

Ofcom Broadcast Bulletin

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Introduction

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

- a) Ofcom's Broadcasting Code ("the Code") which took effect on 16 December 2009 and covers all programmes broadcast on or after 16 December 2009. The Broadcasting Code can be found at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>.

Note: Programmes broadcast prior to 16 December 2009 are covered by the 2005 Code which came into effect on 25 July 2005 (with the exception of Rule 10.17 which came into effect on 1 July 2005). The 2005 Code can be found at http://www.ofcom.org.uk/tv/ifi/codes/bcode_2005/.

- b) the Code on the Scheduling of Television Advertising ("COSTA") which came into effect on 1 September 2008 and contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken. COSTA can be found at http://www.ofcom.org.uk/tv/ifi/codes/code_adv/tacode.pdf.
- c) other codes and requirements that may also apply to broadcasters, depending on their circumstances. These include the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code. Links to all these codes can be found at <http://www.ofcom.org.uk/tv/ifi/codes/>

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

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

Note to Broadcasters

Provider of a broadcasting service

Ofcom has become aware of an increasing incidence of capacity on broadcasting platforms being 'sub-let' by one person to another. As a result, Ofcom has recently published guidance about who we regard as the person who is the provider of a broadcasting (i.e. TV and radio) service and should therefore hold a broadcasting licence to provide the service. Generally, the provider of the service is the person who is in a position to determine what is to be included in the service or, in the words of the Communications Act 2003, the person “with general control over which programmes and other services and facilities are comprised in the service (whether or not he has control of the content of individual programmes or of the broadcasting or distribution of the service)”.

The full text of the document can be found at the following links:

<http://www.ofcom.org.uk/tv/ifi/guidance/>

<http://www.ofcom.org.uk/radio/ifi/ifi guidance/>

Standards cases

In Breach

Bang Babes

Tease Me, 25 January 2010, 21:00, and 27 January 2010, 21:30

Tease Me 2, 10 February 2010, 21:00

Introduction

Bang Babes is an adult sex chat television service, owned and operated by Bang Channels Limited (“Bang Channels” or “the Licensee”) and available freely without mandatory restricted access on the channels *Tease Me* and *Tease Me 2* (Sky channel numbers 912 and 948). Both channels are situated in the 'adult' section of the Sky electronic programme guide (“EPG”). These channels broadcast programmes after the 21:00 watershed based on interactive 'adult' sex chat services: viewers are invited to contact onscreen female presenters via premium rate telephony services (“PRS”). The female presenters dress and behave in a sexually provocative way while encouraging viewers to contact the PRS numbers.

Ofcom received complaints about the following broadcasts. The complainants said that the content transmitted was too sexually explicit to be broadcast at the time it was broadcast.

Bang Babes, Tease Me, 25 January 2010, 21:00 to 22:00

This broadcast featured a presenter wearing fishnet tights and a skimpy all in one “body” with a g-string back. Her breasts were exposed but with black plasters over her nipples. At various times during the broadcast the presenter adopted sexual positions, including lying on her back with her legs wide open to camera and kneeling on all fours bending over with her buttocks close to camera. While in these positions the presenter repeatedly carried out a number of sexually provocative actions. These included stroking and jiggling her buttocks and breasts close to camera and pulling her buttocks apart to reveal outer labial detail.

Bang Babes, Tease Me, 27 January 2010, 21:30 to 22:15

This broadcast featured two presenters wearing PVC and/or rubber type all in one bodices/corsets. They used various sexual “toys” in a playful but provocative way as props in their performance (including a rubber strap-on dildo, a rubber dildo holder, a ruler and a whip). During the broadcast they adopted various sexual positions, including bending over to camera and opening their legs to camera while both standing and seated. While in these positions, at various times during the broadcast, the presenters’ outer labial areas were revealed due to their skimpy underwear. The presenters stroked their breasts and buttocks, and played with the props suggestively, licking them or using them to hit themselves gently. The two presenters ran their hands and fingers over their g-strings touching their genital areas and just after 22:00 one rubbed her genitalia, simulating masturbation.

Bang Babes, Tease Me 2, 10 February 2010, 21:00 to 21:30

This broadcast featured a presenter with a purple/black bra top and thin g-string with a lace mini skirt over this. Her body and breasts were oiled. The presenter adopted various sexual positions including: bending over while on all fours thrusting her buttocks direct to camera, leaning back with her legs open and moving her body up and down while squatting. While in these positions the presenter tugged at her g-

string to reveal some labial detail and pulled at her buttocks to reveal anal detail. During the broadcast the presenter also simulated insertion of a finger into her vagina, touched her thong around her genital area and licked her fingers suggestively.

Ofcom requested comments from Bang Channels in relation to the following Code Rules:

- Rule 2.1 - the broadcaster must apply generally accepted standards; and
- Rule 2.3 - offensive material must be justified by context.

Response

In relation to each broadcast the Licensee stated the following.

Bang Babes, Tease Me, 25 January 2010, 21:00 to 22:00

The broadcaster said that the broadcast was post watershed and that it was not sufficiently strong enough to cause any problems to viewers, even given its close proximity to the watershed. This broadcast was on a channel in the 'adult' section of the EPG and was entirely consistent with viewer expectation for a channel of this kind. It said that the material as broadcast was no different to that broadcast on any other channel in the 'adult' section of the EPG on the night in question. The broadcaster commented that its right as a broadcaster to freedom of expression under Article 10 of the European Convention on Human Rights should be protected. It said that when balanced with the need to protect viewers from harm and offence in a multi-channel environment, the viewer could exercise his choice simply not to view material which was not to his taste. It said that Sky viewers, for example, could block all adult content should they choose. The broadcaster considered that if it was to be found in breach of the Code in this case, Ofcom would find it difficult to justify its position in light of the broadcaster's rights under Article 10 of the Human Rights Act.

Bang Babes, Tease Me, 27 January 2010, 21:30 to 22:15

Bang Channels stated that this material was in line with audience expectation for a channel of this nature at this time of night. It said it was satisfied that the nature of the broadcast provided sufficient context for the type of material shown. Adequate controls were in place to protect the public in the form of warnings as to the nature of the content, the channel type and position, and the ability of all set top boxes on sale in the UK to restrict access to any channel. It asserted its right that freedom of expression outweighed the potential for offence as individuals could exercise their right to simply not view the material in the first place.

Bang Babes, Tease Me 2, 10 February 2010, 21:00 to 21:30

The Licensee did not believe the footage presented any issues under the Code and that it was broadly consistent with past guidance from Ofcom and no different to anything else transmitted by other broadcasters operating within the same sector. It said there was no case to answer under the Code in this case.

Decision

Ofcom has a duty to ensure that generally accepted standards are applied to the content of radio and television services so as to provide adequate protection from the inclusion of harmful or offensive material. In relation to generally accepted standards, including those in relation to sexual material, Ofcom recognises that what is and is not generally accepted is subject to change over time. When deciding whether or not particular broadcast content is likely to fall within generally accepted standards it is

necessary to assess the character of the content itself and the context in which it is provided.

In relation to the broadcast of material of a sexual nature this normally involves assessing the strength or explicitness of the content and balancing it against the particular editorial or contextual justification for broadcasting the content. Ofcom seeks to ensure that material of a sexual nature, when broadcast, is editorially justified, appropriately scheduled and where necessary, access is restricted to adults.

When setting and applying standards in its Code to provide adequate protection to members of the public from harm and offence, Ofcom must have regard to the need for standards to be applied in a manner that best guarantees an appropriate level of freedom of expression in accordance with Article 10 of the European Convention of Human Rights, as incorporated in the Human Rights Act 1998. This is the right of a broadcaster to impart information and ideas and the right of the audience to receive them. Accordingly, Ofcom must exercise its duties in light of these rights and not interfere with the exercise of these rights in broadcast services unless it is satisfied that the restrictions it seeks to apply are required by law and are necessary to achieve a legitimate aim. Ofcom notes however that a broadcaster's right to freedom of expression, although applicable to sexual content and pornography, is more restricted in this context compared to, for example, political speech, and this right can be legitimately restricted if it is for the protection of the public, including the protection of those under 18.

In considering the contents of each of these programmes Ofcom assessed the strength of the content and then asked itself whether the broadcaster ensured that the content was provided with sufficient contextual justification so as to ensure that it fell within generally accepted standards.

Bang Babes, Tease Me, 25 January 2010, 21:00 to 22:00

In terms of the content of this broadcast, Ofcom considered these sexual images to be strong and capable of causing offence. On a number of occasions the presenter adopted various sexual positions that, on occasions, due to the proximity of the camera and her skimpy underwear, revealed some outer labial detail. She also jiggled her buttocks and breasts to camera in a sexually provocative way.

Ofcom examined the extent to which there were any particular editorial or contextual factors that might have limited the potential for offence. Ofcom noted that this programme was broadcast in the first hour after the watershed and that viewers generally expect on all channels that stronger material will be shown after 21:00, within context. Ofcom took account of the fact that the Tease Me channel was positioned in the 'adult' section of the Sky EPG and that viewers tend to expect the broadcast of stronger sexual material on channels in this section of the EPG than would be expected to be included on other channels in other sections. Further, we noted that if viewers choose, they can block certain channels from the EPG.

Ofcom however noted that content broadcast on this channel changes at 21:00 from daytime chat (whose content must be appropriately limited) to an adult sex chat service, and on this channel - as with all channels broadcasting without mandatory restricted access - the transition to stronger material must not be unduly sudden. However, in this case, given the content was broadcast so soon after the watershed, and that it included images whose strength exceeded this necessary, gradual move to more graphic material, the location of the channel in the 'adult' section of the EPG and the existence of voluntary PIN controls were not sufficient to justify the broadcast of the material at this time. The content shown at this time would have exceeded the

likely expectation of the vast majority of the audience for a channel of this nature and location.

Ofcom does not dispute Bang Channels' right to freedom of expression. However, any content broadcast by an Ofcom licensee must comply with the provisions of the Code. In this case, material was shown soon after the 21:00 watershed which was clearly capable of causing offence and which had limited editorial justification: its aim was to persuade viewers to contact the presenters via PRS. In any event, as already pointed out, the weight attached to freedom of expression is less when it concerns sexual imagery broadcast to promote a product or service or pornography or in terms of protecting the health or morals of those under eighteen.

For these reasons, Ofcom considers that the material breached generally accepted standards at this time of night. Viewers may choose not to watch the channel, as suggested by the broadcaster, but there is the potential for viewers to be offended should they come across the material unawares.

This broadcast therefore breached Rules 2.1 and 2.3 of the Code.

Bang Babes, Tease Me, 27 January 2010, 21:30

Ofcom considered this broadcast in respect of Rules 2.1 and 2.3 of the Code.

In terms of the content of this broadcast, Ofcom considered these sexual images to be strong and capable of causing offence. On a number of occasions the presenters positioned themselves in front of the camera with legs wide apart or bent over in front of the camera in an intrusive way for prolonged periods of time. One presenter also appeared to simulate masturbation at one point in the broadcast, as she was seen rubbing her genitalia in a vigorous way through her underwear. As above, transition to stronger material at the watershed should be gradual and any material broadcast should be justified by context.

Ofcom then examined the extent to which there were any particular editorial or contextual factors that might have limited the potential for offence. Ofcom noted that the programme was broadcast just after the watershed and for the reasons stated above viewers expect a gradual move towards stronger material at this time. Again, Ofcom also took account of the fact that the channel was positioned in the 'adult' section of the Sky EPG and that viewers tend to expect the broadcast of stronger sexual material on channels in this section of the EPG than would be expected to be included on other channels. And, in addition, if viewers choose, they can block certain channels from the EPG.

However, in this case, given the overall content of the broadcast, the intrusive and sometimes prolonged and frequent scenes of a sexual nature and the inclusion of images of the presenters outer labial area (provided for the purpose of sexual arousal), the time of broadcast and location of the channel were not sufficient to justify the broadcast of the material. The material shown was strongly sexual and would have exceeded the likely expectation of the vast majority of the audience watching a channel without mandatory restricted access at this time. Ofcom was also concerned at the degree of offence likely to be caused to viewers who might come across this material unawares. Ofcom concluded that this content was clearly not justified by the context and was in breach of generally accepted standards. The broadcaster's claims to freedom of expression in Ofcom's view did not outweigh the potential for offence to be caused by the failure to observe generally accepted standards.

This broadcast was therefore in breach of Rules 2.1 and 2.3 of the Code.

Bang Babes, Tease Me 2, 10 February 2010, 21:00 to 21:30

In terms of the content of this broadcast, Ofcom considered these sexual images also to be strong and capable of causing offence. On a number of occasions, for example, at the start of the broadcast, the presenter adopted sexual positions that, due to her skimpy underwear, revealed some outer labial and anal detail. The presenter also massaged her oiled breasts very close to camera; spanked herself and pulled at her buttocks to reveal outer anal detail; licked her fingers in a provocative way and mimed insertion of a finger into her vagina; and, in general, she was rubbing and touching herself in a sexually provocative way.

Ofcom then examined the extent to which there were any particular editorial or contextual factors that might have limited the potential for offence. Ofcom noted that the programme was broadcast immediately after the 21:00 watershed and that viewers tend to expect on all channels material of increasing strength to be shown after 21:00, within context. Ofcom took account of the fact that the Tease Me 2 channel was positioned in the 'adult' section of the Sky EPG, and that viewers tend to expect the broadcast of stronger sexual material on channels in this section of the EPG than would be expected to be included on other channels, and that access controls were available.

However, in this case, given the content was so immediately sexual and broadcast so soon after the watershed, and that it included material whose strength exceeded the necessary gradual move to more graphic material, the location of the channel was not sufficient to justify the broadcast of the material and would have exceeded the likely expectation of the vast majority of the audience, despite this being broadcast in the 'adult' section of the EPG. Again, Ofcom was concerned by the degree of offence likely to be caused to viewers who might come across the material unawares. The material had the potential to cause offence and in this regard Ofcom concluded that it exceeded generally accepted standards.

This broadcast therefore breached Rules 2.1 and 2.3 of the Code.

Ofcom is presently considering the imposition of a statutory sanction against Bang Media (London) Limited and Bang Channels Limited for material transmitted between 20 June and 25 November 2009. In light of Bang Media and Bang Channels Limited's serious and/or repeated breaches of the Code and Condition 11 of their licences, and their continued transmission after 25 November 2009 of content which appears similar in nature to that which had already been found in breach of the Code, Ofcom issued them with a Direction on 12 March 2010.

As a result of the serious and repeated nature of the breaches recorded in these current findings, and those recorded against Bang Media (London) Limited elsewhere in this Bulletin and in Bulletin 157, the Licensee is put on notice that these present contraventions of the Code are being considered for statutory sanction.

Breaches of Rules 2.1 and 2.3

In Breach

Tease Me: Earlybird

Tease Me TV (Freeview), 25 January 2010, 07:15

Introduction

Tease Me: Earlybird is a televised daytime interactive chat programme broadcast without mandatory restricted access. Viewers are invited to contact onscreen female presenters via premium rate telephony services (“PRS”). The presenters generally dress and behave in a provocative and/or flirtatious manner. It is part of the service known as Tease Me TV which is broadcast between 03:00 and 09:00 and located on Freeview at channel number 98. Tease Me TV on the Freeview platform is owned and operated by Bang Media (London) Ltd (“Bang Media” or “the Licensee”). Pre-watershed, the channel broadcasts programmes based on interactive chat. Post-watershed, the licensee transmits adult sex chat services. All of this programming is available without mandatory restricted access.

Ofcom received a complaint from a mother of a young child who said her child had flicked onto this channel whilst using the remote control. She had general concerns about this material being broadcast during the day and, in this particular case, on a Saturday morning when children may be watching unsupervised. She was worried about children’s exposure to this type of material and how they could be protected.

Ofcom noted that the female presenter dressed and acted in a sexually provocative manner between 07:15 and 07:45. She wore a black one piece “body” cut high on the thighs with a g-string back. At one point she exposed a nipple. She jiggled her hips, licked her fingers suggestively, touched her inner thighs and inside and around the g-string exposing her labial contours. She also adopted a sexual position, pushing her legs apart (albeit away from camera), and lifting her bottom and gyrating.

Ofcom asked Bang Media for its comments on the broadcast in respect of Rule 1.3 (children must be protected by appropriate scheduling from material that is unsuitable for them) and Rule 2.3 (material which may cause offence must be justified by the context).

Response

With regard to Rule 1.3, Bang Media said that the material in question, while not aimed at children, was no different to material commonly available on music channels aimed at younger teenagers. It said that appropriate scheduling was applied in this instance. The Licensee referred to a previous case in which it alleged Ofcom had said that, because the content of this channel was adequately separated from children’s channels on the Freeview platform, there was no contravention of the Code. Therefore Bang Media said there was also no breach of Rule 1.3 in this instance.

In respect of Rule 2.3, the broadcaster had not noted any exposed nipples in the broadcast. It said that the presenter’s movements were not sexually provocative. Bang Media said that Ofcom had previously provided guidance in which it outlined concern with presenters opening their legs to camera. However, on this occasion the presenter’s legs were facing away from the camera and this therefore was consistent

with the guidance given. The broadcaster concluded that in this particular case it did not consider that the complaint warranted further investigation.

Decision

Rule 1.3 makes clear that children should be protected by appropriate scheduling from material which is unsuitable for them. Appropriate scheduling is judged according to factors such as: the nature of the content; the likely number of children in the audience taking into account such factors as school time; the start and finish time of the programme; the nature of the channel; and, the likely expectations of the audience for a particular channel or station at a particular time and a particular day. It should be noted that the watershed starts at 21:00 and ends at 05:30.

Ofcom has made clear in previous published findings¹ what sort of material is unsuitable to be included in daytime interactive chat programmes i.e. those shown after 05:30. Presenters of daytime chat services should not at any time appear to mimic or simulate sexual acts before the watershed or behave in a sexual manner, by for instance adopting sexual positions. These decisions were also summarised in a guidance letter sent by Ofcom to all daytime and adult sex chat broadcasters including the Licensee in August 2009.

As regards Rule 1.3, Ofcom considered the material was clearly unsuitable for broadcast at this time of day when children may be in the audience. In this case, for a period of around half an hour, the presenter mimicked or mimed sex acts, and behaved in a sexual manner. For example she adopted a sexual position by opening her legs wide (albeit away from camera), and she also exposed a nipple at one point, licked her fingers suggestively, touched herself on and around her genital area, and tugged at her thong which at times exposed the contours of her genitals. We concluded that the content had no editorial justification. Its purpose was clearly sexual stimulation with the aim of attracting PRS income and, in contrary to the broadcaster's assertion, was unlike the content of a music channel video (because, for example, the shots of the presenter here were more prolonged and sexually provocative, and were not edited to music).

In light of this Ofcom went on to consider whether the material was appropriately scheduled. We considered the likely number of children in the audience and the time of the broadcast. Ofcom noted that this material was broadcast on a Saturday morning when children are particularly likely to be in the available audience, some unaccompanied by an adult. While Ofcom noted that the material was broadcast on a channel that is not located directly next to children's channels on the Freeview platform, there was the potential for children, should they be flicking through the Freeview electronic programme guide, to come across the channel unawares. Ofcom then considered the likely expectations of the audience for programmes broadcast at this time of day on a channel without mandatory restricted access. In its opinion,

¹These include: The Pad, Tease Me, 26 February, 11:45, The Pad, Tease Me 3, 27 February 2010, 11:45 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb157/, Tease Me: Earlybird, Tease Me TV (Freeview) 26 January 2010, 07:15 all in Bulletin 157 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb157/; The Pad Tease Me, 6 November 2009, 12:00 to 13:00 and 14:00 to 15:00 Bulletin 152 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb152/; Elite Days finding in Bulletin 151 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb151/; Top Shelf TV Finding in Bulletin 149 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb149/; and Elite Days/Elite TV Finding in Bulletin 144 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb144/.

viewers would not expect to come across such material on this channel or any other unencrypted channel at this time.

Taking into account the factors above, Ofcom concluded that the material was unsuitable for children and not appropriately scheduled so as to protect them from it. Therefore the content breached Rule 1.3 of the Code.

Ofcom noted the broadcaster's assertion that Ofcom had said in other previous cases that this channel was adequately separated from children's channels on the Freeview service. Ofcom accepts that there is some separation of chat channels from children's channels on Freeview. However, Ofcom considers that this separation does not adequately protect children from material that is unsuitable for them.

Ofcom then went on to consider the broadcast against Rule 2.3 of the Code and whether the Licensee applied generally accepted standards. This Rule requires material which may cause offence to be justified by the context. Context includes factors such as: the service on which the material is broadcast and the time of broadcast; the likely expectation of the audience; the extent to which the nature of the content can be brought to the attention of the potential audience; and, the effect of the material on viewers who may come across it unawares.

Ofcom noted the broadcaster's assertion that the material was suitably limited for broadcast at this time of day and that the presenter's movements were not sexually provocative and that her open legs were facing away from the camera. However, as detailed earlier, the presenters outfit barely covered her genital area and her actions (for example, tugging at her g-string and fondling herself on and around her genital area, gyrating her hips, opening her legs wide, rubbing her breasts and exposing a nipple) were clearly for the purposes of sexual stimulation. In Ofcom's opinion this material was capable of causing offence. It therefore required justification by the context.

When broadcasting in the early morning around 07:15, *Tease Me: Earlybird* is a daytime chat service broadcast into viewers' homes without mandatory access restrictions, pre-watershed and on the Freeview platform. Ofcom considered, in particular, the likely expectations of the audience and the effect of the material on viewers who may come across it unawares. In Ofcom's view, audiences at this time of day for services available without mandatory restricted access like those on Freeview would not expect to see sexual imagery of this relatively strong nature to be broadcast. The strength of this particular material went beyond the expectations of the majority of viewers of a daytime chat service.

Taking into account the factors detailed above, in Ofcom's view the material broadcast at this time on this service exceeded generally accepted standards and was in breach of Rule 2.3 of the Code.

Ofcom is presently considering the imposition of a statutory sanction against Bang Media (London) Limited and Bang Channels Limited for material transmitted between 20 June and 25 November 2009. In light of Bang Media and Bang Channels Limited's serious and/or repeated breaches of the Code and Condition 11 of their licences and their continued transmission of content which appears similar in nature to that which had been found in breach of the Code, Ofcom issued them with a Direction on 12 March 2010.

As a result of the serious and/or repeated nature of the breach recorded in this current finding, and those recorded against Bang Channels Limited and Bang Media

(London) Ltd elsewhere in this Bulletin and in Bulletin 157, the Licensee is put on notice that this present contravention of the Code is also being considered for statutory sanction.

Breaches of Rules 1.3 and 2.3

In Breach

Tease Me: Earlybird

Tease Me TV (Freeview), 15 February 2010, 05:30

Introduction

Tease Me: Earlybird is a televised daytime interactive chat programme broadcast without mandatory restricted access. Viewers are invited to contact onscreen female presenters via premium rate telephony services (“PRS”). The presenters generally dress and behave in a provocative and/or flirtatious manner. It is part of the service known as Tease Me TV which is broadcast between 03:00 and 09:00 and located on Freeview at channel number 98. Tease Me TV on the Freeview platform is owned and operated by Bang Media (London) Ltd (“Bang Media” or “the Licensee”). Pre-watershed, the channel broadcasts programmes based on interactive chat. Post-watershed, the licensee transmits adult sex chat services. All of this programming is available without mandatory restricted access.

A viewer complained that the content shown during the *Tease Me: Earlybird* programme of 15 February 2010 between 05:30 and 09:00 showed “semi-naked ladies on display”. The complainant believed this content was inappropriate for broadcast at this time of day on this channel.

Ofcom viewed the material broadcast between 05:30 and 09:00 and noted that the presenter was wearing a black bra and G-string, and black fishnet stockings with suspenders. Throughout the three and half hour broadcast the presenter adopted various sexual positions for prolonged periods of time, including: kneeling with her legs wide open to camera; lying on her side and back with her legs open; lying on her front with her legs open and while doing so positioning her buttocks to camera; and kneeling on all fours. While in these positions the presenter repeatedly gyrated her pelvis and buttocks as though miming sexual intercourse. The presenter also repeatedly touched and stroked her body, including her legs and buttocks.

