

# **Ofcom Broadcast Bulletin**

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## 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

### Notice of Sanction

#### **British Broadcasting Corporation (“BBC”)**

*Blue Peter*, 27 November 2006, BBC1, 17:00 and CBBC, 18:30

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On 9 July 2007, Ofcom published its decision to impose a statutory sanction on the BBC for breaches of Rules 2.11 (competitions should be conducted fairly) and 1.26 (due care of people under eighteen) of Ofcom’s Broadcasting Code.

Ofcom has found that these Rules were breached in the ‘live’ transmission of *Blue Peter* at 17:00. During a premium rate telephone competition conducted as part of the programme, technical problems prevented genuine callers being put to air to answer the competition question. Instead, a child visiting the studio was asked to call in and pose as the ‘winner’ of the competition.

A further breach of Rule 2.11 occurred when the same programme was repeated later that day on CBBC. Despite the fact that the competition had ended in the ‘live’ programme, a further 3,574 entrants called the premium rate telephone line to enter because the on-screen caption showing this number had not been sufficiently obscured.

For the reasons set out in the adjudication, Ofcom has imposed a financial penalty of £50,000 on the BBC, £45,000 of which has been imposed for the Code breaches during the ‘live’ programme on BBC1, and £5,000 for the further breach of Rule 2.11 during the repeat on CBBC.

The full adjudication can be found at:

[http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/bbc.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/bbc.pdf)

## In Breach

### **The Green Guide to Life**

*BBC Radio 2, 14 April 2007, 13:00*

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#### **Introduction**

*The Green Guide to Life* is a half-hour comedy programme looking at the complications and confusion of modern day living and supported by material from various stand up comedians. Ofcom received two complaints from listeners who objected to offensive language being used during a comedy sketch featuring Jack Dee, who was heard to say: “*What do you mean, fuck off*”. This programme was broadcast at lunchtime on a Saturday.

Ofcom asked the broadcaster to comment in respect of Rule 1.14 of the Code (the most offensive language must not be broadcast before the watershed or when children are particularly likely to be listening).

#### **Response**

The BBC stated that the language complained of was completely inappropriate for broadcast at this time. It apologised unreservedly and further wished to explain how this error had occurred. The programme was made by an independent production company for an original transmission time of 22:30 and was delivered to the broadcaster without indicating that it contained extremely strong language. It was therefore not vetted before being scheduled in this slot. The broadcaster accepted that it should have been checked. In light of this incident they have instituted new compliance procedures to ensure that all programmes are reviewed in-house to ensure compliance.

#### **Decision**

The language complained of was clearly inappropriate for broadcast at a Saturday lunchtime on Radio 2 when children were particularly likely to be listening. The BBC accepted there was a breach of Rule 1.14. It is the clear responsibility of the broadcaster to ensure that all material, irrespective of who originally produced it, is suitable for broadcast and appropriately scheduled.

This error exposed a weakness in the broadcaster’s compliance procedures. Further this is not the first occasion on which inappropriate language has been transmitted on Radio 2. Ofcom therefore considers it appropriate to record a breach of the Code.

#### **Breach of Rule 1.14**

## The Last Casino

Five, 23 March 2007, 15:30

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### Introduction

*The Last Casino* is a film about a teacher using his students to cheat a casino in order to pay off his debts. It was transmitted in Five's regular weekday afternoon movie slot. A viewer complained to Ofcom that the word "fuck" was clearly audible on one occasion and that it was also included in the programme's subtitles. Five was asked to comment in light of Rule 1.14 of the Code (offensive language before the watershed).

### Response

Five responded that *The Last Casino* was edited thoroughly for afternoon transmission because the original version did contain some swearing. On viewing a copy of the film, Five suggested that the word complained of was not in fact audible and therefore disagreed with the complainant's allegation that it was "*clearly audible*".

With regard to the subtitling, Five explained that this service is provided by Independent Media Support (IMS) once Five has submitted the edited programme to them. In this instance, Five said that it was surprised to see that IMS had included the subtitle "*fuck*" and that it questioned the logic of doing so in a pre-watershed programme and not least because there was no question, in this instance, of anyone lip-reading the word on screen. Five said that its Broadcast Services department wrote to IMS requesting an explanation as to how this situation came about; asking what procedures were in place to prevent it from occurring. Five subsequently informed Ofcom that it will supply IMS with a list of unacceptable pre-watershed language in accordance with Ofcom guidance and that all subtitlers will report the existence of unacceptable words on pre-watershed programmes to their supervisor or traffic manager to be queried with Five.

### Decision

Rule 1.14 of the Code states that "The most offensive language must not be broadcast before the watershed or when children are particularly likely to be listening".

Ofcom checked the copy of the broadcast carefully. It judged that the spoken word "*fuck*" was barely audible, but noted that nevertheless the IMS subtitling team must have considered it audible enough to include in the subtitles. Irrespective of whether the inclusion of "*fuck*" in the subtitles was human error on the part of the subtitler, Ofcom is concerned that before this incident Five did not have agreed procedures in place with its contracted subtitle supplier to ensure that the most offensive language was automatically omitted before the watershed. Further, this appeared to only have been highlighted to Five as a result of this complaint. As the licensee, Five is responsible for the compliance of its broadcast content and it is therefore Five's responsibility to ensure that any party providing a service to it regarding material intended for transmission does so in accordance with the requirements of the Code.

In this instance, the most offensive language was broadcast before the watershed. There was therefore a breach of Rule 1.14.

### Breach of Rule 1.14

## **Build a New Life in the Country**

*Five Life, 7 May 2007, 20:00*

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### **Introduction**

Five Life is a channel owned and operated by Channel 5 Broadcasting Ltd. (“Five”) and is available on digital terrestrial, cable and satellite. One viewer complained to Ofcom that an episode of *Build a New Life in the Country* transmitted at 20:00 on Five Life on 7 May 2007 contained the words “fuck”, “fucked” and “fucking”. Five was asked to comment, with regard to Rule 1.14 of the Code (offensive language broadcast before the watershed).

### **Response**

Five said that *Build a New Life in the Country* was originally produced for transmission on the main Five channel after 21:00 and that when the decision was taken to schedule the programme in an earlier timeslot on Five Life a number of edits were made to remove the bad language and alter its length to fit Five Life’s schedule. It said that this edited version of the programme was known as the ‘B version’. This was approved for transmission from 20:00. On the day that the schedules had to be submitted for publication in listings magazines, however, the planning team needed a programme of longer duration to complete the schedule on Five Life at 20:00 and the decision was therefore taken to replace the shorter ‘B version’ with the longer (and un-edited) ‘A version’.

Five said that it does have a number of procedures in place to ensure programmes are not inappropriately scheduled but that unfortunately, on this occasion, each of them failed as a result of various human errors. Five said this had highlighted a gap in its current compliance systems. The channel offered its sincere apologies to viewers who had been offended. It said that it had since taken a number of steps within its compliance and scheduling departments to minimise the risk of a repeat of this incident.

### **Decision**

Rule 1.14 of the Code states that the most offensive language must not be broadcast before the watershed. In this case the language was clearly offensive and inappropriately scheduled before the watershed.

Ofcom notes Five’s explanation that this occurred through human and scheduling errors. However, it is a condition of the broadcaster’s licence that it has adequate and robust procedures in place to ensure compliance with the Code. Five Life had previously informed Ofcom that it had improved its compliance procedures following the broadcast of an inappropriate trailer in February 2007. Ofcom has therefore recorded a breach of Rule 1.14.

### **Breach of Rule 1.14**

## **Blood on the Carpet**

*The Business Channel, 14 April 2007, 14:00*

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### **Introduction**

The Business Channel is a business entertainment and lifestyle channel available on the Sky platform. A viewer complained to Ofcom that an episode of the former BBC programme *Blood on the Carpet* transmitted at 14:00 contained the words “fuck” and “fucking hell”.

The broadcaster was asked to comment in the light of Rule 1.14 of the Code which states that “the most offensive language must not be broadcast before the watershed...”

### **Response**

The Business Channel responded that the broadcast of these words at this time was caused by an error in compliance and apologised. The person responsible (who no longer works for the company) failed to comprehend the significance of the watershed and assumed that the series, which had previously been broadcast on the BBC, was suitable for transmission at all times. It said that it has now recalled all broadcast master versions of this series to ensure that there is no recurrence of this issue. It also said that the task of checking and editing programmes bought in from third parties is being undertaken by a new company.

### **Decision**

Ofcom has previously resolved with the broadcaster a complaint about offensive language in an episode of *Blood on the Carpet* transmitted on 30 December 2006 at 12:00. On that occasion The Business Channel apologised, saying that the error occurred because it had recently launched and it intended to tighten compliance procedures by, for example, recruiting an experienced in-house compliance officer.

However, despite those assurances, Ofcom is concerned that offensive language has been broadcast again pre-watershed on The Business Channel, indicating that adequate compliance procedures have yet to be effectively implemented. Ofcom therefore views this repeated inclusion of offensive language in a pre-watershed programme as significant and is recording a formal breach of Rule 1.14 of the Code.

### **Breach of Rule 1.14**

## **Police Patrol: Uncut**

*ITV4, 4 February 2007, 20:00*

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### **Introduction**

*Police Patrol* is a fly-on-the-wall documentary series featuring car chases between police and suspected criminals, using real police camera footage.

Two viewers complained that they heard the word “fucking” being used by a police officer when reprimanding a suspect. The same word was included in the programme’s subtitles.

Ofcom asked ITV to respond with regard to Rule 1.14 (offensive language before the watershed).

### **Response**

ITV apologised unreservedly and admitted that a human error had been made. The ‘uncut’ version of the programme was mistakenly scheduled for the 20:00 slot, instead of the more appropriately edited pre-watershed version. ITV noticed the error on transmission, and promptly took steps to audit and check records of the series.

### **Decision**

By broadcasting the word “fucking” in this programme at 20:00, ITV breached Rule 1.14 of the Code. The offence caused by this was compounded by the inclusion of the same word in the programme’s subtitles.

While Ofcom acknowledges ITV’s explanation for the oversight and apology and notes the fact that the broadcaster’s compliance team identified the error on transmission and took corrective action, it is nevertheless the licensee’s responsibility to ensure that robust and effective compliance procedures are in place to prevent errors of this nature occurring in the first instance.

In addition, we noted that on two different occasions during the past year, offensive language has been broadcast on ITV channels before the watershed in versions of programmes intended for broadcast post-watershed. While in those previous instances, Ofcom considered the matter, on balance, resolved, the repeated occurrence of this type of error resulting in offensive language being broadcast before the watershed is a matter which Ofcom takes seriously.

### **Breach of Rule 1.14**

## Note to Broadcasters

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### **Compliance procedures and broadcast of unsuitable material before the watershed or when children are particularly likely to be listening**

There has been an increase in the number of cases where material which was originally produced for a post-watershed timeslot has been transmitted unedited or inappropriately edited for transmission pre-watershed or when children are particularly likely to be listening. This material often contains unsuitable language or violence. In such cases broadcasters frequently explain such failures on scheduling and/or human error.

All broadcasters are therefore reminded that they are under a clear duty to ensure that robust procedures are in place, supported by a sufficient number of appropriately qualified and trained staff, to ensure full compliance with the Code. This obligation covers all aspects of programmes, including tasks such as sub-titling, which the broadcaster may choose to contract out to third parties.

Ofcom expects all broadcasters to check their compliance procedures regularly to confirm they are robust enough to fulfil this requirement. Failure to have adequate compliance procedures in place to ensure compliance with Ofcom's codes is a serious matter and can lead to regulatory action being taken.

## Fairness and Privacy Cases

### Not Upheld

#### Complaint by Mishcon de Reya Solicitors on behalf of Foxtons Limited

*Watchdog, BBC1, 28 March 2006*

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**Summary:** Ofcom has not upheld this complaint. Mishcon de Reya Solicitors (“Mishcon de Reya”) complained to Ofcom on behalf of Foxtons Limited (“Foxtons”) that it was treated unfairly in that the programme: repeated all the malpractices allegedly committed in an earlier programme, *Whistleblower*, but only named Foxtons; one of Foxtons’ offices was featured in the background and one interviewee was asked specifically what she thought of Foxtons; and, it was not given an appropriate or timely opportunity to respond to the allegations made in the programme and a statement submitted to the programme makers was not referred to.

Ofcom found as follows:

- a) Ofcom was satisfied that the programme would not have been likely to have left viewers with the impression that Foxtons was solely responsible for all the alleged acts and malpractices that were the focus of the earlier programme.
- b) Ofcom acknowledged that Foxtons was named in the programme when members of the public were interviewed and that the exterior of one of its West London offices was featured in the background to those interviews. However, Ofcom was satisfied that the programme made it sufficiently clear to viewers that the report was about all the London-based estate agencies featured in the earlier programme and did not focus on a single company.
- c) Ofcom considered that, the programme makers did provide Foxtons with an appropriate opportunity to respond to the issues that were to be raised in the programme. Further, Ofcom was satisfied that the programme did not suggest that the company had accepted that its employees had been involved in wrongdoing and Foxtons’ position was represented in a fair way. Ofcom found no unfairness to the company in this respect.

#### Introduction

On 28 March 2006, BBC1 broadcast an edition of the consumer affairs programme, *Watchdog*, which featured a short report about estate agents. The report followed an earlier programme, *Whistleblower*, broadcast on BBC1 on 21 March 2006, which investigated the practices of a handful of London based estate agents, including Foxtons.

At the beginning of the *Watchdog* report, one of presenters, Julia Bradbury, said that four and a half million people had watched the *Whistleblower* programme and that *Watchdog* had received 550 emails. These emails had “revealed satisfaction” at what the *Whistleblower* programme had exposed, namely, alleged wrongdoing by the featured estate agents.

Members of the public were filmed being interviewed by Julia Bradbury about whether or not they were surprised at what they had seen on the *Whistleblower* programme. The majority of the interviews shown in the programme were filmed on a West London High Street with a Foxtons' office in the background. Secretly recorded footage (originally recorded for and shown in the *Whistleblower* programme) of a document bearing the Foxtons' logo being doctored by a Foxtons' employee was also included in the programme. Immediately after this footage, the presenter was shown asking a member of the public "*What's your opinion of Foxtons, having seen the programme?*" The member of the public replied, "*It's ... it's fallen considerably, just put it that way*".

Brief footage (again, secretly recorded for and shown in the *Whistleblower* programme) of the interior of a Time 2 Move (another London-based estate agency) office was also shown in the *Watchdog* programme. The report concluded with a studio interview with Ray Hall the Director of Enforcement at the Office of Fair Trading on the regulation of estate agents.

On 24 March 2006, four days before the *Watchdog* programme was broadcast, Ms Denise Kelly, a producer for the programme, faxed a letter to Mr Karl Daly, a Foxtons employee, informing the company that the programme would feature a report about Foxtons after the response the programme makers had received from the public over the *Whistleblower* programme and that it intended to reflect and discuss the issues raised by the programme. The faxed letter also included a series of questions that the programme makers invited Foxtons to answer and an invitation for its Chief Executive, Mr Jon Hunt, to attend the studio for a live interview on the programme.

On 27 March 2006, Ms Kelly sent an email to Mr Daly to confirm whether or not a decision had been made about Mr Hunt appearing on the programme and to ascertain whether or not the company had looked at the questions she had posed in her earlier correspondence. Later that day, Mishcon de Reya Solicitors ("Mishcon de Reya") responded to Ms Kelly's fax and email on Foxtons' behalf. It said that Mr Hunt was unable to give an interview at such short notice and attached a statement which set out Foxtons' position which it asked to be broadcast "in full" if the edition of *Watchdog* referred to Foxtons. The same statement had been given to the makers of the earlier *Whistleblower* programme. Mishcon de Reya told Ms Kelly that the statement answered most of her questions and that Foxtons was continuing its investigation into the allegations made about its employees featured in the *Whistleblower* programme and that it would be inappropriate for the company to comment. However, it said that Foxtons would take appropriate action against any employee found to have committed wrongdoing and asked the BBC for relevant footage.

The statement was not broadcast in full on *Watchdog*. However towards the end of the report, Ms Bradbury stated that "*Now the companies involved say they've taken strong action in these cases*".

Mishcon de Reya complained to Ofcom on behalf of Foxtons that the company was treated unfairly in the programme as broadcast.

## **The Complaint**

### **Mishcon de Reya's case on behalf of Foxtons**

In summary, Mishcon de Reya complained on behalf of Foxtons that it was treated unfairly in that:

- a) *Watchdog* repeated all of the malpractices allegedly committed by a number of London based estate agents and criticised in the earlier *Whistleblower* programme, but only named Foxtons. Viewers would have been left to believe that Foxtons was solely responsible for all of the alleged acts;
- b) One of Foxtons' west London offices was featured in the background while members of the public were interviewed on their views on estate agents, in general, having seen the *Whistleblower* programme. One interviewee was asked specifically "*what do you think of Foxtons now?*"; and,
- c) Foxtons were not given an appropriate or timely opportunity to respond to the allegations made in the programme. The statement given to the programme makers before the broadcast of the programme, along with further up to date material - such as the investigation by Foxtons into the allegations and its training of staff - given in the letters of 27 March 2006, was not referred to.

### **The BBC's case**

In summary, the BBC said that the report was not an orthodox *Watchdog* report that featured allegations against an individual company and sought an interview or statement in response. Its purpose was to gauge public reaction to revelations of [alleged] dishonesty about a number of estate agents featured in the *Whistleblower* programme and to move the story forward with a studio interview. The report's focus was on whether the public felt that its trust in estate agents in general had been shaken.

The BBC noted that the short studio introduction made no reference to specific estate agents. The BBC also pointed out that a number of unanswered phone calls had been made by the programme makers to Foxtons' Head Office.

In response to the specific heads of complaint, the BBC said that:

- a) The complainant's assertion that "viewers would have been left to believe that the company was solely responsible for the alleged acts" was not accepted. This ignored the widespread publicity the revelations made by the *Whistleblower* programme had enjoyed across the print and broadcast media (examples were provided to Ofcom). Even if viewers had not seen the media reports or the *Whistleblower* programme, the BBC said that they would have picked up other script references from the *Watchdog* programme itself that made it clear that the item was not a report into a single company. For example, in introducing the report, one of the programme's presenters, Nicky Campbell, said that:

*"The Whistleblower exposé of estate agents, some estate agents, struck a real chord with you";*

and his co-presenter, Julia Bradbury, referred to viewers opinions on "*some of the different agents featured on Whistleblower*" and to "*the companies*" taking "*strong action*".

The BBC said that *Watchdog* did not repeat all the malpractices allegedly committed by a number of London based estate agents as alleged by the complainant. For instance, it did not refer to the breach of data protection laws when personal information held by mortgage brokers Alexander Hall Limited was passed on to Foxtons without the client's permission.

The programme makers believed that they had gone to sufficient lengths to make it clear that the report dealt with revelations about more than one company.

- b) The filming of members of the public took place at various locations in west London, including the vicinity of a number of estate agents where the programme makers hoped to find people with an interest in the topic. A single reference to Foxtons was made in a neutral, non-leading question by Ms Bradbury: “*What’s your opinion of Foxtons, having seen the programme?*” This question immediately followed footage that showed a Foxtons’ employee “forging signatures” and doctoring documents and was, in the BBC’s view, included in the correct context.

The BBC said that the Foxtons logo could just be seen across the street in the background to some of the footage taken of members of the public. However, its distance from the camera meant that it was not particularly eye-catching and it did not have a prominence which would have led viewers to believe that the whole of the item was dealing exclusively with Foxtons.

- c) The BBC said that although it was customary to give companies five working days to respond to new allegations raised by *Watchdog*, in this case, the programme was reflecting criticism that had already been put to Foxtons and where there had been a response.

The BBC was satisfied that Foxtons was given an adequate and timely opportunity to respond by both programme teams. After the *Whistleblower* team revealed its findings to Mr Hunt, there was time for his legal team to look at the matter and send hand-delivered letters to the programme’s two undercover reporters raising the possibility of personal lawsuits before the programme was broadcast. Given this reaction and the widespread publicity already generated by that programme, the *Watchdog* production team assumed that Foxtons’ publicity team would be in full “fire-fighting” mode.

The BBC said that Ms Kelly first contacted Foxtons’ head office on the afternoon of Friday, 24 March 2006 and spoke to “Emily” in what she understood to be the company’s press office. Ms Kelly explained that the programme was intending to broadcast a follow-up report to the *Whistleblower* programme and would like to interview Mr Hunt. She was told that such an inquiry needed to go through Mr Daly who was not in the office. She was also told that both Mr Hunt and his personal assistant were out of the office, but was assured that her query would be passed on to Mr Daly. After receiving no further response that day, Ms Kelly sent the list of questions by fax later that evening.

The BBC said that Ms Kelly did not hear any more from Foxtons’ head office. On 27 March 2006, she emailed the company at 13:18, asking if anyone had had a chance to look at her questions and make a decision over her interview request. An email reply was sent to her by Mischon de Reya at 18:47 that evening and it was only then that the programme makers were made aware that Mr Hunt was unable to attend a live interview. The BBC acknowledged that Mr Hunt may not have been able to attend an interview at short notice, however, given the seriousness of the public relations problem faced by the company, it said that it would not have been unexpected had Mr Hunt cancelled other engagements or for another company spokesperson to have stood in for him.

