considered that the consent that Mr Scott voluntarily gave for his contribution was 'informed consent'. Given this, Ofcom found no unfairness to Mr Scott in relation to this complaint.

- c) Ofcom next considered Mr Scott's complaint that the programme makers ignored his written request to withdraw his contribution, prior to broadcast of the programme.

When adjudicating on this complaint, Ofcom took account of Practice 7.3 which states that where a person is invited to make a contribution to a programme they should normally, at an appropriate stage be made aware of any significant changes to the programme as it develops which might reasonably affect their original consent to participate, and which might cause material unfairness.

In order to consider this complaint Ofcom first determined whether or not the consent obtained from the complainant was in fact informed consent, and secondly, whether there had been significant changes to the programme which could have affected the validity of the consent given.

As noted above (at Head (b) of the Decision), Ofcom concluded that Mr Scott gave 'informed consent' for his voluntary participation in the programme. Given this, Ofcom next addressed the question of whether or not the validity of Mr Scott's consent had been affected by any significant changes to the programme.

Ofcom had regard to the letters that Mr Scott sent to the programme makers after the auditions. The letters stated that all permissions for the use of his contribution were denied. The complainant's letters also set out a number of reasons why he believed he was entitled to withdraw his consent. These reasons included that: the release form had not been read to him; he had not understood the purpose of the release form; he believed there was a 'cooling down' period during which he would be able to withdraw his consent; and he was disabled and did not wish to have the effects of his disability made a spectacle on television.

Ofcom gave careful consideration to all of the reasons listed by the complainant, and found that the reasons listed did not appear to relate to any significant changes which had occurred since the recording of his contribution. Rather they appeared to explain why Mr Scott considered that the consent he had provided was invalid. As noted above (Head (b) and below (Head (d)) of the Decision, this view was not supported by Ofcom, which found that Mr Scott: freely consented to participate in a programme whose nature, purpose and format were well established; and, actively participated in the filming of the programme. In the absence of any other information to suggest that there had been significant changes, it is Ofcom's view that Mr Scott did not provide adequate grounds to withdraw his original consent to participate

Having found that Mr Scott gave 'informed consent' for his participation in the programme, and there being no significant changes which might have affected the consent, Ofcom concluded that it was not unfair for the programme makers to refuse Mr Scott's request to withdraw his contribution. Ofcom found no unfairness in relation to this complaint.

- d) Finally, Ofcom considered Mr Scott's complaint that his privacy had been unwarrantably infringed during the making of the programme in that Mr Scott had been chased by the programme makers to appear on camera.

In reaching a decision about this complaint Ofcom took account of Practice 8.5 which states that any infringement of privacy in the making of the programme should be with the person's consent or be otherwise warranted.

Ofcom had regard to the unedited recordings of Mr Scott's contribution and noted that the complainant appeared in five separate interviews/discussions. These included pre and post audition interviews, and one discussion with Simon Cowell. Ofcom noted that in each instance, Mr Scott was filmed in the open and appeared to actively participate in the discussion at hand. The recordings at no time showed Mr Scott either shying away from or becoming frustrated by the presence of the cameras, or suggest that Mr Scott had requested that the filming be stopped.

Ofcom considered the nature of the filming and noted that Mr Scott had voluntarily attended *The X Factor* auditions with his daughter. While Ofcom appreciated that Mr Scott may have wished primarily to support his daughter during the audition process, it equally acknowledged that by attending the audition, Mr Scott had placed himself in an area where filming was likely to be taking place. Ofcom also had regard for the fact that Mr Scott had signed a release form which had given permission for the programme makers to film him. Furthermore, the actions of Mr Scott, at the audition, did not appear to Ofcom to be of an inherently private or sensitive nature, and had been conducted in a semi public area, in full view of other *X Factor* contestants.

Taking into account all of these factors, Ofcom found that Mr Scott did not have a legitimate expectation of privacy in this respect and there was therefore no infringement of his privacy in the making of the programme. In these circumstances, it was not necessary for Ofcom to go on to consider whether or not any infringement was warranted.

**Accordingly Ofcom has not upheld Mr Scott's complaints of unfair treatment and unwarranted infringement of privacy in the making of the programme.**

## **Complaint by Miss Rachel Scott**

*The Xtra Factor, ITV2, 26 August 2006*

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**Summary:** Ofcom has not upheld this complaint by Miss Rachel Scott of unfair treatment and unwarranted infringement of privacy in the making and broadcast of the programme.

Miss Scott participated in the third series of *The X Factor* and her unsuccessful audition and related interviews were featured in the programme *The Xtra Factor*.

Miss Scott complained that she was treated unfairly in that: she was not properly informed about various aspects of the programme; her musical performance was unfairly edited; the programme makers advised her to beg to be put through to the next round; the programme makers refused her request to withdraw her contribution; and, she had not been offered a preview of the programme.

Miss Scott also complained that her privacy was unwarrantably infringed in both the making and broadcast of the programme in that: the programme makers constantly asked her for information relating to her studio and finances (which she did not believe would be included in the programme as broadcast), and included this highly sensitive, personal information in the programme as broadcast.

Ofcom found as follows:

Ofcom considered that there was adequate information available to Miss Scott to allow her to make an informed decision about whether or not to participate. Furthermore, Ofcom concluded that Miss Scott's active and willing participation was a clear indication that she had consented to contribute to the programme. In Ofcom's view the edited version of Miss Scott's performance was representative of her musical performance on the day of the audition and there was no evidence that the programme makers made suggestions to Miss Scott about the way she should behave during her audition. Ofcom also considered that there had not been any significant changes which might have affected Miss Scott's consent to participate and concluded that it was not unfair for the programme makers to refuse Miss Scott's request to withdraw her contribution. Ofcom further considered that the programme makers' decision not to offer Miss Scott a preview of the programme did not result in unfairness, as such an offer is given by the programme makers at their discretion. Ofcom therefore found no unfairness to Miss Scott in the programme as broadcast.