Ofcom asked Bang Media for its comments on the broadcast in respect of Rule 1.3 (children must be protected by appropriate scheduling from material that is unsuitable for them).

Response

Bang Media said that the material was appropriately scheduled so as to provide adequate protection for children. It stated that the position of the Tease Me TV channel on the Freeview platform provides adequate separation from children’s channels and therefore protection for the under 15s, which amounts to appropriate scheduling. The Licensee referred to previous cases in which it alleged Ofcom had said that, because the content of this channel was adequately separated from children’s channels on the Freeview platform, there was no contravention of the Code.

Bang Media also stated that parental controls are available on Freeview set top boxes, which provide further protections. The licensee referred to recent research by the Association for Interactive Media and Entertainment (AIME), which it said suggests that 90% of Freeview set top boxes on the market come with built in parental controls.

The licensee said that in light of the above the programme did not breach Rule 1.3 of the Code.

Decision

Rule 1.3 makes clear that children should be protected by appropriate scheduling from material which is unsuitable for them. Appropriate scheduling is judged according to factors such as: the nature of the content; the likely number of children in the audience taking into account such factors as school time; the start and finish time of the programme; the nature of the channel; and, the likely expectations of the audience for a particular channel or station at a particular time and a particular day. In particular, it should be noted that the watershed starts at 21:00 and ends at 05:30.

Ofcom has made clear in previous published findings¹ what sort of material is unsuitable to be included in daytime interactive chat programmes. In the context of daytime interactive chat programmes where the presenters generally dress and behave in a provocative and/or flirtatious matter for extended periods in order to solicit PRS calls, the presenters should not for example appear to mimic or simulate sexual acts. These decisions were also summarised in a guidance letter sent by Ofcom to daytime and adult sex chat broadcasters in August 2009. Some of these findings involved Bang Media.

In Ofcom's view the material, broadcast before the watershed was clearly unsuitable for children. During this broadcast the female presenter was wearing very little clothing and also adopted various sexual positions for prolonged periods of time. In particular, she was shown kneeling on all fours, and lying on her front with her legs open and buttocks positioned to camera. While in these positions she behaved in a sexual manner by repeatedly gyrating her pelvis and buttocks as though miming sexual intercourse. During this time she also repeatedly touched and stroked her body. In Ofcom's opinion the imagery shown to viewers had no editorial context other than sexual stimulation. The behaviour of the presenter and her skimpy clothing were intended to be sexually provocative in nature and were not suitable to promote daytime chat. The images were therefore not editorially justified for broadcast at this time.

Ofcom went on to review whether this unsuitable material was appropriately scheduled. Ofcom considered the likely number of children in the audience and the time of the broadcast. Ofcom noted that this material was broadcast at a time when children were likely to be getting ready for school and may have been watching television, some unaccompanied by an adult. While Ofcom noted that the material was broadcast on a channel that is not located directly next to children's channels on the Freeview platform, there was the potential for children, should they be flicking through the Freeview electronic programme guide, to come across the channel

¹These include: The Pad, Tease Me, 26 February, 11:45, The Pad, Tease Me 3, 27 February 2010, 11:45 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb157/, Tease Me: Earlybird, Tease Me TV (Freeview) 26 January 2010, 07:15 all in Bulletin 157 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb157/; The Pad Tease Me, 6 November 2009, 12:00 to 13:00 and 14:00 to 15:00 Bulletin 152 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb152/; Elite Days finding in Bulletin 151 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb151/Issue151.pdf; Top Shelf TV Finding in Bulletin 149 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb149/; and Elite Days/Elite TV Finding in Bulletin 144 at http://www.ofcom.org.uk/tv/obb/prog_cb/obb144/.

unawares. Ofcom then considered the likely expectations of the audience for programmes broadcast at this time of day on a channel without mandatory restricted access. In its opinion, viewers would not expect to come across such material on this channel or any other unencrypted channel at this time.

Taking into account the factors above, Ofcom concluded that the material was clearly unsuitable for children and not appropriately scheduled so as to protect them from it. Therefore the content breached Rule 1.3 of the Code.

Ofcom noted the broadcaster's assertion that Ofcom had said in other previous cases that this channel was adequately separated from children's channels on the Freeview service. Ofcom accepts that there is some separation of chat channels from children's channels on Freeview. However, Ofcom considers that this separation does not adequately protect children from material that is unsuitable for them.

Ofcom also noted the broadcaster's comments that parental controls are available on Freeview set top boxes and its reference to recent research carried out by AIME. While Ofcom recognises that it may be the case that a majority of Freeview set top boxes do now have voluntary parental controls, Ofcom research² shows that only "around one in three households with a multichannel television service have set these [access] controls (34%)". Ofcom therefore does not consider that the existence of parental controls on set top boxes offers enough protection to under-eighteens from viewing unsuitable material of this nature. In any event, broadcasters, under the Code, are required to observe the watershed.

Ofcom is presently considering the imposition of a statutory sanction against Bang Media (London) Limited and Bang Channels Limited for material transmitted between 20 June and 25 November 2009. In light of Bang Media and Bang Channels Limited's serious and/or repeated breaches of the Code and Condition 11 of their licences and their continued transmission of content which appears similar in nature to that which had been found in breach of the Code, Ofcom issued them with a Direction on 12 March 2010.

As a result of the serious and/or repeated nature of the breach recorded in this current finding, and those recorded against Bang Media and Bang Channels Limited elsewhere in this Bulletin and in Bulletin 157, the Licensee is put on notice that this present contravention of the Code is also being considered for statutory sanction.

Breach of Rule 1.3

² UK children's media literacy at:
http://www.ofcom.org.uk/advice/media_literacy/medlitpub/medlitpubrss/uk_childrens_ml/full_report.pdf

In Breach

Special Message

AT, 17 September 2009, 20:39

Introduction

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

Two viewers were concerned that AT broadcast an extended appeal, *Special Message*, over a number of days, to raise £300,000 “to save” two orphans. One complainant believed the funds raised were likely to be given to criminals. The other complainant suspected the appeal was not for a registered charity.

The programme was presented in Urdu and we therefore obtained a full translation. Having considered this, Ofcom identified two issues of concern:

- the status of the broadcast appeal; and
- an on-air reference to a complaint received by Ofcom.

Status of the broadcast appeal

The studio guest sought donations from viewers and responded to viewers’ live telephone calls. Details of a bank account were broadcast on screen but viewers were not told on behalf of what organisation donations were being sought. No information appeared to be provided on air to explain how viewers’ donations would help two orphaned girls that had been mentioned.

Rule 10.13 of the Code states:

“Charity appeals that are broadcast free of charge are allowed in programmes provided that the broadcaster has taken reasonable steps to satisfy itself that:

- the organisation concerned can produce satisfactory evidence of charitable status, or, in the case of an emergency appeal, that a responsible public fund has been set up to deal with it; and
- the organisation concerned is not prohibited from advertising on the relevant medium.”

Ofcom therefore asked AT to provide a full schedule of when the appeal was broadcast on the channel and, with regard to Rule 10.13 of the Code, the following details:

- the organisation for which the appeal was broadcast;
- the action taken by AT, prior to the broadcast of the appeal, to satisfy itself of the charity’s / emergency appeal’s status;
- the holder of the bank account screened during the broadcast; and

- confirmation of whether donated funds were intended to be used to secure the release of kidnapped children and, if so, to whom the funds were ultimately to be given.

On-air reference to a complaint received by Ofcom

During the broadcast the studio guest stated that a complainant to Ofcom had said “*that on this TV, an appeal is being made to save orphan girls, it should not be allowed*”, adding, “*So Ofcom have written to me to ask me – saying OK this is fine...*”

At the time of broadcast, Ofcom had already requested from AT a recording of the appeal it had broadcast the previous day (16 September 2009) and the broadcaster was therefore aware of the complaint in question.

Rule 2.2 of the Code states, among other things, that:

“...portrayals of factual matters must not materially mislead the audience.”

With regard to this rule, Ofcom asked AT:

- what the studio guest meant when he referred to “*Ofcom ... saying OK this is fine...*”; and
- why he said it.

Response

Status of the broadcast appeal

AT said that it was unable to provide a full schedule of when the appeal was broadcast on the channel, as 90% of its studio equipment had recently been stolen.

The broadcaster added that the broadcast appeal was “made for” (i.e. on behalf of) an individual, who it named and who it said was currently in a village near Pashawar (in North-West Frontier Province), Pakistan.

AT did not respond further, with regard to Rule 10.13 of the Code.

On-air reference to a complaint received by Ofcom

AT did not respond, with regard to Rule 2.2 of the Code.

Decision

Status of the broadcast appeal

Ofcom noted the circumstances in which AT said it had had lost its studio equipment. However, we could see no connection between this event and the broadcaster’s inability to provide a broadcast schedule for the appeal in question.

Broadcasters may conduct in programmes, and free of charge, appeals for legitimate charities or publicly-recognised emergencies.

However, in this instance, from the information provided by the broadcaster, the beneficiary of the broadcast appeal appeared to be a private individual. Further, AT provided no evidence or assurance that it had taken any steps to satisfy itself that the beneficiary:

- was not prohibited from advertising on television; and
- had charitable status; or
- was an emergency appeal for which a responsible public fund had been set up.

The broadcast was therefore in breach of Rule 10.13 of the Code.

On-air reference to a complaint received by Ofcom

In the absence of any response from the broadcaster on this issue, Ofcom was unclear why the studio guest had referred to the complaint about which we had sought a recording from the broadcaster. However, whatever the purpose of this reference, Ofcom considered that the studio guest's additional comment (i.e. "*Ofcom ... saying OK this is fine...*") was likely to be understood by viewers as an endorsement of the broadcast appeal's legitimacy.

Ofcom does not approve editorial content for broadcast. In this instance, the broadcaster was aware that Ofcom was not in a position to provide a view that such an appeal was in accordance with its rules, as it knew we were investigating a complaint on the matter.

As stated in Ofcom's guidance to Rule 2.2, the rule is "designed to deal with content that materially misleads the audience so as to cause harm and offence."

In Ofcom's view, AT's inaccurate portrayal of this issue had the potential to mislead viewers that the appeal had been endorsed, in some form, by its regulator. Given that some on-air callers had expressed doubt about the appeals, Ofcom considered that the inaccurate portrayal of this matter may have encouraged viewers to donate to the broadcast appeal who would not otherwise have done so. In materially misleading the audience in this way, the broadcast was likely to cause harm and was in breach of Rule 2.2 of the Code.

Ofcom is particularly concerned by the serious nature of these breaches, in which financial donations were being sought from the audience, with the potential for viewers to be materially misled. Ofcom therefore puts the broadcaster on notice that, should any similar breaches recur in future, it is likely to consider further regulatory action.

Breaches of Rules 2.2 and 10.13

In Breach

CNN YouTube Debate on Climate Change

CNN International, 16 December 2009, 20:00

Introduction

The CNN International channel broadcasts news, current affairs and business programming as well as documentaries on the cable, satellite and Digital Terrestrial Television (Freeview) platforms.

Turner Broadcasting System Europe Limited holds the Television Licensable Content Service (TLCS) licence for the broadcast of CNN International on both the cable and satellite platforms. On the Freeview platform, Turner Entertainment Networks International Limited holds the Digital Television Programme Service (DTPS) licence.

Turner Broadcasting System Europe Limited and Turner Entertainment Networks International Limited are both owned by the same parent company, and is referred here as "Turner".

CNN YouTube Debate on Climate Change was sponsored by Siemens. The hour-long debate was broadcast from Copenhagen, Denmark, during the period that the United Nations Copenhagen Climate Change Summit¹ was being held. The programme consisted of videos which members of the public had uploaded via YouTube. The videos shown on the programme were a mixture of songs, poems and views about climate change as well as questions for the panellists.

The four panellists in the studio were:

- Yvo De Boer, Executive Secretary of the United Nations Framework Convention on Climate Change;
- Daryl Hannah, actress;
- Thomas Freidman, New York Times columnist and author of 'The World is Flat' and 'Hot, Flat & Crowded'; and
- Bjorn Lomborg, Director of the Copenhagen Consensus Centre and author of 'Cool It: The Skeptical Environmentalist's Guide to Global Warming'.

During the programme, Kofi Annan, former UN Secretary General and Chairman of the African Progress Panel, was brought into the studio debate from Geneva, Switzerland via a satellite link.

A viewer objected to the programme being sponsored because "the debate centred on many aspects of current politic [sic], public and industrial controversy, subjects that were heavily featured in news broadcasts during that week and which could only be considered to be current affairs – therefore not eligible for sponsorship".

Ofcom noted that questions put to the panel via YouTube included²:

¹ The Climate Summit was held in Copenhagen between 7 and 18 December 2009.

² These questions are a summary of those put to the panel by the presenter and prompted by the viewer videos. They are not quotations.

- How important is a deal on climate change and how seriously are world leaders taking the issue of climate change?
- Why don't people acknowledge the evidence that suggests that climate change is not caused by humans?
- Will there be penalties for countries which do not meet their targets to reduce CO2 emissions? / How would the world police any agreement?
- How many African leaders were invited to the UN Climate Summit in Copenhagen?
- What can Africa do to help itself in relation to climate change?
- People from poorer nations are demanding action from world leaders, are they getting it?
- How valid is a global carbon tax? / Why are individuals taxed rather than the giant corporations?
- People feel disenfranchised in relation to climate change - how do we get them more involved?

Ofcom also noted that throughout the programme there were various references to YouTube, including:

- The presenter informing the audience: *"Hello and welcome to our programme – the CNN YouTube Debate on Climate Change...this is a little different to the forums that most of you will have been used to seeing. I will be moderating but I won't be asking the questions. Through our partnership with YouTube, everyone around the globe has had the chance to be a part of this discussion."*
- The name of the programme – *CNN YouTube Debate on Climate Change* – which included the YouTube logo was displayed on one wall of the set and also on a television screen between the presenter and the panel at times when this screen was not being used to show videos. The name of the programme with the YouTube logo also appeared continuously in a digital on-screen graphic in the bottom right-hand corner of the screen.
- The videos uploaded via YouTube appeared on a full screen mocked-up YouTube page, which displayed in the search bar the name of the person who had uploaded the video. Green graphic footprints were shown across the page to reflect the green footprints used on the set and in other on-screen graphics.

Ofcom asked Turner for its comments on the programme with regards to Rule 9.1 of the Code which states that news and current affairs programmes may not be sponsored.

In relation to the visual and verbal references to YouTube throughout the programme, Ofcom asked Turner for its comments with regard to Rule 10.5 of the Code which states that product placement is prohibited.

Response

Rule 9.1

Turner said that in its opinion the *CNN YouTube Debate on Climate Change* was not a current affairs programme. Turner continued that the debate was associated with climate change which it considered falls within "the lifestyle genre" rather than the current affairs genre. The broadcaster argued that the "foundation for the discussion was the personal opinions of ordinary citizens from around the world – as submitted in videos to a specific CNN area on the YouTube channel. There were personal

statements, poems, musical adaptations from a wide range of people from around the world and these thoughts provided the focus/questions/ideas for the panel discussion.”

Rule 10.5

Turner informed Ofcom that the programme was not sponsored by YouTube, “there was no commercial relationship between YouTube and the programme. Neither was there any influence to the editorial content of the programme by YouTube”.

The broadcaster explained that the public were invited to participate in the event via the YouTube platform and that was how the content and information for the debate was obtained. Turner said that the references to YouTube within the programme were to inform the viewer of this relationship and were “consistent with the common practice in factual programme production with regard to information providers”. Turner added that “complete transparency [was] necessary to show how the video clips were obtained and selected.”

Turner said that no undue prominence was given to any product or service within the programme and that all third party brand references were editorially justified. Turner added that “no product was placed within the programme”.

Having considered Turner’s submission, Ofcom requested from Turner a copy of any contractual agreements that existed between CNN and Google (the owner of YouTube).

The contract provided by the broadcaster set out the format of the programme, how it would be publicised and promoted, and the responsibilities assigned to each party. There was no financial element to the contract, rather it provided mutual benefits to each party. Ofcom noted, in particular, that in exchange for the promotion of the programme on the Google and YouTube websites, and the provision of the YouTube platform, CNN committed to providing Google and YouTube with extensive visual branding references during the programme. As a result, CNN agreed to:

- “prominently integrate YouTube and Google branding the COP15³ Townhall Event⁴ set”; and
- “ensure that when each YouTube harvested question is played to the audience, panellists and on television, each such question will be in a ‘frame’ with the YouTube logo prominently displayed as part of the graphic.”

Turner subsequently explained that this contract had been based on an agreement with Google/YouTube that had been used previously for other feeds of the CNN International service that are not licensed by Ofcom. The broadcaster stated that in this subsequent use of the contract, “the fact that the programme was intended for an Ofcom licensed feed was overlooked and so no express reference to compliance with the Broadcast Code was included”.

Turner went on to state that “despite what the contract provided”, the programme had been subject to CNN’s compliance checks, and the opinion of the CNN production

³ COP15 stands for the 15th meeting of the Conference of the Parties to the United Nations Framework Convention on Climate Change.

⁴ COP15 Townhall Event was the working title of the programme.

staff who had checked the programme was that the references to YouTube “as an information provider” did not constitute undue prominence.

Decision

Rule 9.1

Rule 9.1 of the Code prohibits news and current affairs programmes on television from being sponsored. This rule is directly derived from the requirements of the Audiovisual Media Services (AVMS) Directive⁵. It supports the important principle of editorial independence and impartiality in news and current affairs. A broadcaster’s editorial control over the content of its news and current affairs programming should not be, or appear to be, compromised.

The Code states:

“A current affairs programme is one that contains explanation and analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy.”

Ofcom did not accept Turner’s submission that the debate fell within the genre of “lifestyle” programming, rather than the current affairs genre. Ofcom noted that as well as the “personal statements, poems, musical adaptations”, the videos played during the programme also contained specific questions for the panel to debate such as⁶:

- How important is a deal on climate change and how seriously are world leaders taking the issue of climate change?
- Why don’t people acknowledge the evidence that suggests that climate change is not caused by humans?
- Will there be penalties for countries which do not meet their targets to reduce CO2 emissions? / How would the world police any agreement?
- How many African leaders were invited to the UN Climate Summit in Copenhagen?
- What can Africa do to help itself in relation to climate change?
- People from poorer nations are demanding action from world leaders, are they getting it?
- How valid is a global carbon tax? / Why are individuals taxed rather than the giant corporations?
- People feel disenfranchised in relation to climate change - how do we get them more involved?

The panel debated the answers to these questions about climate change during the period in which the UN Copenhagen Climate Change Summit was being held. The summit was a topic of extensive international discussion during the week which this programme was broadcast. The programme also contained an interview with Kofi Annan, former UN Secretary General and Chairman of the African Progress Panel.

Therefore Ofcom considered that the programme clearly contained explanation and analysis of current events and issues, and discussion of matters of international

⁵ Article 3(f)(4) of the Audiovisual Media Services Directive states that: “News and current affairs programmes shall not be sponsored”.

⁶ See footnote 2.

public policy. Ofcom concluded that the programme met the definition of a current affairs programme, and should not have been sponsored. As a result, the programme was in breach of Rule 9.1 of the Code.

Rule 10.5

One of the fundamental principles of Section Ten of the Code is that clear separation is maintained between advertising and programming (that is, editorial content). In this case, a contractual arrangement had been drawn up, in which it was a condition that CNN would display and integrate “prominently” a range of visual references to YouTube within the programme, including its branding and logo. In return, Google would promote the programme on the Google and YouTube websites, and provide the YouTube platform for viewers to submit their questions by video. Ofcom judged that this arrangement amounted to product placement.

Product placement is the inclusion of, or reference to, a product or service within a programme in return for payment or other valuable consideration to the programme maker or broadcaster (or any representative or associate of either).

In exchange for the promotion of the programme, and the provision of the YouTube platform, CNN had agreed to provide Google and YouTube with extensive visual branding references during the programme. Ofcom considered this to be a valuable consideration to the broadcaster.

Ofcom noted Turner’s submission that the references to YouTube, as an information provider, did not constitute undue prominence. However, as the references resulted from a product placement arrangement, they were unacceptable under the Code, regardless of any possible editorial justification.

Ofcom therefore found the programme in breach of Rule 10.5 of the Code.

Ofcom was concerned that, when drafting the contract for this programme, Turner had “overlooked” that the programme would be broadcast on its Ofcom licensed service.

These breaches will be held on record in relation to the following licences:

- TLCS 103 licensed to Turner Broadcasting System Europe Limited.
- DTPS 042 licensed to Turner Entertainment Networks International Limited.

Breaches of Rules 9.1 and 10.5

In Breach

Wedi 7

S4C, 1 March 2010, 19:00

Introduction

Wedi 7 is a live early evening magazine programme, broadcast on weekdays on S4C, the Welsh television channel aimed specifically at a Welsh-speaking audience. The programme regularly features a competition in which viewers are invited to contact the studio by telephone to select one of three possible answers to a question, for the chance of winning a prize. Calls from a BT landline are charged at 5 pence.

Ofcom received a complaint from a viewer who had attempted to enter the competition promoted during the programme on 1 March 2010. The competition was promoted as being open to enter until 2.30pm the following day, and the prize on offer was a television. The complainant said that, despite calling within the timeframe stipulated during the programme, his call was answered with a recorded message that advised that lines were closed.

Ofcom therefore sought comments from the broadcaster under Rules 2.13 and 2.14 of the Code.

- Rule 2.13 states that: “Broadcast competitions...must be conducted fairly.”
- Rule 2.14 requires that: “Broadcasters must ensure that viewers...are not materially misled about any broadcast competition”.

Response

S4C explained that the programme’s production company regularly uses a third party service provider to administer telephone competitions. It said that, unfortunately on this occasion, the programme’s producer “forgot to ring [the telephone service provider] to inform them that there was a competition that evening”. Consequently, the telephone lines were not operational.

The broadcaster said that the production company realised the error directly after the programme had aired and upon doing so, immediately contacted the broadcaster to inform it of the problem.

S4C said that it was decided that the competition should be re-run at the earliest opportunity. During the following day’s edition of *Wedi 3* (a similar programme broadcast in the afternoon) and *Wedi 7*, viewers were informed of the problems of the previous evening and told that the competition was to be replayed with additional prizes for 20 runners up. Both programmes also included an apology and instructions about how entrants could be reimbursed. S4C said that in light of this incident, the production company has adopted a new system whereby a number of people are responsible for ensuring that telephone lines are prepared, instead of solely the producer, which was the case beforehand.

The broadcaster said that 2,800 viewers called to enter the competition promoted on 1 March 2010 but as lines were closed, were unable to register their entry. It added

that one viewer had contacted the production company to request that her refund be donated to charity. The production increased this donation to £5.

Whilst it recognised the error, S4C wished to point out that this was an isolated incident and that it did not purposely mislead the audience or seek to cover up the mistake once it had been discovered. Furthermore, in view of the additional responsibilities given to other production staff, the broadcaster was confident that the error would not be repeated.

Decision

Ofcom noted the remedial action undertaken to ensure entrants had the opportunity of obtaining a refund and participating in the competition when it was held again the following day. It also acknowledged that this was a genuine error and accepted that the broadcaster had not deliberately sought to mislead viewers about the competition, or withhold access to the competition lines after inviting viewers to enter.

However, Ofcom had concerns about the compliance procedure in place in relation to the competition telephone line. Merely relying on an individual to notify the call handling provider about the competition was not, in Ofcom's view, a sufficiently robust method of ensuring that lines were set up or being operated correctly. On this occasion, during a live production, the person responsible forgot to inform the provider, which led to the broadcast of a closed competition that a significant number of viewers attempted to enter.

Viewers were invited to enter a competition which they had no chance of winning. The competition was clearly not conducted fairly, in breach of Rule 2.13. Furthermore, although the cost to enter the competition was low, the broadcaster had nevertheless failed to ensure that its viewers were not materially misled by this competition, in breach of Rule 2.14.