The BBC said that Foxtons had chosen not to respond to the written questions submitted by Ms Kelly and that not all of them were covered in the company's statement to the makers of *Whistleblower* and re-copied to the *Watchdog* production team. The programme was not, therefore, able fully to report the company's view on public trust in estate agents. However, the BBC did not accept that there was no reference to the material supplied. During the interview with Mr Ray Hall, Director of Enforcement at the Office of Fair Trading, the presenter said:

*"the companies involved say they've taken strong action in these cases".*

This, the BBC said, was a fair summary of Foxtons' position at that time. In fact, it could be interpreted as overstating its position, given that the statement provided by Mishcon de Reya on 27 March 2006 made no reference to any action taken as a result of the *Whistleblower* programme revelations other than an investigation into them. The statement also asserted that the allegations made by the *Whistleblower* programme had been portrayed out of context but no detail to substantiate this was given. The accompanying letter from Mishcon de Reya made clear that the investigations were still ongoing and that, therefore, it would be inappropriate to report any preliminary findings. In these circumstances, the BBC did not believe that *Watchdog* failed to fairly to represent Foxtons' position as set out in the pre-transmission correspondence of 27 March 2006.

## 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. 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 recognises that (subject to the provisions of the Code) broadcasters can quite properly comment and take particular viewpoints on the subjects of broadcast programmes. However, it is essential, not only to the parties directly concerned but also to listeners and viewers, that such comments should be accurate in all material respects so as not to cause unfairness. Ofcom is also obliged to have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate and consistent targeted only at cases in which action is needed.

This case was considered by Ofcom's Executive Fairness Group. The Group had before it a complaint from Mishcon de Reya on behalf of Foxtons and written submission in response from the BBC. It viewed a recording of the programme as broadcast and read a transcript of it.

The Group's decision is set out below, by reference to each of the heads of Mischon de Reya's complaint made on Foxtons' behalf.

- a) Mishcon de Reya complained that only Foxtons was named in the *Watchdog* programme that repeated all of the malpractices allegedly committed by a number of London based estate agents and criticised in the earlier *Whistleblower* programme. Mishcon de Reya said that *Watchdog* viewers would have been left

to understand that the company was solely responsible for all of the alleged acts and practices referred to in the programme.

By examining the recording of the programme and reading a transcript of it, Ofcom noted that both *Watchdog* presenters referred to “*estate agents*” (Ofcom’s emphasis) three times while introducing the report. Further references were made in the programme to “*agents*” (Ofcom’s emphasis) and to “*companies*” (Ofcom’s emphasis). Also, Ofcom noted that the programme included secretly recorded footage of the interior of a Time 2 Move office, another London-based estate agent, and its logo, “T<sub>2</sub>M”, was visible in this footage. The office front to another London-based estate agency was also featured in the programme as background to one of Julia Bradbury’s interviews with a member of the public.

Ofcom appreciated that there were references to Foxtons in the programme. It noted the inclusion of the secretly recorded footage of a Foxtons employee doctoring documents headed with a part of the company’s logo; that a Foxtons office was shown as background to interview footage with members of the public; and that Julia Bradbury specifically mentioned Foxtons in her question to one of the members of the public. However, Ofcom recognised that the footage of the office was taken from some distance and that the company’s logo was not prominent. Also, footage of two other London-based estate agency offices was included and the references made in the programme were clear that the report focused on more than one London-based estate agency (see above).

In these circumstances, Ofcom was satisfied that the programme would not have been likely to have left viewers in the impression that that Foxtons was solely responsible for all the alleged acts and malpractices that were the focus of the earlier *Whistleblower* programme. In Ofcom’s view, viewers were likely to have understood the *Watchdog* report to be making a generalised reference to the handful of London-based estate agencies featured in the *Whistleblower* programme rather than solely singling out Foxtons as an example. Notwithstanding the extent of the printed press and other media coverage of the instances of alleged wrongdoing exposed in the *Whistleblower* programme, the programme’s imagery and commentary itself made it sufficiently clear, in Ofcom’s view, that the *Watchdog* programme was reporting on all the London-based estate agencies featured in the *Whistleblower* programme and not just a single company.

In these circumstances, Ofcom found no unfairness to Foxtons in this respect.

- b) Mischon de Reya complained that the exterior of one of Foxtons’ west London offices was featured in the background while members of the public were interviewed about estate agents generally after watching the *Whistleblower* programme. One interviewee was asked for their opinion of Foxtons. This fostered the impression, unfairly, that the company was solely responsible for the alleged acts and practices referred to in the programme.

Broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation. However, Ofcom is also aware of the broadcaster’s right (subject to the provisions of the Code) to comment and take particular viewpoints on the subjects of broadcast programmes.

Ofcom acknowledged that Foxtons was the only company named in the programme by Julia Bradbury when interviewing members of the public and that

the exterior of one of its West London offices was featured in the background to those interviews. However, Ofcom also noted that the office front of another London-based estate agency was shown (though its name was not readily recognisable) in footage of an interview by the presenter with another member of the public. Ofcom considered that this footage, along with secretly recorded footage of the interior of the “Time 2 Move” agency, and the programme’s commentary would have added to the viewer’s perception that the focus of the report was on more than one estate agent rather than that the focus of the report was solely on Foxtons (see (a) above).

In these circumstances, Ofcom was satisfied that the programme made it sufficiently clear to viewers that the report was about all the London-based estate agencies featured in the earlier *Whistleblower* programme and that viewers would be unlikely to have understood that the report focused on a single company, and Foxtons, in particular. Ofcom, therefore, found no unfairness to the company in this respect.

- c) Mischon de Reya complained that Foxtons was not given an appropriate or timely opportunity to respond to the allegations made and its statement given to the programme makers before the broadcast of the programme was not referred to.

Ofcom requires 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. Also, where it is appropriate to represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner.

Accordingly, Ofcom first considered whether or not the programme made significant allegations about the company. It was clear from the *Watchdog* programme itself that the BBC’s stated purpose of the programme was to “gauge public reaction to revelations of dishonesty about a number of companies featured in the *Whistleblower* programme” and it was not disputed by Foxtons that it was one of the companies featured. Ofcom also considered: the use of the secretly recorded footage of a Foxtons’ employee doctoring a document; the use of the exterior of one of its offices as a backdrop to interview footage; and the use of the company’s name by Ms Bradbury. In these circumstances, Ofcom considered that (although it was clear that the allegations in the programme concerned all the London-based estate agencies featured in the *Whistleblower* programme and not just Foxtons) the programme was nevertheless capable of adversely affecting the reputation of Foxtons (as one of those estate agents). It was therefore incumbent on the programme-makers to offer Foxtons an **appropriate** opportunity to respond to the allegations. When considering what might constitute an **appropriate** opportunity in these circumstances Ofcom took account of the fact that in its view (as stated above) the programme was clearly reporting on a number of London-based estate agencies and did not unduly focus on Foxtons.

Ofcom noted that the BBC admitted that it was customary for the *Watchdog* production team to give companies five working days in which to respond to new allegations that the programme would raise. However, in this instance, only two working days were given. Ofcom also noted the BBC’s reason for only giving Foxtons two working days notice; namely, that the programme reflected criticism that had already been put to the company when making the *Whistleblower* programme and that the company had responded to that criticism in a written

statement. Ofcom also noted the exchange of correspondence between the BBC, Foxtons and Mischon de Reya between 24 - 27 March 2006 before the broadcast of the *Watchdog* programme and to the comments made by the presenters in the programme itself. The BBC claimed that the presenters fairly summarised Foxtons' position at the time of broadcast.

Ofcom took the view that it would have been preferable, if not at least best practice, for the programme makers to have given Foxtons the customary five working days in which to respond. However, it acknowledged that the circumstances surrounding the report were different, in that Foxtons had already been made aware of the issues that would be addressed by the programme as it revisited the issues raised by the earlier *Whistleblower* programme. In effect the *Watchdog* programme was a follow-up report. Ofcom noted that Foxtons, through Mischon de Reya, was able to reply to Ms Kelly's faxed letter of 24 March 2006; to resend the statement that it had already prepared for the *Whistleblower* programme; and to choose not to answer all the questions put to it by the programme makers. Although two working days may not have given the company enough time to arrange for Mr Hunt to attend a live studio interview for the programme, it would have been open to Foxtons to have put forward another spokesperson for the company.

Taking these factors into account, Ofcom considered that, the programme makers did take, under these particular circumstances, reasonable steps to provide Foxtons with an appropriate and timely opportunity to respond to the issues that were to be raised in the programme. How the company chose to respond to the programme makers' request for a response to all its questions or the invitation for a live studio interview with Mr Hunt was a matter for it and it alone. Ofcom, therefore, found no unfairness to Foxtons in this respect.

Ofcom then went onto consider whether or not the statement provided by Foxtons to the programme makers before the broadcast of the programme was referred to in the programme and, if not, whether this amounted to unfairness.

Ofcom noted that the company chose, through Mischon de Reya, to reissue a statement that had been initially prepared for the *Whistleblower* programme. The statement itself, while giving a general outline about Foxtons, also referred to the fact that most of the employees featured in the *Whistleblower* programme had left the company before it was made aware of the allegations of wrongdoing. Also, the letter dated 27 March 2006 which accompanied the statement contained further information that stated Foxtons' position at the time. Some of this information answered two of the questions asked by Ms Kelly in her faxed letter of 24 March 2006; namely that Foxtons was conducting an ongoing investigation into the allegations and that it would deal with any employee found to have committed wrongdoing accordingly; and, that it would include "break-clauses" in its tenancy agreements if its client required it.

By examining a recording of the programme and the transcript of it, Ofcom noted that the only reference made to either Foxtons' original statement or the response sent by Mischon de Reya on its behalf on 27 March 2006 was Julia Bradbury's statement "*Now the companies involved say that they've taken strong action in these cases...*".

Ofcom also noted the BBC's assertion that the presenter's statement was a reference to the material supplied by Mischon de Reya on 27 March 2006 and that it fairly represented Foxtons position at the time.

Programme makers can quite legitimately select or edit material provided by way of a written statement for inclusion in a programme. This is an editorial decision. It is unrealistic for a company or individual to expect a broadcaster to cede editorial control and necessarily include a written statement in full. The programme makers must, however, ensure that where it is appropriate to represent the views of a person or organisation it is done in a fair manner.

In this case the BBC chose to summarise Foxtons' response by the words:

*"Now the companies involved say they're taken strong action in these cases..."*

Ofcom noted that the BBC accepted in its response to the complaint that the presenter's statement could be interpreted as "over-stating" Foxtons' position as outlined in Mishcon de Reya's response.

However, Ofcom noted that the comment sought to summarise the industry's response in generic and broad terms (in keeping with a programme dealing with a number of companies and not just one). The comment was also made towards the end of the programme and not in obvious proximity to the specific mention of Foxtons in the vox-pop. Further, in Ofcom's view the meaning of the comment was arguably wide enough in scope to encompass the internal investigations undertaken by Foxtons (as well as cover any action taken by other companies).

Taking the factors detailed above into account, Ofcom considered that Julia Bradbury's statement did not suggest that the company had accepted that its employees had been involved in wrongdoing and Foxtons' position was represented in a fair way. Ofcom found no unfairness to the company in this respect.

**Accordingly, the complaint of unfair treatment in the broadcast of the programme was not upheld.**

## **Complaint by Howells Solicitors on behalf of Mr Andrew Jones**

*Shops, Robbers and Videotape, BBC1, 17 May 2006*

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**Summary:** Ofcom has not upheld this complaint of unwarranted infringement of privacy in both the making and broadcast of the programme.

This programme followed members of South Yorkshire Police carrying out their duties in and around Sheffield. Mr Jones was filmed being stopped and subsequently arrested by the police.

Howells Solicitors complained on Mr Jones's behalf that his privacy was unwarrantably infringed in that he did not give his permission for the programme makers to film his arrest and that he had been filmed while in the police station despite his request not to be. Also, footage of him being stopped and arrested was shown in the programme without his permission.

Ofcom was satisfied that Mr Jones was filmed openly in a public place and that in the particular circumstances of this case in which he had been arrested for committing an offence at the time of filming, he did not have a legitimate expectation of privacy in relation to either the recording of footage in those circumstances nor the broadcast of that footage in which his face was obscured. Also, Ofcom was satisfied that having been arrested for committing an offence, in the particular circumstances of this case, Mr Jones did not have a legitimate expectation of privacy in relation to filming at the police station.

### **Introduction**

On 17 May 2006, the BBC broadcast *Shops, Robbers and Videotape* which reported the experiences of a number of South Yorkshire police officers while carrying out their duties in policing the shopping centres in and around Sheffield. Part of the programme focused on the policing of Sheffield city centre at night in areas where large numbers of people congregated after the pubs and clubs closed.

During this part of the programme, Mr Andrew Jones was shown being stopped for driving the wrong way down a one-way street and being questioned by the police who also suspected him of drink-driving. He was filmed by the programme makers while they accompanied a police patrol. Mr Jones was subsequently arrested for refusing to provide a breath sample for testing and was taken to a police station where he was also filmed. However, the footage recorded in the police station was not shown in the programme broadcast. Mr Jones was not named in the footage included in the programme and his face was obscured.

Howells Solicitors complained on Mr Jones's behalf that his privacy was unwarrantably infringed in both the making and broadcast of the programme.

### **The Complaint**

#### **Howells Solicitors' case made on behalf of Mr Andrew Jones**

In summary, Howells Solicitors complained on behalf of Mr Andrew Jones that his privacy was unwarrantably infringed in the making of the programme in that:

- a) He did not give his permission for the programme makers to film him during his arrest in Sheffield city centre and that he had specifically requested not to be filmed while at the police station. However, the programme makers continued to film him despite his request.

Howells Solicitors also complained that Mr Jones's privacy was unwarrantably infringed in the programme as broadcast in that:

- b) He did not give his permission for the footage taken of him being stopped by the police in the street and his subsequent arrest to be broadcast in the programme.

### **The BBC's case**

In summary and in response to the privacy complaint regarding the making of the programme made on behalf of Mr Jones, the BBC said that:

- a) The programme was part of a series which followed the work of Britain's police and that dealt with important contemporary matters including violence, shoplifting, sexual harassment, anti-social behaviour and drink-driving. By showing a range of situations and outcomes in the programme it was, according to the BBC, essential in giving a balanced account of police work and the difficulties faced by police officers while on duty. The BBC said that if the public was to understand the nature of police work, it was necessary, to film each step of the process, from arrest, to charge and, possibly, to court and conviction, as it occurred. The BBC said that a decision to stop filming and, as a result, miss an important event, could have an inappropriately restrictive effect on broadcasters' and journalists' freedom to report on the work of the police, something that was greatly in the public interest. However, the BBC acknowledged that this did not mean that the potential for an unwarranted infringement of privacy should be ignored, or that filming should proceed with no regard for the concerns of those filmed.

In the circumstances of this particular case, the BBC said that Mr Jones had been stopped driving the wrong way down a one-way street late at night. He had, self-evidently, committed one offence and the police officers at the scene also suspected him of having committed another offence, namely that of drink-driving. In these circumstances, the BBC believed that there was sufficient justification for the programme makers to continue filming. Further justification for filming was provided by Mr Jones' refusal to provide a breath sample and his subsequent arrest. As the arresting police officer made clear in the programme, failure to provide a breath sample was regarded by the law with the same gravity as the offence of drink-driving itself.

The BBC accepted that Mr Jones had expressed concern at being filmed in the police station, though his concern had been directed at the police officers rather than the programme maker. The BBC said that the circumstances of this kind of programme making were such that it may be appropriate to continue filming in spite of the wishes of those involved. It said that the arguments that applied to the filming in the police station were the same as those that applied to filming in the street, namely that there was justification in filming Mr Jones in that it was in the public interest to demonstrate the work of the police in such situations.

In summary and in relation to the privacy complaint made regarding the footage broadcast in the programme made on behalf of Mr Jones, the BBC said that:

- b) The content of the programme as broadcast was the key to this issue. During the editing process, the BBC said that the programme makers carefully weighed the considerations relating to Mr Jones's privacy. It was decided to obscure his identity in the material filmed in the street and not to use the material filmed in the police station. The BBC said that it was Mr Jones's own behaviour that had attracted the attention of the police who, by arresting him, demonstrated their belief that he had committed another offence in addition to driving the wrong way down a one-way street. The BBC said that the public interest in the work of the police was sufficient to warrant the programme's approach.

## **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 from 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, consistent and targeted only at cases in which action is needed.

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. When considering and adjudicating on a complaint of unwarranted infringement of privacy, Ofcom first determines whether in its view the complainant had a reasonable expectation of privacy in the circumstances. This may simply depend on the nature of the information or image itself or on a combination of factors. Ofcom then addressed 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).

This case was considered by Ofcom's Executive Fairness Group. The Group had before it a complaint from Mr Jones's solicitors (Howells Solicitors) and written submissions, with supporting material, in response from the BBC. It viewed a recording of the programme as broadcast and read a transcript of it. It also viewed the unedited footage of Mr Jones in Sheffield city centre and at the police station and read transcripts of both.

- a) The Group first considered Mr Jones's complaint that he did not give his permission for the programme makers to film him during his arrest in Sheffield city centre and that he had specifically requested not to be filmed while at the police station. However, the programme makers continued to film him despite his request.

### *Filming in the street*

Before considering whether or not Mr Jones's privacy was infringed during his arrest in Sheffield city centre, Ofcom first considered whether or not he had a legitimate expectation of privacy in the circumstances he found himself in, that is while being filmed in the street after being stopped by the police for driving the wrong way down a one-way street and subsequently arrested for refusing to give a breath sample.

Ofcom noted from the unedited material filmed of Mr Jones that the filming was conducted openly and in a public place, that is, on a public street in Sheffield city centre. It also noted that the programme makers had not obstructed Mr Jones when he was being dealt with by the police and that the cameraman had got out of the police car when Mr Jones claimed that the camera was disturbing him.

Ofcom noted that the context of the programme was an examination of the work of the police which was of importance to the public's understanding of the range of situations dealt with by the police. Ofcom also considered the nature of the footage recorded of Mr Jones. In Ofcom's view, in a situation where a person is filmed either committing an offence or when arrested for an offence, that person's expectation of privacy is diminished in light of their actions. In Mr Jones's case, Ofcom considered that by committing an offence for which he was arrested Mr Jones's expectation of privacy was lessened in such circumstances.

Taking these factors into account, namely that Mr Jones was filmed openly in a public place and that he had been engaged in activity for which he was arrested at the time of filming, Ofcom was satisfied that Mr Jones did not have a legitimate expectation of privacy in relation to the filming. Ofcom therefore found there was no infringement of his privacy in relation to the footage recorded of his arrest in the city centre.

#### Filming in the police station

Ofcom then turned to the complaint regarding the footage recorded at the police station. Before considering whether or not Mr Jones's privacy was infringed, Ofcom first considered if he had a legitimate expectation of privacy in these circumstances, namely, when in custody in the police station.

Ofcom examined the unedited footage that was taken in police station and read a transcript of it. Ofcom noted that when giving his personal details to one of the arresting police officers, Mr Jones had requested "can you get the camera off me please" to which a police officer answered "no".

Ofcom considered that Mr Jones had a heightened expectation of privacy when in the police station, a place where the general public does not have unrestricted access. It took the view that being arrested and taken to a police station was a sensitive situation in which Mr Jones could have legitimately expected a certain degree of privacy, especially when he had requested not to be filmed. However, Ofcom considered that in being engaged in activity which resulted in arrest, Mr Jones's expectation of privacy was diminished by that fact.

Ofcom appreciated that there was a fine balance to be drawn in deciding whether Mr Jones had a legitimate expectation of privacy while in the police station. However, having been arrested for an offence, in Ofcom's view his expectation of privacy, in the sensitive location of the police station, was significantly diminished. In the circumstances of this particular case and on balance, Ofcom was satisfied, having taken all the factors referred to above into account that the Mr Jones did not on balance have a legitimate expectation of privacy in relation to the recording of the programme.

Accordingly Ofcom that Mr Jones's privacy was not infringed in the making of the programme in either of the two locations. It did not therefore go on to consider whether any infringement was warranted.

- b) Ofcom went on to consider Mr Jones's complaint that he did not give his permission for the broadcast of the footage taken of him being stopped and arrested by the police in the street.

Before considering whether or not Mr Jones's privacy was infringed, Ofcom first considered if he had a legitimate expectation of privacy concerning the broadcast of this footage.

Ofcom was satisfied that in the particular circumstances of this case in which Mr Jones had committed an offence for which he was arrested, he did not have a legitimate expectation of privacy in relation to the broadcast of the material recorded of him in the street (discussed above at Decision head a)). Furthermore Ofcom was satisfied that in the broadcast the programme makers had taken steps to conceal Mr Jones's identity: his face was obscured in the programme and that he was not otherwise identified.

In view of these considerations Ofcom found that Mr Jones did not have a legitimate expectation of privacy in this regard and so his privacy was not infringed in the broadcast of the programme. Ofcom did not therefore go on to consider whether any infringement was warranted.

**Accordingly, Howells Solicitors' complaint made on behalf of Mr Jones that his privacy was unwarrantably infringed in both the making and broadcast of the programme was not upheld.**

## **Complaint by Mrs Tahira Hussain**

*Sky News Report: Forced Marriages, BSkyB, 29 March 2006*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment and unwarrantable infringement of privacy.

The programme reported on forced marriages and featured three of Mrs Tahira Hussain's sisters who alleged that they had either been forced into marriage or had run away from home for fear of being forced into marriage.

Mrs Hussain complained that she was treated unfairly in that her family name and home were revealed in a way that associated her with her sisters. Mrs Hussain also complained that her privacy was unwarrantably infringed in the broadcast of the programme in that it revealed her family home address and her family name.

