

Ofcom Broadcast Bulletin

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Introduction

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

- a) Ofcom's Broadcasting Code ("the Code") which took effect on 25 July 2005 (with the exception of Rule 10.17 which came into effect on 1 July 2005). This Code is used to assess the compliance of all programmes broadcast on or after 25 July 2005. The Broadcasting Code can be found at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>.
- b) the Code on the Scheduling of Television Advertising ("COSTA") which came into effect on 1 September 2008 and contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken. COSTA can be found at http://www.ofcom.org.uk/tv/ifi/codes/code_adv/tacode.pdf.
- c) other codes and requirements that may also apply to broadcasters, depending on their circumstances. These include the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code. Links to all these codes can be found at <http://www.ofcom.org.uk/tv/ifi/codes/>.

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

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

Sponsorship credit findings

Introduction to sponsorship credit findings

Broadcast sponsorship, that is sponsorship of programmes and channels, offers organisations an opportunity to be associated with the content they are sponsoring. For reasons of transparency, broadcasters are required to inform the audience when such arrangements are in place. This is achieved through the use of sponsor credits that are broadcast around the sponsored material.

European legislation, the Television Without Frontiers Directive (“TWF Directive”) limits the amount of advertising a television broadcaster can transmit (Article 18) and requires that advertising is kept separate from other parts of the programme service (Article 10). As sponsorship credits are treated as part of the sponsored content rather than advertising, they do not count towards the amount of airtime a broadcaster is allowed to use for advertising. To prevent credits effectively becoming advertisements, and therefore increasing the amount of advertising transmitted, broadcasters are required to ensure that sponsorship credits do not contain advertising messages.

In addition to the rules on advertising separation and minutage, Article 17(1)(c) of the TWF Directive states that sponsorship “must not encourage the purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services”. Guidance issued by the European Commission on the interpretation of this Article states that there should be “no explicit reference to the products or services of the sponsor during the [sponsored] programme, except where the reference serves the *sole purpose* of identifying the sponsor or making explicit the link between the programme and the sponsor”¹ (emphasis added).

The requirements of the TWF Directive are reflected in Rule 9.13 of the Code², which states:

“Sponsorship must be clearly separated from advertising. Sponsor credits must not contain advertising messages or calls to action. In particular, credits must not encourage the purchase or rental of the products or services of the sponsor or a third party”.

Rule 9.13 permits references to the products and services of a sponsor in credits on the basis that they can help identify the sponsor or help associate the sponsor with the sponsored content. We believe Rule 9.13 affords broadcasters the freedom permissible under the European legislation to identify sponsorship in a way that both informs the audience of the sponsorship arrangements and benefits the sponsor.

Ofcom recognises that when judging whether the various components of a sponsorship credit amount to the credit being sufficiently distinct from advertising, fine editorial judgements are often required. We are likely to take into account a number of factors including, but not limited to:

¹ Article 17(1)(c) applies to sponsorship credits as they are the means of identifying a sponsorship arrangement.

² This rule applies to sponsorship credits on television only.

- **Claims about the sponsor's products/services** – claims about the sponsor's products/services (in particular those that are capable of objective substantiation), are likely to be considered as advertising messages and therefore should not be included in sponsorship credits. Examples include, but are not limited to:
 - claims about market leadership, health benefits, efficacy; and
 - the use of promotional language and/or superlatives to describe the sponsor and/or its products and services (e.g. referring to: the breadth of range of products a sponsor provides or how easy a sponsor's product is to use).
- **Calls to action** – credits that contain direct invitations to the audience to contact the sponsor are likely to breach the Code. However, it is possible to include basic contact details (e.g. websites or telephone numbers) in credits, but these should not be accompanied by language that is likely to be viewed as an invitation to the audience to contact the sponsor.
- **Focus of the credit** – credits that focus predominantly on the sponsorship arrangement, rather than the sponsor or its products/services, are less likely to be found in breach of the Code. In particular:
 - Using a creative approach that thematically links the sponsor to the programme (e.g. by genre or using characters which have similar characteristics to the people/characters in the programme). Such links, when used effectively, highlight the fundamental difference between sponsorship and advertising, i.e. sponsorship is about the sponsor's association with the programme, not selling the sponsor's products/services;
 - Detailed descriptions of products/services are likely to result in the focus of the credit failing to be on the sponsorship arrangement. For example, excessive use of footage from DVDs or computer games (in cases where a DVD or computer game sponsors a programme); and
 - Ofcom's published guidance on Rule 9.13 states that it may be possible for some sponsor's slogans and straplines to be used within a credit, for the purpose of helping to identify the sponsor and/or the sponsorship arrangement, provided they do not encourage the purchase or rental of the sponsor's products/services. However, broadcasters should take extra care when using such straplines, particularly in combination with footage from a sponsor's advertising campaign, that the primary focus of the credit is clearly on the sponsorship arrangement.