In recent years, Ofcom has recorded numerous breaches of its rules relating to the running of broadcast competitions and has issued extensive guidance¹ on how they should be conducted to ensure their compliance with the Code. While welcoming the subsequent actions taken by S4C, Ofcom was nevertheless concerned that prior to this incident, the broadcaster had considered that its process of setting up competition telephone lines was adequate.

Breaches of Rules 2.13 and 2.14

¹ http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/section2_2009.pdf

In Breach

Asiana Bridal Show 2010

Sunrise TV, 21 February 2010, 20:00

Introduction

Sunrise TV is a channel aimed at the UK Asian audience.

The Asiana Bridal Show is an annual event held over two days. It features a range of exhibitors that provide a variety of wedding services such as clothing, photography and catering. The event is co-sponsored by Sunrise TV and a number of other companies.

Sunrise TV broadcast a three-part series covering the highlights of the event. The third programme, shown on 21 February 2010, featured a series of interviews with exhibitors, which contained information about the products they offered. Ofcom received a complaint from a viewer who considered that the interviews in the programme amounted to advertisements for the businesses featured.

Ofcom viewed the programme and noted that during a number of these interviews, the presenter prompted interviewees to give the contact details for their business. In one case, contact details for an exhibitor were provided by the interviewer.

Ofcom sought the broadcaster's comments on the programme in relation to the following Code rules:

- Rule 10.3 – Products and services must not be promoted within programmes;
- Rule 10.4 – No undue prominence must be given to in any programme to a product or service; and
- Rule 10.5 – Product placement is prohibited.

Response

Sunrise TV confirmed that no contractual arrangements existed between itself and exhibitors in respect of the interviews that were broadcast.

Sunrise TV also confirmed that it maintained editorial control over all aspects of the broadcast.

Sunrise TV explained that the event has been running for a number of years and has become an important part of the Asian calendar and the build up to the Asian wedding season. While some of the exhibitors at the event were national companies, the vast majority were small businesses with limited national recognition.

It was against this backdrop that the programme's format was designed, not only to showcase the current year's fashions, but also to provide viewers with information about exhibitors and the scope of the show.

Sunrise acknowledged that the event itself was "designed as a promotional vehicle for the exhibitors". It therefore recognised the importance of balancing the provision

of information to viewers in an entertaining and informative programme against the requirements of the Code. When producing the series, the broadcaster said it was careful to avoid giving sponsor logos and exhibitor information a level of prominence that contravened the Code's requirements. Further, it interspersed the interviews with footage from the event's catwalk show to provide viewers with "an insight into the whole wedding event".

Sunrise TV did not believe that the programme was distorted for commercial purposes. However, it accepted that in some instances, "the presenter afforded interviewees the opportunity to go beyond providing informative comment, and allowed them to provide contact details", which it acknowledged could be interpreted as promotional. It recognised that these elements could have been better edited to ensure compliance.

Decision

Ofcom notes Sunrise TV's confirmation that it had no contractual arrangement with any of the exhibitors in relation to the interviews. We therefore found no evidence of a breach of Rule 10.5 (product placement).

Ofcom accepts that, in the context of a programme covering an exhibition such as this wedding fair, viewers would expect to see information about the exhibitors and their services. In this context, we consider that the prominence given to the exhibitors was not excessive and was editorially justified. Therefore, we found no breach of Rule 10.4 (undue prominence).

However, this editorial justification did not extend to those instances where the interviewer prompted interviewees specifically to provide their contact details. On several occasions, the presenter asked certain interviewees: "*if somebody wants to get in touch...where are you?*" This resulted in exhibitors providing details of their business' location, telephone number or website. The effect of these references was to promote the businesses in question, in breach of Rule 10.3.

Breach of Rule 10.3

Resolved

(Celebrity) Big Brother's Big Mouth

E4, 29 January 2010, 23:05

Introduction

Big Brother's Big Mouth ("BBBM") is the 'sister programme' to Channel 4's main *Big Brother* series. It is transmitted live and is broadcast post-watershed and looks at events in the Big Brother House with a studio audience and celebrity guests. It provides a platform for fans to voice their views, put questions to the evicted housemates and discuss the latest events in the house. Viewers are able to contribute to the programme by phone, e-mail, text polls, or by leaving a message on the 24-hour "Mouthpiece" rant line.

This series of BBBM accompanied the 2010 series of Celebrity Big Brother ("CBB"). The series included six episodes which were mainly broadcast on E4 on Fridays at 23:00.

This episode of the programme was intended as the last ever episode of Celebrity BBBM, in light of the fact Channel 4 had announced it had no plans to make further series of CBB. It was broadcast the same night as the CBB series finale and followed the Channel 4 coverage of the event. The programme was presented by Davina McCall, who also presented CBB on Channel 4. It was preceded with a warning which stated:

"First on Four, with strong language, adult humour and flashing images, the Big Mouth on a big event, Celebrity Big Brother."

The programme featured previously evicted celebrity housemates, including the five finalists. One of the guests on the programme was Vinnie Jones, who came third in the competition and had been evicted from the CBB house that night. During the programme a member of the studio audience asked Mr Jones how he had known instantly that the person who came into the house disguised in a chicken outfit was Ms McCall and not fellow housemate Nicola Tappenden. In response to the question, Mr Jones said:

"she was walking like a retard, she was walking like this [he then demonstrated walking with difficulty] and our Nicky walks lovely..."

Ms McCall then responded by saying:

"I do not walk like a retard".

Complaints

Ofcom received eight complaints about the programme. In summary, all of the complainants were offended by the use of the term *"walking like a retard"* by Mr Jones, and the demonstration he gave after saying the comment. Seven of the complainants were also offended by the response from the presenter, Ms McCall, who had repeated the phrase. Four of the complainants also raised concerns that Ms McCall had appeared to enjoy the 'joke' and did not reprimand Mr Jones for the comment.

In line with Ofcom's procedures, the complaints were initially considered by the Executive without representations being requested from Channel 4. On 18 February 2010, Ofcom wrote to Channel 4 informing them that eight complaints had been received but not upheld. Ofcom stated that it was mindful of the overall context of the programme and decided on balance that there was not sufficient evidence to conclude that the word was necessarily intended to be offensive to anyone with learning difficulties. However, given the potential for such terms to cause offence, guidance was given to Channel 4. Ofcom stated that it takes the use of discriminatory language extremely seriously and reminded Channel 4 of the need to approach the broadcast of such language with sensitivity and care.

Two of the complainants requested a review of this decision. One of these requests was not initially treated as asking for a formal review and Ofcom instead wrote to the complainant again explaining its original decision. However, following further correspondence, Ofcom considered the two requests for review and, in accordance with Ofcom's Procedures for the handling of broadcasting standards or other licence-related cases¹, it was decided to refer the case to the Broadcasting Review Committee² ("the Committee") because the reasoning of the original decision was insufficient.

Ofcom asked Channel 4 to submit written representations in relation to the requests for review and on how the relevant section of the programme complied with Rule 2.3 of the Code (which requires material that may cause offence must be justified by the context).

Response

In response, Channel 4 stated that the programme had "an established reputation for its irreverent humour and outspoken content" and that the comments "would not have exceeded the expectation of the audience watching at this time of night".

Channel 4 said, however, that it acknowledged that the comments could have caused offence to some viewers notwithstanding that, in this instance, the word was not directed at someone with a physical or mental disability. It added that the comment "referred directly to Davina as part of a throw away banter between her and Vinnie Jones regarding the way she walked" and that "the comment was not used with the intention of offending anyone with learning difficulties".

However, Channel 4 stated that after complaints were made about the comments the programme was reviewed by the commissioning team responsible for Celebrity Big Brother, together with the Channel's Diversity Advisor.

Channel 4 stated that the commissioning team regretted that "in the heat of the moment during a live programme" the comment by Mr Jones was allowed to go unchecked. It said that "Channel 4 would normally respond to a comment of that nature by asking the presenter to admonish the person responsible and if appropriate, apologise to the audience". However on this occasion, due to the

¹ <http://www.ofcom.org.uk/tv/ifi/guidance/standards/>

² The Broadcasting Review Committee is a sub-committee of the Ofcom Board consisting of members of the Ofcom Content Board. It reviews the decisions of the Ofcom Executive in fairness and privacy investigations, broadcasting standards investigations and other licence-related cases where either the complainant or the licensee is able to demonstrate that the decision is materially flawed.

circumstances of the broadcast, including the very end of an intensive final-eviction day, this did not happen.

Channel 4 informed Ofcom that, in response to a complaint dated 9 February 2010 from one of the complainants, it had apologised on 10 February 2010 on behalf of Channel 4, the programme makers and Ms McCall, and had confirmed that it had removed these comments from its Video on Demand service (4OD) version of the programme.

Channel 4 also stated that when BBBM returns in the summer it would ensure that the programme making team and presenters were reminded of the importance of taking prompt action when contributors or guests make inappropriate comments. Channel 4 argued that, in the light of the prompt action it had taken, the complaints should be resolved.

Decision

Ofcom has a duty to ensure that *generally accepted standards* are applied to the content of radio and television services so as to provide adequate protection from the inclusion of harmful or offensive material. In applying those standards, Ofcom is required, by the Communications Act 2003, to do so “in the manner that best guarantees an appropriate level of freedom of expression”.

In relation to generally accepted standards, including those in relation to offensive or discriminatory language, Ofcom recognises that what is and is not generally accepted is subject to change over time. When deciding whether or not particular broadcast content is likely to fall within generally accepted standards it is necessary to first assess the character of the content itself and then assess the context in which that content is broadcast. In the case of discriminatory language this would involve assessing the potential for offence and balancing that against the particular editorial or contextual justification for broadcasting such language.

Importantly, Ofcom does not prohibit the use of any words. Broadcasters may be able to justify the broadcasting of language and material which the audience may find offensive.

The Committee first examined the language used in this case in order to assess the potential it had for causing offence. In doing so the Committee recognised that the use of discriminatory language of this nature can be profoundly offensive to some viewers as it singles out a minority in society. Ofcom’s own research³ into offensive language identified that the word “retard” is quite polarising. Those people who consider it offensive do so because it is a derogatory term that refers to a disability.

The Committee recognised that the potential offence caused by a discriminatory word such as “retard” depends on the context in which it is used. For example, when using such words in a scripted drama the potential to offend may be lessened as the language may be used to identify the views or personality traits of a particular fictional character.

In the Committee’s opinion, however, the comments made by both Mr Jones and Ms McCall in this programme were clearly capable of causing offence. In reaching this view, the Committee noted that the use of the word “retard” by Mr Jones, although

³ “Language and Sexual Imagery in Broadcasting: A Contextual Investigation”, September 2005

arguably intended as a joke and not aimed at an individual with learning difficulties, could be seen as being a comment on people in society with a particular disability. This was reinforced by Mr Jones demonstrating walking with difficulty when imitating the way in which Ms McCall had walked. Mr Jones then unfavourably compared the walk with that of fellow housemate Nicola Tappenden, which he described as “lovely”. It was the Committee’s view that his use of the word “retard” was capable of being understood not as merely a passing reference directed towards Ms McCall, but also as ridiculing those with a physical or learning difficulty, emphasised by his attempt at imitation.

The Committee was particularly concerned that not only was Mr Jones’ comment not corrected but that it was repeated by the presenter, Ms McCall, without any apparent recognition of its potential to cause offence. The Committee, while acknowledging this was a live show, considered that in this instance the action of Ms McCall had the potential to heighten the offence to viewers.

The Committee was also concerned that the programme makers took no action during the programme to seek to mitigate the offence that would have been caused by the comments. The Committee noted Channel 4’s admission that it “would normally respond to a comment of that nature by asking the presenter to admonish the person responsible and if appropriate, apologise to the audience”. It said that, due to human error, it had failed to do so on this occasion.

In the Committee’s opinion that failure suggested a lack of understanding during the live broadcast of how offensive the comments had been.

The Committee then examined any other contextual factors which might have limited the potential for offence. It took account of the fact that *Big Brother’s Big Mouth* is well known for its irreverent style, outspoken humour and studio banter, and that many viewers are familiar with this format. It also noted that this programme has always been broadcast live and well after the watershed, and that this particular broadcast was preceded by a warning about the content. The Committee recognised that viewers would have expected the programme to contain challenging humour as well as material likely to offend.

However, the Committee concluded that, on balance and in the circumstances of this particular case, there was insufficient context to justify the offence that was likely to be caused by the comments made during the programme. Therefore the broadcast breached generally accepted standards.

The Committee then went on to consider whether Channel 4 had taken immediate and appropriate steps to remedy this breach of generally accepted standards. The Committee noted the action taken by the broadcaster in response to the complaints made about the programme. In particular Channel 4 had voluntarily removed the comments from the Video on Demand (4OD) version of the programme after an internal review (albeit this was in response to a complaint several days after broadcast by an individual who is also a complainant in this case), and had apologised in writing to the complainant. The Committee also noted the measures taken by Channel 4 to ensure this does not happen again. The Committee considered these measures appropriate to remedy the breach of generally accepted standards and therefore considered the case resolved.

Resolved

Advertising Scheduling cases

In Breach

Advertising minutage

Kix!, Pop, Pop Girl, Tiny Pop, True Entertainment, True Movies, True Movies 2, various dates and times

Introduction

Rule 4 of the Code on the Scheduling of Television Advertising (“COSTA”), states: “time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes”.

Rule 16b of the Code states: “children’s programmes (other than schools programmes) with a scheduled duration of 30 minutes or less may not include an advertising or teleshopping break. Such programmes with a scheduled duration of longer than 30 minutes may have one break for each scheduled period of at least 30 minutes”.

Both of these rules implement the requirements of European legislation, the Audiovisual Media Services (AVMS) Directive.

As part of Ofcom’s routine monitoring of broadcasters’ compliance with COSTA, Ofcom observed that between 15 February and 2 March 2010, there were 48 separate instances, across Kix!, Pop, Pop Girl, Tiny Pop, True Entertainment, True Movies and True Movies 2 where the broadcaster appeared to have transmitted more than the permitted allowance of advertising in one clock hour.

Upon further monitoring, Ofcom also observed that between 1 and 28 February 2010, there were several instances across children’s channels; Tiny Pop, Kix!, Pop Girl, Pop, where the broadcaster appeared to have transmitted more than the permitted allowance of advertising breaks in a programme.

Ofcom wrote to CSC Media Group Ltd, the licence holder for *Kix!, Pop, Pop Girl, Tiny Pop, True Entertainment, True Movies and True Movies 2*, for its comments under Rule 4 and Rule 16 of COSTA.

Response

On this issue of minutage overruns, the licensee noted the severity of the incidents identified, which had occurred as a result of both human error and technical failures. As a result, the broadcaster explained it had retrained their staff on the need to comply with COSTA. Furthermore, the licensee stated it had undertaken and paid for significant enhancements to their scheduling software to better alert staff to potential overruns. In addition to this improved system, staff would be instructed to run manual checks on a daily basis.

On the issue of break pattern infringements, the licensee confirmed that all of its children’s channels had migrated to new scheduling patterns.

Decision

Ofcom notes that the licensee has taken further steps to ensure compliance with COSTA, including investment in new scheduling software and further staff training.

However, due to a high number of incidents across CSC Media Group channels within a short period of time, Ofcom consider these to be a significant breaches. We further note previous overruns and break pattern incidents that occurred across CSC Media Group channels, between 16 December 2009 and 24 January 2010.

Following these earlier instances, the licensee informed Ofcom that sufficient procedures had been implemented to ensure future compliance with the COSTA.

Ofcom is concerned that the licensee had not taken sufficient and immediate steps to prevent additional infringements recurring across its channels. Accordingly, we are recording a breach of Rule 4 and Rule 16 of COSTA.

Ofcom will continue to monitor the licensee's channels to assess their compliance with COSTA.

Ofcom may consider further regulatory action if this problem recurs.

Breaches of Rule 4 and Rule 16 of COSTA

In Breach

Advertising minutage

Film 24, 1 to 14 March 2010, various dates and times

Introduction

Rule 4 of the Code on the Scheduling of Television Advertising (“COSTA”), states: “time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes”. This rule implements the requirements of European legislation, the Audiovisual Media Services (AVMS) Directive.

As part of Ofcom’s routine monitoring of broadcasters’ compliance with COSTA, Ofcom observed that between 1 and 14 March 2010, there were 22 separate incidents, where Film 24 appeared to have transmitted more than the permitted allowance of advertising minutes in one clock hour.

Ofcom wrote to Goldfinn Limited, the license holder for Film 24, for its comments under Rule 4 of COSTA.

Response

The broadcaster explained that the overruns were due to a number of complex scheduling problems, including failures in the existing scheduling software which was further compounded by a change of media sales house advertising systems.

The broadcaster further explained that it had conducted an internal investigation into the problems encountered with break scheduling. This had resulted in new systems being put in place by Film 24’s media sales house and Canis Media (Film 24’s scheduling provider). Furthermore, the scheduling software had been upgraded as a direct consequence to include an automatic alarm if the break schedules exceeded the clock hour limits.

Decision

Ofcom notes that Film 24 has taken further steps to ensure compliance with COSTA.

Notwithstanding this, Ofcom consider these incidences to be significant breaches and notes the high number of overruns that took place within a short two week period. We further note previous instances that occurred on Film 24 between 3 January and 28 February 2010, after which the broadcaster had provided Ofcom with assurances that new procedures were in place to prevent further overruns.

Ofcom is concerned that these procedures were not sufficient to prevent the latest overruns recurring. Accordingly, we are recording a breach of Rule 4 of COSTA.

Ofcom may consider further regulatory action if this problem recurs.

Breach of Rule 4 of COSTA

In Breach

Advertising minutage

ESPN, 17 February 2010, 20:00, 19 February 2010, 16:00, 24 February 2010, 20:00, 26 February 2010, 06:00, 28 February 2010, 15:00

ESPN Classic, 27 February 2010, 00:00

Introduction

Rule 4 of the Code on the Scheduling of Television Advertising (“COSTA”), states: “time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes”. This rule implements the requirements of European legislation, the Audiovisual Media Services (AVMS) Directive.

As part of Ofcom’s routine monitoring of broadcasters’ compliance with COSTA, Ofcom observed that between 17 February and 28 February 2010, there were five separate incidences, where ESPN appeared to have transmitted more than the permitted allowance of advertising minutes, during one clock hour.

Additionally, Ofcom observed that on 27 February, ESPN Classic appeared to have transmitted more than the permitted allowance of advertising minutes, during one clock hour.

Ofcom wrote to ESPN (Europe, Middle East and Africa) Ltd, the license holder for ESPN and ESPN Classic, for its comments under Rule 4 of COSTA.

Response

The broadcaster explained that the overruns on ESPN and ESPN Classic can be partly attributed to the effects of transferring over to a new playout system. The broadcaster further stated that, occasionally, some programmes would not play in full which had repercussions for the timing of automated breaks, leading to the subsequent overruns. The broadcaster further explained in relation to ESPN, which broadcasts live sports; that existing compliance checking procedures were neither flexible nor effective enough to deal with the uncertain duration of live sports events.

As a result of the incidents, the broadcaster had introduced a number of technical improvements and further training for staff, to prevent future overruns on both channels.

Decision

Ofcom notes that ESPN and ESPN Classic have taken further steps to ensure compliance with COSTA.

However, Ofcom considers these instances as significant breaches. We further note several previous instances that occurred between 1 January and 13 February 2010 on ESPN and between 1 and 3 January 2010 on ESPN Classics. Following these incidents, the broadcaster assured Ofcom that procedures would be significantly improved to prevent further overruns from occurring. Ofcom considers that these procedures were neither immediate nor effective enough to prevent the latest overruns recurring. Accordingly, we are recording a breach of Rule 4 of COSTA.

Ofcom may consider further regulatory action if this problem recurs.

Breach of Rule 4 of COSTA

In Breach

Advertising minutage

Zing, 15 March 2010, 14:00, 15 March 2010, 15:00, 16 March 2010, 14:00 and 17 March 2010, 15:00

Introduction

Rule 4 of the Code on the Scheduling of Television Advertising (“COSTA”), states: “time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes”. This rule implements the requirements of European legislation, the Audiovisual Media Services (AVMS) Directive.

As part of Ofcom’s routine monitoring of broadcasters’ compliance with COSTA, Ofcom observed that on 15 March 2010, Zing appeared to have transmitted a total of 14 minutes and 45 seconds during one clock hour (2 minutes and 45 seconds more than allowed). Separately, on the same day, Zing also appeared to have transmitted 13 minutes and 30 seconds of advertising was transmitted during another clock hour (1 minute 30 seconds more than allowed)

Upon further monitoring by Ofcom, it also appeared that on 16 March 2010, Zing transmitted a total of 15 minutes of advertising in one clock hour (3 minutes more than allowed) Furthermore, on 17 March 2010, Zing appeared to have transmitted 12 minutes and 7 seconds of advertising (7 seconds more than is permitted)

Ofcom wrote to Asia TV Limited, the licence holder for Zing, for its comments under Rule 4 of COSTA.

Response

The broadcaster explained that the overruns are attributed to variations between the planned and actual programme start times. This led to breaks being transmitted in the wrong clock hours, which led to the subsequent overruns. As a result of these instances, the broadcaster stated they had installed new technical software to prevent future overruns occurring.

Decision

Ofcom notes that Zing has taken further steps to ensure compliance with COSTA. However, we note previous incidences (18 and 20 January 2010) where Zing had exceeded the permitted allowance of advertising minutes in one clock hour. Following these incidences, Zing had stated that new systems had been installed to prevent further incidents occurring. Ofcom is concerned that these measures were not adequate to prevent the latest overruns from occurring. Some of these individual overruns were significant. Accordingly, we are recording a breach of Rule 4 of COSTA.

Ofcom may consider further regulatory action if this problem recurs.

Breach of Rule 4 of COSTA

In Breach

Advertising minutage

More 4, 3 March 2010, 00:00

Channel 4 and S4C, 20 February 2010, 13:00

Introduction

Rule 4 of the Code on the Scheduling of Television Advertising (“COSTA”), states: “time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes”.

This rule implements the requirements of European legislation, the Audiovisual Media Services (AVMS) Directive.

Channel 4

As part of Ofcom’s routine monitoring of broadcasters’ compliance with COSTA, we observed that on 20 February 2010, Channel 4 appeared to have transmitted a total of 13 minutes and 44 seconds of advertising during one clock hour (1 minute and 44 seconds more than allowed). This overrun occurred during the programme *C4 Racing*.

Separately, on 3 March, Ofcom observed that Channel 4 licensee, More 4, appeared to have transmitted 12 minutes and 11 seconds of advertising during one clock hour (11 seconds more than allowed).

S4C

Ofcom was notified by S4C that it had broadcast a live simulcast of the programme *C4 Racing*, on its analogue service on 20 February 2010. As a result S4C had too broadcast a total of 13 minutes and 44 seconds of advertising in one clock hour (1 minute and 44 seconds more than allowed).

Channel 4 and S4C are each responsible for ensuring material broadcast on their channels is compliant with the Code. In the circumstances, Ofcom requested separate formal comments from Channel 4 and S4C in relation to Rule 4 of COSTA.

Response

Channel 4

With regards to the overrun on Channel 4, the licensee explained that as a result of human error, a break had been transmitted in the wrong clock hour which led to the subsequent overrun.

With regards to the overrun on More 4, the broadcaster explained that the schedule for More 4 was running later than had been planned. This led to the transmission of a break slipping from one clock hour to the next, which led to the subsequent overrun.

As a result of both overruns, Channel 4 said they improved working practices amongst staff and installed enhanced technical procedures that would alert staff in the event of a possible overrun.

S4C

S4C explained that as a result of the programme, *C4 Racing*, being transmitted simultaneously with Channel 4, they had followed Channel 4's break pattern which led to the subsequent overrun on S4C. The broadcaster further stated that no other incidents had occurred on S4C since and were unlikely to, again, in the future. Due to S4C's analogue channel being switched off, this would be the last time S4C would be transmitting *C4 Racing* or any other Channel 4 programming simultaneously with Channel 4.