The broadcaster, BSkyB, argued that it was not unfair, nor did it unwarrantably infringe Mrs Hussain's privacy, in its inclusion of the Hussain family name as it was used to identify her two sisters who appeared openly in the report. It also said there was insufficient information in the programme to identify the address of the family home.

Ofcom found that the identification of Mrs Hussain as belonging to the same family as her sisters, who appeared in the programme, did not result in unfairness to Mrs Hussain as there was no criticism of her in the programme nor any implication that she had been either subjected to a forced marriage or had been involved in her sisters' marriages. Ofcom also found that the information disclosed in the programme, in relation to the family home, was insufficient to identify the location or address of Mrs Hussain's property and therefore resulted in no unfair treatment nor unwarrantable infringement of privacy. Furthermore, Ofcom was satisfied that her family name was already in the public domain and that it was reasonable for the programme makers to have used the family name in connection with her sisters who agreed to appear in the programme. Ofcom therefore found that Mrs Hussain's privacy had not been unwarrantably infringed in the programme as broadcast.

### **Introduction**

On 29 March 2006, BSkyB broadcast a news report about forced marriages, that is where one person is tricked or threatened into marriage against his or her will, often as a result of family pressure. The report focused in particular on three sisters: Mrs Zaira Steele (née Hussain, and referred to as Zaira Hussain in the programme), Ms Shagofta Hussain and 'Saima' (who, although she originally agreed to take part in the programme, later changed her mind and her identity was obscured in the programme). The sisters recounted their experiences of being forced into marriage (or, in the case of Ms Shagofta Hussain, of running away from home for fear of being forced into marriage) and expressed their thoughts about the treatment they received from their parents and husbands.

In the programme Mrs Steele alleged that she had been forced to marry at the age of 16. Her Pakistani husband had joined her two years later in the UK. She also alleged that her husband had abused her and that her parents had not helped her when she asked them. Mrs Steele left her first husband and was now married to a man of her own choice. The report also alleged that 'Saima' was rescued from a forced marriage

in Pakistan and that their younger sister, Ms Shagofta Hussain, had run away from home when she was 15 years of age for fear of being forced into marriage.

The programme referred to the Hussain family home as being located in Peterborough.

Mrs Tahira Hussain is a sister of the three women referred to above. Mrs Hussain did not take part in the programme herself, nor was she referred to.

Mrs Hussain complained to Ofcom that she was treated unfairly in the programme as broadcast and that her privacy was unwarrantably infringed in the broadcast of the programme.

## **The Complaint**

### **Mrs Hussain's case**

In summary, Mrs Hussain complained to Ofcom that she was treated unfairly in that:

- a) her family home and her family name were revealed in the programme and that this was unfair to her in that it implied that she was in some way linked with the forced marriages alleged by her sisters.

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

- b) her family name was revealed and her family home address was shown in the programme without consent.

### **BSkyB's case**

In summary, and in response to Mrs Hussain's fairness complaint, BSkyB said that:

- a) While the report showed the outside of her parents' house, what was shown was not sufficient to reveal the address of the property to viewers. Accordingly, showing the outside of the house in this way was not unfair to Mrs Hussain. BSkyB also said that it was not unfair to Mrs Hussain for the report to reveal her family name as it was used to identify Mrs Hussain's two sisters who had agreed to be identified and willingly participated in the programme.

In summary, and in response to Mrs Hussain's privacy complaint, BSkyB said that:

- b) BSkyB said that Mrs Hussain's privacy was not infringed in the broadcast of the programme by the inclusion of footage of the outside of Mrs Hussain's parents' house as it was not sufficient to identify the address of the property, and only disclosed that it was in Peterborough.

BSkyB also said that the inclusion of the family name in the report did not infringe Mrs Hussain's privacy as the report identified the two sisters who had agreed to be identified and willingly participated in the programme.

BSkyB argued that should Ofcom consider that the disclosure of the family name constituted an infringement of Mrs Hussain's privacy, such infringement was warranted. The broadcaster argued that to have concealed the family name would have wrongly implied that Mrs Hussain's two sisters, Mrs Steele and Ms

Shagofta Hussain, who participated openly in the programme, wanted to remain anonymous or that they were afraid of the consequences of speaking out about their experiences. This, BSKyB said, was not the case and it would have undermined their intention in speaking out. BSKyB stated that the aim of Mrs Steele and Ms Shagofta Hussain was to encourage others in similar situations to theirs to take action. Their identification in the report, as compared to their sister who subsequently changed her mind about taking part and whose appearance was disguised, was a key element in achieving their goal, namely that the sisters would be seen to be empowered by the stance they had taken against forced marriages. BSKyB said that the report would not have had this effect if the sisters' full names, including their family name, had not been given. BSKyB also submitted to Ofcom a copy of a newspaper article in which Mrs Steele (referred as Zaira Hussain in the article) discussed these issues.

## Decision

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unfair treatment and unwarrantable infringement of privacy 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, consistent and targeted only at cases in which action is needed.

This case was considered by Ofcom's Executive Fairness Group. Ofcom considered the complaint and the broadcaster's response, together with supporting material and a recording and transcript of the programme as broadcast. In its considerations, Ofcom took account of Ofcom's Broadcasting Code ("the Code").

In the circumstances of this case, Ofcom found the following:

- a) Ofcom considered Mrs Hussain's complaint that her family home and her family name were revealed on the programme and that it implied that she was in some way linked with the "forced marriages" alleged by her sisters.

Ofcom considered this complaint in light of Rule 7.1 of the Code which states that broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes. Ofcom also took into account Practice 7.9 of the Code which states that before broadcasting a factual programme, including programmes examining past events, broadcasters should have taken 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.

Having examined the programme as broadcast and read a transcript of it, Ofcom noted that only the exterior of the Hussain family home was shown and that the commentary had stated that it was located in Peterborough. Ofcom noted that the images of the property did not reveal any house name or number or any other distinguishing signs such as a street name or recognisable landmarks.

In these circumstances, Ofcom was satisfied that the information disclosed in the programme in relation to Mrs Hussain's home was insufficient to identify the address or its location other than it was in Peterborough. In any event, it was

unclear how the identification of her family home would have resulted in unfairness to Mrs Hussain. There was no implication in the programme that Mrs Hussain, who was not named or referred to in the programme, had been forced into marriage against her will or that she had participated in the alleged forced marriages of her sisters. Ofcom therefore found no unfairness to Mrs Hussain in this respect.

In consideration of Mrs Hussain's complaint that the family name was used in the programme and that this was unfair to her, Ofcom noted that, as referred to above, Mrs Hussain was not named or referred to in the programme. Ofcom considered that the association of Mrs Hussain with other members of her family did not result in unfairness to her as there was no criticism of Mrs Hussain in the programme, nor any implication that she had been subjected to a forced marriage or played a role in her sisters' marriages. Ofcom therefore found no unfairness to Mrs Hussain in this respect.

- b) Ofcom then went on to consider Mrs Hussain's complaint that her privacy was unwarrantably infringed in the programme as broadcast in that her family name was revealed and her family home address was shown in the programme without her consent.

In Ofcom's view, the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about the unwarranted infringement of privacy, Ofcom will therefore, where necessary, address itself to two distinct questions: First, has there been an infringement of privacy? Second, if so, was it warranted? (Rule 8.1 of the Code).

Ofcom first considered whether or not Mrs Hussain had a legitimate expectation of privacy concerning the revelation of her family home address in the programme. In deciding this, Ofcom had particular regard to Practice 8.2 of Code which states that information that discloses the location of a person's home or family should not be revealed without permission, unless it is warranted. In these circumstances, therefore, Ofcom was satisfied that Mrs Hussain did have a legitimate expectation of privacy concerning the address of her family.

Ofcom then considered whether or not Mrs Hussain's privacy was infringed in the broadcast of the programme. As already discussed above at head a) of the Decision, by examining the footage in the programme, Ofcom noted that only the outside of the house was shown in close detail. No number or house name was disclosed, nor was any mention made of the location of the house other than it was in Peterborough.

In these circumstances, Ofcom was satisfied that the address details of Mrs Hussain's family home were not disclosed in the report and that the images of the exterior of her house were not sufficient to be able to identify the location or identify the address of the property. Ofcom therefore found that Mrs Hussain's privacy had not been infringed in the programme as broadcast and it was not therefore necessary to consider whether or not any infringement of privacy was warranted.

Ofcom then considered the use of Mrs Hussain's family name in the report and whether its use infringed her privacy.

Ofcom first considered whether or not Mrs Hussain had a legitimate expectation that her family name would not be disclosed. Ofcom recognised that in certain

circumstances the use of a family name in a programme could have the potential to infringe the privacy of those members of the family who are not the subject of the programme but who, nevertheless share the same name. Ofcom therefore considered the particular circumstances of this case.

Ofcom examined the footage in the programme and noted, as discussed above, that Mrs Hussain was not named in it or featured in any other way. However, her sisters, Mrs Steele and Ms Shagofta Hussain, were named and featured in the report which rendered Mrs Hussain identifiable, by association to her sisters, to those who knew her.

Ofcom also noted that her family name was shared by Mrs Hussain and by her two sisters who had agreed to be identified in the programme. It also noted that it would not have been possible to have identified them without the use of their family name. It noted that the family name was already in the public domain as the story of one of the three sisters had been featured in a newspaper article. In these circumstances, Ofcom considered that it was reasonable for BSkyB to have included the names of the two sisters who agreed to appear openly in the programme. For these reasons, Ofcom considered that Mrs Hussain did not have a legitimate expectation that the family name that she shared with her sisters would not be used in these circumstances.

Taking these factors into account, and as Mrs Hussain had no legitimate expectation of privacy in the use of her family name, Ofcom found that Mrs Hussain's privacy was not infringed and did not therefore go on to consider whether any infringement was warranted.

**Accordingly, the complaint of unfair treatment and unwarranted infringement of privacy in the programme as broadcast was not upheld.**

## **Complaint by Mr Marvin Munday and Mrs Nicola Munday** *Haunted Homes, ITV2, 3 and 8 February 2006*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment about the above programme. This programme investigated Mr and Mrs Munday's claim that their house was haunted.

Mr and Mrs Munday complained to Ofcom that they were misled about the programme's nature and the programme unfairly depicted them as amateur paranormal investigators and as "dabbling" with the devil. They also complained that footage of them was unfairly edited, failing to present their experiences fairly and misleading viewers into wrongly believing that they were terrified.

The complaint was considered by Ofcom's Executive Fairness Group. Ofcom was satisfied that Mr and Mrs Munday were not materially misled about the likely nature and content of the programme and that the programme fairly and accurately portrayed Mr and Mrs Munday's expertise in the field of paranormal investigations. Ofcom also considered that the programme makers had not edited footage of Mr and Mrs Munday in a way that was unfair.

### **Introduction**

On the 3 February 2006 (repeated on 8 February 2006), ITV2 broadcast an episode of *Haunted Homes*, a series which investigated the claims made by people who believed that they had experienced paranormal phenomena in their homes. Each household was visited by an investigation team comprising Ms Mia Dolan, described by ITV as a psychic and medium, Mr Mark Webb, a paranormal researcher, and Professor Chris French, who sought to provide a rational explanation for the reported paranormal experiences. The team undertook vigils at each household and offered contrasting responses to the accounts given by the families and to the environment of the house itself.

In this particular episode, the investigation team visited the home of Mr Marvin Munday and Mrs Nicola Munday. The programme said that Mr and Mrs Munday, both described in the programme as "*amateur paranormal investigators*", had used a Ouija board, in the course of their research into paranormal phenomena. A Ouija board to those who accept the paranormal is a board with letters and symbols at its rim to which a planchette (a pointer used with a Ouija board) points to indicate answers to questions put, for example, at a séance. However, their use of the Ouija board had, according to Mr and Mrs Munday, opened a gateway for a malevolent spirit or entity that now haunted their home. Mr and Mrs Munday contributed to the programme and were featured throughout it.

Both Mr and Mrs Munday complained to Ofcom that they were treated unfairly in the programme as broadcast.

### **The Complaint**

#### **Mr and Mrs Munday's case**

In summary Mr and Mrs Munday complained to Ofcom that the programme treated them unfairly in that:

- a) They were misled about the nature of the programme. They were told that it would be a factual, 'fly on the wall' type documentary without dramatisation.
- b) They were depicted, throughout the programme, as amateur paranormal investigators. References in the programme's commentary to them being "amateur" and the programme's investigatory team as "professionals" were used in the same sentence, thereby giving viewers the impression, that Mr and Mrs Munday were amateurs and as such were fearful, terrified and unable to deal with the situation. This was not case.
- c) Mr and Mrs Munday's comments on the situation taken from their interviews were used out of context. Their interviews were edited unfairly leaving out important facts. The programme failed to include their "confident and unfearful" views on the situation.
- d) The programme makers created a theme to the programme without Mr and Mrs Munday's knowledge. After four days of being filmed, the programme that was broadcast had turned into a documentary about the Ouija board and the dangers of using it. Mr and Mrs Munday said that the programme's commentary was over-dramatised in that words were used that were not applicable to them.
- e) The programme failed to present an honest and fair view of Mr and Mrs Munday's experiences and how they had dealt with the situation without the help of the programme makers. Mr and Mrs Munday said that the programme makers were aware that Ms Dolan had failed to expel the paranormal spirit or entity from their house and that she had not burnt the Ouija board as she had promised. Instead, the Ouija board was returned to Mr and Mrs Munday who had engaged "shamanic people" to clear their house. Had the programme shown this, Mr and Mrs Munday said, Ms Dolan would not have been portrayed as the "professional saviour of the day".
- f) The programme constantly used the word "dabble" when referring to Mr and Mrs Munday's research work with the Ouija board which had been conducted over some 16 months. The use of this word was offensive and was used to portray them as amateur.
- g) The programme makers dramatised the situation and wanted viewers to believe that Mr and Mrs Munday were terrified. This was despite the programme makers having told them that the programme would be a factual documentary.
- h) The programme also referred to them as "*the devil dabbling Mundays*" which portrayed them inaccurately.

### **ITV's statement in response**

In summary and in response to the specific heads of complaint, ITV said that:

- a) It was satisfied that Mr and Mrs Munday were not misled into taking part in the programme and that the programme makers had explained the nature and format of it to them and had discussed their proposed contribution to it well before filming.

ITV said that the programme makers maintained that before the filming began, Mr and Mrs Munday were made familiar with the pilot programme for the series which had already been broadcast and followed a similar format to the

programme in which they appeared. ITV said that Mrs Munday had confirmed to the programme makers in a post-transmission telephone conversation on 9 February 2006 that the format of the programme had been explained to Mr and Mrs Munday prior to filming and that they had seen “nearly all” of the pilot programme. ITV added that Mrs Munday later told ITV she and Mr Munday had not seen the pilot.

ITV said that dramatisation and documentary were not mutually exclusive formats in programme making. In this case, elements of Mr and Mrs Munday’s account of paranormal events in their home were depicted visually in reconstruction. Some of the reconstructions were created with Mr and Mrs Munday’s active assistance, which demonstrated that both Mr and Mrs Munday were aware before and during filming of the likely format and tone of the programme. ITV argued that although the programme sometimes used emotive narrative language and creative imagery to engage the audience and to tell the story, it did not treat their situation simply as dramatic entertainment. Mr and Mrs Munday’s account of events was taken seriously and the programme retained the due objectivity of a documentary.

- b) ITV stated that it sincerely regretted that Mr and Mrs Munday were offended by the use of the word “amateur”. However, the fact that they were offended did not mean that the use of the word was unfair to them or an inaccurate reflection of the facts.

ITV said that it was accepted that Mr and Mrs Munday had a longstanding interest in investigating the paranormal and their backgrounds were made clear. In the programme Mr Munday was introduced as being the son of a psychic and who claimed to be particularly sensitive to paranormal activity, while Mrs Munday was introduced as having always believed in ghosts. The programme went on to say that both Mr and Mrs Munday spent *“their weekends researching the spirit world as paranormal investigators...”*

ITV said that in the unedited footage of the interviews with Mr and Mrs Munday, Mrs Munday referred to their interest in the paranormal as a “hobby” and that Mr Munday, although believing himself to be a “sensitive” (a person who has psychic powers but cannot communicate with the dead) with special spiritual abilities, accepted that he did not have the expertise of a “fully fledged medium”.

ITV said that the use of the word “amateur” to describe Mr and Mrs Munday was not intended to belittle them or promote the abilities of Ms Dolan by comparison; rather it was a factual statement. Mr and Mrs Munday did not study the paranormal full time for a living. They had other jobs and pursued their interest in their spare time. ITV said that any contrast between the complainants’ “amateur” status and the professional status of the programme’s investigators was, therefore, a fair one.

ITV said that in their interviews, both Mr and Mrs Munday referred to the situation they found themselves as having got out of hand and that they were looking for outside help to resolve it. For instance, Mrs Munday said that:

*“Living with uninvited intruders is concerning, you feel like you’re losing control...” and “It is like putting a jigsaw together and we can’t do it without the help of a medium...”*

Mr Munday also said in interview that:

*“anything can happen...the research [he had undertaken] has not prepared me for what has happened to us here...”*

- c) ITV said that it was not clear which particular comments Mr and Mrs Munday were referring to in this particular head of complaint.
- d) ITV assumed that Mr and Mrs Munday’s complaint was that they believed that the programme had over-emphasised the theme of their use of the Ouija board and its negative outcome as the central feature of the story. It was clear from reviewing the transcripts of their interviews and the unedited footage of the filmed sequences where Mr and Mrs Munday described their family life in the house that they believed that they had experienced unexplained events that they ascribed to a paranormal force. Ms Dolan had advised Mr and Mrs Munday that the Ouija board they had used was central to understanding the source of the phenomena namely that they had invited the spirit or entity responsible into the house via the Ouija board.

ITV said that Mrs Munday commented in interview about their research of “horror stories about what can happen using the Ouija board”. They suggested that their earlier determination to experiment with the Ouija board was despite advice from others not to do so and that they now wished that they had never started using it. Their conclusion was “nothing good ...has come out from using the Ouija board. I personally think it thrives from negativity. If we stay away from the Ouija board there is certainly a decrease in the amount of negativity in our lives”. ITV said that Mr and Mrs Munday clearly accepted Ms Dolan’s advice at face value at the time of filming. It was therefore editorially justified, and certainly not unfair to the complainants, for the programme to focus on this issue.

ITV said that this theme reflected not only the conclusions of Ms Dolan and Mr and Mrs Munday, but also many other paranormal commentators who warned of the potential negative effects of use of the Ouija board. ITV said that research on viewer attitudes<sup>1</sup> showed that most viewers regarded Ouija boards as being towards the negative or occult end of the paranormal spectrum. In these circumstances, the programme’s commentary, therefore, did seek to convey the message that the use of a Ouija board, especially by people who do not purport to be experienced mediums, can have a negative outcome, and that even people who are experienced in paranormal investigation, such as Mr and Mrs Munday, should not experiment with a Ouija board. This view was reflected by Mr and Mrs Munday themselves in comments that they made.

- e) ITV took this head of complaint to refer to events that took place after the conclusion of filming for the programme. ITV said that Mia Dolan had taken the Ouija board away from Mr and Mrs Munday’s house after the filming was over. ITV said that Ms Dolan accepted that she may well have told Mr and Mrs Munday that the Ouija board had been destroyed when it had not been, but had done so to put their minds at rest, in the genuine belief that it could not cause them any further problem whilst in her hands. ITV said that it had already apologised to Mr and Mrs Munday that the assurance given to them by Ms Dolan that she would destroy the Ouija board was not kept, despite her not being an employee of ITV or the programme makers. However, ITV said that this in itself did not lead to any unfairness to Mr and Mrs Munday in the programme.

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<sup>1</sup> *Beyond Entertainment?*, Independent Television Commission, 2001

At the conclusion of the programme, the commentary stated that:

*“Mia claims she’s finally expelled the demonic spirit that called itself Brian, she takes the Ouija board which she believes will keep Brian away”.*

ITV said that this accurately reflected her opinion that Mr and Mrs Munday’s problems, which both she and they attributed to their use of the Ouija board, would be over. Also, fair and representative extracts from Mr and Mrs Munday’s post clearing interviews were used in the conclusion to the programme, in which they stated, for example, that there was an *“instant calm”*, that the house was *“happy, its light, feels nice to come home to...”*, and that *“anybody that can look after my family for me has my respect”*. This all suggested, according to ITV, that Mr and Mrs Munday were satisfied that the situation had improved after the second “clearance” with Ms Dolan’s help and [after they] were persuaded to follow her advice not to use the Ouija board again.

The programme makers were asked by Mr and Mrs Munday to contact Ms Dolan on their behalf as she was apparently not returning their calls to her. Eventually, the Ouija board was returned to them via courier. ITV said that Mr and Mrs Munday informed them that they had held a ceremony to destroy the board themselves, but they did not tell them about a third “clearance” of the house as such. ITV said that at no time did Mr and Mrs Munday request that the programme makers not to include the interviews they had given after the second “clearance”, which reflected their views of the improved conditions in the house at that time, nor did they request that reference be made in the programme to their own ritual.

ITV said that in all the circumstances, the programme was not obliged to report, as a matter of fairness, that Mr and Mrs Munday had: later became convinced that they still had a continuing spirit problem in the house; that they believed this to be connected to the Ouija board not having in fact been destroyed by Ms Dolan; or, that they had consulted another group of paranormal enthusiasts who performed a different type of shamanic ritual to “clear” the house. The programme reported that Mr and Mrs Munday: had had a worrying problem they could not solve themselves; had invited the *Haunted Homes* team to investigate; that Ms Dolan had sought to “clear” the house; and, that they believed Ms Dolan’s intervention (after two attempts at “clearing”) had been beneficial and that they were following her advice not to use the Ouija board again. This, ITV said, was a fair reflection of the events.