Ofcom considered that Miss Scott had consented to take part in the programme and freely provided information about herself during the course of being interviewed. In the circumstances, Ofcom found that Miss Scott did not have a legitimate expectation of privacy in this respect and there was therefore no infringement of her privacy in the making or broadcast of the programme.

### **Introduction**

This episode of *The Xtra Factor* included behind-the-scenes footage from *The X Factor* auditions. The programme followed the audition experience of one contestant named Rachel Scott and showed footage of Miss Scott and her family.

During her audition, Miss Scott explained that she owned her own recording studio and had invested £14,000 into her music career. Following Miss Scott's audition, the

*X Factor* judges made the decision not to put Miss Scott through to the next round. Miss Scott and her father were shown confronting one of the judges, Simon Cowell, about the decision.

Miss Scott and her family were interviewed both before and after her audition. After the audition they were interviewed by the presenter, Ben Shephard, and during that interview, Miss Scott sang part of a song which she had written herself.

Miss Rachel Scott complained to Ofcom 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**

### **Miss Scott's case**

In summary, Miss Scott complained that she was treated unfairly in the programme as broadcast in that:

- a) The programme makers did not read or explain the consent form to her, despite her explaining that she had dyslexia. Miss Scott's complaint stated that she has significant reading difficulties and would not have been able to understand the content of the consent form when she signed it. Miss Scott said she was told the consent form was a formality.

Miss Scott complained that she was not therefore adequately informed about:

- i) the content of the programme. In particular the fact that she would be filmed and that footage of her would be edited prior to broadcast;
  - ii) what contribution was required of her. Specifically Miss Scott complained that she was not informed that she would be interrogated by the judges and pressurised into disclosing details about her personal life;
  - iii) the fact that without notice, one of the judges would change the format of the audition, by telling her that she could not sing one of her selected songs. Miss Scott said that as a person with dyslexia this came as an "absolute shock".
- b) The programme unfairly edited her audition and interview. Miss Scott said the removal of parts of her musical performance portrayed her in a less than favourable way.
  - c) Miss Scott said the programme makers told her prior to broadcast that she should beg the judges to be put through to the next round, and explain that singing was her life's ambition.
  - d) The programme makers refused her request to withdraw her contribution, prior to broadcast of the programme.
  - e) Miss Scott was not offered a preview of the programme prior to broadcast.

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

- f) The programme makers constantly asked her for background information which she did not believe would be included in the programme as broadcast.

In summary Miss Scott complained that her privacy was unwarrantably infringed in the programme as broadcast in that:

- g) The programme disclosed highly sensitive, personal information about Miss Scott's studio and finances.

### **Channel Television's case**

Channel Television ("Channel TV") is responsible for the compliance obligations of both *The X Factor* and *The Xtra Factor*. Channel TV provided a statement of response to the complaint and also provided the unedited recordings of Miss Scott's contribution. In summary Channel TV responded as follows:

- a) In response to Miss Scott's complaint that she had not been adequately informed about the programme, Channel TV said that according to the producer who dealt with Miss Scott during the first audition, the only reference Miss Scott had made about having dyslexia was in passing and to comment how it had never impeded her academic progress.

Channel TV said Miss Scott's release form had been sent to the complainant in the post on her initial application to the programme, and she would have had to sign it before being allowed to continue with the selection process. Channel TV said that Miss Scott did not ask for help with the form nor did she indicate on the form that she had dyslexia. Channel TV provided Ofcom with a copy of this release form.

In relation to Miss Scott's complaint that the programme makers advised her that the consent form was a formality, Channel TV said that this was simply not true. It said the programme makers working at the audition were experienced researchers and producers and would not have advised contributors in such a way.

- i) In response to Miss Scott's complaint that she was not advised that she would be filmed and footage of her would be edited, Channel TV said it was inconceivable that Miss Scott was unaware of the nature of the programme unless she was claiming that she had never watched it. Channel TV said that the complainant had applied previously for both series 1 and 2 of the programme and in the circumstances it could be assumed that the complainant had watched the programme. Channel TV said it is clear that the programme is not transmitted 'live' and that therefore by definition the programme would be subjected to an editing process.
- ii) In relation to Miss Scott's complaint that she had been interrogated by the judges and pressured into disclosing details about her personal life, Channel TV said the unedited recordings provided no evidence that Miss Scott was interrogated by the judges. Channel TV said the judges were friendly, professional and offered the complainant practical advice as to the direction that her career should follow. Further, one of the judges, Simon Cowell, called her back after her audition to be sure that she understood the rationale behind the judges' decision not to put her through to the next stage of the competition.

Channel TV said that Miss Scott was never asked about her personal life.

- iii) In response to Miss Scott's complaint that the format of the audition had been changed without any notice, Channel TV said that during the audition, Miss Scott was allowed another 'go' at impressing the judges after her first song (*Fallin'* by Alicia Keys) failed to do so. Miss Scott asked if she could sing one of her own compositions and was told that she could.

b) Unfair editing of musical performance

Channel TV said that a comparison between the edited and unedited versions of Miss Scott's contribution clearly illustrated that the complainant's singing abilities were fairly represented. Channel TV said the judges heard all of Miss Scott's performance and judged her not to be good enough to go through to the next round.

c) Advised to beg the judges to be put through to the next round

Channel TV absolutely denied that Miss Scott had been advised to beg and said that at no point did Miss Scott appear to do so.

d) Refused request to withdraw consent

Channel TV said that in only exceptional circumstances would the programme makers allow the contestants' preferences to dictate the editorial decision-making process. Miss Scott's case was simply not one of them as she had made her request almost immediately without having any idea of what was to be included in the programme. Channel TV said that in any event, there was no public interest justification for withdrawing her contribution, nor any personal circumstances that supported doing so.

e) Not offered preview of programme

Channel TV said it was not practical to let contributors have a preview copy of the programme and commercial sensitivity would advise against such an action.

f) Infringement of privacy in the making of the programme

Channel TV said that at no time was Miss Scott led to believe that certain information that had been provided by her to the programme makers, would be edited out.

g) Infringement of privacy in the programme as broadcast

Channel TV said the only information disclosed about Miss Scott's finances was to ask how much she had spent on her studio. This was simply because the complainant had volunteered to the judges that she had invested a lot of money into her own studio and journalistically it would be quite natural to ask "How much?", so that the audience at home could be given an idea of her level of commitment.