Decision

Channel 4

Ofcom notes that Channel 4 has taken further steps to ensure compliance with COSTA. However, we note a previous incident on Channel 4, on 24 January 2010, where a total of 14 minutes and 11 seconds of advertising was broadcast during one clock hour (2 minutes and 11 seconds more than allowed).

Ofcom is concerned that Channel 4 did not take sufficient steps to prevent additional infringements recurring across its channels. Accordingly, we are recording a breach of Rule 4 of COSTA. Ofcom may consider further regulatory action if this problem recurs.

S4C

Ofcom notes that S4C itself reported the overrun to Ofcom, and that it arose because it was carrying a live simulcast of Channel 4 Racing. Following digital switchover in Wales, S4C no longer simulcasts Channel 4 programming, so this particular problem will not recur. Accordingly, we consider the matter to be resolved.

Channel 4: In Breach of Rule 4 of COSTA

S4C: Resolved in respect of Rule 4 of COSTA

In Breach

Advertising minutage

Horse & Country TV, 2 March 2010, 21:00 and 8 March 2010, 21:00

Introduction

Rule 4 of the Code on the Scheduling of Television Advertising (“COSTA”), states: “time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes”. This rule implements the requirements of European legislation, the Audiovisual Media Services (AVMS) Directive.

As part of Ofcom’s routine monitoring of broadcasters’ compliance with COSTA, Ofcom observed that on 2 March 2010, Horse & Country appeared to have transmitted a total of 12 minutes and 34 seconds of advertising during one clock hour (34 seconds more than allowed). Separately, on 8 March 2010, Horse and Country appeared to have transmitted a total of 14 minutes of advertising during one clock hour (2 minutes more than allowed).

Ofcom wrote to Horse and Country TV for its comments under Rule 4 of COSTA.

Response

The broadcaster explained that both overruns were the result of programme start times inadvertently slipping beyond their schedule time. This resulted in the advertising break slipping from one clock hour to the next, which led to subsequent overruns occurring. As a result of these instances, the broadcaster explained they needed to do more to ensure future compliance with COSTA and has introduced a number of improvements to their operational procedures.

Decision

Ofcom notes that Horse & Country has taken further steps to ensure compliance with COSTA.

However, we note several previous instances (between 5 January 2010 and 27 February 2010) where Horse & Country had exceeded the permitted allowance of advertising minutes in one clock hour. Following these previous instances, the broadcaster had provided Ofcom with assurances that no further overruns would occur on Horse & Country due to new and improved procedures being installed. Ofcom is concerned that these procedures were not sufficient enough to prevent the latest overruns from occurring. Accordingly, we are recording a breach of Rule 4 of COSTA.

Ofcom may consider further regulatory action if this problem recurs.

Breach of Rule 4 of COSTA

In Breach

Advertising minutage

Body in Balance, 4 April 2010, 17:00

Introduction

Rule 4 of the Code on the Scheduling of Television Advertising (“COSTA”), states: “time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes”. This rule implements the requirements of European legislation, the Audiovisual Media Services (AVMS) Directive.

As part of Ofcom’s routine monitoring of broadcasters’ compliance with COSTA, Ofcom observed that Body in Balance appeared to have transmitted a total of 13 minutes and 08 seconds of advertising, during one clock hour (1 minute 08 seconds more than allowed).

Ofcom wrote to Body in Balance for its comments under Rule 4 of COSTA.

Response

The broadcaster explained that the overrun was the result of an error in the calculation of advertising minutes; a process which was currently reliant on a manual checking system. This error led to an overrun of advertising minutes in one clock hour. As a result of the incident, the broadcaster explained that they would improve their manual checking processes, however, at present, could not financially afford to introduce a more robust automated checking system.

Decision

Ofcom notes the improvements the broadcaster has made to ensure future compliance with COSTA. However, we are concerned that Body in Balance’s existing procedures were not sufficient enough to prevent the latest overrun from occurring. Accordingly, we are recording a breach of Rule 4 of COSTA.

Breach of Rule 4 of COSTA

Note to Broadcasters

Ofcom's Code on the Scheduling of Television Advertising

In recent months, several channels have been found in breach of rules in Ofcom's Code on the Scheduling of Television Advertising ('COSTA') relating to the amount of advertising and the number of permitted advertising breaks.

The Code (http://www.ofcom.org.uk/tv/ifi/codes/code_adv/tacode.pdf) sets out the rules with which television broadcasters licensed by Ofcom ('broadcasters') must comply when carrying advertising. These rules give effect to relevant provisions of the Audio Visual Media Services (AVMS) Directive.

In particular, the Code states that:

- (a) "time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes"; and
- (b) "restrictions apply when inserting advertising breaks during the following programmes:
 - films and news programmes may only include one advertising or teleshopping break for each scheduled period of at least 30 minutes;
 - children's programmes (other than schools programmes) with a scheduled duration of 30 minutes or less may not include an advertising or teleshopping break. Such programmes with a scheduled duration of longer than 30 minutes may have one break for each scheduled period of at least 30 minutes. Breaks are not permitted within schools programmes, but may be scheduled between programmes";

Ofcom actively monitors compliance with the Code, and takes breaches seriously.

Where Ofcom considers that a channel may have exceeded its hourly allowance of advertising minutage, or have taken more than the permitted number of internal breaks, we shall investigate. A list of channels under investigation is published each week at http://www.ofcom.org.uk/advice/audience_complaints/. Further information relating to Ofcom's investigation procedures can be found at <http://www.ofcom.org.uk/tv/ifi/guidance/standards/standards.pdf>.

Ofcom is concerned by some licensees' continuing failure to comply with the requirements of COSTA. Broadcasters should note that Ofcom will consider imposing sanctions against them – including fines – where they seriously or repeatedly breach the Code.

For further information on Ofcom's sanctions procedure, please refer to the following link: <http://www.ofcom.org.uk/radio/ifi/figuidance/sanctions/>.

For all enquiries relating to COSTA, please contact advertising.rules@ofcom.org.uk.

Other Cases

In Breach

209radio, community radio service for Cambridge

28 February 2010 to present

Introduction

On 28 February 2010 209radio Ltd, the company holding a licence to provide a community radio service for Cambridge, broadcasting as 209radio, ceased broadcasting its licensed service.

Accordingly, on 17 March Ofcom wrote to 209radio Ltd to ask how 209radio Ltd had complied with the following two conditions in its licence relating to format delivery.

Condition 2(1) contained in Part 2 of the Schedule to the licence, which states that:

“The Licensee shall provide the Licensed Service specified in the Annex for the licence period.”

Condition 2(4), contained in Part 2 of the Schedule to the licence, which states that:

“The Licensee shall ensure that the Licensed Service accords with the proposals set out in the Annex so as to maintain the character of the Licensed Service throughout the licence period.”

Response

209radio Ltd confirmed that it was no longer broadcasting its normal service and explained that this was due to financial problems.

Decision

By ceasing to broadcast its licensed service from 28 February 2010, 209radio Ltd was clearly in breach of the above licence conditions. Ofcom has therefore formally recorded this breach by 209radio Ltd.

We also note that this breach by the Licensee is continuing, as 209radio has not resumed broadcasting its licensed service since 28 February 2010. Provision by a Licensee of its licensed service is the fundamental purpose for which a community radio licence is granted. Ofcom has a range of duties in relation to radio broadcasting, including securing a range and diversity of local radio services which are calculated to appeal to a variety of tastes and interests, and the optimal use of the radio spectrum. These matters find expression in, or are linked to, the licence condition requiring the provision of the specified licensed service. Where a licensed service is not being provided in accordance with the licence, none of the required community radio programme output is provided, nor are the ‘off-air’ activities included in the licence (as set out in the Licensee’s key commitments). These include ‘social gain’ (such as training programmes, and opportunities for discussion) and access to and participation in the service (volunteering opportunities, for example). This is to the potential disadvantage of the target community, and in addition, choice for listeners is reduced. Finally, it is not an optimal use of the radio spectrum to have

allocated frequencies unused, or not used for the purpose for which they have been allocated.

Ofcom is now considering the most appropriate next steps, including possible revocation of the licence. Since revocation requires a statutory sanction, Ofcom has formally notified the Licensee that we are considering these licence contraventions for statutory sanction in light of their seriousness and ongoing nature.

Breach of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by 209radio Ltd (licence number CR095)

Fairness and Privacy Cases

Upheld

Complaint by Islam Channel

5 Live Breakfast, BBC Radio 5, 8 September 2009

Summary: Ofcom has upheld this complaint of unfair treatment made by Islam Channel.

BBC Radio 5's breakfast programme included a discussion as to whether *"Britain's foreign policy was likely to lead to terror attacks in the future"*. One caller said that a lot of radicalised Muslims had cable television with access to Middle Eastern channels, which contributed to their radicalisation. Ed Husain, a guest on the programme, who was described as a *"former radical Muslim"* who now campaigned against extremism said *"...there's a channel here and I'll name it, Islam Channel, Sky 813, when suicide bombings occur, they refer to them as human operations, taking the sting out of the issue, partly funded by Saudi Arabia..."*

Islam Channel complained to Ofcom that it was treated unfairly in the programme as broadcast.

In summary Ofcom found that Mr Husain's remark was likely to suggest to listeners that Islam Channel might be responsible for radicalisation of Muslims and that this was a serious criticism of Islam Channel. Islam Channel was entitled to be given an appropriate and timely opportunity to respond to this. No such opportunity was given, nor did the presenter intervene appropriately in the discussion. This resulted in unfairness to Islam Channel.

Introduction

On 8 September 2009, the BBC Radio 5 breakfast programme included a discussion as to whether *"Britain's foreign policy was likely to lead to terror attacks in the future"*. The programme featured a number of callers who gave their views as to whether Britain's presence in Afghanistan and Iraq was likely to lead to further terrorist attacks in Britain. One of the callers said that a lot of radicalised Muslims had cable television with access to Middle Eastern channels, which contributed to their radicalisation. The presenter, Nicky Campbell, said he had watched mainstream British Muslim channels *"where the notion that the CIA perpetrated 9/11 has gone unchallenged"*. Ed Husain, a guest on the programme, who was described as a *"former radical Muslim"* who now campaigned against extremism, then said:

"...there's a channel here and I'll name it, Islam Channel, Sky 813, when suicide bombings occur, they refer to them as human operations, taking the sting out of the issue, partly funded by Saudi Arabia..."

Islam Channel, which is licensed by Ofcom and provides news, current affairs and entertainment programming from an Islamic perspective, complained to Ofcom that it was treated unfairly in the programme as broadcast.

The Complaint

Islam Channel's case

In summary, Islam Channel complained that it was treated unfairly in that:

- a) It was portrayed unfairly in that the programme included a claim that the channel was one of the problems that led to radicalisation of Muslims.
- b) It was not given an appropriate and timely opportunity to respond to the serious allegations made about it in the programme.

The BBC's case

In summary, the BBC responded to the complaint as follows:

- a) In response to the complaint that Islam Channel was portrayed unfairly in that the programme included a claim that the channel was one of the problems that led to radicalisation of Muslims, the BBC said that the only statement in the programme which applied specifically to Islam Channel was made by studio guest Ed Husain, author of "The Islamist" and former Islamist activist. The BBC said that, having named Islam Channel, Mr Husain said "*when suicide bombings occur, they refer to them as human operations, taking the sting out of the issue*". Further remarks by the presenter, Nicky Campbell ("*And they refer to Israel as 'the Zionist state'...*") and Mr Husain ("*...or 'the Zionist entity'...*") were preceded by "*these channels*". The BBC said that, although these remarks were not explicitly about Islam Channel, it accepted that listeners would have understood Islam Channel to be among the television channels being referred to. The BBC said that the remarks rested on direct observation by Mr Husain and (in the case of referring to Israel as "*the Zionist state*") Mr Campbell. The BBC believed them to be statements of fact in respect of the terms used in Islam Channel broadcasts and considered that there was no unfairness in making them.
- b) In response that Islam Channel was not given an appropriate and timely opportunity to respond to the serious allegation made about it in the programme, the BBC said that the complaint concerned one brief exchange in an hour-long discussion which was mainly focused on whether UK foreign policy rendered the UK more or less likely to be the subject of terrorist attacks. However, the BBC said that, as the immediate context of the remarks was a discussion of the causes of radicalisation among Muslims and the terrorist acts associated with it, it accepted that they tended to suggest that Islam Channel and similar television services were to be numbered among those causes. The BBC said that there was no suggestion that Islam Channel engaged in incitement and that the "*allegations*" were confined to the use of euphemistic terminology for suicide bombings and pejorative terminology for Israel. However, the BBC accepted that they constituted the kind of criticism which would normally call for an opportunity to respond, or, in the absence of that opportunity, appropriate intervention by the presenter.

Decision

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

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

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

Ofcom considered together the complaints that the programme included an unfair claim that Islam Channel was one of the problems that led to radicalisation of Muslims and that the channel was not given an appropriate and timely opportunity to respond to serious allegations made in the programme.

Ofcom considered whether the broadcaster's actions were consistent with its obligation to avoid unjust or unfair treatment of individuals in programmes as set out in Rule 7.1 of the Ofcom Broadcasting Code ("the Code"). In particular Ofcom considered Practice 7.9, which states that 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 Practice 7.11, which states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

Ofcom noted that the programme included a discussion about whether Britain's foreign policy was likely to lead to future terror attacks. The discussion included comments about radicalisation of Muslims and in this context Mr Husain said that, by referring to suicide bombings as "*human operations*", Islam Channel "*took the sting out of the issue*". Ofcom shared the BBC's view this was likely to have suggested to listeners that Mr Husain considered that the use of such terminology was euphemistic and that the use of such words was one of the problems that might lead to radicalisation of some of Islam Channel's Muslim viewers. Ofcom also noted the BBC's view that Mr Husain was making a factual statement about his observation of terminology used by Islam Channel and Ofcom considered that Mr Husain was entitled to make that statement and that the BBC was entitled to include it in the programme. However, Ofcom noted that the BBC considered that, in the context of the discussion, Mr Husain's remark was likely to be taken as suggesting that Islam Channel's coverage might lead to radicalisation of Muslim viewers. Given the subject of the debate, namely the potential for future terror attacks, Ofcom considered that this was a serious criticism. As the BBC acknowledged, Islam Channel should have been offered an opportunity to respond to this. This was not offered, nor did the presenter intervene or point out that Islam Channel was not in a position to respond during the programme. This resulted in unfairness to Islam Channel.

Accordingly, the complaint of unfair treatment by Islam Channel was upheld and the broadcaster found to be in breach of Rule 7.1

Partly Upheld

Complaint by Mr Keith Harding

Channel M News, Channel M, 29 June 2009

Summary: Ofcom has partly upheld Mr Keith Harding's complaint of unfair treatment in the programme. It has not upheld his complaint of unwarranted infringement of privacy in the broadcast.

The report included an interview with Mrs Nyeshia O'Brien, who had recently hired Mr Harding to refurbish her kitchen. Mrs O'Brien described the problems she had been suffering as a result of poor workmanship by Mr Harding and his employees. The programme reported that Mrs O'Brien and her husband had paid £8,000 to Mr Harding for a kitchen extension, but that seven weeks later the kitchen was still "*ripped open*" and Mr and Mrs O'Brien suspected they had been "*ripped off*". The programme also stated that Mrs O'Brien had said Mr Harding had a "*number of aliases*".

The programme's presenter then stated that Mr and Mrs O'Brien became frustrated and worried when it appeared that Mr Harding's company's premises had been closed down after his failure to pay the rent on it for a year. The presenter also said that, after further conversations between Mr and Mrs O'Brien and Mr Harding, Mr Harding had told them that he may liquidate his company rather than resolve the situation.

A rugby team photograph in which Mr Harding was highlighted and identifiable was shown.

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

In summary, Ofcom found that:

- The programme makers took reasonable steps to satisfy themselves that material facts had not been presented unfairly.
- The programme made several significant allegations about Mr Harding's business practice and competence to which he should have been given an appropriate and timely opportunity to respond. He was not given such an opportunity and this was unfair.
- Mr Harding had a limited expectation of privacy that a rugby team photograph of him would not be broadcast. However, Ofcom considered that the public interest in examining the negative experiences felt by some consumers, and Mrs O'Brien's right to impart her story outweighed any expectation of privacy Mr Harding had.

Introduction

On 29 June 2009, Channel M broadcast an edition of its news bulletin. This edition featured a report about "rogue traders" in Manchester.

The report included an interview with Mrs Nyeshia O'Brien, who had recently hired Mr Keith Harding to refurbish her kitchen. Mrs O'Brien described the problems she had been suffering as a result of poor workmanship by Mr Harding and his employees. The programme reported that she and her husband had paid over £8,000 to Mr Harding for a kitchen extension. However, the programme reported that seven weeks later the kitchen was still "*ripped open*" and that Mr and Mrs O'Brien suspected they had been "*ripped off*". The programme also stated that Mrs O'Brien had said Mr Harding had a "*number of aliases*".

The programme's presenter then stated that Mr and Mrs O'Brien became "*frustrated and worried*" when it appeared that Mr Harding's company's premises had been closed down after his failure to pay the rent on it for a year. The reporter also said that, after further conversations between Mr and Mrs O'Brien and Mr Harding, Mr Harding had told them that he may liquidate his company rather than resolve the situation. The presenter then said:

"Keith Harding has not responded to our invitations to speak to us. But, Nyeshia believes he has previously been involved with two other companies that were hastily dissolved and left creditors out of pocket."

A photograph of Mr Harding was shown, in which he was highlighted and identifiable.

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

The Complaint

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

- a) He was portrayed unfairly because a number of false allegations were made against him, namely that:
 - i) He used aliases, with the implication that he did this to hide his true identity.
 - ii) He was a director of ABC Home Repairs Ltd, when he was not.
 - iii) He had not paid rent for 12 months to his landlord and was in serious arrears.
 - iv) He had run many previous businesses and had liquidated them, leaving people with money owed.
 - v) He was a "rogue trader".
- b) He did not have an opportunity to respond to the allegations set out in head a).

In summary, Mr Harding complained that his privacy had been unwarrantably infringed in the programme as broadcast in that:

- c) A photograph of him in an Aldwinians Rugby Team photo was broadcast, with his face highlighted, amid the allegations detailed in head a).

Channel M's case

In summary, Channel M responded to Mr Harding's complaint of unfair treatment as follows:

- a) Channel M first responded to the complaint that Mr Harding was portrayed unfairly.

- i) With regards the complaint that Mr Harding used aliases, Channel M said that Mr Harding used Kennedy or Harding or a combination of both in his correspondence with Ofcom, Channel M and his solicitors. It said that, therefore, there was no case to answer on this issue.
 - ii) With regard to the complaint that the report said Mr Harding was a director of ABC Home Repairs Ltd when he was not, Channel M said the companies he had run had had his daughter, his wife and other family members named as directors. Channel M said that its understanding at the time was that Mr Harding was the “owner” and he had not disputed this until complaining to Ofcom.
 - iii) As regards the complaint that the report said Mr Harding had not paid rent for 12 months and was in serious arrears with his landlord, Channel M said that this fact was confirmed to them by speaking to the landlord of one of Mr Harding’s previous businesses.
 - iv) With reference to the complaint that Mr Harding had run many other businesses and owed money to people after liquidating the businesses, Channel M said that it had at least six people willing to write letters explaining how much Mr Harding owed them, including one person owed in excess of £15,000. It said that this was the cornerstone of the news item and was accurate.
 - v) As regards the complaint that the report unfairly portrayed Mr Harding as a “rogue trader”, Channel M said that, taking all the above into account, and the fact that Mr Harding turned down the offer to comment on the allegations at the time and before the transmission, the news story was valid and true.
- b) Channel M next responded to the complaint that Mr Harding was not given an opportunity to respond to the allegations set out in head a). Channel M said that it had first attempted to contact Mr Harding on 26 June 2009, with no answer. It said that it then attempted to contact Mr Harding again on 29 June 2009, the date of broadcast, on three different phone numbers. Messages were left on two of these numbers’ answering machines. Channel M said that it accepted the story was one sided due to Mr Harding being unavailable for comment on the day of transmission. Channel M said that, in hindsight, it could have waited for a response and given him a right to reply.

In summary, Channel M responded to Mr Harding’s complaint of unwarranted infringement of privacy in the programme as broadcast as follows:

- c) Channel M said that it had acted in the public interest by broadcasting the story. Channel M also said Mrs O’Brien gave the photograph to the programme makers.

Decision

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

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of

freedom of expression. Ofcom is also obliged to have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate and consistent and targeted only at cases in which action is needed.

In reaching its decision, Ofcom considered all the relevant material provided by both parties. This included recordings of the programme as broadcast and a transcript, both parties' written submissions and recordings and transcripts of unedited material. Ofcom considered and applied its Broadcasting Code ("the Code").

Unfair Treatment

a&b) Ofcom considered together the complaints that Mr Harding was portrayed unfairly in the programme and that he was not given an appropriate opportunity to respond to serious allegations made about him.

In doing so, Ofcom considered Rule 7.1 of the Code, which provides that broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes. Ofcom also had regard to Practice 7.9, which states that broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation. It also had regard to Practice 7.11, which states that "if a programme alleges wrongdoing or incompetence or makes other serious allegations, those concerned should normally be given an appropriate and timely opportunity to respond". The guidance that accompanies Practice 7.11 also states that "an individual needs to be given sufficient information concerning the arguments and evidence included in the programme to enable them to respond properly". It goes on to explain that "the programme should fairly represent the substance of any response but it is not normally necessary, in the interests of fairness, to reproduce it in its entirety".

Ofcom first considered the complaint that the programme made false allegations about Mr Harding, which amounted to allegations of either wrongdoing or incompetence. In particular, that he used aliases, was a director of ABC Home Repairs Ltd, was in serious arrears with this landlord, had liquidated previous businesses leaving people with money owed and was a "rogue trader." Ofcom considered these elements of the complaint together in relation to the complaint of unfair portrayal.

Ofcom first considered the background to the news report and its investigation into Mr Harding. It noted that the news report set out to cover the story of a woman seeking to warn people about a "rogue trader" who she claimed was responsible for an incomplete job carried out by "ABC Home Repairs". Against this background, Ofcom then considered what allegations were made about Mr Harding in the programme. Ofcom noted that the programme referred to him in their introduction as a "rogue trader" and in commentary said:

"Nyesha Farag-O'Brien and her husband handed over over £8,000 to a friend they knew as Keith Harding in order for him to carry out extensive work on their kitchen. Seven weeks later and the kitchen's still ripped open and they suspect that they've been ripped off".

Ofcom noted that the programme included statements that Mr Harding "goes by a number of aliases" and had "repeatedly refused" to refund any money to the O'Brien family. The presenter also stated that Mrs O'Brien said Mr Harding had been "threatening to liquidate the company, rather than resolve the situation" and

that *“Nyesha believes that he has previously been involved with two other companies that were hastily dissolved and left creditors out of pocket”*.

The programme did not explicitly state that Mr Harding was a director of ABC Home Repairs Ltd, as alleged in the complaint, but did contain the following commentary:

“Mr and Mrs O’Brien are becoming increasingly frustrated and worried, particularly since discovering that the premises license to ABC Home Repairs, which is supposed to be on this industrial estate in Ashton-under-Lyne, have actually been closed down since the company hadn’t paid any rent since July last year”.

There was therefore a clear implication in the programme that Mr Harding was in some way responsible for the company “ABC Home Repairs”, and for the company’s unpaid rent.

With regard to the issue of whether such assertions were true and accurate, as noted above broadcasters are required to take reasonable steps to ensure that material facts are not presented unfairly. Ofcom noted that the programme was based in the first instance on allegations made by Mrs O’Brien, which she corroborated by showing the programme makers her unfinished kitchen, and considered that it was a reasonable step by the broadcaster in satisfying themselves that the material facts were not presented unfairly. Ofcom also assessed the further such steps that Channel M had taken that went beyond a presentation of the work Mr Harding had done on Mrs O’Brien’s house: the programme makers had, as noted, spoken to Mrs O’Brien and seen her kitchen; they had spoken to the landlord of one of Mr Harding’s previous businesses; and they had obtained assurances from Mr Harding’s other creditors that they would provide letters explaining how much Mr Harding owed them.