- f) ITV accepted and regretted that Mr and Mrs Munday had taken offence at the use of the word “dabble” in the programme. Nevertheless, the use of the word was not unfair to them simply because they found it offensive or demeaning. The word dabbler is, as Mr and Mrs Munday pointed out in their complaint, a synonym for amateur. In the context of the programme, ITV said that it reflected an activity which Mrs Munday had herself referred to as “playing”- an occasional activity during their leisure time which they believed had unforeseen and negative consequences.
- g) ITV said that the programme used illustrative comments from the interviews of Mr and Mrs Munday to explain to the viewer the fear that their children had experienced, the children’s dislike of the front bedroom; and, their concern that their children should not be adversely affected by their interests in the

paranormal, For example, ITV said that Mrs Munday in interview describing an incident said that:

*“by seeing the monk it really scared me and my heart was beating really fast” and “I was really scared after seeing that”.*

ITV accepted that Mr Munday maintained that he was not frightened personally by the experiences in the house, but said that he also expressed concern for the fears of the children and how it might affect them in later years and that he would feel helpless in the face of “nasty” physical phenomena. It was not unreasonable for the programme to generalise that the family had been terrorised by the phenomena in the house.

ITV said that there was always a difficult editorial judgment to be made in such programmes, given a general dearth of recorded evidence to substantiate what each family said that they had experienced and, given that the programme could not represent these accounts uncritically as fact. However, at the same time, the programme wished to relay to the viewer the psychological reality of how disturbing perceived paranormal phenomena could be for a family. What was criticised by Mr and Mrs Munday as “dramatisation” or “misrepresentation” in the commentary stems from the desire to convey the family’s experience to the viewer in a compelling way. Although the programme clearly used emotive language to engage the viewer, and occasionally it was fair to say that that language did not accurately reflect the language used by Mr and Mrs Munday themselves (for example *“their lives have been devastated”*), ITV said that the programme did not exaggerate their fears or edit their contribution in such a way that was unfair to them, given what they had told the programme makers in interview of their fears and concerns and the fears of their children.

- h) ITV said that the programme’s commentary did not use the words *“the Devil dabbling Munday’s”*. In fact, Mr and Mrs Munday were referred to as those *“who dabbled with the devil”* by the continuity announcement at the beginning of the programme repeat on 8 February 2006. ITV said that this was produced by an ITV unit not connected with the programme makers. However, given the programme made clear that it was Ms Dolan’s view that the entity was evil and “demonic” which Mr and Mrs Munday at the time appeared to accept as being in accord with their own beliefs, and given ITV do not accept the use of the word “dabbling” was unfair in relation to their use of the Ouija board, ITV said that the phrase in itself was not unfair to Mr and Mrs Munday.

### **Mr and Mrs Munday’s comments**

In summary and in response to ITV’s statement, Mr and Mrs Munday commented that:

- a) They had made it clear to the programme makers that they were not in “trouble” and that being paranormal investigators themselves, they were able to deal with the situation. They were told they would be considered for a ‘fly on the wall’ documentary programme. Their story was dramatised it was not factual but they had agreed to participate in a factual documentary. They also made it clear to the programme makers that they were not familiar with the pilot programme. Mrs Munday said that in a post-transmission telephone conversation with the programme makers on 9 February 2006, she was asked whether or not she had seen the pilot programme, to which she responded that she had seen some of it, namely, the part where a woman was seen to be walking upstairs with a walking

stick. Mrs Munday made it clear to the programme makers that she had not seen the whole of the pilot programme.

- b) Mr and Mrs Munday took issue with ITV relying on the difference between a “sensitive” and a medium without apparently understanding what that meant. They also believed the rushes of interviews with themselves show evidence of repeated questioning, persuasion etc to lead them into saying things they did not agree with (which they said they resisted). Mr and Mrs Munday argued that this omission lead to unfairness and incorrect representation.
- c) Mr and Mrs Munday stated that they specifically complained about the beginning of the programme which featured Mrs Munday saying “*it has to stop now*”. Mr and Mrs Munday said that this was said in the context of their research into the Ouija board having to stop and not a reference to the situation portrayed in the programme. They pointed to the transcript of the interview as evidence.
- d) Mr and Mrs Munday maintained that the programme makers had told them that they had been looking for paranormal investigators to be contributors and that they would not be portrayed as something they were not. Mrs Munday said that she had become suspicious that the Ouija board was becoming the focus of the filming, but that she was assured otherwise by the programme makers. Mr and Mrs Munday said that they were aware of the controversial attitudes towards the Ouija board but their comments on it were not shown in the programme. The only opinion voiced in the programme was that of Ms Dolan, They were portrayed as irresponsible and uneducated.
- e) Mr and Mrs Munday said that the programme failed to give a fair portrayal of the actual events. They said that Ms Dolan was given unjust credit which belittled them in the programme and failed to fulfil what they believed they had agreed to. Mr and Mrs Munday said that the whole story (including the later successful clearing and late destruction of the Ouija board) should have been included in the programme and broadcast to the viewer, not just half of it and that that had been part of their agreement with the programme makers.
- f) Mr and Mrs Munday made no further comments but did not accept ITV’s position.
- g) Mr and Mrs Munday quoted ITV’s statement, that: “At the same time the programme wishes to relay to the viewers the psychological reality of how disturbing perceived paranormal phenomena can be for a family “as evidence that the programme maker “invented’ the Mundays as a family to fit their requirements. They pointed to a question to Mrs Munday which said “people will be thinking, well you seem to know an awful to so why don’t you cope with it”
- h) Mr and Mrs Munday reiterated that they found this phrase offensive.

### **ITV’s final comments**

In summary and in response to Mr and Mrs Munday’s complaint, ITV said that:

- a) Mr and Mrs Munday were made aware of the likely tone and format of the programme prior to filming. ITV reiterated that they were happy to cooperate with the programme makers in filming the reconstructions and they had understood that the purpose of the filming was to illustrate their story.

ITV accepted that the programme makers' recollection of the contents of the telephone conversation with Mrs Munday on 9 February 2006 did not accord precisely with that of Mrs Munday. It said that it was a genuine lapse of memory on the part of the programme makers and noted that Mrs Munday confirmed that she had seen some of the pilot programme and not all of it. There was no unfairness in representing certain events via these reconstructions.

- b) ITV said it was not unfair to repeat questions in order to get the most clear and concise answer and that this was a common technique as was explained to Mr and Mrs Munday. The programme could not include everything filmed by the programme makers, but did not misrepresent the concerns of Mr and Mrs Munday.
- c) ITV said that the use of Mrs Munday's comment "*it has to stop now*" in the programme was used fairly and entirely in context. ITV said that her comment was made in interview in the context that Mr and Mrs Munday's own research with the Ouija board had to stop since, in her words, "*we've probably made the wrong decision*" in pursuing it. The comment was therefore used in the programme at this point to represent the belief of Mr and Mrs Munday that no good had come from using the Ouija board, given the increasingly negative experiences that they had reported.
- d) ITV said that Mr and Mrs Munday were included in the programme because of the merits of their story and not because they were paranormal investigators.
- e) ITV made no further relevant comments regarding this point.
- f) ITV made no further comment.
- g) ITV made no further comment.
- h) ITV made no further relevant comments regarding this point.

### **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. 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 recognises that (subject to the provisions of the Code) broadcasters can quite properly comment and take particular viewpoints on the subjects of broadcast programmes. However, it is essential, not only to the parties directly concerned but also to listeners and viewers, that such comments should be accurate in all material respects so as not to cause unfairness. Ofcom is also obliged to have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate and consistent targeted only at cases in which action is needed.

This case was considered by Ofcom's Executive Fairness Group. The Group had before it a complaint and further written submissions from Mr and Mrs Munday and a

statement in response, with supporting material, and further written submissions from ITV. It viewed a recording of the programme as broadcast and read a transcript of it. It also viewed unedited interview footage (and read transcripts of the interviews) and viewed unedited footage of one of the reconstructions.

In considering the individual heads of Mr and Mrs Munday's complaint, Ofcom took into account Rule 7.1 of the Code which states that broadcasters must avoid unjust and unfair treatment of individuals or organisations in programmes.

Ofcom addressed separately each of Mr and Mrs Munday's individual complaints concerning the programme's treatment of them.

Ofcom's Executive Fairness Committee found the following:

- a) Ofcom first considered Mr and Mrs Munday's complaint that they were misled about the nature of the programme in that they were told that it would be a factual, 'fly on the wall' type documentary without dramatisation.

In considering this element of the complaint, Ofcom took into account of Practice 7.2 of the Code which states 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. It also had regard to Practice 7.3 in the Code states 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 the purpose of the programme, what the programme is about and be given a clear explanation of why they have been asked to contribute and when (if known) it is likely to be first broadcast; be told what contribution they are expected to make; be informed about the areas of questioning and wherever possible the nature of the 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. The Code explains that taking these measures is likely to result in the consent that is given being "informed consent". It may be fair to withhold all or some of this information where it is justified in the public interest or under other sections in the Code.

Ofcom noted the absence of any note-taking or other documentary evidence in the material submitted by ITV and Mr and Mrs Munday to determine what was or was not explained to them by the programme makers during the making of the programme. It also noted from the unedited material and from the programme itself that both Mr and Mrs Munday had taken part in reconstructed scenes of events from their own perspective, for example Mr and Mrs Munday using the Ouija board. Ofcom also noted that although it was accepted by ITV that Mr and Mrs Munday had not seen the entire pilot programme, Mrs Munday had, at least, seen some part of it. It noted that ITV also accepted that the programme had used emotive language in its commentary and had used creative imagery (that is, using reconstructions) in order to tell the story, but that it had done so, it claimed, in a way that retained the due objectivity of a documentary programme.

Ofcom recognised that there was a clear conflict between the parties in what they understood to be the purpose and nature of the programme and the format that it was to take. However, neither party has provided any documentary evidence for Ofcom to consider which addressed what Mr and Mrs Munday understood the nature of their contribution would be and the manner in which they would appear

in the programme and, as a result, whether or not this amounted to unfairness in the programme as broadcast.

Although Ofcom was not able to determine exactly what transpired between the programme makers and Mr and Mrs Munday before and during the filming process, it was, nevertheless, satisfied that the programme makers had not materially misled them into contributing to the programme and as to its likely format. In Ofcom's view, it was clear from the footage of the reconstruction with Mr and Mrs Munday at the Ouija board that they were happy to assist the programme makers in filming them in that manner. Ofcom considered that although the programme retained a factual, documentary presentation style, the inclusion of reconstruction footage resulted in the programme taking a more informal presentational style than would be usual for a 'fly on the wall' style documentary. Through actively participating in the filming of the reconstructions, Ofcom took the view that Mr and Mrs Munday would have been sufficiently aware of the nature and format that the programme was likely to take, namely a more informal recounting of their story (also see (d) below). In these circumstances, Ofcom found no unfairness to Mr and Mrs Munday in this respect.

- b) Ofcom went on considered Mr and Mrs Munday's complaint that they were depicted throughout the programme as being "*amateur paranormal investigators*" in contrast to the 'professional' investigators which gave viewers the impression, wrongly, that they, being amateurs were "fearful, terrified and unable to deal with the situation".

In considering this element of complaint, Ofcom took account of Practice 7.9 of the 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; and, anyone whose omission could be unfair to an individual or organisation has been offered an opportunity to contribute.

Ofcom noted that the programme's commentary included references to Mr and Mrs Munday being "*amateur*" and "*amateur paranormal investigators*" and their interest in the paranormal was described as a "*hobby*". In contrast Ofcom noted that the programme's team of experts brought in to help Mr and Mrs Munday were referred to as "*experienced paranormal investigators*" and as "*experts*".

Ofcom considered that neither ITV nor Mr and Mrs Munday suggested that Mr and Mrs Munday's interest in paranormal phenomena was anything other than genuine. It considered that the programme made it clear that both Mr and Mrs Munday were genuine and sincere in their beliefs. For instance, the commentary said that "*both Nic and Mel Munday spend their weekends researching the spirit world as paranormal investigators.*" Ofcom noted that in the un-transmitted interview footage Mr Munday said that "I wish I'd never started it in the first place". He explained that a medium [Ms Dolan] would be above a "sensitive" [himself] "quite simply...because they're more experienced."

Ofcom was satisfied that there was a distinction between Mr and Mrs Munday as paranormal investigators, and the three experts featured in the programme. In Ofcom's view, it was clear that Mr and Mrs Munday did not investigate the paranormal professionally, that is for a living, and that, in these circumstances, and it was reasonable for the programme's commentary to refer to them as amateurs. Ofcom considered that it would have been unlikely that viewers would

have considered Mr and Mrs Munday in a negative way and in a way that was unfair to them as a result of the description of them in the context of this programme as “*amateur paranormal investigators*”.

Ofcom then went on to consider whether or not the programme’s references to Mr and Mrs Munday as amateurs would have given viewers the impression, wrongly, that they were “fearful, terrified and unable to deal with the situation” that they found themselves in.

In Ofcom’s view the use of the word amateur did not in itself suggest that Mr and Mrs Munday were therefore fearful, terrified and unable to deal with the situation. By examining the programme and the unedited interview footage, it was clear to Ofcom that Mr and Mrs Munday had been concerned about some of the paranormal events that had apparently occurred in their home and had reached a position where they sought the help of the *Haunted Homes* paranormal investigation team to expel the paranormal entity from the house (see (c) and (g) below).

Taking all the relevant factors detailed above into account, Ofcom was satisfied that the programme’s description of Mr and Mrs Munday as “*amateur*” and “*amateur paranormal investigators*” was a fair and accurate representation of their expertise in the field of paranormal investigations, especially when contrasted to the three paid investigators featured in the programme and did not imply that as Mr and Mrs Munday were “fearful, terrified and unable to deal with the situation”. Ofcom, therefore, found no unfairness to Mr and Mrs Munday in either respect.

- c) Ofcom then went on to consider Mr and Mrs Munday’s complaint that their comments on the situation taken from their interviews were used out of context, The interviews were edited unfairly leaving out important facts in the programme which failed to include their “confident and unfearful views on the situation”.

In considering this element of the complaint, Ofcom had regard to Practice 7.6 of the Code which states that when a programme is edited, contributions should be represented fairly. It also had particular regard to Practice 7.9 of the Code. Ofcom considered that in the un-transmitted interview footage Mrs Munday stated, in a joint interview with her husband that “we’re confident in what we do and I don’t want to be portrayed, on that, where, we sort of can’t handle it”. In response to the question as to why they needed help she explained that, as a sensitive, her husband was capable of protecting the family spiritually but could not “get rid of anything that is of a negative nature”.

Mrs Munday said in her untransmitted interview about the situation after using the Ouija board that “Living with uninvited intruders is concerning, you feel like you are losing control...”

Ofcom considered that it was clear from the unedited interview that Mrs Munday and Mr Munday both agreed that as a “sensitive” Mr Munday was not able to get rid of the unwanted spirit they believed they had in the house.

It was also clear that Mr and Mrs Munday had expressly said after repeated questioning that they did not want to be portrayed as being unable to handle the situation. However they had also expressed concern for the children and the long-term effects of the situation on them and Mrs Munday had expressed fears at some of the situations she had experienced over the years in the house.

Ofcom then considered whether not including such comments led to unfairness in the programme as broadcast.

In Ofcom's view the wider public would not have gained an adverse view of Mr and Mrs Munday's whether they were portrayed as fearful or as confident. In either case the essential details were that: they believed that a spirit had entered the house following their use of the Ouija board; they wanted help to get rid of the spirit; and they feared for the consequences for the children if they did not do that.

In these circumstances, Ofcom found no unfairness to Mr and Mrs Munday in this respect.

Mr and Mrs Munday made a specific reference in their complaint to the inclusion of Mrs Munday's comment words "*it has to stop now*" in this context at the start of the programme:

Commentary: "*The Munday's say they are plagued by spirit they claim they welcomed into their home.*"

Mrs Munday: "*He would say some really personal stuff which could play with your head. [edit] It has to stop now.*"

Ofcom noted the full context of the words it has to stop now from the transcript of the interview with Mrs Munday was as follows:

*"We got ourselves into this, in the name of research, and um, probably made the wrong decision, with the Ouija board, but I think it's something that we had to do. We've certainly not ignored any advice, and we've extensively research, um, the subject, but it has to stop now. There's um, there's, it definitely has to stop, we can't carry on like this. If it is cleared from our home, it will enable us to pursue what we want to do [that is, to follow their own spiritual path and investigate paranormal activity]"*.

Ofcom also noted that Mr and Mrs Munday claimed that her comment was made in the context of their research into the Ouija board and not to the situation the programme portrayed them to be in. It also noted that ITV maintained that her comment was used in context, in that their research had to stop since they had, in Mrs Munday's words "*probably made the wrong decision*".

In considering this single element of the complaint Ofcom noted that the words "*it has to stop now*" could be taken to mean that the research with the Ouija board had to stop or that the presence of the spirit that Mrs Munday believed had occurred as a result of the use of the Ouija board has to stop. It was highly probable that the former was the meaning that Mrs Munday has intended. Ofcom also noted that in the transcript of the unedited interview Mrs Munday explained that she believed that:

*"Mel [Mr Munday] is capable of protecting us spiritually, he is classed as a sensitive, but he can't take that step forward to actually get rid of anything that is of a negative nature. We're asking for help now so we can ...pursue our lives as we did before this happened"*.

In the circumstances Ofcom was satisfied that ITV could correctly use the phrase “*it has to stop now*” to refer either to the use of the board or Mr and Mrs Munday’s perception that they were experiencing the presence of a spirit following the use of the Ouija board. Ofcom found that there was no unfair treatment to Mr and Mrs Munday in the use of Mrs Munday’s comment in the opening of the programme.

By examining the unedited interview footage and reading the transcript of it, Ofcom was satisfied that the commentary’s introduction was used fairly and accurately in representing Mr and Mrs Munday’s belief that only negative experiences had resulted from their experimentation with the Ouija board. In these circumstances, and taking into account Ofcom’s findings in heads (b) and (g) relating to them being fearful and terrified, Ofcom found that there was no unfair treatment to Mr and Mrs Munday in this respect.

- d) Ofcom then considered Mr and Mrs Munday’s complaint that the programme makers created a theme without their knowledge and that the programme broadcast turned into a documentary about the Ouija board and the dangers of using it. Mr and Mrs Munday said that the commentary was over-dramatised in that it used words that were not applicable to the circumstances.

In considering this element of the complaint, Ofcom took into account of Practice 7.2 and 7.3 of the Code.

Ofcom noted that Mr and Mrs Munday stated that they believed that they were contributing to a factual documentary about their paranormal experiences and were unaware that the final programme would focus on the events surrounding the Ouija board. By examining the interview footage and reading the transcripts, Ofcom noted that both Mr and Mrs Munday explained that their recent experiences in the house which had led them to seek outside assistance were in their view the result of their use of the Ouija board. Ofcom noted that according to the programme it was also Ms Dolan’s view that the negativity the family was experiencing was caused by the use of the board. Ofcom also noted that both Mr and Mrs Munday accepted Ms Dolan’s opinion and advice (that it was the use of the Ouija board that was the cause of their paranormal experiences) at the time of filming.

Ofcom acknowledged that it was an editorial decision to be made by the programme maker as to what should be included in a programme from material provided by way of interview and other footage, as long as the resulting programme is fair in its treatment of the individual or company that has contributed. It is unrealistic for a company or individual to expect a broadcaster to cede editorial control of the content of the programme.

Taking the factors referred to above into account, although Ofcom accepted that Mr and Mrs Munday had discussed their interest in paranormal phenomena and apparent paranormal activity in their house, it was an editorial decision for the programme makers to focus on a particular aspect, so long that in doing so it created no unfairness to Mr and Mrs Munday.

In the circumstances of this particular case, Ofcom was satisfied that the programme’s focus on the events surrounding the use of the Ouija board was an editorial decision for the programme makers to make. It considered that it was appropriate for the programme makers to focus on the board as it was: the probable cause, according the Ms Dolan and Mr and Mrs Munday, of the reported unpleasant experiences that they had experienced; the reason for Mr

and Mrs Munday calling in the *Haunted Homes* team to expel the paranormal entity from the house; and illustrated the potential negative effects that can be experienced by those using a Ouija board according to public perception reflected in research. In Ofcom's view, the programme makers' decision to focus on the Ouija board element of Mr and Mrs Munday's paranormal experiences did not result in unfairness to Mr and Mrs Munday.

- e) Ofcom then considered Mr and Mrs Munday's complaint that the programme failed to present an honest and fair view of their experiences and how they had dealt with the situation without the help of the programme makers.

In considering this element of complaint, Ofcom took account of Practice 7.9 of the Code.

Ofcom noted that Ms Dolan had failed to burn the Ouija board as she had promised to do after she had taken it away with her after the filming and the reasons given by ITV for her failure. It also noted that Mr and Mrs Munday claimed that they had had to arrange for "shamanic people" to come and clear their house. Ofcom noted that ITV had apologised to Mr and Mrs Munday for any assurance given to them by Ms Dolan that was not fulfilled, but that ITV maintained that it did not amount to unfairness to them. Ofcom noted that the programme showed Ms Dolan's two attempts to expel the apparent paranormal entity from Mr and Mrs Munday's house and that the programme had ended after referring to the second attempt. It also noted that ITV maintained that Mr and Mrs Munday did not request that their comments relating to the second "clearance" in the programme should not be in the programme.