**Complainant's comments on Channel TV's statement**

Miss Scott wrote to Ofcom putting forward comments in relation to Channel TV's statement. In summary Miss Scott responded as follows:

- a) Miss Scott referred to the copy of the release form (provided by Channel TV) which the broadcaster said had been sent in the post following her initial application to the programme. Miss Scott said that the signature shown on the document was not hers, and that she had never seen the form before. Miss Scott said it was therefore impossible for Channel TV to be confident that she did not have difficulty understanding the form itself, given that she did not sign the form.

Miss Scott said that she was accustomed to having to advise people of her disability so that they were aware of her limitations and so that adjustments can be made. Miss Scott said that when she arrived at *The X Factor* auditions she made the staff fully aware of her disability because there were no questions relating to disabilities on the Application Form, which she returned by post to the programme makers before the audition day. Miss Scott said that she advised the reception staff that she had dyslexia (according to the complainant, a note was made and she was told that it would be forwarded to the appropriate person) and she also told the producer.

Miss Scott maintained that she and her family had been told the consent form was a formality and that it was not necessary to fill in the "Name" and "Address" sections of the consent forms – just sign the bottom.

- i) Miss Scott said that she was aware of the programme but only the final version which is broadcast on television. Miss Scott said that the broadcast version is different to what happens during the making and editing stages. Miss Scott maintained that at no point throughout the first audition, the screen test, or the second audition was she informed that her contribution would be edited.
- ii) Miss Scott said that she made it clear to the researcher who interviewed her that she did not wish to talk about how much her studio cost her, noting that the unedited recording of her interview showed her telling the producer "I wouldn't even like to go there". Miss Scott said the researcher pressed her repeatedly and eventually the information was given by Miss Scott's father, who believed it was to be used for background information and not for broadcast. Miss Scott said that she believed the researcher had understood from her comment ("I wouldn't even like to go there") that she did not wish to talk about it, but despite this the researcher fed the information to Mr Cowell. Miss Scott referred to the unedited recording of her audition and said Mr Cowell repeatedly asked her about how much her studio cost. Miss Scott suggested that had she told the judge to "mind his own business" she would have been discriminated against for being rude.
- iii) Miss Scott said that the programme makers had told her to rehearse the same songs which she had sung at her first audition. In support of this Miss Scott provided Ofcom with a copy of her second audition invitation. Miss Scott said the invitation informed her that she would be required to sing the same two songs in the second round and that she should be prepared.

Miss Scott said that having dyslexia meant that she finds it extremely difficult to cope with sudden alterations without prior notification. Had she been told that a judge would stop her from singing her pre-arranged song, she would not have participated in the competition because of her disability. By not taking account of the fact that she has dyslexia and

changing the format, the programme makers put her at a distinct disadvantage.

b) Unfair editing of musical performance

Miss Scott maintained her contribution was not edited fairly as virtually all of it was removed from the programme as broadcast. Miss Scott said that she believed the two lines of her performance that were included in the programme had been manipulated by a vocal processing package which distorted her vocals.

c) Advised to beg the judges to be put through to next round

Miss Scott maintained that she had been told by the programme makers to beg the judges to be put through to the next round. Miss Scott also referred to a section of the unedited recordings of her father's confrontation of Mr Cowell and noted that Mr Cowell said "She could beg for an hour and I wouldn't put her through".

d) Refused request to withdraw consent

Miss Scott said that her decision to request to withdraw her contribution was made after taking account of the pressures that the audition experience had had on her and her family. Miss Scott said she believed the programme makers would honour her wishes to withdraw as her contribution had been given voluntarily. Further, the complainant said she had extenuating circumstances, relating to illness and her disability, which the programme makers should have taken into consideration. Miss Scott said the programme makers were obliged to have a duty of care towards its contributors.

e) Not offered preview of programme

Miss Scott said that if she had been able to see a preview of the programme, she would never have agreed with the way the programme had been edited.

f) Infringement of privacy in the making of the programme

Miss Scott said that she believed the information she gave while being interviewed by the researcher was for background information and would only be used to give an idea of what type of person she was. By telling the researcher that "she wouldn't even like to go there" she believed she had indicated that details about her finances were sensitive and personal. She did not give the researcher permission to divulge these details to Mr Cowell.

g) Infringement of privacy in the programme as broadcast

Miss Scott said that she did not give permission for the broadcast of sensitive and personal details about her studio and finances on television.

**Channel TV's second statement in response to complainant's comments**

Channel TV provided a second statement in response to the complaint. In summary, Channel TV responded as follows:

- a) Channel TV said that Miss Scott appeared to contradict herself in alleging both that she had never seen the release form before Channel TV submitted a copy of it to Ofcom, and also saying that on the day of the audition, that she was told it was "merely a formality". Channel TV maintained that the release form was not forged or filled in by any member of the production team.

Channel TV denied that Miss Scott informed the producer of her dyslexia. The remark which Channel TV had referred to, was made in passing to a male researcher during an interview which was not transmitted. Channel TV also acknowledged that a comment was made about Miss Scott having dyslexia by her father during the family's interview with Ben Shephard.

- i) In relation to Miss Scott's complaint that she was not informed that she would be filmed or that the footage would be edited, Channel TV said that the function room where the audition was held had signs regarding filming. These signs made it clear that filming was potentially in progress at all times and invited objection from anyone who might demur. Further, as the programme was not the first series that Miss Scott had applied for, Channel TV contended that she would have been aware of the fact that contestants are filmed before and after the actual auditions and that these contributions are often included in the finished programme.
- iii) In relation to Miss Scott's complaint that the format of the audition had been changed without any notification, Channel TV referred to the second audition invitation, provided to Ofcom by Miss Scott. Channel TV said the document was a pro forma which had been sent to contestants who were selected to go through to the second round audition. It said the document did not state what a contestant might be expected to sing. Channel TV said the standard instruction to the production staff is to tell all contestants who progress to the third round to sing the same song as used in their earlier auditions, while having a second song prepared in the event that the first is not clearable (e.g. under the programme's agreements with music publishing companies), or if the judges decide they wish to hear something different. Channel TV said it did not see how the document was relevant to Miss Scott's complaint as it did not purport to give any instructions on what will happen at the judges' audition.