Ofcom then went on to consider whether Channel M had taken reasonable care in offering Mr Harding an opportunity to contribute, whether significant allegations of wrongdoing or incompetence were made against him, and thus, whether Mr Harding should have been given an appropriate and timely opportunity to respond.

Having reviewed the transcript of the programme and, in particular the excerpts set out above, Ofcom reached the view that the report made several clear disparaging assertions which cumulatively amounted to significant allegations regarding Mr Harding’s business practice and competence, and which had the potential to result in unfairness to Mr Harding. Ofcom therefore considered that Mr Harding’s omission could have been unfair and that the broadcaster should have taken reasonable steps to offer him an opportunity to contribute.

Ofcom also took the view that in such circumstances it was incumbent upon Channel M to provide Mr Harding with an “appropriate and timely” opportunity to respond to the serious allegations made about him in the programme. Ofcom then considered whether Mr Harding was given an appropriate and timely opportunity to respond to the serious allegations.

Ofcom noted that the programme makers first attempted to contact Mr Harding on 26 June 2009, with no answer. The programme makers then attempted to contact Mr Harding again on 29 June 2009, the date of broadcast, on three different phone numbers. Messages were left on two of these numbers’ answering

machines. Ofcom further noted that Channel M said that it accepted the story was one sided due to Mr Harding being unavailable for comment on the day of transmission and it accepted that, in hindsight, it could have waited for a response and given him a right to reply.

As set out above, the allegations made about Mr Harding were significant in nature and in Ofcom's view he should have been afforded an appropriate and timely opportunity to respond to them. Although the programme makers attempted to contact Mr Harding three days before the broadcast and again on the day of broadcast itself, they did not get a response from him. In view of the serious allegations made in the programme about Mr Harding's business practices and competence, it was incumbent on the programme makers to take further reasonable steps to seek a response from him before broadcasting the allegations. He was therefore not given an appropriate and timely opportunity to respond and there were no grounds for the programme makers to depart from the usual requirement for such an opportunity.

Ofcom concluded that the programme makers did take reasonable steps required to satisfy themselves that material facts had not been presented unfairly, but did not take reasonable steps when offering Mr Harding an opportunity to contribute. Ofcom also found that the programme makers' failure to provide Mr Harding with an appropriate and timely opportunity to respond to the allegations in the programme resulted in unfairness to him in the programme as broadcast.

Privacy

- a) Ofcom finally considered Mr Harding's complaint of unwarranted infringement of privacy in the broadcast of the programme, in that a picture of him was shown amid the allegations set out in head a).

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

This is reflected in 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 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 also had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

Ofcom acknowledged that Mr Harding was named and identified on the programme and that a picture of him, in a rugby team photograph, was broadcast. However, in Ofcom's view, a person's name or identity is not in itself information that necessarily attracts a significant expectation of privacy. In addition, Ofcom took into account that the photograph broadcast did not disclose any sensitive, and only a very limited amount of personal, information about Mr Harding, as it showed him as part of a local rugby team. And, that he was

identified (including by means of the photograph) in connection with his business practices, which he undertakes publicly, and so which are not private matters and have little or nothing to do with his private life.

Against those matters, though, Ofcom recognised that there may be circumstances in which the disclosure of a person's name, identity and appearance may be understood to be personal or sensitive and to which an expectation of privacy may attach. In this case, Mr Harding would have some expectation that a photograph of him in a rugby team would not be broadcast on a television news programme.

Ofcom therefore concluded that Mr Harding had a limited expectation of privacy that a rugby team photograph of him would not be broadcast in the context of a news report. Having concluded that Mr Harding had a limited expectation of privacy in this regard, Ofcom then went on to consider whether this expectation was unwarrantably infringed.

Ofcom weighed Mr Harding's limited expectation of privacy against the broadcaster's competing right to freedom of expression and the audience's right to receive information and ideas without unnecessary interference. Ofcom noted that both Channel M and Mrs O'Brien had a right to freedom of expression. Ofcom considered that as part of Mrs O'Brien's right, she was entitled to report her view of her negative consumer experience.

Ofcom also took the view that the broadcaster had a right to report a story which informed viewers of the negative experiences that could be felt by consumers, in cases where significant sums of money appeared to be involved, and that such a topic served the public interest. Ofcom therefore considered that there were considerable factors that weighed in favour of the broadcaster's right to report such a story, over Mr Harding's expectation of privacy.

Taking the above factors into account, Ofcom is satisfied that there has not been an unwarranted infringement of Mr Harding's legitimate expectation of privacy.

Accordingly, Ofcom has partly upheld Mr Harding's complaint of unfair treatment in the programme as broadcast. It has not upheld his complaint of unwarranted infringement of privacy in the broadcast of the programme

Not Upheld

Complaint by Mr David Ham on his own behalf and on behalf of Mrs Lorraine Ham (his wife), Miss Rubi Ham and Miss Chelsie Ham (his daughters)

Saints and Scroungers, BBC1, 18 August 2009

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

BBC1 broadcast an edition of *Saints and Scroungers* which looked at people fraudulently claiming benefits and those entitled to state-funded support. In this context the programme included images of and information about Mr Ham, and his family.

Mr Ham was shown and identified in the programme in the context of a report about his fraudulent claim for benefits. The programme included documentation relating to and references regarding his personal financial transactions and the shops where he and his daughters worked. It also showed Mr Ham's wife and made references to her personal financial transactions.

Mr Ham complained that he and his family were treated unfairly and that their privacy was unwarrantably infringed in the making and broadcast of the programme.

Ofcom found that:

- Mr Ham and his family were not treated unfairly in relation to the various claims which he said were made about him in the programme (including those which Ofcom considered were serious allegations of wrongdoing). In addition, either because it considered that the claims were not actually made in the programme; because it considered that they were made but were not serious allegations of wrongdoing or because it considered that the representation of material facts with regard to the said claim(s) did not result in unfairness to the complainant Ofcom found that it was not incumbent upon the broadcaster to give him an opportunity to respond to any of these claims.
- Mr Ham and his family were not treated unfairly in that the programme omitted to say that he had received the lightest sentence possible and that his daughters had written evidence (verified by Havering Council) to prove that Mr Ham did not own their shops because the programme had treated the material facts with regard to these matters with reasonable care.
- Mr Ham and his family had a limited expectation of privacy in relation to the obtaining of personal paperwork during the making of the programme. However this was outweighed by the broadcaster's right to exercise its freedom of expression with respect to the circumstances surrounding a conviction for fraudulent benefit claims and to serve the public interest in enabling viewers to see how an investigation into such benefit claims is conducted and the conviction and sentence which may result. Ofcom therefore concluded that the privacy of Mr Ham and his family was not unwarrantably infringed in the making of the programme.

- Mr Ham and his family did not have a legitimate expectation of privacy in relation to the inclusion of the following elements of the programme: images of Mr Ham and information identifying him; an extract of a contribution he gave to a radio phone-in programme and images of Mrs Ham.
- Mr Ham and his family had a limited expectation of privacy in relation to the inclusion of the following elements of a the programme: a recording of Mr Ham being interviewed under caution; references to conversations between Ms Chelsie Ham and Ms Rubi Ham and fraud investigators and personal paperwork relating to Mr Ham's financial transactions. However, in each case this expectation was outweighed by the broadcaster's right to freedom of expression with respect to showing the circumstances surrounding a conviction for fraudulent benefit claims and to serve the public interest in showing viewers how an investigation into such benefit claims is conducted and the conviction and sentence which may result. Taking all of these factors into account, Ofcom found that there was no unwarranted infringement of the privacy of Mr Ham or his family in the broadcast of the programme.

Introduction

On 18 August 2009, BBC1 broadcast an edition of *Saints and Scroungers*, a programme which looks at cases where people claim benefits to which they are not entitled and cases where people need and are entitled to state-funded support.

This edition followed the investigation and ultimate conviction of Mr David Ham. It began by saying:

"We investigate the case of David Ham who scammed over £41,000 in stolen benefits. But whose big headedness caused his well deserved downfall."

Havering Council had conducted an investigation into Mr Ham's claims for housing and council tax benefit which were made on the basis that Mr Ham worked part-time at two shops owned by his daughters Miss Rubi Ham and Miss Chelsie Ham.

The programme showed how, the officers investigating his case discovered his interest in two shops as a result of his participation in a radio phone-in.

The programme stated that Mr Ham was:

"charged with five counts of deception, four relating to making claims whilst running businesses and one to do with undisclosed capital. He is found guilty of one charge with the others being kept on file for future reference pending further misdemeanour."

It then stated that Mr Ham was given a 20 week custodial sentence suspended for one year and 60 hours of community service and ordered to repay the £41,363 falsely claimed.

Mr Ham was shown in the programme walking to court. A number of pieces of personal documentation were included in the programme. These included a tenancy agreement, bank statements credit card applications, letters regarding the will of Mr Ham's uncle and a benefit claim form. The programme also showed the inside of Mr Ham's former home. Mrs Lorraine Ham was filmed accompanying Mr Ham to court, but her face was obscured. Neither Miss Rubi Ham nor Miss Chelsie Ham appeared in the programme.

Mr Ham complained to Ofcom that he and his family were treated unfairly in the programme and that their privacy had been unwarrantably infringed in the making and broadcast of the programme.

The Complaint

Mr Ham's case

In summary, Mr Ham complained that he and his family were treated unfairly in the programme as broadcast in that:

- a) He and his family were unfairly portrayed in that:
 - i) A number of false allegations were made against them

The programme alleged Mr Ham was imprisoned, had wrecked his former home, had bought a caravan, was found guilty, when instead he had pleaded guilty, and did not inform Havering Council of his inheritance. It also alleged that Mrs Ham had twenty-seven bank accounts and that Miss Rubi Ham and Miss Chelsie Ham were implicated in Mr Ham's benefit claims.

These allegations were made using the biased evidence of two fraud investigators.

- ii) The programme failed to mention

That Mr Ham received the lightest sentence possible. That Miss Rubi Ham and Miss Chelsie Ham had written evidence to prove that Mr Ham did not own their shops and that Havering Council had verified this.

- b) He was not given an opportunity to respond to the allegations set out in head a) i).

In summary, Mr Ham complained that his privacy and that of his family's had been unwarrantably infringed in the making of the programme in that:

- c) Personal paper work was obtained for the programme.

In summary, Mr Ham complained that his privacy and that of his family's had been unwarrantably infringed in the programme as broadcast in that:

- d) He was shown and identified in the programme in the context of the false allegations.
- e) His wife appeared in the programme in the context of the false allegations.
- f) His daughters were referred to in the programme in the context of the false allegations.
- g) Personal paper work was shown in the programme.

The BBC's case

In summary, the BBC responded to Mr Ham's complaint that he and his family were unfairly treated as follows:

- a) The BBC responded to the complaint that Mr Ham and his family were unfairly portrayed.
 - i) The broadcaster first addressed the section of this head of the complaint in which Mr Ham said that he and his family were unfairly portrayed because a number of false allegations about them were included in the programme. It took each of the points which Mr Ham had indicated were false allegations in turn.

Mr Ham was imprisoned

The broadcaster said that the programme did not say that Mr Ham was imprisoned. The BBC noted that the programme had described the result of the court case against Mr Ham in the following way:

"He was found guilty on one charge with the others being kept on file for future reference, should he fall foul of the law again. The judge sentences him to 20 weeks, suspended for a year, and 60 hours of community service".

The BBC acknowledged that at one point the programme had indicated that a fraud investigator from Havering Council was attending the sentencing of Mr Ham in order to see him "sent down". However, it argued that this had been a reference to the investigator's expectation and that the programme had clearly reported the outcome of the hearing, i.e. the precise nature of Mr Ham's sentence, notably the fact that he was given a suspended sentence and therefore was not imprisoned.

Mr Ham had wrecked his former home

The BBC said that the programme had indicated that Mr Ham had wrecked his former home and added that it did not believe that this resulted in unfairness to him because it was true. It also noted that Mr Ham's former landlady, who was interviewed in the programme, had provided evidence of damage to the property which was discovered on the day that Mr Ham had moved out and had said that she had had a conversation with Mr Ham, on that same morning, in which he admitted responsibility for the damage.

Mr Ham had bought a caravan

The BBC said that the programme had indicated that Mr Ham had bought a caravan and that it did not think this resulted in unfairness to him because it was true. To support its position the BBC noted that during an interview with fraud investigators from Havering Council (a transcript of which was supplied) Mr Ham had admitted that he had bought a caravan with the proceeds of an inheritance.

Mr Ham was found guilty when instead he had pleaded guilty

The BBC acknowledged that the programme had said that Mr Ham had been “found guilty”. It argued that this was not unfair because the court had reached a verdict of guilty as a result of his plea. The broadcaster reiterated its position that the programme had reported Mr Ham’s conviction accurately.

Mr Ham did not report his inheritance to Havering Council

The BBC acknowledged that the programme had said that Mr Ham did not report his inheritance to Havering Council. It noted that during the aforementioned interview with fraud investigators from Havering Council Mr Ham had admitted that he had not reported his inheritance to Havering Council and claimed that this was “an oversight” and that he had not realized that he was required to provide such notification.

Mrs Ham had twenty-seven bank accounts

The BBC said that the programme did not say that Mrs Ham had twenty-seven bank accounts but rather that she had twenty-seven bank and credit card accounts. It said that it believed this to be true and noted that this information had been provided to Havering Council fraud investigators by the credit rating agency Experian. The BBC also said that the information was included in the Summary of Evidence prepared for the prosecution in the case against Mr Ham (a copy of which was supplied to Ofcom).

Miss Rubi Ham and Miss Chelsie Ham were implicated in Mr Ham’s benefit claims

The BBC said that the programme did not allege that say that Mr Ham’s daughters were involved in his fraudulent activities. It argued that the programme had simply indicated that they worked for him in his two shops and included the fraud investigators accounts of visits to each of these shops when Ms Chelsie Ham and Ms Rubi Ham, respectively, were present. In addition, the BBC noted that at the end of the description of the visit to the Liberty’s Flower’s shop where investigators spoke to Ms Rubi Ham the programme said:

“... Neil believes both Ham’s daughters are innocent of any wrongdoing and have nothing to do with their father’s money making fraud.”

The BBC said that the inclusion of this comment made it absolutely clear that neither of Mr Ham’s daughter’s was accused of having a part in their father’s fraudulent activities.

- ii) The broadcaster then addressed the section of this head of the complaint in which Mr Ham said that he and his family were unfairly portrayed because the programme failed to mention certain points. It took the two points which Mr Ham had said were unfairly omitted in turn.

Mr Ham received the lightest sentence possible

The BBC refuted this assertion. It argued that probation was a sentencing option in cases like Mr Ham’s [rather than a suspended sentence] and said

that no unfairness could have arisen to Mr Ham given that the programme had accurately reported his actual sentence.

Miss Rubi Ham and Miss Chelsie Ham had written evidence to prove that Mr Ham did not own their shops and that Havering Council had verified this

The BBC said that it assumed Mr Ham was referring to the identity of the leaseholders rather than the owners of the shops. It argued that the programme had not alleged that Mr Ham owned either of the shops or disputed that Mr Ham's daughters were the respective leaseholders of the properties. The BBC did not accept that demonstrating that Mr Ham was not the leaseholder disposed of the allegation that the businesses were family businesses and that he was involved in running them and derived a benefit from the profits. To support its position the BBC referred to Mr Ham's interview with the fraud investigators from Havering Council. It argued that this interview clearly established that Mr Ham was involved in running the shops and that he had described himself as both the manager and an employee of Chubby's Farm Shop on separate credit card applications in which he had declared his earnings to be £35,000 and £40,000, respectively.

The BBC also referred to the transcript of a radio phone-in interview with Mr Ham, an extract of which was included in the programme, (a copy of which was supplied) when Mr Ham referred to the two businesses as his shops.

- b) The BBC then responded to the complaint that Mr Ham was not given an opportunity to respond to the allegations set out in head a) i), which he said were made about him in the programme. The broadcaster took each of these points in turn.

Mr Ham was imprisoned

The broadcaster said that there was no requirement to give Mr Ham an opportunity to respond to the claim that he was imprisoned because it was not made in the programme.

Mr Ham had wrecked his former home

The BBC said that there was no requirement to give Mr Ham an opportunity to respond to the claim that he had wrecked his former home because he had admitted responsibility to the landlord. The BBC noted that in his complaint Mr Ham did not deny making this admission but instead asked: "If I wrecked the house why was I not arrested and charged"? The BBC indicted that this had been a matter for Mr Ham's landlord.

Mr Ham had bought a caravan and Mr Ham did not report his inheritance to Havering Council

The broadcaster said that there was no requirement to give Mr Ham an opportunity to respond to the claim that he had bought a caravan and not reported it to Havering Council of his inheritance because this had admitted these matters during his interview with fraud investigators from Havering Council.

Mr Ham was found guilty when instead he had pleaded guilty

The BBC said that there was no requirement to give Mr Ham an opportunity to respond to the claim that he had been convicted when in fact he had pleaded guilty because, as it had argued in response to head a) i) there was no requirement to mention that the finding of guilt arose from a plea of guilty, and the finding of guilt itself was a decision of the court which does not require a right of reply.

Mrs Ham had twenty-seven bank accounts

The BBC did not provide a response to Mr Ham's complaint he was not given an appropriate opportunity to respond to the claim in the programme that Mrs Ham had twenty-seven bank accounts.

Miss Rubi Ham and Miss Chelsie Ham were implicated in Mr Ham's benefit claims

The BBC said that there was no requirement to give Mr Ham an opportunity to respond to the claim that his daughters were involved in his fraudulent activities, because it was not made in the programme but rather it had specifically stated that this was not being alleged.

In summary, the BBC responded to Mr Ham's complaint that his privacy and that of his family was unwarrantably infringed in the making of the programme as follows:

- c) In response to the specific complaint that personal paperwork had been obtained during the making of the programme the BBC argued that the subject of the programme, i.e. "the very serious allegations of criminal conduct by Mr Ham" and investigations into "criminal behaviour involving fraud upon the public purse" was in the public interest. It also said that, in light of this, obtaining evidence in support of such allegations was warranted and added that the programme maker was obliged to be fair to those against whom the allegations were being made by satisfying itself that there was sufficient evidence to substantiate the allegations. The BBC said that in this case the evidence was largely comprised of documentation relating to the personal and financial affairs of Mr Ham and his family and that as such the obtaining of this paperwork was warranted.

In summary, the BBC responded each of the heads relating to Mr Ham's complaint that his privacy and that of his family was unwarrantably infringed in the broadcast of the programme as follows:

- d) The BBC responded to the complaint that Mr Ham was shown and identified in the programme in the context of false allegations by referring back to the argument it had made in response to the Mr Ham's fairness complaint, namely that it did not believe that any false allegations had been made about Mr Ham and that all the allegations were justified.
- e) The BBC then responded to the complaint that Mrs Ham appeared in the programme in the context of false allegations. It said that Mrs Ham was not named in the programme and no allegations were made about her. It acknowledged that Mrs Ham appeared in the programme but argued that this was incidental, in that the material shown was filmed when she was in the company of Mr Ham, in a public place, specifically as he attended court. The BBC also said that the programme maker's decision to obscure her face by 'blobbing it'

indicated that the programme was not accusing her of involvement in Mr Ham's crimes.

- f) In response to the complaint that Mr Ham's daughters were referred to in the programme in the context of false allegations the BBC repeated its argument that no false allegations had been made against Mr Ham.
- g) Lastly, the BBC responded to the complaint that personal paperwork was shown in the programme. It argued that this was only to the extent that it was necessary in order to provide corroboration for the allegations made in the programme and that therefore any breach of privacy was warranted for the reasons set out in response to head c) above. The BBC also said that items of confidential personal information (e.g. names and addresses) had been redacted to ensure that any breach of privacy was minimal.

Decision

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

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

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

In Ofcom's view the complaint at head a) i) (that Mr Ham and his family were unfairly portrayed in that a number of false allegations were made against them in the programme) and at head b) (that Mr Ham was not given an appropriate opportunity to respond to these allegations) were linked in that they were both about a series of claims which Mr Ham said had been made about him in the programme. It therefore considered these heads of complaint together.

- a) i) and b) In considering these sections of Mr Ham's complaint Ofcom took account of Rule 7.1 of the Ofcom Broadcasting Code ("the Code"), which provides that broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes. Ofcom also considered Practice 7.9 and Practice 7.11 of the Code. The first of these provides that, before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to the individual or organisation. The second provides that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

Ofcom looked at each of the each of the points which Mr Ham had indicated were false allegations in turn. Ofcom noted that in considering these heads of complaint its role was not to establish conclusively from the broadcast programme or the submissions and supporting material, whether these points

were false allegations but rather to address itself to the issue of whether the programme makers took reasonable care in relation to material facts.

Ofcom considered the complaint that the programme said Mr Ham was imprisoned.

Ofcom assessed the section of the programme, in which the conviction and sentencing of Mr Ham was described.

It noted that the presenter (Dominic Littlewood) introduced this section by saying:

“At last David Ham’s run of scamming and destruction are at an end; because his court day has arrived. It’s taken an epic investigation to get here but Neil Garnett is going to be watching from the gallery to see his man sent down”.

In addition, Mr Ham’s conviction and sentence was described by the presenter who said:

“He’s found guilty on one charge with the others being kept on file for future reference, should he fall foul of the law again. The judge sentences him to 20 weeks, suspended for a year and 60 hours of community service. No longer owning Chubby’s farm shop and with a criminal record for the rest of his days Ham now faces having to pay back the £41,363 stolen from the taxpayer”.

The description of the sentence was accompanied by this on screen text:

David Ham’s Sentence -

20 Weeks Suspended Sentence
60 Hours Community Service

Ofcom noted that in its response to this part of Mr Ham’s complaint the BBC had acknowledged that the presenter had indicated that Mr Garnett was attending court in order to “*see his man sent down*” but that it had argued that this was merely a reference to the investigator’s expectation and that the programme had reported clearly that this was not the outcome of the case.

Having assessed this part of the programme Ofcom considered that the presenter’s comment that the fraud investigator was in court in order to “*see his man sent down*” might on its own have been understood by viewers to have indicated that Mr Ham would serve a period of imprisonment.

However, Ofcom observed that this comment was closely followed by both verbal and on screen information about Mr Ham’s sentence which would have made it clear to viewers that while Mr Ham was given a sentence of 20 weeks imprisonment this was a suspended sentence with conditions attached.

In addition, while Ofcom recognised that in making the comment “*see his man sent down*” the presenter, Mr Littlewood, had used somewhat colourful language, it also observed that Mr Littlewood was known for his ‘man of the people’ persona and use of popular slang on a range of consumer affairs programmes.

In light of the inclusion of the detailed description of Mr Ham’s sentence in the programme and in the context of the established nature of Mr Littlewood’s style,

Ofcom considered that viewers would have understood that Mr Ham was not imprisoned.

Ofcom therefore found no unfairness to Mr Ham or his family in respect of the complaint that the programme said that he had been imprisoned.

Given the conclusion noted above, it was Ofcom's view that the programme did not claim that Mr Ham had been imprisoned. Therefore it was not necessary for it to go on to consider whether this was serious allegation and if so whether or not it was incumbent upon the broadcaster to offer the complainant an appropriate and timely opportunity to respond to it.

Ofcom therefore found no unfairness to Mr Ham or his family in respect of the complaint that the programme did not offer him an opportunity to respond to the claim that he had been imprisoned.

Ofcom then considered the complaint that the programme said Mr Ham had wrecked his former home.

It noted that in the relevant section of the programme, the presenter explained that after Mr Ham's benefit payments were stopped he was evicted from his home for non-payment of rent. The programme showed images of the house in which it said Mr Ham had formerly lived. The fixtures and fittings in this property had been ripped out and left across the floor and in the garden. Alongside these images the presenter said:

"After finally being evicted, this is the state the Ham's landlady claims the house was left in".