Again, Ofcom acknowledged that it was an editorial decision to be made by the programme maker as to what should be included in a programme from material provided by way of interview and other footage, as long as the resulting programme is fair in its treatment of the individual or company that has contributed.

Taking all the relevant factors referred to above into account, Ofcom took the view that ITV were not obliged to include reference to Mr and Mrs Munday arranging a third "clearance" because they believed that they had a continuing problem with the paranormal entity. Ofcom was satisfied that the programme accurately and fairly represented the situation Mr and Mrs Munday found themselves in at the time of recording, namely that: they had had a worrying problem they could not solve themselves; they had invited the *Haunted Homes* team to investigate; that Ms Dolan had sought to "clear" the house; and, that they reported Ms Dolan's intervention (after two "clearance" attempts) had been beneficial and they were following her advice not to use the Ouija board again. Although it accepted that Mr and Mrs Munday had conducted a third "clearance" after the filming had been completed and that they had made the programme makers aware of this, it remained an editorial decision for the programme makers to present the events in a particular way, so long that in doing so it created no unfairness to Mr and Mrs Munday.

In Ofcom's view, the programme fairly depicted the events that took place in the house during filming. It therefore found no unfairness to Mr and Mrs Munday in this respect.

- f) Ofcom then went on to consider Mr and Mrs Munday's complaint that the programme constantly used the word "dabble" when referring to their research work with the Ouija board. To Mr and Mrs Munday, this was offensive.

In considering this element of the complaint, Ofcom took into account Practice 7.9 of the Code.

Ofcom noted the full commentary lines:

*"Mia is horrified and realises that Nic and Mel [Mr and Mrs Munday], despite some experience with the paranormal are way out of their depth. Some believe that dabbling with a Ouija board can make you vulnerable to evil spirits";*

*"The Munday's have learnt the hard way that dabbling with a Ouija board can have a devastating affect on family life", and;*

*"It's easy to blame them [Mr and Mrs Munday] for dabbling with the unknown but they say they had no idea what was going to happen to them".*

Ofcom noted that the word "dabble" was, according to Mr and Mrs Munday, as offensive to them as the word "amateur". Ofcom also noted the references in the programme's commentary to Mr and Mrs Munday as being amateur paranormal investigators (see (b) above) and that their interest in the paranormal was described by Mrs Munday in interview as a "hobby".

Ofcom noted that the word dabble was used to refer to the use of the Ouija board by Mr and Mrs Munday and not to any other aspect of their paranormal investigations.

It noted that the commentary had reflected Mr and Mrs Munday's view of the situation when it referred to Mr and Mrs Munday's interest in the Ouija board as "research" and that their use of the board to make contact with the paranormal as an "experiment".

Taking all the relevant factors detailed above and also under head (b) into account, Ofcom was satisfied that: Mr and Mrs Munday were not professional paranormal investigators; that they believed that their use of the Ouija board had led to apparent paranormal activity in the house; and, that they had felt the need to call on a psychic to "clear" the paranormal entity they believed was in their house. In these circumstances, the programme's description of Mr and Mrs Munday's use of the Ouija board as "dabbling" was a fair and accurate representation. Therefore, Ofcom found no unfairness to Mr and Mrs Munday in this regard.

- g) Ofcom considered Mr and Mrs Munday's complaint that the programme makers dramatised the situation and wanted viewers to believe that Mr and Mrs Munday were terrified. Ofcom considered whether or not the programme would have given viewers the impression that they were "fearful and terrified" and unable to deal with the situation that found themselves in (which is also discussed in (a), (b) and (c) above).

In considering this element of the complaint, Ofcom took into account Practice 7.9 of the Code.

By examining the recording and transcript of the programme Ofcom noted that in the programme as broadcast both Mr and Mrs Munday made a number of comments about the situation and their perspective on it. Separately the programme commentary and presenter also ascribed feelings to Mr and Mrs Munday.

In the programme Mrs Munday recounted an earlier experience (unconnected to the use of the Ouija board). She described a figure she had seen as *"intimidating"* and that she had been *"really scared"*. The commentary stated that *"much to Nic's distress this burly figure was also said to terrify the children"*. Mrs Munday then described how the children were *"crying and shaking"* after they said they had seen a figure in their room. Ofcom considered the comments in Mrs Munday's own words were used fairly and the commentary saying that she was distressed by her children's distress was to be expected of Mrs Munday as a responsive mother and that such wording was not unfair to her.

The programme then related other paranormal phenomena and said that Mr and Mrs Munday were *"desperate"* to learn more and took the *"drastic step"* of using the Ouija board. Mr and Mrs Munday explained that *"the spirit on the board"*, who they explained was named Brian *"started out very friendly"* but *"then all of a sudden [he could]...be very nasty...he would say some really personal stuff which could potentially play with your head"*. Mrs Munday explained that at that stage they questioned what they were doing but decided to carry on.

The commentary explained that to Mrs Munday *"Brian was frightening the whole family"* and Mrs Munday in interview described the children as *"scared"*. The commentary then described Mr and Mrs Munday as saying their lives had been *"devastated"*. Later the commentary described Mr and Mrs Munday as *"horrified and fearful"*. The commentary then described Mr and Mrs Munday as having had *"their fears confirmed"*. The presenter explained in the programme that they *"live in constant dread"*.

A night vigil by Mr and Mrs Munday and the three visiting investigators followed. Ms Dolan is described as uncharacteristically distressed by her experiences overnight and psychically sick. The programme then shows an attempt by Ms Dolan to *"send the spirit over to the other side"*. The commentary explains that a week later Mr and Mrs Munday contact Ms Dolan *"in a panic"*. Ms Dolan returns and the programme explains that a second "clearing" occurs which, according to Mr and Ms Munday in the programme, creates *"an instant calm...It's happy, it's light, it feels nice to come home to."*

By examining the unedited interview footage and transcript, Ofcom noted that Mr and Mrs Munday said in interview that after using the Ouija board that *"Living with uninvited intruders is concerning, you feel like you are losing control..."* and that the research that they had undertaken had not *"prepared [Mr Munday] for what has happened to us here..."*.

However the un-transmitted interview does not indicate that the Mr and Mrs Munday were frightened, horrified, fearful, living in constant dread or that they had said their lives were devastated or that they had contacted Ms Dolan in panic.

Ofcom noted that Mr Munday maintained in interview that he was not scared of the paranormal activity in their house. Ofcom also noted that ITV accepted that Mr Munday maintained that he was not frightened personally by the experiences

in the house, but said that he expressed concern for the fears of the children and how it might affect them in later years and that he would feel helpless in the face of “nasty” physical phenomena. Ofcom noted that ITV said that it was not unreasonable for the programme to generalise that the family had been terrorised by the phenomena in the house.

Ofcom also noted that ITV said that what was criticised by Mr and Mrs Munday as “dramatisation” or “misrepresentation” in the commentary stems from the desire to convey the family’s experience to the viewer in a compelling way. ITV said that although the programme clearly used emotive language to engage the viewer, and occasionally it was fair to say that that language did not accurately reflect the language used by Mr and Mrs Munday themselves (for example “*their lives have been devastated*”), ITV said that the programme did not exaggerate their fears or edit their contribution in such a way that was unfair to them, given what they had told the programme makers in interview of their fears and concerns and the fears of their children.

In Ofcom’s view in deciding to portray Mr and Mrs Munday as frightened by a spirit invited to the house through the use of the Ouija board the programme makers chose to ignore the expressed attitudes of Mr and Mrs Munday in order to create a more dramatic storyline.

However Ofcom then considered whether this had resulted in unfairness to Mr and Mrs Munday.

Research undertaken by the Independent Television Commission indicated that it was the public’s view that the use of the Ouija board lay at the negative end of the occult spectrum. It was therefore likely that viewers would not consider Mr and Mrs Munday in a negative way because they were portrayed as being afraid of the situation in their house.

Ofcom noted that the Mr and Mrs Munday were part of a group of paranormal investigators and therefore had a specific interest in being portrayed as competent and unafraid to their colleagues. However Ofcom considered that Mr and Mrs Munday’s attitude to the paranormal would be well understood by their circle of friends, family and colleagues and that the portrayal of them in the programme would be recognised as the programme makers’ embellishment and was therefore not unfair to them in this regard.

For these reasons, Ofcom found no unfairness to Mr and Mrs Munday in this respect.

- h) Ofcom considered Mr and Mrs Munday’s complaint that the programme referred to them as “*the Devil dabbling Mundays*”, a phrase that portrayed them inaccurately.

In considering this element of complaint, Ofcom took into account of Practice 7.9 of the Code.

Ofcom also noted the full continuity announcement line at the beginning of the programme broadcast on 8 February 2006 was as follows:

*“Time now to enter the weird world of the eerie as we head to Salisbury to meet the Mundays who dabbled with the devil – and this programme contains scenes that you may find disturbing”.*

Ofcom noted that the announcement had referred to Mr and Mrs Munday as “*the Mundays who dabbled with the devil*” and not “the devil dabbling Mundays”. Ofcom noted that the continuity announcement was produced by a unit of ITV not connected with the programme makers, and the broadcaster’s regretted any offence it had caused Mr and Mrs Munday. It also noted Mr and Mrs Munday’s complaint that the phrase portrayed them inaccurately. Ofcom noted that ITV maintained that it was fair as the problems experienced by Mr and Mrs Munday were, according to Ms Dolan, “*demonic*” and “*evil*” in nature, a view that Mr and Mrs Munday agreed with at the time. Ofcom also noted the research undertaken by the Independent Television Commission in 2001 entitled *Beyond Entertainment?* (referred to in response to head (d)) which pointed to the public’s perception that Ouija boards were in some way connected with the occult or capable of invoking “dark forces or evil intent”.

By examining the programme as broadcast and reading the transcript of it, it was clear to Ofcom that Ms Dolan believed that the paranormal entity Mr and Mrs Munday believed haunted their house was “*demonic*” and was, in some way, “*evil*” in nature. Mrs Munday also explained in the programme that the entity could become “*nasty*” when questioned on the Ouija board and that both Mr and Mrs Munday agreed with Ms Dolan’s findings.

Ofcom also was satisfied that the continuity announcement did not, in itself, portray Mr and Mrs Munday in a way that was unfair to them. In Ofcom’s view the wording used accurately reflected the view held by Ms Dolan at the time of filming. This being the case, and given the context in which the references were made it was unlikely that viewers’ would have been left with an unfair impression of Mr and Mrs Munday.

For these reasons, Ofcom found no unfairness to Mr and Mrs Munday in this respect.

**Accordingly, Mr and Mrs Munday’s complaint of unfair treatment in the broadcast of the programme was not upheld.**

## Complaint by National Car Parks

*Inside Out, BBC North East and Cumbria, 2 October 2006*

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**Summary:** Ofcom has not upheld NCP's complaint of unfair treatment in the programme as broadcast.

This edition of *Inside Out* featured a report about parking enforcement in Sunderland. The programme reported the findings of an undercover reporter who covertly recorded his experience of working as a parking attendant with National Car Parks ("NCP"). On the basis of the reporter's covert recordings the programme alleged that some NCP parking attendants had been involved in a range of inappropriate behaviour including illegal ticketing, bribery, favouritism, vandalism and racism. The programme included interviews with local residents of Sunderland and NCP's Director of Communications, Mr Tim Cowen.

NCP complained that it was treated unfairly in the programme as broadcast in that: it was not given a fair opportunity to respond to four pieces of undercover footage that had been included in the programme; the programme did not include its comments in relation to Blue Badge (disabled) drivers; the programme makers unfairly edited three pieces of footage; and the programme makers incorrectly subtitled an NCP attendant's comment to imply that his comment was racist.

Ofcom found as follows:

- a) Ofcom found that NCP was given a fair opportunity to respond to any significant allegations that had been presented in the programme.
- b) Ofcom found that it was not incumbent on the programme makers to include Mr Cowen's comments relating to Blue Badge drivers as they were not directly relevant to the allegation that some NCP attendants did not appear to show compassion for Blue Badge drivers. Furthermore, the programme included a statement from the Sunderland Council which accurately reflected NCP's response to this allegation.
- c) Ofcom viewed the unedited recordings of all three pieces of footage and found that the editing did not result in unfairness to NCP.
- d) Ofcom noted that the subtitled comment was only one of a number of comments included in the programme as examples of the racist comments made by some NCP parking attendants. Ofcom considered that the inclusion of the subtitle did not result in unfairness to NCP as it would not have significantly affected viewers understanding of the allegations made against NCP or the company's response to those allegations.

### Introduction

On 2 October 2006, BBC North East and Cumbria broadcast an edition of *Inside Out* about parking enforcement in Sunderland.

The report focused on the experiences of an undercover reporter who worked as a parking attendant with National Car Parks ("NCP"). The programme reported the findings of an undercover reporter who secretly recorded his experience of working as a parking attendant with National Car Parks ("NCP"). On the basis of the

reporter's secret recordings the programme alleged that some NCP parking attendants had been involved in a range of inappropriate behaviour including illegal ticketing, bribery, favouritism and vandalism. The programme also alleged that some attendants were racist and showed footage of attendants using racially offensive terms such as: "*Paki Land*" and "*Blackie streets*". The programme included interviews with local residents of Sunderland and NCP's Director of Communications, Mr Tim Cowen.

National Car Parks Limited complained of unfair treatment in the programme as broadcast.

## **The Complaint**

### **NCP's case**

In summary, NCP complained that it was treated unfairly in the programme as broadcast in that:

- a) The programme makers did not provide NCP with an appropriate and timely opportunity to respond to the following programme allegations:
  - i) That an NCP parking attendant allegedly bent the rules to ticket a delivery man's van. In this segment of the programme a member of the public, Mr Foxton, described an incident where an NCP parking attendant had been "*punching my registration into his computer as he was walking towards my vehicle*" and claimed that he had been targeted by the NCP parking attendants. NCP said this information alone was not evidence that the parking attendant was acting inappropriately or was breaking the rules.
  - ii) By showing an NCP van, that was parked on double yellow lines, and commenting "*It parks anywhere on yellow lines, on speed bumps, it doesn't get a ticket*", the programme suggested that NCP vehicles received preferential treatment. NCP said there are many occasions when a vehicle used in parking enforcement can be lawfully parked where another vehicle might be contravening the regulations. NCP said it was never given an opportunity to respond to this allegation.
  - iii) The programme included footage of a senior attendant advising other attendants to, according to the programme, "*bluff when [road] signs are not enforceable*". NCP said that if it had been asked to respond to this specific piece of undercover footage, it would have been able to explain that the comments were made in relation to cars that park on zigzag markings outside of a school, and that it is perfectly acceptable to ask drivers to move-on (as the senior attendant was advising) in such situations.
  - iv) A resident claimed that he had received a ticket because of the colour of his skin, even though his car was parked legally. NCP said there was no evidence to back up this claim.
- b) The programme alleged that NCP unfairly enforced regulations relating to disabled drivers (commonly referred to as Blue Badge drivers). NCP said the programme did not broadcast any balancing response from NCP, despite Mr Cowen giving his opinion on this issue during his interview.
- c) The programme was unfairly edited:

- i) The programme's introduction misrepresented a quote by Mr Cowen as a result of unfair editing. NCP complained that the quote was used out of context and was unfairly juxtaposed with footage of NCP parking attendants behaving inappropriately.
- ii) Footage of an NCP parking attendant was edited to give the unfair impression that he was targeting certain streets or cars because of racist attitudes. NCP said the unedited footage of the incident showed an Asian man being given an hour's grace despite having an out of date resident's permit. The person receiving the ticket was in fact being given more leniency than was normally required under the relevant parking regulation. In addition, NCP said that it had been shown additional unedited footage of the incident and recalled that it showed the parking attendant in question, having a friendly exchange with an Asian man whom he clearly knew.
- iii) Covertly filmed footage of an NCP manager was edited to give the unfair impression that he agreed there was a ticketing culture (e.g. where attendees are encouraged to issue a set amount of tickets per day) in the Sunderland branch of NCP. NCP said that it had seen additional unedited footage of the conversation and recalled that the NCP employee had stated "It's not about ticket numbers – it is about showing you are working up to six o'clock". NCP said that the removal of this part of the conversation significantly changed the meaning of the manager's comments that were included in the programme.
- d) The programme subtitles incorrectly stated that an NCP attendant had said: "*They're dirty gets round there*", instead of "*Word gets round there*". NCP complained that the incorrect subtitle unfairly suggested that a NCP employee had made a racist comment.

### **The BBC's case**

In relation to NCP's specific complaints, the BBC responded as follows:

- a) Opportunity to respond
  - i) The BBC accepted that Mr Foxton's account of a parking attendant punching in his car details before reaching his car, did not conclusively prove that an NCP parking attendant's actions breached parking regulations, and conceded that a caveat, though not necessarily a response from NCP would have been appropriate. The BBC said that the allegation in this case was a small point in comparison with other allegations included in the programme, to which NCP had a full opportunity to respond. In the circumstances, it did not accept that this omission led to any significant unfairness.
  - ii) In relation to the NCP van that was parked on double yellow lines, the BBC said that contrary to the complaint, the programme did not suggest that the NCP van might be illegally parked. The commentary merely pointed out that an NCP van, unlike other vehicles, can park pretty much anywhere, with no threat of a parking ticket. The BBC maintained that in the circumstances, there was no need for a balancing comment from NCP.
  - iii) As regards the senior attendant's comments to "*bluff*" when road signs were not enforceable, the BBC said that the NCP's argument, that asking people to move on when parked on zigzag markings outside of a school is acceptable

and common, missed the point. The BBC said it was plainly true that parking restrictions outside schools were a good thing which is why they are imposed throughout the country. The BBC said it was however clear from the senior attendant's remarks that the zigzag markings being referred to were not enforceable and that staff would have been bluffing had they followed his advice and threatened to issue a ticket.

The BBC said the programme's serious allegation of "*bluffing*" was put to the NCP during an interview with Mr Cowen and his response was used in the programme commentary which stated: "*NCP say this is utter fantasy*". Following Mr Cowen's interview, the BBC said that it returned to NCP for a further statement about the transparency of issuing tickets and included NCP's response in the programme, that Sunderland Council were "*fully informed at all times and they had publicised the issue in a transparent and open way*". The BBC said that Mr Cowen was additionally asked questions relating to the apparent confusion regarding traffic orders. In the circumstance, the BBC maintained that NCP was given a fair opportunity to respond.

- iv) In relation to NCP's complaint that it was not given an opportunity to respond to a resident's comment that he had been given a ticket because of the colour of his skin, the BBC said that even had NCP accessed the particular ticket in question, the ticket would only have disclosed the infringement for which the attendant had "claimed" the ticket had been issued, not whether there had been an "actual" infringement. This would have been a fruitless discussion when there was a wider and considerably more significant issue to deal with, namely, that of the racist attitudes and motivation of some parking attendants.
- b) In response to NCP's complaint in relation to Blue Badge drivers, the BBC said that in the interest of completeness, it would have been preferable to have included in the programme Mr Cowen's observation about the need to clamp down on Blue Card fraud. However, the BBC did not believe this omission led to unfairness. The BBC said the programme was dealing with an allegation from a disabled driver, Mr Brittain, about unfair enforcement, which if true, would not have been justified even in terms of the need to clamp down on fraudulent use of Blue Cards. The BBC said the point that might have been made in response to this by NCP (that there was a legitimate reason for issuing the ticket), was dealt with clearly in the commentary, where the reporter points out that "*He got a ticket because he displayed his badge but forgot to put out the clock.*"
- c) Alleged unfair editing
  - i) In response to NCP's complaint that the programme's introduction misrepresented a comment by Mr Cowen, the BBC said the programme's introduction included footage of some parking attendants' extraordinary behaviour: one making racist remarks; and another describing having caused criminal damage to a member of the public's car. The commentary then asked "*Is this a management who know what's going on?*" The BBC said it was not unfair for the programme to include Mr Cowen's statement that "*This is a fine example of best practice. This is how parking enforcement should be conducted*" in response to this question.

The BBC said that no average viewer would construe this to mean that Mr Cowen believed that the extraordinary behaviour was best practice. Rather it was perfectly obvious that he was describing what he thinks the state of

affairs in Sunderland to be, thus inadvertently providing an answer to the question.

- ii) In order to respond to NCP's complaint that the programme had unfairly edited footage of an Asian man receiving a ticket, to make it appear that the attendant had been racially motivated, the BBC provided unedited recordings of the incident in question. The BBC said that it was not the case that the driver in question received "an hour's grace" as the car had been parked in a bay in which anyone was entitled to park for an hour. Furthermore the unedited recording showed the parking attendant lurked around the corner as the driver's parking time expired.

The BBC said it believed that the evidence of crude, racially-motivated behaviour by some of the NCP attendants was compelling and overwhelming. The BBC noted that it did not accept (nor indeed understand how) the "friendly" exchange between the parking attendant and an Asian man would have put a significant new context on the suggestion that the parking attendant in question was targeting certain streets or cars because of racist attitudes (as complained of by NCP).

- iii) The BBC said the programme produced ample evidence that there was a ticketing culture in Sunderland NCP, with numerous examples of parking attendants suggesting that a good day's work was about issuing the maximum number of tickets. The BBC said the one example cited by the company, where the senior attendant appeared to contradict this was greeted with incredulity by the staff member to whom it was addressed.
- d) The BBC maintained that the programme subtitle "*They're dirty gets around there*" was correct. The BBC said that it had listened to the footage on high quality speakers prior to broadcast. The broadcaster noted that their re-listening of the word in question identified a hard consonant sound at the beginning of the "er" vowel and also a clear "y" sound at the end of it. The BBC said that this is consistent with the word being "dirty" and not "word".