Channel TV made no additional comments in relation to the other heads of complaint.

## **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 the making and broadcast 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.

The complaint was considered by Ofcom's Executive Fairness Group. In reaching its decision, the Group had regard for a copy of the programme, the programme transcript, both parties' written submissions, and copies of relevant unedited programme recordings.

- a) Ofcom considered Miss Scott's complaint that the programme makers did not read or explain the consent form to her, despite her explaining that she had dyslexia. Also Miss Scott's complained that she was told the consent form was a formality and was not adequately informed about: the content of the programme; what contribution was required of her; or the fact that one of the judges would change the format of the audition, without notice.

Ofcom first sought to determine whether Miss Scott gave consent to participate in the programme as broadcast. In reaching a decision, Ofcom took account of Practice 7.3 which includes that 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; be told what kind of contribution they are expected to make; be informed about the areas of questioning and, wherever possible, the nature of other likely contributions; and, be made aware of any significant changes to the programme as it develops which might reasonably affect their original consent to participate, and which might cause material unfairness.

Ofcom noted that Miss Scott believed the programme makers should not have used her contribution because the programme makers had not read a consent form to her (to ensure that she understood what she was agreeing to, by participating in the programme). Further, she stated that the signature appearing on the consent form provided by Channel TV was not hers. Ofcom acknowledges that a written consent form is a tool of 'best practice' that is commonly used within the industry to ensure that contributors are informed of the nature and content of a programme, and also to signify that a contributor has given their express consent to participate. However, it is important to note that written consent forms are not the only way in which participants can be informed about a programme nor is it the only way in which participants can show that they have agreed to take part in a programme.

In the circumstances of this case, Ofcom noted that Miss Scott appeared to give a number of indications that she was aware of the nature of the programme and that she was a willing participant in the production process. From the parties' written submissions and the unedited recordings, Ofcom noted that this was the third time that Miss Scott had applied to take part in *The X Factor* auditions. From the interview footage it was also apparent to Ofcom that Miss Scott knew the reputations of the judges, which suggested to Ofcom that she was very familiar with the programme.

Ofcom next noted that before Miss Scott was able to take part in the audition process, she had been required to apply in writing – a clear indication that Miss Scott was, at the time of application, willing to participate in the programme. Miss Scott was then accepted to attend two separate audition days, during which she gave a number of interviews. From the untransmitted recordings of these audition days it was clear to Ofcom that Miss Scott willingly and actively took part in the production process and appeared to enjoy the experience:

Interviewer: *“If you could just start of by introducing yourself and everyone you have come here with today”.*

Miss Scott: *“Ok. I’m Rachel Scott and this is my Mum, this is my Dad and this is my Nana. I’ve come here to X Factor today because I want a recording deal”.*

And later, during another interview:

Interviewer: *“Right, tell me how much this means to you, this is a major, major, major achievement. OK so tell me how much this means to you”.*

Miss Scott: *“This is so fantastic. I’ve never got this far before and it’s just amazing. The whole X Factor experience is just unreal”.*

Ofcom also noted that after being told by the judges that she would not be put through to the next round, Miss Scott and her family voluntarily participated in a further three interviews including one with Simon Cowell and *The Xtra Factor* presenter, Ben Shephard.

Taking all of these factors into account, it is Ofcom’s view that Miss Scott volunteered to take part in a competition where the nature, purpose and format of the competition were well established and known to her. Ofcom further considered that Miss Scott, as an active and willing participant in the production process (as indicated by her actions of applying in writing to audition for the programme, attending two of the audition days and taking part in a number of interviews), indicated that she consented to participate in the programme. Having found this to be the case, Ofcom turned to Miss Scott’s specific complaints in relation to Head (a):

- i) Ofcom considered Miss Scott’s complaint that she was not adequately informed of the fact that she would be filmed and that footage of her would be edited prior to broadcast (as per Practice 7.3 above).

It should be noted that Ofcom is not a fact finding tribunal and was not able to determine whether or not the programme makers presented Miss Scott with a consent form, or whether the signature appearing on the release form (provided by Channel TV) was that of Miss Scott. However, after taking into account the information provided by both parties, Ofcom considered that Miss Scott was aware of information relating to the fact that filming would take place and that footage of her would be edited. In reaching this decision Ofcom made the following observations:

- Ofcom first noted that the audition area displayed signage indicating that filming was in progress;
- Secondly Ofcom noted that Miss Scott was accompanied by three of her family members all of whom signed consent forms for their participation when attending the audition. Ofcom acknowledged Miss Scott’s submission that she and her family were told the forms were “merely a formality”, along with Channel TV’s response that such advice was never given. Notwithstanding this conflict of information, Ofcom considered that participants of a programme can reasonably be expected to read (or where necessary ask someone to read for them), consent forms which

they have been asked to sign. Ofcom noted that these consent forms explained that the programme makers reserved the right to edit footage filmed at the audition; and

- Finally Ofcom considered the fact that Miss Scott volunteered to take part in a programme which has a well established format – one which it appeared to Ofcom that the complainant was familiar with. Ofcom considered that it was reasonable to expect that the complainant should have understood that by auditioning for the programme she could be filmed, and that any such footage was likely to be edited in some way.

Taking these factors into account, Ofcom found that from the information available to Miss Scott, it was reasonable to expect her to be aware that her audition experience would be filmed and any such footage would be edited before being broadcast. In the circumstances, Ofcom found no unfairness to Miss Scott in relation to this complaint.

- ii) Ofcom next considered Miss Scott's complaint that she was not informed of the contribution required of her. In particular that she would be interrogated by the judges and pressured into disclosing details about her personal life. Ofcom noted from the complaint that Miss Scott was concerned about the disclosure of how much money she had spent on her studio and career (as per Practice 7.3 above).