The landlady was then shown (with her face obscured) describing what she found on the morning that Mr Ham was due to be evicted:

"When we went to the property in the morning for the time for the bailiff to get there we obviously were quite stunned to see that the front door was missing and I was wondering what the hell was going on. And I looked through the front window and saw that there was nothing there, no carpets, no nothing. Some of the furniture had been cut up and thrown around and it was a complete mess. What we came across was absolute devastation".

Alongside further images of the damage done to the house and its contents the presenter described the house in the following way:

"Vandalised from floor to ceiling, kitchen work tops cut through, toilets ripped out and furniture destroyed".

Ofcom also noted that the landlady was shown describing a telephone conversation she had had with Mr Ham after he had moved out. The landlady said that she had asked Mr Ham: *"Why have you done all this when I've done nothing to you"* and that *"he just very calmly said 'Well, it was our home, you threw us out so, yes, I'm entitled to do that and that's it'"*.

In Ofcom's view this section of the programme clearly indicated that Mr Ham had wrecked his former home.

In considering whether it was unfair for the programme to state that Mr Ham had wrecked his former home Ofcom looked at the source of this information.

Ofcom observed that the programme had based the claim that Mr Ham had wrecked his former home on information supplied to it by Mr Ham's former landlady and the images of the damage done to the house - in which he had been living - on the day that he had left it.

In Ofcom's view Mr Ham's former landlady was a credible witness to the condition in which she found her property after Mr Ham left it and any communication she had with Mr Ham thereafter. Although it was not for Ofcom to determine whether or not Mr Ham had in fact wrecked his former home, it appeared to Ofcom that in relying upon the testimony of Mr Ham's former landlady, and the images of the damage to the house, the programme makers took reasonable care in relation to presenting material facts regarding the condition of Mr Ham's former home after he had left it.

It therefore found no unfairness to Mr Ham or his family in respect of the complaint that the programme alleged that he had wrecked his former home.

Ofcom observed that the Code 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.

It considered that the claim in the programme that Mr Ham had wrecked his former home was a serious allegation of wrongdoing. However, in this instance Ofcom considered that given that the broadcaster had taken reasonable care to present material facts in relation to this claim fairly it was not incumbent upon them, in the interests of fairness, to further offer Mr Ham an opportunity to respond to this claim.

Ofcom therefore found no unfairness to Mr Ham or his family in respect of the complaint that the programme did not offer him an opportunity to respond to the allegation that he had wrecked his former home.

Ofcom considered the complaints that the programme said Mr Ham had bought a caravan and that he did not report his inheritance to Havering Borough Council together.

It observed that the programme included extracts from an interview with Mr Garnett in which he said that the fraud investigation team had found out that *"the Hams had bought a luxury caravan and that they managed a £16,000 deposit for it."* Mr Garnett went on to explain that while the caravan was *"solely in Mrs Ham's name we [the fraud investigation team] believed that Mr Ham clearly had a connection with it and that some or all of that money was his"*.

The presenter then said:

"A £16,000 down payment on a caravan! Ham states this cash was left to him by his uncle but having failed to disclose this correctly and with Ham in the interview under caution, Neil gets him to explain this sudden windfall".

Mr Garnett then said:

“Although he [Mr Ham] was prepared to admit he’d had this sixteen thousand pounds inheritance and that he’d bought the caravan with it when we pushed him further to find out where the money had come from he became evasive. He did say it was from an uncle but he couldn’t remember where he had lived, he couldn’t remember when he had died, he couldn’t remember the solicitors that had dealt with the estate and we could get no further information out of him”.

In Ofcom’s view this section of the programme clearly indicated that that Mr Ham had bought a caravan and did not report his inheritance to Havering Borough Council as he was required to do while in receipt of benefits.

In considering whether it was unfair for the programme to make these claims about Mr Ham Ofcom looked at the source of this information.

It observed that the programme had based the claims on information supplied to it by the fraud investigation team at Havering Borough Council (led by Mr Garnett) which had been looking into Mr Ham’s benefit claims. In particular, Ofcom noted that in an interview under caution with Mr Garnett and his colleague (a transcript of which was provided by the broadcaster) Mr Ham had admitted that his uncle had left him £16,000, that he had used this money as a deposit on a caravan and that as a result of an “oversight” he had not reported this inheritance to Havering Borough Council.

Ofcom considered that in light of having run a two-year investigation into Mr Ham’s benefit claims Mr Garnett and his team were credible witnesses regarding the actions of Mr Ham and his family in relation to Mr Ham’s benefit claims and financial transactions. In addition, it observed that the programme maker had had a copy of an interview, conducted by Mr Garnett and his colleague, in which Mr Ham had admitted that he had bought a caravan and not reported his inheritance to Havering Borough Council.

In relying upon the testimony of Mr Garnett and his team and Mr Ham’s interview under caution Ofcom considered that the programme makers took reasonable care in relation to material facts regarding Mr Ham’s purchase of a caravan and reporting of his inheritance to Havering Borough Council.

It therefore found no unfairness to Mr Ham or his family in respect of the complaint that the programme said that he had bought a caravan and alleged that he had not reported his inheritance to Havering Borough Council.

Ofcom did not consider that the claim that Mr Ham had bought a caravan was a serious allegation of wrongdoing. Therefore, it was not incumbent upon the broadcaster to offer the complainant an appropriate and timely opportunity to respond to it.

Ofcom considered that the claim that Mr Ham had not reported his inheritance to Havering Borough Council as he was required to do while in receipt of benefits was a serious allegation of wrongdoing. However, in this instance Ofcom considered that given that the broadcaster had taken reasonable care to present material facts in relation to this claim fairly it was not incumbent upon them, in the interests of fairness, to further offer Mr Ham an opportunity to respond to this claim.

Ofcom therefore found no unfairness to Mr Ham or his family in respect of the complaint that the programme did not offer him an opportunity to respond to the statement that he had bought a caravan and the allegation that he had not reported his inheritance to Havering Borough Council.

Ofcom then considered the complaint that the programme said Mr Ham was found guilty when instead he had pleaded guilty.

Ofcom observed that the presenter of the programme started his description of Mr Ham's conviction and sentence by saying "*He's found guilty on one charge with the others being kept on file for future reference, should he fall foul of the law again*".

It was therefore clear to Ofcom that the programme had indicated that Mr Ham had been found guilty of one charge and had omitted to say that he had pleaded guilty.

Ofcom noted that in his complaint Mr Ham did not challenge the statement that he was found guilty but argued that he was unfairly treated because the programme did not include the information that he pleaded guilty.

In this context it is important to note that the decision regarding what information should be included in or excluded from a programme is an editorial one and that Ofcom's only concern lies in assessing whether or not the inclusion or omission of the said information resulted in unfairness to the complainant.

Ofcom considered that the key point in the representation of the result of the court case against Mr Ham which had the potential to affect Mr Ham's reputation was whether or not he was convicted of the charges against him, i.e. whether or not he was found guilty.

Given that Mr Ham was found guilty and that the programme made this clear to viewers, it is Ofcom's opinion that the exclusion of the information that Mr Ham pleaded guilty would not have had a significant effect upon viewer's opinion of him and thereby his reputation.

Therefore, Ofcom found no unfairness to Mr Ham or his family in respect of the complaint that the programme said that he was guilty but omitted to say that he had pleaded guilty.

Given that the programme had reported the fact that Mr Ham had been found guilty rather than making an allegation against him in this regard, it was not incumbent on the broadcaster to offer Mr Ham an opportunity to respond to this statement.

Ofcom therefore found no unfairness to Mr Ham or his family in respect of the complaint that the programme did not offer him an opportunity to respond to the statement that he was found guilty.

Ofcom then considered the complaint that the programme said Mrs Ham had twenty-seven bank accounts.

Ofcom noted that in the programme Mr Garnett was shown saying: "*David Ham had claimed throughout the investigation that he didn't have any bank accounts. As a*

result of our enquiries we established that he had seven accounts that included credit cards and his wife had twenty-seven including credit cards.”

In Ofcom’s view viewers would have understood this comment to indicate that Mrs Ham had twenty-seven accounts for financial transactions some of which were bank accounts and some of which were credit card accounts.

In considering whether it was unfair for the programme to make this statement about Mrs Ham Ofcom looked at the source of this information.

It observed that the programme had based this statement on information supplied to it by the fraud investigation team at Havering Borough Council. Ofcom also noted that in its response to the complaint the BBC had said that the original source of this information was the credit rating agency Experian.

As noted above, Ofcom considered that Mr Garnett and his team were credible witnesses regarding the actions of Mr Ham and his family in relation to Mr Ham’s benefit claims and financial transactions.

In relying upon the testimony of the fraud investigation team Ofcom considered that the programme makers took reasonable care in relation to material facts regarding Mrs Ham’s bank and credit card accounts.

It therefore found no unfairness to Mr Ham or his family in respect of the complaint that the programme claimed that Mrs Ham had twenty-seven bank accounts.

Ofcom did not consider that the claim that Mrs Ham had twenty-seven bank and credit card accounts was a serious allegation of wrongdoing. Therefore, it was not incumbent upon the broadcaster to offer the complainant an appropriate and timely opportunity to respond to it.

In light of this Ofcom found no unfairness to Mr Ham and his family in this respect.

Ofcom then considered the complaint that the programme had implicated Miss Rubi Ham and Miss Chelsie Ham in Mr Ham’s benefit claims.

Ofcom observed that the programme explained that during the course of the investigation into Mr Ham’s benefit claims a fraud investigator had visited the two shops in which Mr Ham’s daughters worked, Chubby’s Farm Shop and Liberty Flowers. It also noted that the programme had included reconstructions of each of these visits.

Alongside the first of these reconstructions Mr Garnett said:

“Two of my investigators came here when it was Chubby’s Farm Shop to see the proprietor, obtain business records and details of employees. When they visited, they were told by a woman who introduced herself as Chelsie Ham, that initially her father, David Ham, was running the business, she changed that and said it was her shop. When asked for details of employees she said she didn’t have it. The investigators formed the opinion, that although Chelsie was working there she wasn’t actually running the shop. It was being run by David Ham, that she was concealing that information and she was refusing to supply details on employees because he would be named there. During the visit they formed the opinion that there was more to this case than met the eye.”

Alongside the second of these reconstructions Mr Garnett said:

“We’re at Barking now, this is Liberty Flowers the shop David Ham mentioned on the radio. The investigators saw David Ham behind the counter. When asked whether the owner was there, he said that she would be back later. The investigators called back later, and saw a woman who introduced herself as Ruby Ham. She said she was running the business, but when they asked for further details she got upset, her father who was still in the shop became agitated and aggressive and abusive and eventually he told investigators to leave what he described as ‘my shop’.”

After this the programme’s presenter said:

“My Shop? Better watch your words David! And it’s no wonder Ham’s daughter Rubi became upset, being just 16 years old! At this stage Neil believes both Ham’s daughters are innocent of any wrong doing and have nothing to do with their father’s money making fraud.”

It is Ofcom’s view that the inclusion of the comment from the presenter noted above would have made it clear to viewers that the programme did not allege that Mr Ham’s daughters were involved in his benefit claims.

In addition, Ofcom considered that in light of the information included in the programme about the fraud investigators’ visits to Chubby’s Farm Shop and Liberty’s Flowers viewers would have been in a position to decide for themselves if, and, if so to what extent, either Ms Chelsie Ham and/or Ms Ruby Ham were implicated in Mr Ham’s benefit claims.

In light of this context Ofcom considered that the programme makers took reasonable care in relation to material facts regarding any perceived or actual link between Mr Ham’s daughters and his benefit claims.

Ofcom therefore found no unfairness to Mr Ham or his family in this respect.

Given its conclusion that the programme did not allege that Mr Ham’s daughters were involved in his benefit claims, it was not necessary for it to go on to consider whether this was serious allegation and if so whether or not it was incumbent upon the broadcaster to offer the complainant an appropriate and timely opportunity to respond to it.

Ofcom therefore found no unfairness to Mr Ham or his family in respect of the complaint that Mr Ham was not offered an opportunity to respond to the implication that his daughters were involved in his benefit claims.

In light of the evidence above in relation to heads a) i) and b) of this complaint, Ofcom found that that Mr Ham was not treated unfairly in relation to the various claims which he said were made about him in the programme (including those which Ofcom considered were serious allegations of wrongdoing). In addition, for the reasons noted above Ofcom found that it was not incumbent upon the broadcaster to give him an opportunity to respond to any of these claims.

a) ii) Ofcom then considered Mr Ham’s complaint that he and his family were unfairly portrayed in that two points were omitted from the programme. It considered these points in turn.

In considering this part of the complaint Ofcom again took account of Rule 7.1 and Practice 7.9 of the Code.

Ofcom considered the complaint that the programme failed to mention that Mr Ham received the lightest sentence.

Ofcom observed that in its response to the complaint the BBC argued that this was not the lightest sentence which Mr Ham could have been given.

However, Ofcom noted that its role was not to determine whether or not a specific claim was true (in this case whether or not Mr Ham was given the lightest sentence possible) but whether the programme makers treated the material facts regarding this point with reasonable care. In relation to this part of the complaint, that required Ofcom to consider whether the omission of this point from the programme resulted in unfairness to him.

As noted in the decision at head a) i) above Ofcom considered that the programme had made clear to viewers that Mr Ham received a 20 week suspended sentence with the following conditions attached: that he exhibit good behaviour for one year, that he undertake 60 hours of community service and that he agree to pay back the money he had received from Havering Borough Council to which he was not entitled.

Given that Ofcom found that the programme clearly set out the details of Mr Ham's sentence, it considered that viewers would have had sufficient information to consider the relative weight of Mr Ham's sentence for themselves and that the omission of any opinion regarding the relative weight of Mr Ham's sentence would not have affected viewer's perception of him to the extent that it could have resulted in unfairness to him.

In light of this it was Ofcom's view that the programme makers took reasonable care in relation to the material facts regarding the relative weight of Mr Ham's sentence.

Ofcom therefore found no unfairness to Mr Ham or his family in this respect.

Ofcom then considered the complaint that the programme failed to mention that Miss Rubi Ham and Miss Chelsie Ham had written evidence to prove that Mr Ham did not own their shops and that Havering Council had verified this.

As noted above, it is not Ofcom's role to determine whether or not a specific statement is true (in this case whether or not Miss Rubi Ham and Miss Chelsie Ham had written evidence to prove that Mr Ham did not own Chubby's Farm Shop and Liberty's Flowers and Havering Council had verified this) but whether the programme makers treated the material facts regarding this point with reasonable care. In relation to this part of the complaint that required Ofcom to consider whether the omission of this point from the programme resulted in unfairness to Mr Ham.

Ofcom observed that the programme explained that one of the issues which the fraud investigations team had looked at was whether, in contrast to the claims he made to the Council, Mr Ham owned and/or managed the shops Chubby Farm Shop and Liberty's Flowers.

In particular, Ofcom observed that prior to the reconstructions of the investigators visits to the shops (see head a) i) above), the presenter said:

“Ham had claimed to the Council that he occasionally helped his daughter out in the shop, sometimes earning just £85 a week as a thank you, and that the rest of his time was spent caring for his ill wife, hence why he needed housing and council tax benefits”.

Ofcom also noted that the programme included an extract of Mr Garnett’s interview in which he said that one of his investigators had:

“identified that he [Mr Ham] was named as the landlord of a flat above a shop which was being run ostensibly by his daughter. And because he was claiming benefit and not declaring any relationship with the shop or flat, and not declaring any rents received we began an investigation into his circumstances. We found initially two interesting documents. One was a tenancy agreement to the flat where David Ham was named as landlord and the other was a document in the council system which was a letter from David Ham confirming he had no interest in the property”.

In addition Ofcom observed that later in the programme the presenter said:

“Fraud investigator Neil Garnett and his team believe David Ham owns the two shops he talked about on the radio but they have to prove it”.

In this context Ofcom also recognised that, as the BBC had noted in its response to the complaint (and the programme had made clear), during a phone-in programme on the Kiss 100 radio station Mr Ham had responded to the following question from the radio presenter *“Dave nice one where’s your shop?”* by saying *“Uh I got one in Hornchurch and one in Barking ... one a flower shop and Chubby’s Garden Centre”.*

In addition, Ofcom observed that in the programme Mr Garnett said that the investigations team had found two credit card applications in Mr Ham’s name and that in each of them *“he showed that he was employed by Chubby’s, one as self-employed, the other as the manager, and that he had declared on one that his annual income was £35,000 and on the other £40,000”.* Mr Garnett added the opinion that *“He [Mr Ham] was clearly presenting a public image of being a businessman yet at the same time to the London Borough of Havering he was saying that he was relying on state benefits”.*

Ofcom considered that given these comments and Mr Garnett’s descriptions of the investigators’ visits to the two shops, viewers would have understood that the fraud investigations team believed that Mr Ham managed the businesses (referred to in the programme variously as *“Chubby’s Farm Shop”* (or *“Chubby’s Garden Centre”*) and *“Liberty’s Flowers”* and *“the two shops”*) and that he may have either had an interest in or owned the property in which Chubby’s Farm Shop was located. Ofcom also considered that it would have been clear to viewers that the fraud investigations team believed that Mr Ham had not informed Havering Borough Council that he managed these shops or declared his true earnings from either the shops or any interest he might have had in the property in which Chubby’s Farm Shop was located because doing so would have prevented him continuing to receive benefits.

Given that Ofcom had found that Mr Garnett and his team were credible witnesses regarding the actions of Mr Ham and his family in relation to Mr Ham’s benefit claims and financial transactions it considered that the broadcaster took reasonable care in relation to material facts regarding the management and ownership of the shops and the property in which one of them was located.

In addition, in Ofcom's view the key point in the representation in the programme of the management and ownership of the shops and Mr Ham's interest in or ownership of the property in which one of them was located which had the potential to affect Mr Ham's reputation was whether he deliberately did not declare his true earnings from either in order to continue to receive benefits to which he was not entitled.

In this context Ofcom's noted that in its view the programme had clearly explained the charges against Mr Ham in court in that it had included the presenter saying: "*Standing before the judge David Ham faces five counts of deception. Four relating to making claims whilst running businesses and one to do with undisclosed capital, i.e. his uncle's inheritance*". Ofcom also recognised that the programme had clearly explained that Mr Ham was found guilty of one of these charges with the other four being kept on file in case he should commit any further criminal offences.

In light of its conclusion that the programme had taken reasonable care in relation to material facts regarding the management and ownership of the shops and the property in which one of them was located and that it had made clear that Mr Ham was found guilty on one of the charges of deception in relation to his benefit claims with the rest being kept on file Ofcom considered that viewers would have had sufficient information to decide upon the status of the Mr Ham's relationship to the shops for themselves. Given this, it was Ofcom's view that the omission of the information that Miss Rubi Ham and Miss Chelsie Ham had written evidence to prove that Mr Ham did not own their shops and that Havering Council had verified this would not have had a significant effect upon viewer's opinion of him and thereby his reputation.

Therefore, Ofcom found no unfairness to Mr Ham or his family in this respect.

In light of the evidence above in relation to head a) ii) of this complaint, Ofcom found that that Mr Ham was not treated unfairly in that the programme omitted to say that he had received the lightest sentence possible and that his daughters had written evidence (verified by Havering Council) to prove that Mr Ham did not own their shops.

Ofcom went on to consider the heads of Mr Ham's complaint which related to the unwarranted infringement of his privacy and that of his family in either the making or broadcast of the programme.

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

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

- c) Ofcom first considered Mr Ham's complaint that his privacy and that of his family was unwarrantably infringed in the making of the programme in that personal paperwork was obtained for the programme.

In considering this part of the complaint Ofcom took account of Rule 8.1 of the Code as well as Practice 8.5 of the Code which states that any infringement of privacy in the making of a programme should be with the person's consent or be otherwise warranted.

In considering whether or not the privacy of Mr Ham and his family was unwarrantably infringed in the making of the programme, Ofcom first assessed the extent to which they had a legitimate expectation of privacy in respect of the material that was obtained (i.e. the personal paperwork) and whether any expectation was affected by the way it was obtained.

Ofcom observed that several pieces of documentation which contained information about or pertaining to Mr Ham's financial transactions were included in the programme. These were: a tenancy agreement for the flat above Chubby's Farm Shop with Mr Ham's name on it, a bank statement showing receipt of £44,821.32, a credit card statement with a charge on it; copies of two cheques paid in the name of C. Ham, Chubby's Farm Shop; a sales purchase agreement; a hire purchase agreement; a list of rents received; the first page of the will of Mr Ham's uncle; a letter to Mr Ham from a firm of solicitors informing him that he was due to inherit £44,821.32 from the estate of his late uncle; a copy of a benefit claim form with the sections detailing any capital held by the claimant crossed through; a copy of the purchase agreement form for the caravan which the programme said Mr Ham had bought. On the information available to it Ofcom concluded that this personal paperwork was provided to the programme makers by Havering Borough Council, i.e. the Council that brought the prosecution against Mr Ham for fraudulently claiming benefits, and that this material was used as evidence in the case. Given that these documents related to the personal finances of Mr Ham and his family Ofcom considered that they did have a legitimate expectation of privacy in relation to the obtaining of this material in the making of the programme. However, Ofcom also considered that their expectation of privacy in relation to obtaining of this material was lessened because the material had been obtained in the course of an investigation by Havering Borough Council into Mr Ham's benefit claims and used as evidence in court case against Mr Ham at the end of which he was convicted of one count of deception in relation to his benefit claims.

Taking account of these considerations, Ofcom concluded that Mr Ham and his family had a limited expectation of privacy in relation to the obtaining of personal paperwork during the making of the programme.

It then went on to weigh this limited expectation of privacy against the broadcaster's competing right to freedom of expression and the public interest in enabling the general public to see and understand the basis of an investigation into, and subsequent conviction for, claiming state benefits fraudulently.

Ofcom also noted that in its response to the complaint the BBC argued that in making a programme which made serious allegations of wrongdoing against Mr Ham's the programme makers were obliged to ensure that they were being fair towards him by satisfying themselves that there was sufficient evidence to substantiate those allegations.

In Ofcom's view it would be inappropriate to unduly constrain programme makers' ability to obtain such material in these circumstances given that doing so would impede the broadcaster's ability to exercise its right to freedom of expression with respect to the circumstances surrounding a conviction for fraudulent benefit claims

and to serve the public interest in enabling viewers to see how an investigation into such benefit claims is conducted and the conviction and sentence which may result. It took the view that this outweighed the limited expectation of privacy of Mr Ham and his family in relation to the obtaining of this material.

Taking all of these factors into account, Ofcom found that there was no unwarranted infringement of the privacy of Mr Ham or his family in the making of the programme.

In Ofcom's view the complaints at heads d) to g) were closely related in that they all related to unwarranted infringement of privacy in the programme as broadcast. It therefore considered these heads of complaint together.

d) to g) Ofcom considered Mr Ham's complaint that his privacy and that of his family was unwarrantably infringed in the broadcast of the programme in that he was shown and identified, his wife was shown and his daughters were referred to in the programme in the context of false allegations and that personal paperwork was shown in the programme.

In considering this part of the complaint Ofcom took account of Rule 8.1 of the Code as well as Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

In considering whether or not the privacy of Mr Ham and his family was unwarrantably infringed in the broadcast of the programme, Ofcom first assessed the extent to which they had a legitimate expectation of privacy in respect of the material that was broadcast (i.e. the images of and/or references to Mr Ham, his wife and their daughters and the personal paperwork).

Mr Ham

Ofcom observed that Mr Ham was shown and identified in the programme. Specifically, footage of him walking to court on one occasion and walking outside court on another was included in the programme and he was repeatedly identified as either Mr Ham or David Ham. In addition a clip of Mr Ham contributing to a phone-in show on Kiss 100 was heard in the programme as was an extract of an interview with Mr Ham conducted by the fraud investigation team

Ofcom considered that given that the footage of Mr Ham was filmed in a public place (outside court) and that he was shown and identified in the context of the investigation into his benefit claims by Havering Borough Council, the charges brought against him in court and his conviction on one count of fraudulently claiming benefits he did not have a legitimate expectation of privacy with regard to the inclusion of the images of him and references to him in the programme which made him identifiable.