### **NCP's comments in response to the BBC statement**

NCP's comments in relation to its specific heads of complaint were as follows:

- a) Opportunity to respond

- i) In relation to the programme's inclusion of comments from a resident, Mr Foxton, NCP said there was no evidence to suggest that Mr Foxton received a ticket, let alone that it had been issued improperly. Had the BBC provided details of any ticket received by Mr Foxton, NCP would have been able to respond in an open and transparent manner. NCP said that to be denied the opportunity to respond and be accused of bending the rules was clearly unfair.
- ii) No additional comments.
- iii) No additional comments.
- iv) As regards the programme's inclusion of comments from a resident who believed he had been given a ticket because of the colour of his skin, NCP said that the BBC's statement appeared to suggest that NCP had not been

asked to comment on the issue of this particular ticket because it might not have told the truth.

b) No additional comments.

c) Alleged unfair editing

i) In relation to its complaint that the programme's introduction had misrepresented a comment by Mr Cowen, NCP agreed that it was fair for the programme makers to ask whether NCP management was aware of "*what was going on*". But maintained that it was unfair for the programme makers to use Mr Cowen's comments to respond to the question, when the full transcript of Mr Cowen's interview, indicated that he was speaking about the way in which the parking contract was structured and not the behaviour of a small number of individual parking attendants.

ii) As relation to the complaint that footage of an Asian man receiving a ticket had been unfairly edited to make it appear that the attendant had been racially motivated, NCP said that technically a ticket could have been issued to a vehicle displaying an out of date permit at "anytime", although as a matter of good practice NCP parking attendants would not issue if a car was parked in a bay where one hours free parking was allowed. NCP said the circumstances surrounding the issuing of this ticket appeared to be perfectly fair.

iii) No additional comments.

d) No additional comments.

### **The BBC's second statement**

The BBC responded as follows to NCP's comments:

a) Opportunity to respond

i) Regarding the inclusion of comments by Mr Foxton, the BBC noted that even if NCP had provided a copy of the ticket in question, it could not have told the programme makers if the information had been punched into the hand held computer while the parking attendant was approaching the vehicle or later. In any case, the allegation being made was a very small one when weighed against other allegations in the programme to which NCP had a full opportunity to reply. In the circumstances the BBC maintained that no unfairness resulted from not putting this point explicitly to Mr Cowen.

ii) No additional comments.

iii) No additional comments.

iv) In relation to NCP's complaint that it was not given an opportunity to respond to a resident's comment that he had been given a ticket because of the colour of his skin, the BBC denied that they were suggesting that NCP would not have told the truth if given an opportunity to respond. The BBC said the point they had been making was that NCP could only have disclosed the reason *actually* recorded by the parking attendant for issuing the ticket. The BBC said

that NCP could not have known or disclosed any ulterior, racist motive. Therefore, the absence of a reply did not result in unfairness to NCP.

b) No additional comments.

c) Editing

i) As regards the complaint that the programme's introduction sequence had unfairly represented Mr Cowen's comments, the BBC said that Mr Cowan replied directly to a question put to him, stating that parking enforcement should be conducted as it was in Sunderland. The BBC said that "best practice" clearly referred to the conduct of NCP and the delivery of enforcement in Sunderland and not to the report referred to earlier in the exchange.

ii) The BBC said the real point at issue here was the obvious racist motive of the parking attendant in hiding for the first available opportunity to issue the ticket to a person he referred to as a "Paki".

iii) No additional comments.

d) 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.

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 NCP complaint that it was not provided with an appropriate and timely opportunity to respond to four segments of undercover footage that were included in the programme.

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.

It is important to note that programme makers are not directed by Ofcom to offer an opportunity to respond in relation to every individual reference made in a programme. Rather, programme makers must ensure that their programme does not result in unfairness to individuals or organisations. Therefore, when considering a complaint of this nature, Ofcom will have regard to the programme as a whole.

Ofcom first considered whether the four segments of undercover footage complained of by NCP could be described as amounting to a significant allegation. If this was the case, then Ofcom should consider whether an appropriate opportunity to respond was given.

- i) In relation to the complaint that NCP had not been provided with an appropriate opportunity to respond to comments made by a resident, Mr Foxton, Ofcom noted that these comments had been included in a segment of the programme about Villette Road in Sunderland.

In Ofcom's opinion, viewers were likely to understand that Mr Foxton's comments contributed to the allegation that drivers on Villette Road felt they were being discriminated against by NCP parking attendants who actively target them. Ofcom noted that NCP had been offered an opportunity to respond to the wider allegation of parking attendants targeting particular areas or individuals. In Ofcom's view, given this opportunity to respond, it was not additionally incumbent on the programme makers to offer a specific opportunity to comment upon Mr Foxton's contribution. Taking these factors into account, Ofcom found that the programme maker's decision not to offer NCP a specific opportunity to respond to Mr Foxton's comments did not result in unfairness to the complainant.

- ii) Ofcom noted that the relevant section of the programme included footage of an NCP van with the following commentary:

Commentary: "[The NCP van] *parks anywhere, on yellow lines, on speed bumps – it doesn't get a ticket.*"

In Ofcom's view, the commentary was observational - it did not allege wrongdoing or otherwise make a significant allegation against NCP. In the circumstances, Ofcom was not persuaded that the complainant was entitled to an opportunity to respond to this particular piece of footage. Ofcom therefore found no unfairness in this respect.

- iii) Ofcom considered NCP's complaint that it had not been given an opportunity to respond to footage of a senior attendant advising other attendants to "*bluff when the signs aren't enforceable*". NCP's said that if it had been given an opportunity to respond to this piece of footage, it would have been able to explain that the senior parking attendant's comments were made in relation to zigzag markings near to the school and therefore were justified.

Having viewed a recording of the unedited recording of this piece of footage, it is Ofcom's view that the fact that the discussion had been in relation to zigzag markings near to a school did not affect the significance of the undercover footage in demonstrating that attendants had been advised to "*bluff*" drivers, when they knew a ticket could not be issued. Ofcom further noted that the undercover footage of the senior attendant was used to emphasise the programme's point that drivers were not adequately informed of the town's traffic orders. This was part of a more serious allegation that NCP and the Council may have received revenue from illegally issued tickets.

In Ofcom's view, these wider allegations were of a serious nature and merited an opportunity to respond. Ofcom noted that these allegations were put to NCP and the Council, and their responses were included in the programme as broadcast. In the context of the overall opportunity to respond, Ofcom found

that it was not incumbent on the programme makers to seek NCP's specific response to the undercover footage of a senior parking attendant advising his attendants to "*bluff*". Ofcom found no unfairness in respect of this complaint.

- iv) Ofcom considered NCP's complaint that the programme included a statement from a Sunderland resident, Mr Hussain, that he had received a ticket for two reasons "*because of my colour, and also to make money*".

Ofcom noted that Mr Hussain's comments were shown in conjunction with footage of some NCP parking attendants making racist comments (details of 'comments' provided at head (d), below). Ofcom considered that an allegation of racist treatment by NCP attendants was serious, and one which NCP was entitled an opportunity to respond to. Ofcom noted that the programme makers advised Mr Cowen that they had evidence of parking attendants behaving in a racist manner. Mr Cowen's response was included in the programme as follows:

Interviewer: *"Again we have some strong evidence which shows staff behaving in a racist manner whilst on duty."*

Mr Cowen: *"Really? OK...well I'd be very interested to see that. I don't believe it, but if you've got something you can show me that will change my mind, fair enough. We've never ever had any complaints in Sunderland about racism on the part of our parking attendants."*

Interviewer: *"But certainly if you were presented with evidence when the programme goes out, you'd take action on what the allegations are?"*

Mr Cowen: *"We'll certainly take a look at it, and if there's anything we need to respond to, we will do."*

Ofcom considered that the programme maker's decision to not specifically inform NCP of Mr Hussain's comments did not hinder its ability to respond to the wider allegation of parking attendants behaving in a racist manner.

Ofcom found that NCP was provided with sufficient information to be able to respond to the allegation of racist treatment and its response was presented in the programme as broadcast. In the circumstances, Ofcom found no unfairness to NCP in this respect.

Taking all the above factors into consideration, Ofcom did not believe that NCP was denied an appropriate and timely opportunity to respond to any significant allegations that were presented in the programme. Accordingly Ofcom has not upheld NCP's complaints in this respect.

- b) Ofcom next considered NCP's complaint that the programme did not provide any of its balancing comments in response to the allegation that NCP unfairly enforced regulations relating to disabled drivers (commonly referred to as Blue Badge drivers). Mr Cowen said this was despite him being asked for his opinion on this issue during his interview.

In reaching a decision in relation to this complaint Ofcom took account of Practice 7.11 (detailed above) and Practice 7.13 which states that where it is appropriate to

represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner.

Ofcom viewed the programme as broadcast. The relevant part of the programme described the difficulties that a blue badge driver, Mr Brittain, had experience when attempting to appeal a parking ticket:

Commentary: *“Blue Badge holders, disabled drivers also complain they get a raw deal in Sunderland. The man I’m going to meet has emphysema. His ticket troubles began when he parked on yellow lines at a health centre. He got a ticket because he displayed his badge but forgot to put out the clock. Eric says he should have had a warning and the Council bungled his appeal.”*

Eric Brittain: *“When you tell them that you have got a clock card and had omitted to display it, all they have to do is check on you and find out if you’re genuine and show compassion and common sense.”*

Ofcom noted that this segment of the programme did not allege that NCP had unfairly enforced parking regulations, as complained of by NCP. As shown above, the commentary explained to viewers that Mr Brittain had received a ticket for not displaying his clock. In Ofcom’s opinion, viewers would have understood that Mr Brittain’s contribution to the programme was to support the programme’s allegation that NCP parking attendants, in enforcing the rules, did not appear to show compassion for Blue Badge drivers. This allegation was supported by undercover footage of an NCP parking attendant impersonating a disabled driver. Ofcom considered that this wider allegation of wrongdoing merited an opportunity to respond.

Ofcom viewed a recording of Mr Cowen’s unedited interview and noted that he had been asked about parking attendant’s treatment of disabled drivers. The recordings showed that Mr Cowen enquired about whether there was any evidence of unacceptable behaviour, and based on the interviewer’s assurance that there was, he made the following comment:

Mr Cowen: *“[Disabled drivers] can talk to us and we will deal with it because that is not acceptable...I’m afraid that anonymous evidence that you tell me you have got but don’t want to present to me, that doesn’t really cut it. Any person with a disability who feels they are being treated unfairly by us should contact us and we will respond.”*

Ofcom noted that the programme as broadcast included the following statements by the Sunderland City Council (“the Council”):

Commentary: *“A director said ‘all parking attendants are fully trained’ and the Council would ‘take a serious view about any discourtesy to the public in the course of their duties’.”*

Commentary: *“[The Council] was concerned that the allegations had been made without the Council’ being provided with any information to enable us to investigate them’. If any one has a complaint of racial harassment or discrimination ‘they should report it to NCP and it the Council to enable it to be investigated properly’.”*

While Ofcom noted that the quotes included in the programme were from the Council, they were in response to the same allegations and gave viewers the same information as Mr Cowen provided. In the circumstances Ofcom was satisfied that NCP had been given an appropriate opportunity to respond to the allegation.

Ofcom next considered NCP's complaint that the programme maker's failure to include Mr Cowen's specific comments relating to Blue Badge drivers, resulted in unfairness. Ofcom viewed a recording of Mr Cowen's unedited interview and noted that Mr Cowen made a number of comments in relation to Blue Badge parking enforcement, including the following except:

Mr Cowen: *"Enforcing disabled bays is a very, very high pressure aspect of parking enforcement. We get criticised if we don't enforce them properly because then legitimate blue badge holders can't use them. There are occasions when blue badge holders are confused about the way in which they need to display their badge. It needs to be displayed with the date of issue upwards, not the photograph, and mistakes are made. So what can often happen is that a legitimate badge holder would receive a penalty charge notice. That doesn't happen so much in Sunderland as it does in some parts of the country because in Sunderland the first time that we see an infringement of that kind we issue a warning notice which is designed to instruct the blue badge holder how to properly display their badge. Most blue badge holders will of course support the principles of proper enforcement because blue badge fraud is a big issue. Either it's people borrowing a relative's blue badge when they want to park somewhere that they shouldn't or it's someone using an out of date blue badge, or in many parts of the country it can be stolen or fraudulently made blue badges, so it is a tough area and you need to make sure your parking attendants understand how to deal with this firmly and sensitively but you have to make sure that you enforce properly because you have to keep the disabled bays free for the people who can legitimately use them. Without enforcement, that just wouldn't happen."*

Ofcom noted that in this section of Mr Cowen's unedited interview, he explained why it was important and necessary for NCP parking attendants to enforce parking regulation for disabled bays. However, in Ofcom's view, this was not directly relevant to the programme's point relating to Blue Badge drivers, which was that some parking attendants do not show compassion for this group of drivers. It is Ofcom's opinion that the inclusion of Mr Cowen's comments (above), would not have better addressed the programme allegation (than the one included from the Council) or significantly affected the viewer's opinion of NCP. In the circumstances Ofcom found that the programme maker's decision not to include the comments did not result in unfairness to NCP.

- c) Ofcom considered NCP complaint that the programme was unfairly edited. The complaint referred to three pieces of footage.

In reaching a decision about the editing of the footage, Ofcom took account of Practice 7.6 which states that when a programme is edited, contributions should be represented fairly. Ofcom weighed up the programme makers' right to use their editorial discretion when editing a programme and the need for programme makers to present material facts in a fair way.

- i) NCP complained that it was unfair for the programme to juxtapose footage of NCP parking attendants involved in unacceptable behaviour with comments by Mr Cowen stating that: *“This is a fine example of best practice...this is how parking enforcement should be conducted”*. NCP said that Mr Cowen’s comments had been originally made in relation to the way the Sunderland parking contract had been set up.

Ofcom viewed Mr Cowen’s unedited interview and noted that his comments about parking in Sunderland being an example of “best practice” were initiated by him and were in relation to a university report about parking enforcement:

Mr Cowen: [The report] *picked six local authority areas where parking enforcement was done as examples of best practice, the way forward. Sunderland was one of those areas...The thing that we have to remember is that Sunderland Council runs one of the best parking enforcement operations in the country. By “best” I mean one of the ones that’s most customer-friendly.*

The interviewer returned to the report later in the interview and asked the following questions:

Interviewer: *If I could turn to the whole conduct – you mentioned the report that was done and something that was cited in that, so would you say that the conduct of NCP in Sunderland could be seen as best practice?*

Mr Cowen: Yes.

Interviewer: *So you think this should be seen as an example to the rest of the country how parking enforcement should be conducted in a city?*

Mr Cowen: *Absolutely. This is how parking enforcement should be conducted...I hope that the public will come to accept that parking enforcement is being delivered in the way that it was set up to be delivered. In Sunderland, yes, indeed, this is a fine example of best practice”*

Taking into account the full interview, Ofcom was not persuaded that Mr Cowen’s comments were only in relation to the way in which the Sunderland Council had set up its parking contract. In Ofcom’s view, it was clear from the unedited recording of the interview, that Mr Cowen raised the topic of the report to make the point that the way in which Sunderland Council (and by association NCP as its contractor) *delivered* and *conducted* parking enforcement was one of the best in the country. Furthermore, Mr Cowen’s comments in response to the interviewers’ direct questions emphasised that he believed the Sunderland’s parking operation as a whole was *“a fine example of best practice”*. In the circumstances, Ofcom found that it was not unfair for the programme to edit Mr Cowen’s comments to make the point that NCP did not appear to be aware of its parking attendants’ behaviour, and that it believed its current operation and conduct was a commendable example of parking enforcement in the country.

- ii) Ofcom next considered NCP complaint that the programme makers unfairly edited footage of an NCP parking attendant to give the impression that he was targeting certain streets or cars because of racist attitudes. In addition, NCP complained that the programme makers removed part of the footage that showed the attendant having a friendly exchange with an Asian man, with whom he was clearly acquainted.

Ofcom viewed an unedited recording of the relevant undercover footage. The footage showed a parking attendant and the undercover reporter on duty in a part of Sunderland in which a large proportion of the residents are Asian. While walking the attendant made a number of derogatory comments to the undercover reporter:

Attendant: *You feel like a fucking foreigner in your own country, you know what I mean.*

U'cover reporter: *They're only kids man.*

Attendant: *I dread to think of a number of fucking people in these houses...The smell of fucking cabbage.*

Moments after making these comments the following exchange occurred with an Asian resident. The exchange happened as the two parties walked past each other in the street:

Resident: *Hello*

Attendant: *All right?*

Resident: *How are you?*

Attendant: *Not bad.*

Resident: *Busy?*

Attendant: *No, not really.*

The attendants continued to patrol a number of streets in the area and stopped to speak with a white resident who the parking attendant appeared to know. During their conversation, the attendant described how his day was going and that he was expecting to give another ticket during his shift:

Resident: *You not booked many did you?*

Attendant: *Seven*

Resident: *Seven! Dear me.*

Attendant: *I have a blackie logged in Winifred Terrance, you know the permits, his is only for last year.*

Resident: *Champion lad. You over the moon?*

Attendant: *I will be if I get him.*

Attendant: *I'm going to give him an hour because he is in a bay.*

Resident: *I see.*

Attendant: *I gotta give him an hour. If he is still there for the hour, like – slap...*

The attendant returned to the car (referred to above) and issued a ticket. After the ticket was issued, the driver of the car, an Asian man, returned. The attendant had a short exchange with the driver about needing to buy a new permit, and the attendant commented to the undercover reporter *"Fucking daft Paki"*.

Ofcom compared the unedited recording with the edited version that was included in the programme as broadcast. Ofcom noted that the edited version referred to why the attendant was issuing a ticket to the car (i.e. because the permit was out of date) and that the attendant would need to wait an hour before issuing the ticket because the car was parked in a bay. Ofcom was also satisfied that the programme presented the attendant's derogatory comments as contained in the unedited recording. In relation to the attendant's "friendly exchange" with another Asian resident, Ofcom was not persuaded that the inclusion of the footage would have altered the viewer's understanding of the attendant. In Ofcom's view, the exchange - as quoted above - was barely more than passing comments.

Taking all these factors into account, Ofcom considered that when editing the footage the programme makers presented the material facts of the incident, in a way which was not unfair to NCP. In Ofcom's opinion viewers would have been likely to understand that the car's resident permit was out of date and the parking attendant derived additional satisfaction from ticketing a car because he believed the driver was of a particular ethnic background. Ofcom found that this impression was not unfair and accordingly found no unfairness.

- iii) Ofcom turned to NCP's complaint that the programme makers unfairly edited undercover footage to support the allegation that there was a ticketing culture within NCP.

Ofcom considered the relevant part of the programme as broadcast which stated:

Commentary: *There's a burning question to be asked here. Why are the attendants so keen to hand out tickets? The Council and NCP say keeping the traffic moving is what it's all about. But for attendants a good day's work is all about notching up tickets. That's how it seems when you listen to them talking....*

Senior attendant (during team briefing):

*I guarantee there's tickets in Southwick after half past four. There's tickets on every beat after five o'clock. More tickets on some beats than others"*

Commentary: *The briefing over, the attendants are unleashed on Sunderland's streets.*

Ofcom noted that in its submission, NCP said that the programme makers failed to include part of the senior attendant's comments which would have explained that issuing tickets was about attendants showing that they are working up until six o'clock, rather than a need to issue tickets.

Ofcom viewed an unedited recording of the relevant undercover footage and noted that the senior attendant did make additional comments in-line with NCP's complaint:

Senior attendant: *...nobody is doing anything after 5 o'clock. Some people are; most people aren't. There's tickets to be had.*

However Ofcom also noted the other attendants response to the senior attendants comments. It appeared from the recordings that the attendants were not convinced that "it wasn't about tickets":

Senior attendant: *There is tickets on every beat after 5 o'clock. More tickets on some beats than others...*

Attendant: *I thought it wasn't about tickets?*

Senior attendant: *It's is about proving you are doing something by the book.*

Attendant: *We are counting!*  
(All meeting attendees break into laughter)

In Ofcom's view, the unedited recording suggested that despite the senior attendant's assurances, the attendants (and to some degree the senior attendant himself, as indicated by his own laughter) believed that the number of tickets issued was still important. Taking this into account, Ofcom found that the editing of the footage did not alter the significance of the clip in a way that was unfair to NCP.

- d) Ofcom considered NCP complaint that the programme subtitles incorrectly stated "*They're dirty gets round there*" instead of "*Word gets round there*". NCP complained that the incorrect subtitle suggested that an NCP employee had made a racist comment.

In reaching a decision in relation to this complaint Ofcom took account of Practice 7.9 and 7.11 which state that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation. Further, 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 viewed a recording of the relevant clip and also had regard to both parties' interpretation of the parking attendant's comment. Ofcom also noted that the audio quality of the recording was at times, difficult to interpret. Ofcom is not a fact finding tribunal and given the parties differing interpretation of the clip and the quality of the recording Ofcom did not seek to determine the content of the subtitled comment. Rather Ofcom sought to determine, whether the BBC's interpretation resulted in unfairness to NCP.