In relation to Miss Scott's complaint that she was not informed by the programme makers that these events would take place, Ofcom noted that the format of *The X Factor* programme is consistently the same for each series. In each series, contestants are interviewed before their audition about various aspects of their life, during the audition by the judges, and immediately after their audition in order to gauge their reaction to the judges' decision. As noted above, Miss Scott was familiar with the programme.

Ofcom also had regard for the fact that *The X Factor* audition is part of a competition process, which by its very nature will contain unknown elements. Given this, Ofcom considered that it was not incumbent on the programme makers to explain each and every detail of the audition process, as doing so would eliminate the competition element of the programme.

Ofcom next considered Ms Scott's specific complaint about being pressurised into disclosing details about her studio. In doing so, Ofcom had regard for both the conduct of the judges during the audition and also that of the programme maker's who interviewed Miss Scott before the audition.

Ofcom noted that the topic of how much Miss Scott had spent on her studio and career had been raised in two of the pre-audition interviews.

#### Interview 1:

Interviewer: *"Tell me briefly about your studio".*

Rachel: *"OK my studio that I am going to be opening is going to be mainly for my own personal use..."*

Interviewer: *"Do you have a studio right now? Tell me what you have got".*

Rachel: *“At the moment I have a huge set up, I just bought a Yamaha mixing desk, which cost a lot of money, two computers running”.*

Interview 2:

Rachel: *“...Always been involved in song writing, singing and now I’ve moved into producing music and I’ve got my own studio now. I’ve got my own studio where I write my own music and it’s just been built and I’ve just bought a nice big desk”.*

Ofcom considered that it was reasonable for the programme makers to make enquiries about Miss Scott’s studio as it was related to her musical aspirations and, as the interviewer explained, informed viewers about the investments that Miss Scott had made in her music career.

Ofcom noted that during the second interview, the interviewer asked Miss Scott several times, about the cost of the studio:

Interviewer: *“So tell me, to have your own recording studio, that couldn’t have been cheap could it?”*

Interviewer: *“So, just going back to the recording studio, we’ll talk more about the song writing in a second – how much do you think your recording studio cost?”*

Interviewer: *“So how much?”*

Interviewer: *“Tell me, how much was the studio?”*

Taking into account the number of times that the interviewer posed the question, Ofcom considered that the line of questioning was indeed probing. However, Ofcom noted that at no point did Miss Scott say that she did not wish to reveal the answer. The only response which showed any indication that she may not wish to respond was: “I wouldn’t even like to go there”, which in Ofcom’s opinion, from the interviewer’s point of view, could have related as much to the fact that Miss Scott did not wish to think about how much money she had spent over the years on her studio, as it did to any attempt not to answer the question.

Having viewed the unedited recordings of Miss Scott’s interviews, while Ofcom considered the line of questioning to be probing, it did not believe that the programme makers placed undue pressure on Miss Scott to answer any of their questions. Ofcom considered that the friendly tone of the interviews afforded Miss Scott adequate opportunity to decline to answer the question, if she wished.

Ofcom next considered the actions of the judges during the audition process. Ofcom noted that during the audition, Simon Cowell asked Miss Scott about how much money she had invested in her career:

Rachel: *“I’m from Weymouth in Dorset. I’ve been singing since I was 14 I’ve working the gig circuit since I was 16, I’ve had my*

*songs played on the BBC Radio South and Gemini FM. I'm a songwriter as well. So I'm here today because I want a record deal".*

Simon: *"And how much have you invested in terms of time and money?"*

Rachel: *"I've invested quite a bit of money in this. I've got my own studio..."*

Simon: *"How much?"*

Rachel: *"And I record my own music".*

Simon: *"So how much?"*

Rachel: *"At the moment 14 grand..."*

Again Ofcom believed that while it is evident that Simon was persistent, it did not consider that the judge "interrogated" Miss Scott, as was complained. In Ofcom's view, the question was relevant given the nature of the programme. Further, the manner in which contestants and the judges interact is well-established with viewers and participants alike and so, in Ofcom's view, a contestant who applies, on a number of occasions, to appear on the show is likely to be familiar with the format.

Taking all these factors into consideration, Ofcom considered that it was not incumbent on the programme makers to explain the precise format of the audition to Miss Scott, who was a contestant in a well-established reality-based competition (please also refer to finding at Head (a) (iii)), and in any event had not been placed under undue pressure during the programme interviews. Ofcom therefore found that Miss Scott's treatment at the audition resulted in no unfairness to her.

- iii) Ofcom next considered Miss Scott's complaint that she was not informed one of the judges would change the format of the audition, by telling her that she could not sing one of her selected songs (i.e. a song by the Pussycat Dolls). Miss Scott said that as a person with dyslexia this came as an "absolute shock".

Ofcom viewed the unedited recording of Miss Scott's audition and noted that after Miss Scott had sang her first song, 'Fallin', by Alicia Keyes, she received the following negative comments from the judges:

Louis: *"I didn't enjoy it at all. I don't think you have a lot of soul".*

Sharon: *"It was very weak. Weak. Weak performance, weak voice. I don't think you really believed in what you were doing. No conviction".*

Simon: *"...I don't believe any record company in the work, right now, would ever sign you up because it would be pointless. And in terms of investing any more money, don't".*

In response to these comments Miss Scott then asked *“Well, would you like to hear one of my own?”* to which Simon Cowell said *“Yeah”*.

Ofcom noted that it was Miss Scott who requested to sing another song, and she had specifically suggested that it be one of her own creation. Ofcom also noted that the only reference to her original song selection (a song by The Pussycat Dolls) was made in passing:

Miss Scott: *“Well would you like to hear one of my own?”*

Simon: *“Yeah”*.

Miss Scott: *“Yeah?”*

Simon: *“Yeah”*.

Miss Scott: *“Ok. Erm, which one shall I do...?”*

Simon: *“The best one”*.

Miss Scott: *“The best one. OK. So many to choose from Simon”*.

Simon: *“I know so many hits”*.

(Louis laughs)

Miss Scott: (laughs) *“OK. I’m thinking, I’m thinking cos’ I was going to do...my second song was going to be Pussycat Dolls”*.