In addition, given that Mr Ham's contribution to the Kiss 100 radio programme had already been broadcast with his consent (in that he had chosen to phone the station and make the contribution to the radio programme) and that therefore any information contained within it (whether or not it was private) was in the public domain Mr Ham did not have a legitimate expectation of privacy in regard to its re-use in this programme.

Ofcom considered that Mr Ham had some expectation of privacy with regard to the recording of his interview with the fraud investigation team in that he discussed personal financial matters within it. However, it noted that the interview had taken place under caution and that therefore there was an underlying understanding that the material being discussed may be disclosed in court and therefore become a matter of public record.

Ofcom therefore concluded that although Mr Ham did not have a legitimate expectation of privacy with regard to either being shown and identified in the programme or the inclusion of an extract of his phone-in contribution to the radio station, he had a limited expectation of privacy with regard to the inclusion of a section of his interview with the fraud investigation team.

Ofcom then went on to weigh Mr Ham's limited expectation of privacy in regard to the interview against the broadcaster's competing right to freedom of expression and the public interest in enabling the general public to see and understand the basis of an investigation into, and subsequent conviction for, claiming state benefits fraudulently.

In Ofcom's view there was a clear public interest in viewers seeing how an investigation into fraudulent benefit claims is conducted and the conviction and sentence which may result. Ofcom considered that the inclusion of the extract of Mr Ham's interview under caution was directly relevant to that investigation and his subsequent conviction. It also noted that Mr Ham's conviction was a matter for public record and that the broadcaster had a right to freedom of expression with respect to the circumstances surrounding that conviction. Taking these considerations into account Ofcom concluded that the broadcaster's right to freedom of expression and the public interest in showing viewers a complete picture of an investigation into fraudulent benefit claims outweighed Mr Ham's limited expectation of privacy in relation to this footage.

In light of these factors Ofcom found that there was no unwarranted infringement of the privacy of Mr Ham or his family in the programme as broadcast in respect of the complaint that he was shown and identified in the programme in the context of the false allegations

Mrs Ham

Ofcom observed that Mrs Ham was shown in the programme. Specifically, footage of her accompanying her husband when he walked to court and of her walking outside the court a little way apart from her husband was included in the programme. Ofcom noted that when images of Mrs Ham were included in the programme she was neither identified by name nor referred to. (Mrs Ham was referred to in other parts of the programme - for more detail see the decision in relation to heads a) i) and b) above and the decision in relation to the complaint about the inclusion of personal paperwork below.) Ofcom also noted that on the first occasion Mrs Ham was shown in the programme her face was "blobbed" and on the second she was seen only from behind or obscured by another person.

Ofcom recognised that viewers might well have inferred that the woman seen accompanying Mr Ham (who as noted above was identified in the programme) to court was Mrs Ham. However, given that the footage of Mrs Ham was filmed in a public place (outside court) and that her face was either obscured artificially or not shown and that she was not identified, Ofcom considered that Mrs Ham did

not have a legitimate expectation of privacy with regard to the inclusion of the images of her in the programme.

In light of these factors Ofcom found that that there was no unwarranted infringement of the privacy of Mr Ham or his family in the programme as broadcast in respect of the complaint that Mrs Ham was shown in the programme in the context of the false allegations.

Ms Chelsie Ham and Ms Rubi Ham

Ofcom observed that neither Ms Chelsie Ham nor Ms Rubi Ham was shown in the programme. Ofcom noted that they were referred to in the programme which said that that they worked in Chubby's Farm Shop and Liberty Flowers, respectively. Ofcom also noted that the programme included a reconstruction of visits made by fraud investigators from Havering Borough Council to these shops in the course of their investigation into Mr Ham's benefit claims and that during these reconstructions the programme described Ms Chelsie Ham and Ms Rubi Ham's responses to the investigators' questions notably with regard to the role that Mr David Ham had at each shop.

Ofcom recognised that Ms Chelsie Ham and Ms Rubi Ham had a legitimate expectation of privacy with regard to conversations that they each had about the employment and work pattern at the shop at which they worked in that these conversations concerned their personal contractual arrangements but considered that this expectation was limited to a degree by the fact that the conversations were part of an investigation into Mr Ham's fraudulent benefit claims.

Ofcom then went on to weigh Ms Chelsie Ham and Ms Rubi Ham's limited expectation of privacy in against the broadcaster's competing right to freedom of expression and the public interest in enabling the general public to see and understand the basis of an investigation into, and subsequent conviction for, claiming state benefits fraudulently.

In this context Ofcom observed that, as noted above, it considered that the programme makers took reasonable care in relation to material facts regarding any perceived or actual link between Mr Ham's daughters and his benefit claims.

As previously stated, in Ofcom's view there was a clear public interest in enabling viewers to see how an investigation into fraudulent benefit claims is conducted and the conviction and sentence which may result. Ofcom considered that the inclusion of the investigators' description of their visits to the shops which they believed were managed by Mr Ham was directly relevant to that investigation and Mr Ham's subsequent conviction. It also noted that Mr Ham's conviction was a matter for public record and that the broadcaster had a right to freedom of expression with respect to the circumstances surrounding that conviction. Taking these considerations into account Ofcom concluded that the broadcaster's right to freedom of expression and the public interest in showing viewers a complete picture of an investigation into fraudulent benefit claims outweighed Ms Chelsie Ham and Ms Rubi Ham's expectation of privacy in relation to the footage describing their conversations with the fraud investigators.

In light of these factors Ofcom found that that there was no unwarranted infringement of the privacy of Mr Ham or his family in the programme as broadcast in respect of the complaint that Ms Chelsie Ham and Ms Rubi Ham were referred to in the programme in the context of the false allegations.

Personal paperwork

As noted above, Ofcom observed that several pieces of documentation which contained information about or pertaining to Mr Ham's financial transactions were included in the programme. In addition, the programme included the following references to the personal financial transactions of Mr Ham and his family: a reference to the caravan being held solely in the name of Mrs Ham; a reference to Mr Ham having had seven financial accounts and Mrs Ham having had 27 financial accounts over the period during which Mr Ham had claimed benefits; a reference to a letter in the council system in which Mr Ham confirmed that "he had no interest in the property [i.e. the flat above Chubby's Farm shop]"; and the reference (noted in the decision at head a) i) and b) above) to two credit card applications made in Mr Ham's name in which he claimed to be either self-employed by or the manager of Chubby's and that his income was either £35,000 or £40,000.

Ofcom observed that in none of the documentation showing or references to Mr Ham's financial transactions in the programme was the address of Mr Ham and his family included.

As noted above, on the information available to it Ofcom concluded that this material was provided to the programme makers by Havering Borough Council, i.e. the Council that brought the prosecution against Mr Ham for fraudulently claiming benefits, and that this material was used as evidence in the case. Given that these documents related to the personal finances of Mr Ham and his family Ofcom considered that they did have a legitimate expectation of privacy in relation to the obtaining of this material in the making of the programme. However, Ofcom also considered that their expectation of privacy in relation to obtaining of this material was lessened because the material had been obtained in the course of an investigation by Havering Borough Council into Mr Ham's benefit claims and used as evidence in court case against Mr Ham at the end of which he was convicted of one count of deception in relation to his benefit claims.

Having recognised that Mr Ham and his family had a limited expectation of privacy with regard to the information included in the programme about or pertaining to Mr Ham's financial transactions Ofcom then went on to weigh this expectation of privacy against the broadcaster's competing right to freedom of expression and the public interest in enabling the general public to see and understand the basis of an investigation into, and subsequent conviction for, claiming state benefits fraudulently.

Ofcom again noted that in its view there was a clear public interest in viewers seeing how an investigation into fraudulent benefit claims is conducted and the conviction and sentence which may result. Ofcom considered that the inclusion of this material was directly relevant to that investigation and Mr Ham's subsequent conviction. It also noted that Mr Ham's conviction was a matter for public record and that the broadcaster had a right to freedom of expression with respect to the circumstances surrounding that conviction. Taking these considerations into account Ofcom concluded that the broadcaster's right to freedom of expression and the public interest in showing viewers a complete picture of an investigation into fraudulent benefit claims outweighed the limited expectation of privacy of Mr Ham and his family in relation to the broadcast of footage of this material.

Taking account of all of these factors Ofcom found that that there was no unwarranted infringement of the privacy of Mr Ham or his family in the

programme as broadcast in respect of the complaint that personal paperwork was shown in the programme.

In light of the evidence above in relation to heads d) to g) of this complaint, Ofcom found that that the privacy of Mr Ham and his family was not unwarrantably infringed in the programme as broadcast.

Accordingly Ofcom has not upheld Mr Ham's complaint of unfair treatment or unwarranted infringement of privacy in either the making or broadcast of the programme

Not Upheld

Complaint by Steeles Law Solicitors made on behalf of Mr Keenam Bradshaw-Davis

Dispatches: Rape in the City, Channel 4, 22 June 2009

Summary: Ofcom has not upheld this complaint made by Steeles Law Solicitors on behalf of Mr Keenam Bradshaw-Davis of unfair treatment and unwarranted infringement in the programme as broadcast.

This edition, entitled *Rape in the City*, investigated the issue of multiple perpetrator rape (“gang rape”) in England. As part of its investigation, the programme interviewed groups of young black and mixed-race men whose ethnic backgrounds were similar to the majority of those men convicted of participating in “gang rape”.

Mr Bradshaw-Davis, aged 16 years old at the time of filming, was a member of one of the groups interviewed. During the programme, Mr Bradshaw-Davis offered his views on casual sexual partners and rape.

In summary, Ofcom found the following:

- Based on all information had by the programme makers prior to broadcast, it was reasonable for them to believe that they had obtained the informed consent of Mr Bradshaw-Davis. There was no evidence to suggest he was misled as to the nature of the programme, and he willingly and actively participated in the programme.
- He was not unfairly portrayed by the programme as being confused about consensual sex. His views on the issue were clear, unequivocal and included in the programme.
- He did not have a legitimate expectation of privacy over information he disclosed whilst being interviewed, on camera, for a programme due to be broadcast.

Introduction

On 22 June 2009, Channel 4 broadcast an edition of its documentary series *Dispatches*. This edition, entitled *Rape in the City*, investigated the extent of multiple perpetrator rape (“gang rape”) in England. As part of its investigation, the programme interviewed groups of young black and mixed-race men whose ethnic backgrounds were similar to the majority of those men convicted of participating in “gang rape” to gain an insight into their attitudes towards girls, girlfriends, sex and group sex.

Members of one of the groups interviewed were questioned about their sexual attitudes and practices. The programme stated that the group had said that it was common for young men to have a number of girls they could call on to have sex with and that it was not unusual for a girl to have sex, particularly oral sex, with several young men at the same time.

Mr Keenam Bradshaw-Davis, aged 16 years old at the time of filming, was one of the members of the group interviewed. In the programme, Mr Bradshaw-Davis was shown expressing his views on casual sexual partners and rape.

Steeles Law Solicitors (“Steeles Law”) complained to Ofcom on behalf of Mr Bradshaw-Davis that he was treated unfairly in the programme and that his privacy had been unwarrantably infringed in the programme as broadcast.

The Complaint

Mr Bradshaw-Davis’ case

In summary, Steeles Law complained on behalf of Mr Bradshaw-Davis that he was treated unfairly in the programme as broadcast in that:

- a) He did not provide informed consent.
 - i) He was misled as to the nature of the programme. In particular, Steeles Law said that Mr Bradshaw-Davis was told that he would be interviewed about gangs, not “gang rape”. Although the interview started with questions about gangs, it led into questions about girls, sex and then, finally, gang rape.
 - ii) He did not consent to being included in the programme. In particular, Steeles Law said that Mr Bradshaw-Davis was told by the programme makers that to be included in the programme he would need to provide a consent form signed by his parents. As he did not wish to be included in the programme, he did not return the form to them.
- b) He was unfairly portrayed by the programme’s editing.

Steeles Law said that Mr Bradshaw-Davis had articulated clearly in the interview that when a girl did not agree to do something he would never seek to persuade her to do it. The programme’s presenter however went on to state that the young men interviewed did not know the difference between a girl giving consent and withdrawing that consent, which they did.

In summary, Steeles Law complained on behalf of Mr Bradshaw-Davis that his privacy had been unwarrantably infringed in the programme as broadcast in that:

- c) His identity was revealed in the programme despite other participants being anonymised, even though his identity was not pertinent to the issues in the programme.

Channel 4’s case

In summary, Channel 4 responded to Mr Bradshaw-Davis’ complaint of unfair treatment as follows:

- a) i) In response to the complaint that Mr Bradshaw-Davis was misled as to the nature of the programme, Channel 4 said that the programme makers had approached the Copenhagen Youth Project (“the CYP”) and explained the nature of the programme and the kind of contributions that they sought. Mr Steve Griffith, a volunteer worker at the CYP, identified a number of local young men who were attached to the CYP and who, it was thought, might be willing to discuss their attitudes to sex and sexual encounters on camera. Channel 4 said that Mr Bradshaw-Davis was one of the young men identified by the CYP and that he participated in the making of the programme without any inducement, urging or encouragement from the production team.

Channel 4 said that as the time for filming approached, the group were asked whether they were going to “come to filming”, to which Mr Bradshaw-Davis replied, “What? About gang rape?”. Closer to the time of filming, Channel 4 said that Mr Bradshaw-Davis had led the rest of the group to the place where filming was to occur asked, “Is this the one about gang rape?”.

Channel 4 said that when the filming commenced, the presenter thanked the young men for participating and asked, “You know we’re doing this thing about gang rape...”. It said that there were no questions about gangs at the start of the filming and that no one in the group, including Mr Bradshaw-Davis, raised any objection to any line of questioning during the filming process. Channel 4 said that there was no reason to suspect that Mr Bradshaw-Davis was not fully aware of what topics the programme makers were interested in discussing and filming. It said that throughout the filming process, Mr Bradshaw-Davis was articulate, animated and responsive. Channel 4 said that there was nothing about his demeanour that suggested that Mr Bradshaw-Davis was surprised by the line of questioning or uncomfortable about answering questions.

- a) ii) In response to the complaint that Mr Bradshaw-Davis did not consent to being included in the programme, Channel 4 said that no member of the production team spoke with Mr Bradshaw-Davis prior to the commencement of filming. It said that the day before filming took place, a meeting was held between the production team and some of the young men who were to be filmed. However, Channel 4 said that Mr Bradshaw-Davis had chosen not to attend that meeting and so, as a consequence, no member of the production team could have told Mr Bradshaw-Davis that a signed consent form by his parents was necessary before any part of his contribution would be included in the programme.

However, Channel 4 said that the production team made efforts to ensure that those persons under 18 years of age who were to be featured in the programme had discussed the filming with their parents or guardians and had obtained their informed consent to participate in the filming and subsequent broadcast. It said that Mr Bradshaw-Davis was 16 at the time of filming and 17 by the time of broadcast. Channel 4 said that, because of this, it was under no obligation under Ofcom’s Broadcasting Code to gain the consent of his parents to his participation in the filming or broadcast of the programme.

Channel 4 said that, although it seemed clear that Mr Bradshaw-Davis changed his mind after filming was completed and did not want to be featured in the programme, his change of mind did not affect the quality of the informed consent he gave before and during the filming process.

- b) In response to the complaint that Mr Bradshaw-Davis’ contribution was unfairly edited in the programme, Channel 4 said that it was not the case that all of the young men who were filmed with Mr Bradshaw-Davis expressed the same view as he did on the question of consent. It said that his views about rape were clear and had been included in the programme. Channel 4 said that the programme did not state that all the young men interviewed “did not know the difference between a girl giving consent and withdrawing consent”. It said that the presenter had made a general comment about all the young men featured which was to say that they spoke in a particular way without realising the full depth of what they were doing and what they were involved in.

In summary, Channel 4 responded to Mr Bradshaw-Davis’ complaint of unwarranted infringement of privacy in the broadcast of the programme as follows:

- c) Channel 4 said that Mr Bradshaw-Davis did not have a legitimate expectation of privacy in relation to the broadcast of his contribution as he had voluntarily participated in the filming and thereby consented to its broadcast. Further, it said that he did not participate in filming on the basis that his identity be obscured or hidden and did not impart any private information. Channel 4 said that where identities were obscured in the programme, it occurred either because the speaker was a victim of sexual crime and could not, by law, be identified or because the contributor was not 16 years of age or older and parental consent for involvement had not been obtained. Also, it said that how one person was treated in a programme could not impact upon the privacy issues of another. Channel 4 also said that the law recognises that proper regard must be had to the views of the journalists and programme makers on issues such as identification and must not interfere unduly with editorial judgements. It said that one of the functions of the programme was to alert women and young girls to the attitude of young men towards them and such sexual activities. It said that viewers regard contributions where identity is known as having greater credibility. Channel 4 said the fact that Mr Bradshaw-Davis was prepared to talk openly about sexual behaviour was particularly telling as it showed how commonplace such conduct was, that he and his friends were not ashamed or embarrassed by it and, particularly, that he and they did not think there was anything at all wrong with their views. Channel 4 said that Mr Bradshaw-Davis' admission that he would assault any woman from whom he contracted a sexually transmitted disease was, of itself, an important reason to reveal his identity.

Decision

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

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

Steeles Law's complaint was considered by Ofcom's Executive Fairness Group. In reaching its decision, Ofcom considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript, both parties' written submissions and their supporting materials and recordings and transcripts of untransmitted interview footage.

Unfair treatment

When considering complaints of unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of the Code. Ofcom had regard to Rule 7.1 when reaching its decisions on the individual heads of complaint detailed below.

- a) i) and ii) Ofcom considered together the complaints that Mr Bradshaw-Davis had been misled as to the nature of the programme and that he did not provide informed consent to participate in the programme.

In considering this part of the complaint, Ofcom took account of Practice 7.3 of the Code which states that in order for potential contributors to a programme to be able to make an informed decision about whether to take part, they should be given sufficient information about: the programme's nature and purpose; their likely contribution; any changes to the programme that might affect their decision to contribute; and the contractual rights and obligations of both parties.

Ofcom first considered whether Mr Bradshaw-Davis was misled as to the nature of the programme. In doing so, it examined the unedited footage of the entire interview with the group and the initial questions put to them by the presenter. In particular, Ofcom noted the presenter's first question:

"Guys, hey, thanks for coming round. Er, you know we're doing this thing for er, Channel 4 about gang rape, but what I want to talk to you is about is er, first of all, I want to know how old are you guys, how old are you?"

Ofcom then noted, after the presenter asked the group about whether they had girlfriends, that he asked:

"Now, what I want to understand, you know, since they've got a girl, tell me, what, what do you think, what is – what do you think about the attitudes of young, black men towards girls when it comes to their sexual attitudes?"

Ofcom also examined some of the contributions made by Mr Bradshaw-Davis during the course of the interview. At one point he said:

"Well, like, for instance, yeah, bom, if you get a girl and she likes to do dirty things such as giving head, having sex, whatever, yeah, and you, you ask, this is how it starts, you ask her like, bom, what, is it just me or can I bring my boys in, innit, like, by brethrens, innit."

Having examined all of the unedited footage of the interview and read a transcript of it, Ofcom was satisfied that Mr Bradshaw-Davis was told at the outset of the interview what the programme was to be about and that he showed no signs of surprise or hesitation in answering questions on the subject of "gang rape". Ofcom noted that Mr Bradshaw-Davis was participating in the discussions and engaged with the presenter's questions in a manner which demonstrated that he understood the nature of the programme being made and was aware that his opinions might feature in it.

Ofcom then compared the programme as broadcast with the topics covered in the interview and examined whether the content of the programme reflected the information given to him about it at the outset of the filmed interview. Ofcom noted the title of this edition of the programme *Rape in the City* and the opening words spoken by the presenter:

"Tonight on Dispatches – the shocking truth about women being gang raped by groups of young men".

Ofcom also noted that the programme included a number of "gang rape" cases and contributions from victims and the families of victims as well as groups of young men and women who shared their views on sex, sexual relationships and rape. As a member of one of the groups of young men featured in the programme, Mr Bradshaw-Davis was shown giving his opinions on group sex,

rape and what his reaction would be towards a young woman if he contracted a sexually transmitted disease from her. Ofcom again noted that, just as in the unedited footage, Mr Bradshaw-Davis was shown participating in the discussions and engaged with the presenter's questions. Ofcom considered that the nature and content of the programme as broadcast was the same as the nature and content of Mr Bradshaw-Davis' interview. Ofcom therefore concluded that Mr Bradshaw-Davis was not misled as to the nature of the programme.

Having established that Mr Bradshaw-Davis was accurately told what the nature and content of the programme would be, Ofcom then considered whether Mr Bradshaw-Davis had provided his informed consent to participate in the programme and in doing so examined what other information was made available to him prior to his participation and the process through which the programme makers sought it.

Ofcom noted that the programme makers had approached Mr Griffith from the CYP and asked him to identify a group of young men who would be willing to be interviewed on camera for the programme. Ofcom noted that the day before filming the programme makers had held a meeting with the group during which it was explained by the programme makers what the programme was going to be about and what their contribution to it would involve. Ofcom also noted that Mr Bradshaw-Davis did not attend this meeting.

Ofcom noted that there was a conflict of evidence between the way in which Mr Bradshaw-Davis and the programme makers recalled the representations that were made to him regarding the signing of consent forms. Ofcom is not required to resolve conflicts of evidence as to the nature or accuracy of particular accounts of events but to adjudicate on whether a complainant has been treated unfairly in a programme. In any event, informed consent does not rest on the signing of a consent or release form and the Code does not normally require the provision of parental consent for persons aged 16 or over.

Ofcom was concerned that Mr Bradshaw-Davis was not spoken to directly before the interview (and that the programme makers had relied to such an extent on a go-between), particularly given the seriousness and sensitivity of it. However, when Ofcom examined the events of the day of filming itself, it noted that Mr Bradshaw-Davis attended the day of filming and participated in the interview. Ofcom considered it was clear that Mr Bradshaw-Davis was told at the outset of the interview what it was to be about, that he actively participated in it and that, in the absence of any significant changes to the programme or his contribution to it, that it was reasonable for the programme makers to have believed they had obtained the informed consent of Mr Bradshaw-Davis given all the information available to them before the broadcast of the programme.

Ofcom therefore concluded from the material submitted to it that Mr Bradshaw-Davis was not misled by the programme makers into taking part in the programme and that he gave his informed consent.

Ofcom therefore found no unfairness to Mr Bradshaw-Davis in this respect.

- b) Ofcom then considered the complaint that Mr Bradshaw-Davis was unfairly portrayed by the programme's editing, in respect of his views on consensual sex.

In considering this head of complaint, Ofcom had regard to Practice 7.9 of the Code which states 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.

In assessing this head of complaint, Ofcom first considered whether the programme unfairly portrayed Mr Bradshaw-Davis' understanding of consent¹. Ofcom noted that Mr Bradshaw-Davis said in the programme:

"You see guys who rape, yeah, on my life, yeah, I think they should all burn, 'cos, 'cos, that's just disgusting. You can't force a girl to do something she don't want to do".

Ofcom took the view that Mr Bradshaw-Davis' statement clearly demonstrated that he had an understanding of consensual sexual intercourse and was vehement in expressing his disgust with men who would "force a girl" to do something she would not want to do.

Ofcom noted that after Mr Bradshaw-Davis' statement the presenter had a discussion with Mr Griffith in which they discussed what the group had said in their interview and the issue of "gang rape" more generally. In this discussion, the presenter said:

"What concerns me is whether a girl who agrees to have sex with some boys has the same power to say no at any point."

Mr Griffith replied:

"Well this is, this is the big question. You know umm, the word consent and the understanding of consent because if they're all waiting their turn [...]"

After this discussion, the programme's presenter stated:

"As a black man I was shocked to hear young black men express views that are so disturbing. I find their attitudes towards women and their confusion about what sexual consent means really worrying."

Ofcom considered that this statement was made subsequent to the dialogue the presenter had with Mr Griffith and took the view that it referred to situations in which a girl had consented to sexual intercourse with some but not all of the individuals in a 'gang'. It therefore did not refer to Mr Bradshaw-Davis or any specific comments he may have made. Indeed, Ofcom took the view that it would have been clear to viewers that he was opposed rape, given the vehement and unequivocal nature of his disagreement with it.