In reaching a decision, Ofcom noted that this clip was one of a number of clips used in the programme as examples of the racist comments made by some NCP parking attendants. These other clips showed NCP parking attendants using the terms: “*fucking blackie streets*”, “*fucking daft Paki*”; and, “*Paki Land*”.

Ofcom considered that the use of such language by NCP attendants merited a response from the complainant. Ofcom noted that NCP was provided with an opportunity to respond to the allegation that the programme makers had material which showed parking attendants behaving in a racist manner, and its response was appropriately reflected in the programme as broadcast.

In the overall context of the programme, Ofcom concluded that the programme maker’s decision to include the subtitle “*They’re dirty round there*” did not result in unfairness to NCP. Ofcom found that the subtitle was unlikely to have significantly affected viewers understanding of the allegations made against NCP or the company’s response to them, given the programme’s wider context and the comments already made by the attendants. In the circumstances Ofcom found no unfairness to NCP.

**Accordingly, Ofcom has not upheld NCP’s complaint of unfair treatment in the programme as broadcast.**

## **Complaint by Mr Stephen Filer on his own behalf and on behalf of Mrs Markina Filer, Mrs Kathleen Filer, Mrs Julie Stephenson and Mr Robert Stephenson**

*Emergency: Firefighters, ITV1 (West), 12 October 2005*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment and unwarranted infringement of privacy.

This programme followed the work of Bristol-based firefighting crews and included footage of a light-aircraft crash in which the pilot, Mr Stephen Filer's father, died.

Mr Filer complained to Ofcom that: no permission was given for the programme to be broadcast; conditions made by the family concerning the filming of the crash site were not adhered to; and, the privacy of the Filer family was unwarrantably infringed in both the making and broadcast of the programme.

The broadcaster, ITV, argued that: it had taken into account the feelings of the Filer family; the programme was sober and unsensationalised; the programme makers were unaware of any specific controls placed on the media other than those set by the emergency services and that no instruction or request was ignored; and, the programme makers were not asked to leave the site by any member of the Filer family. ITV said both the site of the crash and the fact that Mr Michael Filer had lost his life, were matters which were firmly in the public domain, and Mr Michael Filer was not shown or named in the programme.

Ofcom recognised the distressing nature of the footage, recorded and broadcast, for the Filer family, but found that it did not result in unfairness, nor in the unwarranted infringement of the privacy of Mr Filer or members of his family in either the making or the broadcast of the programme.

### **Introduction**

On 12 October 2005, ITV1 (West) broadcast an episode of *Emergency: Firefighters*, which was part of a six-part documentary series that examined the work of the fire service. The programme makers were given permission to follow the work of the Avon Fire and Rescue Service ("the fire service") and spent three months "embedded" with two fire crews known as "watches", based at two separate fire stations in Bristol (Temple and Bedminster) and with recruits at a firefighting training establishment in Avonmouth.

One of the short profiles of the work of the Bedminster based firefighters featured the scene of a light aircraft crash in which the pilot, Mr Michael Filer (Mr Stephen Filer's father), died. The crash occurred on 30 April 2005, some six months before the programme was broadcast. Mr James Martin, an associate producer, was with the Bedminster based firefighters on the day of the accident and had travelled with them to the crash site. The aircraft had crashed on land that belonged to Naish Farm, which was owned by Mr Michael Filer.

The programme included a recording of the telephone call made by the ambulance service to the fire service requesting their attendance at the crash site. The ambulance service operator said:

*“It’s called Naish Farm. That’s Clapton in Gordano. A small light aircraft has landed in a field...there is one casualty, a 72 year old male. He’s not conscious and we’re not knowing whether he is breathing either”.*

Footage of the firefighters arriving at the farm was then shown in the programme. The accompanying commentary speculated that the aircraft may have hit an overhead cable on take-off, and a firefighter, Mr Fred Le Ouedec, talked about how he handled the “gruesome” part of his job that involved the recovery of bodies in fatal accidents. The programme’s commentary informed viewers that the police had sealed off the crash site area as a potential crime scene because there had been a fatality and that only the emergency service personnel were allowed near it. From a distance, people could be seen at the crash site. Images of emergency service vehicles and personnel going to the crash site and the wreckage of the aircraft itself, including the empty cockpit, were also shown in the programme.

Mr Stephen Filer (“Mr Filer”), the son of the deceased pilot Mr Michael Filer, complained on behalf of himself and on behalf of: Mrs Markina Filer, his wife and daughter-in-law of the deceased; Mrs Kathleen Filer, his mother and the wife of the deceased; Mrs Julie Stephenson, the daughter of the deceased; and, Mr Robert Stephenson, the son-in-law of the deceased, that they were treated unfairly and their privacy was unwarrantably infringed in both the making and broadcast of the programme.

Neither Mr Filer, nor any member of his family, were named in the programme.

## **The Complaint**

### **Mr Filer’s case**

- a) In summary, Mr Filer complained on his own behalf and on behalf of the members of his family referred to above that they were treated unfairly in the programme as broadcast. In particular, Mr Filer complained that:
  - On the instructions of the family, the police had told the press and media crews that they could not have access to the crash site. However, after taking advice from the police, the family permitted controlled access to the site on the condition that any filming should not contain close-up shots and that filming only be allowed once the aircraft wreckage had been removed. This condition, Mr Filer said, was not respected, that is the particular permission given for the media’s access at specific times to the incident area on the family’s private land was not adhered to.
  - Members of the family did not give their permission for the programme containing footage of the crash site and aircraft wreckage to be broadcast. Mr Filer said that despite having spoken to the broadcaster before the programme was transmitted to express his family’s wish for the footage not to be shown, it was shown.
- b) Mr Filer also complained on his own behalf and on behalf of the members of his family referred to above that their privacy was unwarrantably infringed in both the making and broadcast of the programme in that:
  - The programme showed footage of the emergency services entering the family’s private property and attending the crash site where Mr Michael Filer

had died. In doing so, the programme included footage shot on private grounds without the family's permission and showed graphic details and close-up images of the crash site.

- It also included footage of the entrance to their property and broadcast details of the address, despite the family's insistence that such references be removed from the programme before broadcast.

By way of background, Mr Filer also said that it should be taken into account that at the time of broadcast, the accident was recent and that his family had yet to come to terms with their loss. He also said that the programme was about the work of firefighters and that the inclusion of the footage of the crash site was not necessary in "educating the public" about the subject. He also said that the footage provided no additional information to viewers that warranted the affect on Mr Filer and his family.

### **ITV's case**

- a) In summary and in response to Mr Filer's complaint of unfair treatment in the programme, ITV said that it denied that the family had been treated unfairly:
- ITV stated that on 7 October 2005, Mr Filer contacted Mr Garrett to discuss his family's concerns about the programme and the way in which the footage of the crash site was obtained. He said that the footage had been filmed at the crash site without the family's permission and claimed that this was in contravention to the instructions given by them to the police at the scene. ITV said that Mr Garrett explained to Mr Filer that at all times, Mr Martin had followed to the letter the instructions given to him by the police and maintained that no police officer had told him that he should not have been there or that the family did not wish him to be there. The only contact Mr Martin had with the family at the scene was the express request from Mrs Kathleen Filer that he should not film her husband's body; this wish was respected. At no time during the period of around four hours that Mr Martin was present at the site was told that there was any agreement between the police and family that media observers should not be present. Furthermore, ITV said that it had no knowledge of any specific controls being placed on the media other than already described, that is by the police and emergency services. Again, ITV said that no instruction or request was ignored by the programme makers.
  - ITV stated that prior to broadcast, Mr Filer and his family had expressed their wish that the footage taken at the crash site should not be included in the programme. On 7 October 2005, Mr James Garrett, ITV West's Head of Features and Current Affairs, received a telephone call from Mr Tony Moore, a police officer from Avon and Somerset Police who had been appointed as the liaison officer for the family over the various inquiries into the crash. The programme makers had already been in contact with Mr Moore about the content of the programme, explaining that it would be featuring footage of the crash site. Mr Moore explained to Mr Garrett that members of the Filer family were unhappy that footage from the aftermath of the crash was to be shown. Mr Garrett asked Mr Moore to pass his contact details onto the family so that he could discuss their concerns with them.

ITV said that later that same day, Mr Stephen Filer contacted Mr Garrett to discuss the intended programme. Mr Filer said that he was very unhappy that the programme would include footage of the aircraft wreckage and was also concerned about the adverse effect of such publicity prior to the conclusion of the inquest into his father's death. Mr Garrett explained the remit of the programme series, how the footage was taken, and how the story of the accident was to be presented in a way that was sympathetic and not sensationalised. Mr Garrett reminded Mr Filer that the story of the crash had been widely reported by the local media at the time of the accident and, although conscious of the Mr Filer's distress, the broadcast was in the public interest.

ITV said that in light of Mr Filer's concerns, Mr Garrett agreed to review the programme and satisfy himself again that it contained nothing that might cause unnecessary grief to the Filer family. Taking into account the feelings of the Filer family, the programme was re-edited to remove a line of commentary that referred to the practical difficulties encountered by the firefighters in removing Mr Michael Filer's body from the wreckage. Although it would have been reasonable to retain this comment in the programme, in balancing the public interest against what was known to be the strong feelings of the family, Mr Garrett was prepared to remove it. However, he decided not to remove the sequence in its entirety, believing that the insight provided by Mr Le Ouedec into how firefighters dealt with death was an important one. Having reconsidered and re-edited the programme, Mr Garrett was satisfied that he had taken into account the feelings of the Filer family as much as he reasonably could and that the item was sober and unsensationalised and that, in the public interest, it provided an important insight into the work of the firefighters involved.

On 11 October 2005, ITV said Mr Garrett contacted Mr Filer and explained his decision. Mr Filer said that he would talk to the police and coroner's officer again because "What you are doing is opposed by all of them. If you have taken any footage it will have been without our permission and we will try to sue you".

ITV said that on 12 October 2005, the day of broadcast, Mr Garrett had a telephone conversation with Mr Kevin Pearson, the Chief Fire Officer for Avon. Mr Pearson had met Mr Filer and had explained his own feeling that the programme was editorially sound and was an accurate portrayal of the sometimes difficult job done by the firefighters under his command. Under an agreement between the fire service, the programme makers and ITV West, the fire service had had the opportunity to view the series pre-transmission. While ITV West at no time ceded editorial control over the programmes, it allowed the fire service the opportunity to correct any potential factual inaccuracies. Consequently, Mr Pearson was provided with a copy of the programme which was to be broadcast that night. Mr Pearson had shown Mr Filer the programme (the version that existed before Mr Garrett's last-minute edit referred to above). Later that day, Mr Filer contacted Mr Garrett again and sought an assurance from him that the programme would not be broadcast. While at all times respecting the feelings of the Filer family, ITV were unable to cede to their request and the programme was broadcast as planned. ITV acknowledged that the footage of the crash site was, by its very nature, shocking, however, it was broadcast in the public interest and was dealt with soberly and was not sensationalised in any way.

b) In summary and in response to Mr Filer's complaint of unwarranted infringement of privacy in both the making and broadcast of the programme, ITV said that:

- ITV said that Mr Stephen Filer's mother was aware of Mr Martin's presence at the crash site and that neither she nor anyone else asked him to leave. ITV said that even if Mr Martin's presence at the scene was a breach of privacy, which it denied, it was warranted in light of the public interest contained in the programme subsequently broadcast.
- ITV said that the programme did include footage of emergency services entering the crash site, and argued that "sufficient details were not given to inform members of the public (who were not already aware through the various press reports) of the identity of the crash victim". ITV said that at no time during the programme were members of the Filer family identified. The only location reference given in the programme was the recording of the ambulance service call for the firefighters to attend a light aircraft crash in a field at Naish Farm in Clapton in Gordano. While this clearly gave a description of the site of the crash, ITV said that it did not do anything more. ITV argued there was no suggestion that the owner of the farm had been involved in the crash. ITV stated that both the site of the crash and the fact that Mr Michael Filer had tragically lost his life, were matters which were firmly in the public domain. However, the programme did not refer to him by name precisely in order not to bring the story to any members of the television audience not already familiar with it.

ITV said that it extended its sympathies to the Filer family. However, the programme makers denied that the Filer family's privacy had been unwarrantably infringed in either the making or broadcast of the programme. It stated that if there had been an infringement of the family's privacy, which ITV denied, it was warranted in the public interest.

### **Mr Filer's response to ITV's statement**

a) In summary and in response to ITV's statement regarding unfair treatment, Mr Filer said that:

In relation to the crash site being filmed without the family's consent:

- The programme's producer, Mr Martin, had arrived at the crash site with the firefighters and Mr Filer said that he could only surmise that the police officer at the scene assumed permission had been given for his presence. At no time did Mr Martin introduce himself or seek permission to film. Being on private land, Mr Martin failed to seek permission to enter onto the land. Mr Filer said that the family had assumed that any footage taken at the time at the crash site would be for the use of the emergency services and the Civil Air Authority's Air Accident Investigation Branch (the "AAIB"). Mr Filer said that it was the programme makers' responsibility to have sought the landowners' permission beforehand to gain access to the farm land and to carry out any activity on it.
- The family were notified of the programme's existence or intent to broadcast the programme by the police, not the programme makers, a few days before broadcast. This gave the family very little time to object to its broadcast.

- b) In summary and in response to ITV's statement regarding unwarranted infringement of privacy, Mr Filer said that:
- In the distressing circumstances, the presence of Mr Martin would not have been in the forefront of anyone's mind, given that he was with the fire fighters. Mr Filer said that his family had assumed that any footage taken would be for the emergency services and AAIB use only and were therefore not on their "guard". The public interest argument given by ITV was only a matter of opinion and it failed to justify "trespass" or "breach of privacy while trespassing".
  - Mr Filer said that although the property's address was given out during the inquest into the crash, it was difficult to find it unless a person had the "luxury of video-footage showing how you enter down somebody else's private driveway over which the farm has right of way but the public do not".

### **ITV's final comments in response**

- a) In summary, and in response to Mr Filer's comments regarding unfair treatment, ITV said that:

In relation to the complaint that the crash site was filmed without the family's consent:

- Mr Filer's imputation that the emergency services were somehow unaware of the reason for Mr Martin's presence and his intentions was rejected by ITV. The police and Mr Martin had co-operated without difficulty for several hours and they were aware of who he was and why he was filming. At no stage was he told about any "no media" policy, something of which the police officers with whom he was dealing were equally unaware. ITV said that had he been asked at any stage to leave the scene he would have done so. The fact remained that he was not asked to do so; and,

ITV did not deny that Mr Martin passed the police cordon and up to the crash site to film the wreckage. However, this was done with the permission of the police once they had declared that the scene was no longer "off-limits" as a potential crime scene and the fire service, once they had deemed the site to be safe. ITV argued that there was no assumption by any of the civil authorities at the crash site that Mr Martin was filming for the fire service or the AAIB.

- The programme makers had contacted Mr Filer and his family via the police liaison officer as a matter of courtesy and the family had ample opportunity to make their feelings known, which they did. Appropriate steps to minimise distress to Mr Filer and members of his family were taken by the programme makers. This resulted in the removal of references to the difficulties being faced by firefighters with respect to the process of recovering Mr Michael Filer's body. The fire service voiced its comments about the cause of the crash immediately after the incident. The edit was not made because of concerns about prejudicing the inquest but, rather, in an attempt to respect the family's concerns.
- b) In summary, and in response to Mr Filer's comments regarding unwarranted infringement of privacy, ITV said that:

- ITV made no further relevant comments in relation to the obtaining and broadcasting of the footage that was included in the programme.
- ITV said that the family's address was a matter of public record and that it had been well covered in the local media at the time that the accident occurred. ITV argued that as the Filer family would have known, it would once again become the subject of media coverage when the inquest was held and the report of the AAIB was published. ITV said that the programme did not link the address of the site to the dead pilot, nor did it name him. From the information given in the programme, ITV said that viewers would not have assumed that Mr Michael Filer was also the owner of the field where the aircraft crashed. ITV said that if viewers were aware of this information, they would have obtained it from other sources.

## 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 unwarranted infringement of privacy 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 targeted only at cases in which action is needed.

This case was considered by Ofcom's Executive Fairness Group. It considered the complaint and the broadcaster's response, together with supporting material and subsequent submissions from both parties. Ofcom viewed the programme as broadcast and read a transcript of it, and took account of Ofcom's Broadcasting Code ("the Code").

Ofcom found the following:

- a) Ofcom first considered Mr Filer's complaint made on his own behalf and on behalf of members of his family that conditions about the filming at the site were not respected and that the family's wishes in this respect were disregarded.

Ofcom considered this element of the complaint in light of Rule 7.1 of the Code which states that broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes and the Practices in the Code that relate to fairness. In particular, Ofcom took account of Practice 7.2 which states 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. It also took account of Practice 7.7 which states that guarantees given to contributors, for example relating to the content of a programme, confidentiality or anonymity, should normally be honoured.

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 noted that it was not disputed by either party that Mr Martin had spoken to Mrs Kathleen Filer at the gate to the crash site field and that she had asked him not to film her husband's body. However, Ofcom also noted that Mr Filer had gone further in his account made in his complaint by saying that the family had instructed the police, on their (that is, the police's) advice, to allow media access to the crash site so long as no close-up pictures were taken and were only to be allowed into the field once the aircraft wreckage had been removed. Mr Filer also surmised that the police had misunderstood Mr Martin's status and thought that he was attached to the fire service.

Ofcom noted that there was disagreement between the parties about the extent of any restrictions on filming by the Filer family. Ofcom is not a fact finding tribunal and was unable to determine what exactly had transpired between Mr Martin, Mrs Kathleen Filer and/or the police. The specific details of any conversation between them about the conditions of filming were not recorded. Having considered both parties' submissions, it was clear to Ofcom that the Filer family were genuine in their belief that they had laid down conditions for the media to film at the scene. However, it was equally clear to Ofcom that Mr Martin and ITV genuinely understood that no such conditions had been stipulated by the family other than a request not to film Mr Michael Filer's body.

In Ofcom's view, there was an absence of any persuasive material that demonstrated that Mr Martin was aware that a member of the Filer family had imposed conditions, (except the request from Mrs Filer not to film the body of her husband), as to what the media could and could not film. Ofcom also noted that the footage used in the programme did not contain any footage of the crash site before Mr Michael Filer's body was removed, i.e. footage recorded before the police were satisfied that the area no longer needed to be classed as a potential crime scene. This, in Ofcom's view, demonstrated that the police, at least, were aware of Mr Martin's status as a programme maker and not a firefighter as he was not allowed access to the site whilst it was regarded as a crime scene.

Although Mr Filer claimed that Mr Martin did not make it known that he was, in fact, a programme maker, rather than a member of the emergency services, for the reasons given above Ofcom took the view that it would have been unlikely for the police to have confused his status at the scene and to have assumed he was part of the fire service. Ofcom understood the extremely distressing nature of the situation the Filer family were faced with on the day, and afterwards, but it did not appear to Ofcom that either the police or any member of the Filer family at any time asked Mr Martin to leave the area or to stop filming. In these circumstances, Ofcom was satisfied that the programme makers acted in a manner that was in accordance with the conditions laid down by the emergency services and there did not result in unfairness in the programme as broadcast.

In light of these considerations, Ofcom found that there was not unfairness to either Mr Filer or his family in this respect.

Ofcom next considered Mr Filer's complaint that the family's wishes concerning the broadcast of the footage were not respected and considered whether or not guarantees were given by the programme makers. In this respect, Ofcom had regard to Practice 7.7 of the Code referred to above.

Ofcom noted that prior to broadcast, the broadcaster had spoken to Mr Filer about the concerns that he and members of his family had about the content of the programme. It also noted that the broadcaster had re-edited the programme

before broadcast to remove specific references made by the fire fighters about the removal of Mr Michael Filer's body from the wreckage to spare the family further distress.

Ofcom considered that the coverage of the incident demonstrated the difficult nature of the work faced by the fire fighters involved and was a legitimate story for the programme makers to follow. It was also considered that the broadcaster had taken reasonable steps to inform the family of the content of the programme before transmission and had made a serious attempt to reduce the possible distress the programme may have had on them. This is discussed in detail below at Decision head b). It was clear from the broadcaster's decision to excise certain material from the programme that it did consider the requests made to it by Mr Filer on behalf of his family. However, it was also clear to Ofcom that no wider guarantees were either given or reneged upon.

In light of these considerations Ofcom found no unfairness resulted from the programme makers' dealings with Mr Filer and his family.

- b) Ofcom then considered Mr Filer's complaint that his privacy and that of members of his family was unwarrantably infringed in both the making and broadcast of the programme.

Ofcom first considered Mr Filer's complaint that the emergency services were shown in the programme entering the family's private property and the programme included close up footage and graphic images of the crash site.

Ofcom recognises that 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? Ofcom considered the privacy element of Mr Filer's complaint in light of Rule 8.1 of the Code which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

In considering this element of the complaint, Ofcom also took account of Practice 8.3 of the Code which states that when people are caught up in events which are covered by the news they still have a right to privacy in both the making and the broadcast of a programme, unless it is warranted to infringe it. This applies both to the time when these events are taking place and to any later programmes that revisit those events. Ofcom also took into account Practice 8.5 which states that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted. Ofcom took account of Practice 8.19 which states that Broadcasters should try to reduce the potential distress to victims and/or relatives when making or broadcasting programmes intended to examine past events that involve trauma to individuals (including crime) unless it is warranted to do otherwise.