Simon: *“I really don’t want to hear that”*.

Miss Scott: *“No? Don’t blame you. OK”*. (sings own song).

Taking the unedited recordings into account, it is Ofcom’s view that the change in format was brought about by Miss Scott’s suggestion to sing one of her own songs rather than a decision by the judges not to allow her to sing her selected song (as appears to be complained of by Miss Scott).

In any event, Ofcom considered that regardless of how the change in format came about, such unpredictable changes were reasonable given that the programme was designed to be a competition – which in nature is intended to challenge the contestants (provided that no unfairness results to the contestants). As noted above, Miss Scott volunteered and actively took part in *The X Factor* competition, being aware of the nature of the programme.

Ofcom also noted that the programme as broadcast did not include any reference to Miss Scott’s second song selection.

In all these circumstances, Ofcom found that the judges decision to allow Miss Scott to sing her own song, resulted in no unfairness to her in the programme as broadcast.

- b) Ofcom next considered Miss Scott’s complaint that the programme unfairly edited her audition and interview in a way which portrayed her musical performance in a less than favourable way.

In reaching a decision about this complaint Ofcom took account of Practice 7.6 which states that when a programme is edited, contributions should be represented fairly.

Ofcom viewed the unedited recordings of Miss Scott's audition and accompanying interviews. Taking these recordings into account, it is Ofcom's view that the excerpts of Miss Scott's performance, that were included in the programme, were representative of Miss Scott's performance on the day. Further, Ofcom considered that the two excerpts selected by the programme makers were illustrative of Miss Scott's audition experience, in that they gave viewers an indication of the performance Miss Scott gave during her audition, and also informed viewers that Miss Scott was able to go on and give another impromptu singing performance despite the disappointment of not being put through to the next round of *The X Factor*.

Ofcom found that the edited version of Miss Scott's performance did not result in unfairness to the complainant as it was representative of the complainant's musical performance on the day of the audition, and her audition experience as a whole.

- c) Ofcom considered Miss Scott's complaint that the programme makers told her prior to broadcast that she should beg the judges to be put through to the next round, and explain that singing was her life's ambition.

In reaching a decision in relation to this complaint Ofcom took account of Practice 7.2 which provides that broadcasters and programme makers should normally be fair in their dealings with potential contributors to programmes unless, exceptionally, it is justified to do otherwise. Ofcom also took account of the fact that this complaint relates to events occurring during the making of the programme. As noted above, 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.

Ofcom viewed the unedited recordings of Miss Scott's audition experience. Ofcom noted that during Miss Scott's pre-audition interview, she was asked a number of times "what the audition meant her". On all occasions Miss Scott expressed her view that it would be a "dream come true" as she had dedicated most of her life to a career in the music industry.

Ofcom was not able to determine what occurred off-camera. However from the information contained in the unedited recordings, Ofcom found no evidence that Miss Scott had been advised by the programme makers to either beg the judges to be put through to the next round or to explain that singing was her life's ambition (though Ofcom noted that Miss Scott had voluntarily intimated as much to the interviewers).

In any event, Ofcom noted from the untransmitted material that during the audition, Miss Scott did not appear to beg at any point. Ofcom noted that after receiving the negative feedback from the judges Miss Scott simply asked if she could sing them another song.

Taking all these factors into account, Ofcom found no evidence that the programme makers made suggestions to Miss Scott about the way that she

should behave during her audition, and in any event Ofcom that the alleged unfair treatment did not result in unfairness to the complainant in the programme as broadcast.

- d) Ofcom next considered Miss Scott's complaint that the programme makers refused her request to withdraw her contribution, prior to broadcast of the programme.

In reaching a decision, Ofcom took account of Practice 7.3 which states that where a person is invited to make a contribution to a programme they should normally, at an appropriate stage be made aware of any significant changes to the programme as it develops which might reasonably affect their original consent to participate, and which might cause material unfairness

In order to consider this complaint, Ofcom first considered whether or not the consent obtained from the complainant was in fact informed consent, and secondly whether there had been significant changes to the programme which could have affected the validity of the consent given.

As already stated above (Head (a) of the Decision), Ofcom found there was adequate information available to Miss Scott relating to the format of the programme and the treatment she could reasonably be expected to receive as an *X Factor* contestant, to allow her to make an informed decision about whether or not to participate. Furthermore, Ofcom found that Miss Scott's active and willing participation in the making of the programme was a clear indication that she had given consent for her contribution. In the circumstances Ofcom was satisfied that Miss Scott had given 'informed consent' for her contribution to the programme.

Ofcom next considered whether or not there had been significant changes to the programme which could have affected the validity of Miss Scott's consent.

Ofcom had regard for the reasons set out by the complainant (in her letters to the programme makers following the audition) for why she wished to withdraw her contribution. Ofcom noted that the reasons listed did not relate to specific changes in the programme but rather related to why Miss Scott believed she was entitled to withdraw her consent (i.e. because she had not fully understood what was being agreed to by signing the consent form; her belief that there was a 'cooling down' period during which she would be able to withdraw her consent; and her wish to deny the use of her copyrighted songs).

Ofcom gave careful consideration to all of the reasons listed by the complainant, and found that the reasons listed did not appear to relate to any significant changes which had occurred. Rather they appeared to explain why Miss Scott considered that the consent she had provided was invalid. As noted above, this view which was not supported by Ofcom's finding at Head (a) of the Decision. In the absence of any other information to suggest that there had been significant changes, it is Ofcom's view that Miss Scott did not provide adequate grounds to withdraw her original consent to participate.

Having found that Miss Scott gave 'informed consent' for her participation in the programme, and there being no significant changes which might have affected the validity of the consent, Ofcom concluded that it was not unfair for the programme makers to refuse Miss Scott's request to withdraw her contribution. Ofcom found no unfairness in relation to this complaint.

- e) Ofcom considered Miss Scott's complaint that she was not offered a preview of the programme prior to broadcast. Ofcom noted that Miss Scott did not claim that she had been assured of an opportunity to preview the programme, but rather that she believed it was unfair for the programme makers not to offer her a preview.