Ofcom therefore concluded that the programme was not edited in a way that resulted in unfairness to Mr Bradshaw- Davis in the programme as broadcast.

Privacy

- c) Ofcom finally considered Steeles Law's complaint Mr Bradshaw-Davis' privacy was unwarrantably infringed in the programme as broadcast.

¹ As defined by the Sexual Offences Act 2003.

Ofcom considered the complaint that Mr Bradshaw-Davis' identity was revealed in the programme despite other participants being anonymised, even though his identity was not pertinent to the issues in the programme.

In Ofcom's view, the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. Rule 8.1 of the Code states that any infringement of privacy in programmes or in connection with obtaining material included in programmes, must be warranted. 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 also had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

Ofcom first considered whether Mr Bradshaw-Davis had a legitimate expectation of privacy in relation to the broadcast of the interview footage of him. The Code explains that "legitimate expectations of privacy will vary to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and where the individual concerned is already in the public eye".

Ofcom recognised that the nature of the information disclosed in the programme, that is information pertaining to Mr Bradshaw-Davis' sexual practices, may be considered as being information of a sensitive and private nature and may therefore attract an expectation of privacy. However, for the reasons already stated in the decision at paragraph a) above, Ofcom was satisfied that Mr Bradshaw-Davis had understood the nature of the programme and his contribution to it and that the consent that he had given to the programme makers to film him and broadcast the footage of him was informed. Mr Bradshaw-Davis was therefore fully aware, in Ofcom's view that his opinions and any private information about him revealed could be included in the programme for broadcast. Ofcom was also satisfied that no significant changes had subsequently arisen which affected his consent. In these circumstances, Ofcom took the view that Mr Bradshaw-Davis did not have a legitimate expectation with regard to the information filmed and later disclosed in the programme.

Having found no legitimate expectation of privacy, Ofcom found that Mr Bradshaw-Davis' privacy was not infringed in the programme as broadcast. It was not therefore necessary for Ofcom to further consider whether any infringement of privacy was warranted.

Accordingly, Ofcom has not upheld Steeles Law's complaint that Mr Bradshaw-Davis was treated unfairly and that his privacy was unwarrantably infringed in the broadcast

Not Upheld

Complaint by Ms Nassila Zelleg

Brighton Beach Patrol, Five, 30 October 2009 (and repeated on 3 November 2009 on Fiver)

Summary: Ofcom has not upheld this complaint of unfair treatment and unwarranted infringement of privacy made by Ms Nassila Zelleg.

This edition of the programme included footage of two families involved in a heated argument on Brighton beach, a lifeguard intervening and the two families leaving the beach. Although the faces of those involved in the argument had been blurred to prevent their identification, Ms Zelleg, one of the people included in the footage complained that she was treated unfairly and that her privacy was unwarrantably infringed in the programme as broadcast.

In summary, Ofcom found the following:

- In view of the conflict of evidence about who provided Ms Zelleg with an assurance that footage of her would not be broadcast, Ofcom was unable to conclude that Ms Zelleg had been treated unfairly by the broadcaster.
- The programme did not portray Ms Zelleg as a “hooligan from London”.
- The broadcaster’s right to freedom of expression outweighed Ms Zelleg’s legitimate expectation of privacy and there was no unwarranted infringement of Ms Zelleg’s privacy.

Introduction

On 30 October 2009 (repeated on 3 November 2009 on Fiver), Five broadcast an edition of *Brighton Beach Patrol*. The series followed the work of police, coastguards and lifeguards who patrol Brighton’s beach. This edition included footage of a heated argument taking place between two families on the beach and lifeguards intervening and asking the families to leave.

It was stated in the programme that the lifeguards had no idea how the argument started, but one of the lifeguards said:

“She was saying it was like a racial thing, but I don’t think that it was. They were both from London – obviously”.

The faces of the people arguing were obscured but their voices were not.

Ms Nassila Zelleg, one of the people involved in the argument, complained to Ofcom that she was treated unfairly and that her privacy was unwarrantably infringed in the programme as broadcast.

The Complaint

Ms Zelleg's case

In summary, Ms Zelleg complained that she was treated unfairly in the programme as broadcast in that:

- a) The footage of her was broadcast without her consent. When she asked the programme makers to stop filming, they promised that the footage would not be broadcast, but it was.
- b) She was portrayed unfairly because the footage was edited in such a way that it wrongly made her look like a "hooligan from London".

By way of background, Ms Zelleg said that, even though the lifeguard said he did not think it was a racial thing, the situation occurred because she was victimised and subjected to racial abuse and she was only trying to defend herself and her son.

In summary, Ms Zelleg complained that her privacy was unwarrantably infringed in the programme as broadcast in that:

- c) She was told that the footage of the argument would not be broadcast, but it was and people recognised her.

Five's case

In summary, Five responded to the complaint that Ms Zelleg was treated unfairly in the programme as follows:

- a) As regards the complaint that footage of Ms Zelleg was broadcast without her consent despite a promise that it would not be broadcast, Five said that neither it nor the programme makers promised Ms Zelleg that the footage of the argument would not be broadcast. Five said that, after the argument was broken up by the lifeguards, Ms Zelleg approached one of the programme's associate producers and made it clear that she did not want footage of her broadcast on television. Five said that the associate producer attempted to calm Ms Zelleg down, but did not tell her that she would not appear in the programme and had confirmed that she would not have given such an assurance.

Five said that later in the day, a member of Brighton & Hove City Council's Seafront team ("the Seafront Team"), who had witnessed Ms Zelleg's exchange with the associate producer, approached the producers and told them that he had assured Ms Zelleg that she would not feature in the programme. Five said that the Seafront Team member did not have any authority to provide such an assurance to Ms Zelleg.

- b) In response to the complaint that the footage was edited to make Ms Zelleg look like a "hooligan from London", Five said that the programme contained an accurate account of events and fairly represented the positions of all those involved. Five said that the programme made clear that the lifeguards did not know who was responsible for starting the argument and included reference to Ms Zelleg's view that she had been victimised and subjected to racial abuse. Five said that all those involved in the argument were blurred in the programme as broadcast to ensure that they were not identified. Five said that the reference to

both families coming from London was simply a throwaway comment made by another lifeguard.

Five said that, having reviewed the untransmitted material in light of Ms Zelleg's complaint, it did not consider that there was any additional detail or explanation from Ms Zelleg (or indeed any other person involved in the argument) that it was unfair to Ms Zelleg not to have included in the programme.

Five said that the programme's narrator made clear that the lifeguards "*had no idea how the row started*" and Five considered that it was clear to viewers that both families were asked to leave the beach because of their behaviour during the argument. Five said that there was no suggestion that Ms Zelleg was to blame for the argument.

In summary, Five responded to the complaint that Ms Zelleg's privacy was unwarrantably infringed in the programme as broadcast, as follows:

- c) Five said that, for the reasons set out under head a) above, it did not accept that Ms Zelleg was told by the programme makers that the footage of the argument would not be broadcast.

Five said that in any event, Ms Zelleg was filmed openly, on a public beach, and in broad daylight, where her actions and words were clearly visible and audible to those around her (indeed, the untransmitted material showed that a large crowd witnessed the argument as it occurred on the beach). Five said that regardless of who was responsible for the argument, both families were behaving in an anti-social manner, so much so that the lifeguards decided to intervene and ask the families to leave the beach. Five said that it did not therefore accept that Ms Zelleg had a reasonable expectation of privacy in respect of the argument, she was in a public place and her behaviour was not of a private nature.

Five said that in the event that it was considered that Ms Zelleg had a reasonable expectation of privacy in relation to the argument, it believed that any infringement was warranted in the circumstances. Five said that it considered that it was in the public interest to demonstrate the commendable and varied work carried out by lifeguards in maintaining order on the beach. Five said that it considered the public interest outweighed any right to privacy. Five also pointed out that all those involved (including Ms Zelleg) were blurred in the programme as broadcast to ensure that they were not recognisable to the public at large.

Decision

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

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

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

Unfair treatment

- a) Ofcom first considered the complaint that Ms Zelleg was treated unfairly in the programme as broadcast because the footage of her was broadcast without her consent despite the programme makers' assurance that it would not be.

In considering this part of the complaint Ofcom took account of Rule 7.1 of Ofcom's Broadcasting Code ("the Code"), which provides that broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes. Ofcom also had regard to Practice 7.7 which states that guarantees given to contributors should normally be honoured.

Ofcom noted that blurred footage of Ms Zelleg was broadcast in the programme which showed two families involved in a heated argument on the beach, a lifeguard intervening and the two families leaving the beach. Ofcom noted that when Ms Zelleg became aware that she had been filmed she informed the programme makers that she did not want footage of her broadcast and believed she had secured an assurance from the programme makers to that effect. However, Five said that while the programme makers were informed by a Seafront Team member that he had assured Ms Zelleg that she would not feature in the programme, the programme makers themselves had provided Ms Zelleg with no such assurance.

While the programme makers would be under no obligation to honour the assurance provided by the Seafront Team member, pursuant to the Code, they should normally honour any assurance they provide. However, as Ofcom was not in a position to determine the conflict of evidence as to who had provided the assurance to Ms Zelleg, it was unable to uphold the complaint in this respect.

- b) Ofcom considered the complaint that Ms Zelleg was treated unfairly in the programme as broadcast because the footage was edited in such a way that it wrongly made her look like a "hooligan from London".

In considering this part of the complaint Ofcom took account of Rule 7.1 of the Code. Ofcom also had regard to Practice 7.6 which states that where a programme is edited, contributions should be represented fairly and Practice 7.9 which says broadcasters must take reasonable care not to present, disregard or omit material facts in a way which is unfair to an individual.

As noted at decision head a) above, the broadcast footage showed two families involved in a heated argument on the beach, a lifeguard intervening and the two families leaving the beach. While it was clear that two people involved in the argument did appear to be verbally aggressive, Ms Zelleg had her back to the camera most of the time and did not appear to be involved in the verbal exchanges. Ofcom also noted that the faces of those involved in the argument had been blurred in an effort to prevent them from being identified in the programme.

Ofcom noted that in a trailer for this section of the programme, the following statement was broadcast:

Narrator: *“Coming up. Out of towners lower the tone”.*

During the section of the programme about which complaint was made, the following statements were broadcast:

Lifeguard: *“I think they’d just been like picking at each other for a while, and then it just kind of – she was saying it was like a racial thing, but I don’t think that it was, and they’re both from London, obviously”.*

Narrator: *“The lifeguards have no idea how the row started, but it’s got to stop. They don’t tolerate this kind of behaviour on the beach”.*

In Ofcom’s view, although Ms Zelig was present while the argument took place, neither the footage nor the statements made by the narrator or the lifeguard portrayed her as a “hooligan from London”.

Ofcom has not therefore upheld Ms Zelig’s complaint in this respect.

Privacy

- c) Ofcom considered the complaint that Ms Zelig’s privacy was unwarrantably infringed in the programme as broadcast because she was told that the footage of the argument would not be broadcast, but it was and people recognised her.

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

This is reflected in Rule 8.1 of the Code which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted. Ofcom also had regard to Practice 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

In considering whether or not there had been any unwarranted infringement of Ms Zelig’s privacy, Ofcom first considered the extent to which Ms Zelig could legitimately have expected that the footage of her involvement in the argument would not be broadcast without her consent.

Ofcom recognised that Ms Zelig was not participating in a public event, was not a public figure and was clearly involved in an embarrassing and distressing situation, but it also recognised that the argument had been openly filmed on a public beach and had attracted the attention of other people at the beach that day, including the lifeguards. However, despite the fact that the argument took place in public, Ofcom noted that Ms Zelig received an assurance (from a person she believed to be associated with the programme makers) that footage of her involvement in the argument would not be broadcast. In view of that assurance (which the programme makers said had been provided by a Seafront Team member without their authority), Ofcom considered that Ms Zelig would legitimately have expected that footage of the argument would not be broadcast to a wider audience.

Ofcom acknowledged that, in an effort to ensure that those involved in the argument were not recognisable to the public at large, the programme makers took steps to blur their faces in the programme as broadcast. However, Ms Zelleg in her complaint indicated that the blurring had been insufficient to prevent her from being recognised by family, friends and neighbours.

In Ofcom's view, Ms Zelleg had a legitimate expectation of privacy in relation to her involvement in the argument, to the extent that it would not be broadcast to a wider audience.

Ofcom then proceeded to consider the competing right of the broadcaster to freedom of expression. In this respect, Ofcom considered whether in the circumstances there was a sufficient public interest to justify the intrusion into Ms Zelleg's private life.

Ofcom noted that this was not a situation where Five argued that the public interest involved exposing crime or anti-social behaviour, but merely that there was a public interest in showing the work of the lifeguards at the beach. Ofcom recognised that there may be some public interest in showing the work of the lifeguards, albeit limited.

Ofcom noted that there had not been a major intrusion into Ms Zelleg's private life and that there was some public interest in showing the work of the lifeguards.

Ofcom recognised that the footage was a necessary, effective and telling part of the lifeguards' story and that while it would have been possible to have told their story without the footage, that would have ignored the realities of this kind of programme. From a journalistic point of view, the footage was an essential part of the story and the footage carried the message more strongly than narrative alone could have done. Ofcom also recognised that by blurring the identities of those involved in the argument, the programme makers had taken reasonable steps to mask Ms Zelleg's identity. In Ofcom's view, the decision to broadcast the blurred footage was within the margin of editorial judgment and something for which appropriate latitude should be allowed.

Ofcom concluded, when considering all of the above circumstances, that the broadcaster's right to freedom of expression outweighed Ms Zelleg's legitimate expectation of privacy, and there was no unwarranted infringement of Ms Zelleg's privacy.

In light of the above, Ofcom has not upheld the complaint in this respect.

Accordingly Ofcom has not upheld Ms Zelleg's complaint of unfair treatment and unwarranted infringement of privacy in the programme as broadcast

Other Programmes Not in Breach

Up to 3 May 2010

Programme	Transmission Date	Broadcaster	Categories	Number of complaints
60 Minute Makeover	13/04/2010	ITV1	Product placement	1
Abbey Clancy's Parent Trip (trailer)	02/04/2010	ITV2	Generally accepted standards	1
Advertising	n/a	Sunrise	Advertising scheduling	1
Advertising	n/a	Chellozone channels	Advertising scheduling	1
Advertising	n/a	Liverpool FC TV	Advertising scheduling	1
Advertising	n/a	Movies 4 Men	Advertising scheduling	1
Advertising	n/a	Movies 4 Men 2	Advertising scheduling	1
Arthur	05/04/2010	CBBC	Harm	1
Avid Merrion Short	31/03/2010	4Music	Generally accepted standards	1
Aviva sponsorship of ITV Drama Premieres	24/04/2010	ITV1	Generally accepted standards	1
BBC News at Six	23/04/2010	BBC 1	Violence and dangerous behaviour	2
BBC News at Ten	21/04/2010	BBC 1	Race discrimination/offence	1
Bear Grylls: Born Survivor	18/04/2010	Discovery	Animal welfare	1
Best of You've Been Framed!	24/04/2010	ITV1	Under 18s in programmes	1
Breakfast Show	28/03/2010	Buzz Asia	Race discrimination/offence	1
Britain's Got Talent	17/04/2010	ITV1	Nudity	3
Britain's Got Talent	24/04/2010	ITV1	Nudity	11
Britain's Got Talent	24/04/2010	ITV1	Violence and dangerous behaviour	17
Britain's Got Talent	24/04/2010	ITV1	Animal welfare	1
Britain's Got Talent	17/04/2010	ITV1	Competitions	1
Britain's Got Talent	24/04/2010	ITV1	Competitions	1
Britain's Got Talent	17/04/2010	ITV1	Violence and dangerous behaviour	1
Caesar	30/04/2010	BBC Radio 7	Offensive language	1
Comedy Lab	19/04/2010	Channel 4	Race discrimination/offence	1
Competition	n/a	Cool FM	Competitions	1
Competition	19/04/2010	Smooth FM North East	Competitions	1
Coronation Street	16/04/2010	ITV1	Disability discrimination/offence	7
Coronation Street	23/04/2010	ITV1	Sexual material	10
Coronation Street	23/04/2010	ITV1	Animal welfare	1
Coronation Street	19/04/2010	ITV1	Violence and dangerous behaviour	1
Coronation Street Omnibus	25/04/2010	ITV1	Drugs, smoking, solvents or alcohol	1
Crash	24/03/2010	BBC 1 Wales	Disability discrimination/offence	1
CSI: New York	14/04/2010	Five	Violence and dangerous behaviour	1

Dads Army	28/03/2010	BBC 2	Sexual material	1
Department of Transport sponsorship credit	n/a	Smooth Radio	Materially misleading	1
Dermot Meets. . . David Cameron	21/04/2010	BBC 3	Offensive language	1
Divided	20/04/2010	ITV1	Competitions	1
Doctor Who	17/04/2010	BBC 1	Offensive language	2
Drop Dead Diva (trailer)	01/04/2010	Living	Generally accepted standards - other	1
EastEnders	26/04/2010	BBC 1	Religious/Beliefs discrimination/offence	3
EastEnders	23/04/2010	BBC 1	Religious/Beliefs discrimination/offence	1
EastEnders	20/04/2010	BBC 1	Generally accepted standards - other	1
EastEnders	26/04/2010	BBC 1	Sexual material	1
EastEnders	22/04/2010	BBC 1	Sexual material	1
EastEnders Omnibus	25/04/2010	BBC 1	Religious/Beliefs discrimination/offence	1
Embarrassing Bodies	28/03/2010	Channel 4	Nudity	10
Embarrassing Bodies	25/04/2010	Channel 4	Nudity	2
Embarrassing Bodies	23/04/2010	Channel 4	Nudity	1
Emmerdale	22/04/2010	ITV1	Suicide and self harm	3
Emmerdale	19/04/2010	ITV1	Generally accepted standards	1
Emmerdale	22/04/2010	ITV1	Generally accepted standards	1
FA Cup Live	10/04/2010	ITV1	Hypnotic and other techniques	1
FlashForward	05/04/2010	Five	Violence and dangerous behaviour	1
Football Focus	24/04/2010	BBC 1	Offensive language	1
Foyle's War	18/04/2010	ITV1	Advertising scheduling	1
Frankie Boyle Live	18/04/2010	Channel 4	Generally accepted standards - other	5
Frankie Boyle Live	18/04/2010	Channel 4	Offensive language	1
Friday Night with Jonathan Ross	23/04/2010	BBC 1	Race discrimination/offence	1
Friday Night with Jonathan Ross	23/04/2010	BBC 1	Offensive language	1
George and Larry Lamb's Parent Trip	25/04/2010	ITV2	Animal welfare	1
George and Larry Lamb's Parent Trip	27/04/2010	ITV2	Animal welfare	1
GMTV	10/03/2010	ITV1	Commercial References	1
GMTV	20/04/2010	ITV1	Nudity	1
Gordon's Great Escape (trailer)	15/04/2010	More 4+1	Generally accepted standards - other	1
Great British Menu	13/04/2010	BBC 2	Harm	1
Harveys' sponsorship of Coronation Street	n/a	ITV1	Religious/Beliefs discrimination/offence	1

Have I Got News for You	26/04/2010	BBC 2	Animal welfare	1
Heart Breakfast	09/04/2010	Heart 106.2	Sexual orientation discrimination/offence	1
House on Fire	21/04/2010	BBC Radio 4	Offensive language	1
Iain Lee	15/04/2010	Absolute Radio	Sexual material	1
Indemand	19/03/2010	Hallam FM	Competitions	1
It's Me or The Dog	20/04/2010	Sky 3	Animal welfare	1
ITV News	12/04/2010	ITV1	Promotion of products/services	1
Kia Motors' sponsorship of CSI	24/04/2010	Five	Generally accepted standards - other	1
Kia Motors' sponsorship of NCIS / Law & Order	n/a	Five	Generally accepted standards - other	1
Loose Women	27/04/2009	ITV1	Age discrimination/offence	1
Maltesers' sponsorship of Loose Women	22/04/2010	ITV1	Sponsorship	1
Matt Edmondson	04/04/2010	BBC Radio 1	Generally accepted standards	1
Mock the Week	27/04/2010	Dave	Race discrimination/offence	1
Money for Nothing	20/03/2010	BBC Radio Wales	Race discrimination/offence	1
News	01/04/2010	Peak FM	Due accuracy	1
News	01/04/2010	Smooth Radio North East	Generally accepted standards	1
News	21/04/2010	BBC Radio 2	Generally accepted standards	1
Nick Ferrari	12/04/2010	LBC 97.3FM	Generally accepted standards	1
Off the Ball	27/03/2010	BBC Radio Scotland	Generally accepted standards	1
Pamela Anderson Comedy Roast	17/04/2010	Channel 4	Generally accepted standards	2
Panth Time	20/03/2010	Sikh Channel	Crime	2
Party	24/03/2010	BBC Radio 4	Religious/Beliefs discrimination/offence	2
Psychic Interactive	19/04/2010	Psychic TV	Exorcism, the occult and the paranormal	1
Rihanna "Rude Boy"	26/04/2010	Capital Radio	Sexual material	1
Russell Brand: Doing Life	08/04/2010	Channel 4	Offensive language	1
Saah vs Pahu	15/11/2009	Sahara 1	Sponsorship	1
Seven Ages of Britain	07/03/2010	BBC 1	Generally accepted standards	1
Sky News	02/04/2010	Sky News	Advertising/editorial separation	1
Sky News	03/04/2010	Sky News	Advertising/editorial separation	1
Snog, Marry, Avoid?	10/04/2010	BBC 3	Gender, including Transgender discrimination	3
Soccer A.M.	27/03/2010	Sky1	Generally accepted standards - other	1
Songs of Praise	21/03/2010	BBC 2	Religious Offence	1

South Park (trailer)	18/04/2010	Comedy Central	Sexual orientation discrimination/offence	1
Sunrise	19/04/2010	Sky News	Sexual orientation discrimination/offence	4
Supernanny	25/04/2010	E4	Under 18s in programmes	1
Supersize vs Superskinny	30/03/2010	Channel 4	Harm	1
The Andrew Marr Show	18/04/2010	BBC 1	Disability discrimination/offence	2
The Aristocrats	24/04/2010	Channel 4	Generally accepted standards - other	3
The Cleveland Show (trailer)	03/04/2010	E4	Generally accepted standards - other	1
The Gadget Show	12/04/2010	Five	Generally accepted standards - other	1
The One Show	14/04/2010	BBC 1	Age discrimination/offence	1
The One Show	26/04/2010	BBC 1	Animal welfare	1
The Simpsons	22/04/2010	Sky1	Offensive language	1
The Today Programme	08/04/2010	BBC Radio 4	Race discrimination/offence	1
The Vicar of Dibley	25/04/2010	Gold	Animal welfare	1
The Vote Now Show	12/04/2010	BBC Radio 4	Race discrimination/offence	1
The Wright Stuff	26/04/2010	Five	Generally accepted standards	1
Top Gear	25/04/2010	Dave Ja Vu	Crime	1
Top Gear USA Special	25/04/2010	BBC 2	Generally accepted standards	2
Tottenham Hotspur v Arsenal	14/04/2010	Sky Sports 1	Generally accepted standards	5
Townsend and Parry	07/04/2010	Talksport	Generally accepted standards	1
Tropic of Cancer	28/03/2010	BBC 2	Offensive language	1
UEFA Champions League	07/04/2010	ITV1	Race discrimination/offence	21
Usher "Daddy's Home"	25/02/2010	Peace FM community station	Offensive Language	1
UTV Live	19/04/2010	UTV	Due impartiality/bias	1
Volcanic Ash: Flight of Terror	21/04/2010	Five	Generally accepted standards	2
Wallander	15/04/2010	BBC 4	Violence and dangerous behaviour	1
Waterloo Road	21/04/2010	BBC 1	Generally accepted standards	1
Welcome to Lagos	15/04/2010	BBC 2	Generally accepted standards	5