It is not within Ofcom's remit to determine whether or not any breach of the law of trespass had taken place. In the circumstances of this particular case, Ofcom was required to determine whether or not the actions of the programme makers unwarrantably infringed the privacy of Mr Filer and his family during the making and broadcast of the programme. Ofcom examined both parties' accounts of the incident and the footage that was recorded and then used in the programme.

Ofcom first considered whether or not Mr Filer and his family had a legitimate expectation of privacy in relation to the recording and broadcast of the footage of the crash site. Ofcom recognised the personal distress Mr Filer and other members of his family experienced at the time of the accident. It noted that the footage recorded and broadcast featured wreckage of the aircraft in which Mr Filer's father (the pilot of the aircraft) had died, and was therefore of heightened sensitivity. Ofcom also noted that the accident had occurred on land belonging to Mr Filer's father, and that that was therefore where filming had taken place. Taking all these factors into account, Ofcom was satisfied that the circumstances and location of the crash and the nature of the personal tragedy experienced by the Filer family were such that, on balance, Mr Filer and members of his family had a legitimate expectation of privacy in relation to the recording and broadcast of material at the crash site.

Ofcom then considered whether or not the privacy of Mr Filer and his family was infringed in the making of the programme. In its deliberations Ofcom again recognised that the material filmed was of a highly distressing and sensitive nature for Mr Filer and his family in view of the personal tragedy they had so recently suffered. Ofcom's duty was to consider the submissions made by both parties and determine whether, in view of the full circumstances of the recording of footage at the site of the crash, the privacy of Mr Filer and his family had been infringed.

In turning to the submissions Ofcom noted that Mr Martin had been given permission by the fire service to follow its fire fighters in carrying out their duties. Although he travelled with the fire fighters to the crash site, Ofcom noted that Mr Martin was not permitted by the emergency services to enter the field where the aircraft wreckage lay on their arrival. Ofcom also noted the broadcaster's submission which stated that the police also refused Mr Martin entry and explained to him that only emergency service personnel were to be allowed near the site until the status of the crash site was no longer considered a potential crime scene, and that Mr Martin followed these instructions.

As discussed above in Ofcom's finding on Mr Filer's complaint of unfair treatment, Ofcom noted that there was disagreement between the parties regarding the extent of any restrictions on filming by the Filer family. In the absence of any persuasive material to the contrary, it appeared to Ofcom that Mr Martin was unaware of any conditions having been laid down by any member of the family about his filming at the crash site or to the nature of the images filmed, other than the request by Mrs Kathleen Filer not to film her husband's body. Also, it was significant that no persuasive material was submitted to suggest that Mr Martin did not adhere to the restrictions placed on him by the emergency services at the crash site.

In any event Ofcom noted that the material recorded by Mr Martin, while of heightened sensitivity to the Filer family given the death of Mr Michael Filer, included images of the wreckage only, was filmed from a distance behind the police cordon and, as discussed above Mr Martin had complied with Mrs Kathleen Filer's request not to film her late husband's body.

Taking all the factors referred to above into account, Ofcom was satisfied that: Mr Martin had permission from the emergency services to be present and to film at the crash site; that he had obeyed the instructions of the emergency services; that he was unaware of any restrictions being placed on him by any member of the Filer family. In light of these considerations, and of the nature of the footage

recorded which did not include images of any members of the Filer family, Ofcom found that there was no infringement of the privacy of Mr Filer and members of his family in the making of the programme.

Ofcom then turned its attention to whether or not the inclusion of the material taken at the crash site infringed Mr Filer's and members of his family's privacy in the programme as broadcast. Ofcom noted that prior to transmission, the broadcaster had spoken to Mr Filer about the concerns that he and members of his family had about the programme and had re-edited it before transmission to remove references made by emergency service personnel to the removal of Mr Michael Filer's body from the wreckage to spare the family further distress.

Ofcom noted that the coverage of the incident, in demonstrating the difficult nature of the work faced by the fire fighters involved, was a legitimate story for the programme makers to follow. The material featured was of the wreckage of the plane, did not show people in distress, nor were the shots lingering or otherwise inappropriate to the subject matter of the item. Ofcom was also satisfied that ITV West had taken reasonable steps to inform Mr Filer and members of his family of the content of the programme, and had made a responsible attempt to reduce the possible distress the programme may have had on them.

Taking all these considerations into account and while recognising the distressing nature of the broadcast footage for the Filer family, in light of the nature of the material broadcast which included images of the wreckage of the plane but did not name or show footage of any members of the Filer family, Ofcom found that there was no infringement of privacy in the broadcast of the programme in relation to Mr Filer or members of his family.

Ofcom then considered Mr Filer's complaint concerning the inclusion of the footage of the entrance to the property and that the programme broadcast details of the address of the farm where the accident occurred. In deciding this, Ofcom had regard to Practice 8.2 of the Code which states that information that discloses the location of her person's home or family should not be revealed without permission, unless it is warranted. In the circumstances of this particular case, Ofcom was satisfied that Mr Filer and his family had a legitimate expectation of privacy concerning the inclusion of the footage and details of the property.

Ofcom then considered whether or not Mr Filer and his family's privacy was infringed in the broadcast of the programme. Ofcom noted that neither Mr Michael Filer nor any other members of his family were named in the programme. It also noted that the footage and commentary in the programme made reference to an incident that had occurred in a specific area. The name of the farm and the village where Mr Michael Filer lived was referred to as well as the details and footage of the accident itself. However Ofcom took the view that only those who were already aware of the accident and the circumstances surrounding it would have been able to identify the accident with Mr Michael Filer and the Filer family. It was also apparent from the supporting material provided with the broadcaster's submission that details of the accident and the location where it happened were already in the public domain and had been reported in the local media. In light of these considerations Ofcom found that there was no infringement of privacy in the broadcast of the programme in this respect.

In conclusion, Ofcom found that there was no infringement of privacy, in relation to Mr Filer or members of his family, in the making or broadcast of the programme and Ofcom did not therefore go on to consider whether any infringement was warranted.

**Accordingly, the complaint of unfair treatment and unwarranted infringement of privacy in both the making and broadcast of the programme was not upheld.**

## Other Programmes Not in Breach/Out of Remit

19 June to 3 July 2007

Programme	Trans Date	Channel	Category	No of Complaints
100 Highlights	17/04/2007	Kanal 5	Animal Welfare	1
24 Hours With (trailer)	16/06/2007	ITV1	Sex/Nudity	1
24 Hours With (trailer)	18/06/2007	ITV1	Sex/Nudity	3
3 Minute Wonder: Up Close and Personal	18/06/2007	More 4	Sex/Nudity	1
8 Out Of 10 Cats	15/06/2007	Channel 4	Offensive Language	2
8 Simple Rules	17/06/2007	abc1	Generally Accepted Standards	1
Afternoon Show	23/05/2007	Capital 95.8	Offensive Language	1
Aged 12, and Looking After the Family	05/02/2007	Channel 4	Inaccuracy/Misleading	2
BBC News	27/06/2007	BBC1	Generally Accepted Standards	1
BBC News	12/06/2007	BBC1	Generally Accepted Standards	1
Battle for the Holy Land: Love Thy Neighbour	21/05/2007	Channel 4	Religious Offence	1
Battle for the Holy Land: Love Thy Neighbour	21/05/2007	Channel 4	Due Impartiality/Bias	1
Big Brother 8	12/06/2007	Channel 4	Generally Accepted Standards	1
Big Brother 8	18/06/2007	Channel 4	Generally Accepted Standards	1
Big Brother 8	08/06/2007	Channel 4	Generally Accepted Standards	4
Big Brother 8	04/06/2007	E4	Offensive Language	1
Big Brother 8	28/06/2007	Channel 4	Generally Accepted Standards	1
Big Brother 8	12/06/2007	Channel 4	Generally Accepted Standards	2
Big Brother 8	13/06/2007	Channel 4	Offensive Language	2
Big Brother 8	31/05/2007	Channel 4	Generally Accepted Standards	1
Big Brother 8	04/06/2007	Channel 4	Generally Accepted Standards	3
Big Brother 8	08/06/2007	Channel 4	Sex/Nudity	1
Big Brother 8	09/06/2007	E4	Generally Accepted Standards	1
Big Brother 8	11/06/2007	Channel 4	Generally Accepted Standards	3
Big Brother Live	09/06/2007	E4	Generally Accepted Standards	1
Big Brother on the Couch	03/06/2007	Channel 4	Generally Accepted Standards	1
Big Brother's Big Mouth	30/05/2007	Channel 4	Generally Accepted Standards	6
Big Brother's Big Mouth	12/06/2007	E4	Generally Accepted Standards	2
Big Brother's Big Mouth	20/06/2007	E4	Generally Accepted Standards	1

Big Brother's Big Mouth	05/06/2007	E4	Generally Accepted Standards	2
Big Brother's Big Mouth	19/06/2007	E4	Generally Accepted Standards	1
Big Brother's Big Mouth	07/06/2007	E4	Generally Accepted Standards	3
Big Brother's Little Brother	03/06/2007	Channel 4	Offensive Language	1
Blue Kiss	12/06/2007	Smile TV	Sex/Nudity	1
Bob and Roberta Smith	29/05/2007	Resonance FM	Animal Welfare	1
Bob and Roberta Smith	29/05/2007	Resonance FM	Generally Accepted Standards	7
Breakfast Show	03/05/2007	Essex FM	Generally Accepted Standards	1
Breakfast Show	29/05/2007	Virgin Radio	Generally Accepted Standards	1
Britain's Got More Talent	09/06/2007	ITV2	Generally Accepted Standards	2
Britain's Got More Talent	10/06/2007	ITV2	Generally Accepted Standards	4
Britain's Got More Talent	16/06/2007	ITV2	Generally Accepted Standards	1
Britain's Got Talent	10/06/2007	ITV1	Sex/Nudity	2
Britain's Got Talent	13/06/2007	ITV1	Generally Accepted Standards	1
Britain's Got Talent	16/06/2007	ITV1	Offensive Language	1
Britain's Got Talent	10/06/2007	ITV1	Animal Welfare	2
Britains Got More Talent	17/06/2007	ITV2	Generally Accepted Standards	1
Brothers and Sisters	20/06/2007	Channel 4	Advertising	1
Build A New Life in the Country	07/06/2007	Five	Competitions	1
Bull Shit Hour (trailer)	08/04/2007	FX Channel	Offensive Language	1
Celebrity Masterchef	12/06/2007	BBC1	Generally Accepted Standards	1
Channel 4 News	04/06/2007	Channel 4	Inaccuracy/Misleading	3
Channel 4 News	04/06/2007	Channel 4	Generally Accepted Standards	1
Channel 4 News	04/06/2007	Channel 4	Due Impartiality/Bias	1
Channel 4 News	15/06/2007	Channel 4	Inaccuracy/Misleading	1
Chris Moyles	08/06/2007	BBC Radio 1	Generally Accepted Standards	1
Chris Moyles Show	11/06/2007	BBC Radio 1	Generally Accepted Standards	1
Classic FM News	12/04/2007	Classic FM	Generally Accepted Standards	1
Cool FM	20/05/2007	Cool FM	Offensive Language	1
Cops With Cameras	12/06/2007	ITV1	Due Impartiality/Bias	1
Crash Test Dummies	19/05/2007	Sky One	Generally Accepted Standards	1
Danny & Nicky in the Morning	20/03/2007	Southern FM	Sex/Nudity	1
Deal or No Deal	17/06/2007	Channel 4	Due Impartiality/Bias	1
Derby Day	02/06/2007	BBC1	Sex/Nudity	3
Derren Brown's Trick or Treat	18/05/2007	Channel 4	Generally Accepted Standards	5
Derren Brown's Trick or Treat	18/05/2007	Channel 4	Dangerous Behaviour	1
Disappearance	22/05/2007	SciFi Channel	Generally Accepted Standards	1

Dispatches: Bin Wars	24/05/2007	Channel 4	Due Impartiality/Bias	1
Drive	03/05/2007	BBC Radio 5 Live	Generally Accepted Standards	1
Drive with Ian Wright & Adrian Durham	21/05/2007	Talksport	Generally Accepted Standards	3
Eastenders	20/05/2007	BBC1	Violence	1
Embarrassing Illnesses	14/06/2007	Channel 4	Generally Accepted Standards	3
Embarrassing Illnesses	21/06/2007	Channel 4	Inaccuracy/Misleading	1
Emmerdale	05/06/2007	ITV1	Violence	2
Everybody Hates Chris (trailer)	10/06/2007	Five	Violence	1
Everybody Hates Chris (trailer)	08/06/2007	Five	Violence	1
F1 Grand Prix trailers	10/03/2007	ITV	Advertising	1
F1: Monaco Grand Prix Live	27/05/2007	ITV1	Advertising	1
Friday Night with Jonathan Ross	08/06/2007	BBC1	Generally Accepted Standards	1
Friday Night with Jonathan Ross	08/06/2007	BBC1	Offensive Language	1
GMTV	16/05/2007	ITV1	Generally Accepted Standards	1
GMTV	25/05/2007	ITV1	Generally Accepted Standards	1
Gay to Z	15/06/2007	Channel 4	Sex/Nudity	1
Generation Xcess	03/06/2007	ITV2	Offensive Language	1
Gordon Ramsay's F Word (trailer)	17/05/2007	Channel 4	Generally Accepted Standards	1
Graham Norton Uncut	09/06/2007	BBC2	Generally Accepted Standards	1
Graham Norton Uncut	02/06/2007	BBC2	Religious Offence	1
Grand Designs	25/06/2007	More 4	Offensive Language	1
Have I Got News For You	25/05/2007	BBC1	Generally Accepted Standards	1
Health and Wealth	08/03/2007	DM Digital	Generally Accepted Standards	1
Heir Hunters	11/06/2007	BBC1	Dangerous Behaviour	1
Heresy	06/06/2007	BBC Radio 4	Generally Accepted Standards	1
Holby Blue	05/06/2007	BBC1	Sex/Nudity	1
Hollyoaks	13/06/2007	Channel 4	Offensive Language	1
Hollyoaks	21/06/2007	Channel 4	Inaccuracy/Misleading	1
Home and Away	12/06/2007	Five	Sex/Nudity	1
How to Look Good Naked	12/06/2007	Channel 4	Sex/Nudity	3
Hustle	31/05/2007	BBC1	Generally Accepted Standards	2
ITV News	05/06/2007	ITV1	Generally Accepted Standards	2
ITV Play	05/06/2007	ITV1	Competitions	1
Jo Whiley	22/11/2006	BBC Radio 1	Generally Accepted Standards	1
Jon Gaunt	20/06/2007	Talksport	Generally Accepted Standards	1
Jon Gaunt	17/05/2007	Talksport	Generally Accepted Standards	1
Jon Gaunt	12/06/2007	Talksport	Generally Accepted Standards	1
Keith Arthur's Fisherman Blues	02/06/2007	Talksport	Generally Accepted Standards	1
Kerrang	14/06/2007	Kerrang	Sex/Nudity	1

Let Me Entertain You	06/06/2007	BBC2	Generally Accepted Standards	1
Loose Women	14/06/2007	ITV1	Generally Accepted Standards	1
Loose Women	11/06/2007	ITV1	Generally Accepted Standards	1
Loose Women	25/05/2007	ITV1	Generally Accepted Standards	1
MTV Movie Awards	05/06/2007	MTV	Generally Accepted Standards	2
Miss Match	02/06/2007	E4	Generally Accepted Standards	1
Neighbours	24/05/2007	BBC1	Generally Accepted Standards	1
Nick Abbot	14/04/2007	LBC	Generally Accepted Standards	1
Paul Bunker Breakfast Show	11/06/2007	Mercury FM	Offensive Language	1
Pete Price	02/05/2007	Radio City	Generally Accepted Standards	1
QI	19/06/2007	BBC2	Religious Offence	1
Quiz Call	08/04/2007	Five	Competitions	3
Quiz Call	21/04/2007	Five	Competitions	2
Quiz Call	01/04/2007	Five	Competitions	1
Quizcall	22/04/2007	Five	Competitions	2
Quizcall	14/04/2007	Five	Competitions	1
Quizcall	06/05/2007	Five	Competitions	4
Quizcall	07/06/2007	Five	Competitions	1
Radio City 96.7	21/05/2007	Radio City 96.7	Inaccuracy/Misleading	1
Richard & Judy	18/06/2007	Channel 4	Offensive Language	1
Rome	21/06/2007	BBC2	Offensive Language	1
Rome	27/06/2007	BBC2	Sex/Nudity	2
Rome	27/06/2007	BBC2	Offensive Language	1
Rome	20/06/2007	BBC2	Offensive Language	3
Rome	24/06/2007	BBC2	Offensive Language	2
Rome	20/06/2007	BBC2	Violence	1
Rugby: England v South Africa	26/05/2007	Sky Sports2	Generally Accepted Standards	1
Saturday Live	05/05/2007	BBC Radio 4	Generally Accepted Standards	1
Shariah TV	05/06/2007	Channel 4	Crime (incite/encourage)	1
Shark	07/06/2007	Five	Sponsorship	1
Sky News	28/06/2007	Sky News	Generally Accepted Standards	1
Sky News	19/06/2007	Sky News	Animal Welfare	1
Sky News	23/04/2007	Sky News	Due Impartiality/Bias	1
Spanish Property Crash: Tonight	01/06/2007	ITV1	Inaccuracy/Misleading	1
Sunrise With Eamonn Holmes	18/05/2007	Sky News	Commercial References	1
Talk To Me	10/06/2007	ITV1	Generally Accepted Standards	1
Talk To Me	17/06/2007	ITV1	Offensive Language	1
Talk To Me	10/06/2007	ITV1	Religious Offence	1
Talk To Me	17/06/2007	ITV1	Generally Accepted Standards	1

Talk To Me	10/06/2007	ITV1	Crime (incite/encourage)	1
Talk To Me	10/06/2007	ITV1	Offensive Language	1
Terror in the Skies: A Tonight Special	04/06/2007	ITV1	Inaccuracy/Misleading	1
Terror in the Skies: A Tonight Special	04/06/2007	ITV1	Generally Accepted Standards	1
The Apprentice: You're Fired	06/06/2007	BBC2	Generally Accepted Standards	1
The F Word	26/04/2007	Channel 4	Generally Accepted Standards	1
The Farm Revealed	14/06/2007	Channel 4	Generally Accepted Standards	1
The Friday Night Project	08/06/2007	Channel 4	Generally Accepted Standards	2
The Friday Night Project	01/06/2007	Channel 4	Generally Accepted Standards	1
The Graham Norton Show	31/05/2007	BBC2	Religious Offence	3
The Great Big British Quiz	09/12/2006	Five	Competitions	3
The Great British Menu	08/06/2007	BBC2	Generally Accepted Standards	1
The Jeremy Kyle Show	18/06/2007	ITV1	Generally Accepted Standards	3
The Jeremy Kyle Show	05/06/2007	ITV1	Religious Offence	1
The Jeremy Kyle Show	05/06/2007	ITV2	Generally Accepted Standards	1
The Jerry Springer Show	04/06/2007	Living TV	Generally Accepted Standards	1
The Last Detective	31/05/2007	ITV1	Inaccuracy/Misleading	1
The Last Detective	03/05/2007	ITV1	Generally Accepted Standards	1
The Mark of Cain	12/04/2007	Channel 4	Religious Issues	1
The News Quiz	25/05/2007	BBC Radio 4	Religious Offence	1
The Sunday Programme	13/05/2007	ITV2	Generally Accepted Standards	1
The Time Of Your Life	18/06/2007	ITV1	Sex/Nudity	1
The Time Of Your Life	18/06/2007	ITV1	Offensive Language	1
The Weakest Link	28/05/2007	BBC1	Generally Accepted Standards	1
The Wright Stuff	30/05/2007	Five	Generally Accepted Standards	1
The Wright Stuff	11/06/2007	Five	Generally Accepted Standards	1
This Week	17/05/2007	BBC1	Generally Accepted Standards	1
This is Your Life	02/06/2007	ITV1	Inaccuracy/Misleading	1
Tim Marlow with Gilbert and George	05/03/2007	Five	Commercial References	1
Tiswas Reunited	16/06/2007	ITV1	Generally Accepted Standards	1
Today	26/04/2007	BBC Radio 4	Generally Accepted Standards	1
Today	08/06/2007	BBC Radio 4	Generally Accepted Standards	1
Top Gear	28/01/2007	BBC 2	Generally Accepted Standards	1
Totally Doctor Who	08/06/2007	BBC1	Dangerous Behaviour	1
Trinny and Susannah Undress	12/06/2007	ITV1	Offensive Language	1

Trinny and Susannah Undress	05/06/2007	ITV1	Sex/Nudity	1
Trinny and Susannah Undress	05/06/2007	ITV1	Offensive Language	4
UCKG	11/05/2007	Passion TV	Religious Issues	1
UEFA Cup Final	16/05/2007	ITV4	Generally Accepted Standards	1
Wake Up to Wogan	05/06/2007	BBC Radio 2	Generally Accepted Standards	1
Why are we Killing our Daughters	28/01/2007	Channel Punjabi	Generally Accepted Standards	1
Wife Swap	19/06/2007	E4	Animal Welfare	1
Woods and Watson	12/05/2007	Deveron FM	Inaccuracy/Misleading	1
World Business	02/06/2007	CNBC Europe	Due Impartiality/Bias	1
XL	19/02/2007	XL	Generally Accepted Standards	1
You Can Choose Your Friends	07/06/2007	ITV1	Generally Accepted Standards	2
You've Been Framed	16/06/2007	ITV1	Generally Accepted Standards	1
You've Been Framed	26/05/2007	ITV1	Generally Accepted Standards	1