It is important to note that the Code does not require programme makers to offer a preview of their programmes to programme contributors. The only Practice which relates to an opportunity to preview a programme (Practice 7.6) provides that contributors should be given clear information, if offered an opportunity to preview the programme, about whether they will be able to effect any changes to it. It is Ofcom's view, that programme makers are under no obligation to offer contributors a preview of a programme.

In the circumstances Ofcom found that the programme makers' decision not to offer Miss Scott a preview of the programme did not result in unfairness, as such an offer is given by the programme makers at their discretion. Ofcom found no unfairness in this respect.

- f) Ofcom considered Miss Scott's complaint that her privacy was unwarrantably infringed in the making of the programme in that the programme makers constantly asked her for background information which she did not believe would be included in the programme as broadcast.

In reaching a decision about this complaint Ofcom took account of Practice 8.5 which states that any infringement of privacy in the making of the programme should be with the person's consent or be otherwise warranted. In determining whether Miss Scott's privacy had been infringed, Ofcom sought to assess whether the complainant had a legitimate expectation of privacy in relation to the way in which the programme makers obtained material during the making of the programme.

Ofcom had regard for the nature of the filming and noted that Miss Scott had voluntarily attended *The X Factor* auditions and willingly participated in a number of filmed interviews with the programme makers.

Ofcom viewed the unedited recordings of Miss Scott's interviews and noted that the filming was carried out openly and it was clear to Ofcom that Miss Scott was an active participant during the interviews. As noted above (at Head (a) of the Decision) while Ofcom considered that the line of questioning was at times probing, the programme makers did not place undue pressure on Miss Scott to answer any of their questions. Ofcom considered that Miss Scott had consented to take part in the programme and freely provided information about herself during the course of being interviewed.

Taking into account, all of these circumstances, Ofcom found that Miss Scott did not have a legitimate expectation of privacy in this respect and there was therefore no infringement of his privacy in the making of the programme. In these circumstances, it was not necessary for Ofcom to go on to consider whether or not any infringement was warranted.

- g) Miss Scott complained that her privacy was unwarrantably infringed in the programme as broadcast in that the programme disclosed highly sensitive, personal information about her studio and finances.

Ofcom noted that the programme as broadcast included the following exchange between Miss Scott and one of the judges, Simon Cowell:

Rachel: *"I've got my own studio, I've invested quite a bit of money in this".*

Sharon: *"OK".*

Simon: *"How much?"*

Rachel: *"At the moment 14 grand".*

In this case, Ofcom was required to determine whether Miss Scott had a reasonable expectation of privacy in relation to the broadcast of this information.

It is generally accepted by Ofcom that information relating to a person's finances could reasonably attract a legitimate expectation of privacy. However it is important to note, that when someone gives informed consent for a programme to reveal information about them that is of a private nature, the contributor normally no longer has an expectation of privacy in relation to that information.

As noted at Head (a), it is Ofcom's view, that when Miss Scott chose to participate in the programme, she gave informed consent for the programme makers to film her, and for that footage to be included in the programme as broadcast. Further, she had told the programme makers, on camera, the amount of money she had spent on her studio.

Taking these factors into consideration, Ofcom found that Miss Scott did not have a legitimate expectation of privacy in this respect. Ofcom therefore concluded that the programme maker's decision to broadcast footage of Miss Scott's audition, during which she provided information about her finances, did not infringe the complainant's privacy. In these circumstances, it was not necessary for Ofcom to go on to consider whether or not any infringement was warranted.

**Accordingly Ofcom has not upheld Miss Scott's complaint of unfair treatment or her complaint of unwarranted infringement of privacy.**

## Other Programmes Not in Breach/Out of Remit

1 to 15 September 2007

Programme	Trans Date	Channel	Category	No of Complaints
All New You've Been Framed	01/09/2007	ITV1	Generally Accepted Standards	1
Animals do the Funniest Things	25/08/2007	ITV1	Animal Welfare	2
Anne Widdecombe vs. Prostitution	15/08/2007	ITV1	Due Impartiality/Bias	1
Anne Widdecombe vs. Benefits Culture	22/08/2007	ITV1	Generally Accepted Standards	1
Australian Princess	01/09/2008	ITV2	Offensive Language	1
BBC London News	28/08/2007	BBC1	Substance Abuse	1
BBC News 24	10/08/2007	BBC News 24	Crime (incite/encourage)	1
Battle for the Holy Land: Love Thy Neighbour	21/05/2007	Channel 4	Religious Issues	1
Big Brother 8	16/08/2007	Channel 4	Generally Accepted Standards	1
Big Brother 8	05/06/2007	Channel 4	Generally Accepted Standards	1
Big Brother 8	23/08/2007	Channel 4	Sex/Nudity	4
Big Brother 8	24/08/2007	Channel 4	Generally Accepted Standards	2
Big Brother's Big Mouth	31/08/2007	E4	Generally Accepted Standards	1
Big Brother's Little Brother: The Reunion	02/09/2007	Channel 4	Offensive Language	1
British Superbikes	27/08/2007	ITV4	Generally Accepted Standards	1
British Touring Car Championship	02/09/2007	ITV1	Generally Accepted Standards	1
Brotherhood (trailer)	-	FX Channel	Inaccuracy/Misleading	1
Channel 4 News	12/07/2007	Channel 4	Generally Accepted Standards	1
Channel 4 News	24/08/2007	Channel 4	Generally Accepted Standards	1
Chart Show TV	20/08/2007	Chart Show TV	Dangerous Behaviour	1
Chris Moyles Show	30/08/2007	BBC Radio 1	Offensive Language	1
Committed	07/08/2007	Five	Religious Offence	1
Crime Scene Academy	17/07/2007	Five	Dangerous Behaviour	1
Deadliest Catch	01/09/2007	Channel 4	Generally Accepted Standards	1
Decoding the Past	17/08/2007	History Channel	Inaccuracy/Misleading	1
F1: Australian Grand Prix Qualifying	18/03/2007	ITV1	Advertising	3
F1: Italian Grand Prix	09/09/2007	ITV1	Due Impartiality/Bias	1
Fifth Gear	03/09/2007	Five	Generally Accepted Standards	1
Fifth Gear	03/09/2007	Five	Dangerous Behaviour	1
Foxy & Toms Breakfast Show	09/08/2007	Radio 2tenfm	Competitions	1

Friends (vodafone sponsorship)	04/08/2007	Channel 4	Generally Accepted Standards	1
GMTV	03/09/2007	ITV1	Due Impartiality/Bias	1
Hearts vs Hibernian	06/08/2007	Setanta Sports 1	Generally Accepted Standards	1
Help I'm a Teen Mum	13/08/2007	ITV1	Generally Accepted Standards	1
Hidden Lives Week (trailer)	31/08/2007	BBC1	Generally Accepted Standards	1
Hidden Lives Week (trailer)	31/08/2007	BBC1	Sex/Nudity	2
Hidden Lives Week (trailer)	16/08/2007	BBC4	Sex/Nudity	1
Hidden Lives Week (trailer)	28/08/2007	BBC1	Sex/Nudity	1
Hidden Lives Week (trailer)	28/08/2007	BBC1	Generally Accepted Standards	1
Hidden Lives Week (trailer)	04/09/2007	BBC4	Sex/Nudity	1
Holby City	28/08/2007	BBC1	Generally Accepted Standards	2
ITV News	13/06/2007	ITV1	Inaccuracy/Misleading	1
ITV News	13/06/2007	ITV1	Due Impartiality/Bias	1
ITV News	21/02/2007	ITV1	Due Impartiality/Bias	1
ITV News	21/02/2007	ITV1	Inaccuracy/Misleading	3
ITV News	07/09/2007	ITV1	Due Impartiality/Bias	1
ITV News	13/06/2007	ITV1	Generally Accepted Standards	1
ITV News	04/09/2007	ITV1	Commercial References	1
Jo Whiley	15/08/2007	BBC Radio 1	Generally Accepted Standards	1
Jon Gaunt	24/08/2007	Talksport	Generally Accepted Standards	1
Lunchtime News	27/08/2007	ITV1	Animal Welfare	1
Midsomer Murders	25/08/2007	ITV3	Unconscious influence/hypnosis/subliminal	1
Mock the Week	23/08/2007	BBC2	Generally Accepted Standards	1
Mukti Snan	27/07/2007	Channel 5	Violence	1
Mutz Cutz	26/08/2007	Zee Music	Sponsorship	1
National Lampoon's Dorm Daze 2	25/08/2007	Trouble TV	Generally Accepted Standards	1
News	06/06/2007	Al Jazeera	Due Impartiality/Bias	1
News Knight With Sir Trevor McDonald	28/06/2007	ITV1	Generally Accepted Standards	4
News Knight With Sir Trevor McDonald	01/07/2007	ITV1	Generally Accepted Standards	1
Panorama (trailer)	28/07/2007	BBC2	Violence	1
Party People	10/08/2007	MKTV	Generally Accepted Standards	1
Ramsay's Boiling Point	24/08/2007	Biography Channel	Generally Accepted Standards	1
Richard & Judy	29/08/2007	Channel 4	Generally Accepted Standards	1
Richard & Judy	24/08/2007	Channel 4	Due Impartiality/Bias	1
Richard & Judy	24/08/2007	Channel 4	Generally Accepted Standards	3
Richard & Judy	17/08/2007	Channel 4	Due Impartiality/Bias	5
Richard & Judy	17/08/2007	Channel 4	Generally Accepted Standards	1

Richard and Judy	13/07/2007	Channel 4	U18's in Programmes	1
Rugby World Cup Live	08/09/2007	ITV1	Scheduling	2
Showbiz News	27/08/2007	ITV2	Generally Accepted Standards	2
Sky News	26/08/2007	Sky News	Inaccuracy/Misleading	1
Sky News	22/05/2007	Sky News	Animal Welfare	2
Spendaholics	02/08/2007	BBC3	Animal Welfare	1
Sunrise With Eamon Holmes	22/05/2007	Sky News	Animal Welfare	1
The Big Lunch, The Big Man, Martyn Sloan	16/04/2007	Hilltown FM	Offensive Language	2
The Bill	23/08/2007	ITV1	Generally Accepted Standards	1
The IT Crowd	24/08/2007	Channel 4	Generally Accepted Standards	1
The Jeremy Kyle Show	03/09/2007	ITV1	Generally Accepted Standards	1
The Jeremy Kyle Show	26/02/2007	ITV2	Generally Accepted Standards	1
The Jeremy Vine Show	26/07/2007	BBC Radio 2	Generally Accepted Standards	1
The Mix 96 Breakfast Show	09/08/2007	Mix 96	Offensive Language	1
The One Show	31/08/2007	BBC1	Inaccuracy/Misleading	1
The Star Breakfast	-	Cambridge & Ely Star Radio	Competitions	1
The Steve Allen Show	19/03/2007	LBC	Generally Accepted Standards	1
The Toby Foster Breakfast Show	12/06/2007	BBC Radio Sheffield	Generally Accepted Standards	1
The Weakest Link	22/08/2007	BBC2	Generally Accepted Standards	1
The X Factor	26/08/2007	ITV2	Offensive Language	2
The X Factor	25/08/2007	ITV1	Generally Accepted Standards	2
The X Factor	25/08/2007	ITV1	Offensive Language	1
Totally Jodie Marsh	09/09/2007	MTV	Inaccuracy/Misleading	1
Ultimate Wild Water	21/08/2007	BBC1	Dangerous Behaviour	1
Weekend Breakfast	19/08/2007	Talksport	Generally Accepted Standards	1
Weekend Nazis	27/08/2007	BBC1	Inaccuracy/Misleading	3
Who Wants To Be A Millionaire? (trailer)	-	Challenge TV	Generally Accepted Standards	1
Will Smith Presents The Tao of Bergerac	15/08/2007	BBC Radio 4	Generally Accepted Standards	1
Would I Lie To You?	21/07/2007	BBC1	Generally Accepted Standards	1