Background to Ofcom's monitoring of sponsorship credits

In late 2008 Ofcom noted an apparent increase in the amount of information about sponsors' products/services included in some sponsorship credits. As a result, between November 2008 and December 2008 we conducted a monitoring exercise to assess levels of compliance with Rule 9.13. Those credits found in breach of Rule 9.13 were published in Broadcast Bulletin 130 on 23 March 2009³, along with some further guidance about the factors Ofcom takes into account when considering whether a sponsorship credit complies with Rule 9.13.

³ http://www.ofcom.org.uk/tv/obb/prog_cb/obb130/issue130.pdf

In Broadcast Bulletin 130, we also stated that we would carry out further monitoring of sponsorship campaigns a few months later. Consequently, between 15 June 2009 and 15 July 2009, we monitored approximately 100 sponsorship campaigns across a wide range of broadcasters licensed by Ofcom, including non-English speaking channels and channels which broadcast outside the UK. We were reassured that the majority of the credits viewed did not breach Rule 9.13 and, generally, we noted that the additional guidance we issued in Broadcast Bulletin 130 on compliance with Rule 9.13 had been taken into account by many broadcasters. However, some credits⁴ were nevertheless found in breach of Rule 9.13 and the findings are included in this bulletin.

Broadcasters should note that the European Commission has recently been taking a very active interest in this issue and is known to be monitoring the compliance of sponsorship credits in some Member States (as well as other commercial matters that fall within its remit). It should be noted that, in particular, the European Commission is concerned about maintaining the distinction between sponsorship and advertising.

The findings published in this Bulletin

The findings in this bulletin reflect a range of compliance issues in this area. It was of particular concern to Ofcom that there were some cases in this monitoring exercise where Ofcom found a broadcaster to have breached Rule 9.13 repeatedly. We will be requiring the broadcasters in question to attend a meeting to discuss and assure us about their compliance procedures, as noted in the relevant findings.

Ofcom will continue to conduct monitoring exercises on sponsorship credits on an ad hoc basis. In view of the published findings and detailed guidance given by Ofcom in this area to date, broadcasters should note that credits found to be in breach of Rule 9.13 may also be considered for further regulatory action.

Updates

Ofcom recognises that broadcasters may find further guidance on the interpretation of both Sections Nine and Ten of the Code beneficial. In Bulletin 130, we announced our intention to provide further information on the interpretation of both Sections Nine and Ten of the Code in regular updates. We have since sent two updates to those who had registered an interest in receiving them.

If you wish to receive these, or future updates, please send your email contact details to: lauren.cleverley@ofcom.org.uk.

While we are happy to send these updates to anyone with an interest in Sections Nine and Ten of the Code, it should be remembered that broadcasters are responsible for compliance with the Code and therefore detailed enquiries from organisations other than broadcasters should always be directed to the broadcaster in the first instance.

⁴ The dates of transmission included in the following findings reflect the periods during which each sponsorship campaign was broadcast, rather than the dates on which Ofcom monitored the credits.

In Breach

Sponsorship of various programmes

Kanal 4 Denmark, 18 May 2009 to 26 June 2009, various dates & times

Kanal 5 Denmark, 3 July 2009 to 12 July 2009, various dates & times

Kanal 5 Sweden, 22 March 2009 to 13 June 2009, various dates & times

Introduction

Kanal 4 Denmark, Kanal 5 Denmark and Kanal 5 Sweden are Danish and Swedish language channels broadcast to Denmark and Sweden by SBS Broadcasting Networks Limited ("SBS"). SBS holds Ofcom licences for nine channels which it operates. The SBS compliance department based in London manages compliance for all these licences centrally.

The following sponsorship campaigns were broadcast on Kanal 4 Denmark, Kanal 5 Denmark and Kanal 5 Sweden on various dates between 22 March 2009 and 12 July 2009.

Kanal 4 Denmark

Various programmes sponsored by Nivea

The documentary series, *De unge mødre* (*The Young Mothers*), the American drama series, *Grey's Anatomy* and the reality shows, *Hva' kvindervil ha'* (*What Women Want*) and *Singleiv* (*Single Life*) were sponsored by Nivea Body Lotion between 18 May 2009 and 26 June 2009. The sponsorship credits featured the following:

- Visual: A man and woman applying body lotion. Final shot – five bottles of Nivea body lotion (each a different type/scent).
- Voiceover: "The programme is presented together with Nivea Body Lotion. Denmark's best seller."
- Caption: "No. 1. Nivea: Denmark's most sold body lotion."

Kanal 5 Denmark

Various programmes sponsored by Brüno

Various films and programmes were including *The Bodyguard*, *Scary Movie 2* and *House* were sponsored by the cinema release of the film Brüno between 3 July 2009 and 12 July 2009.

All of the credits consisted entirely of extracts from the film and were accompanied by the voiceover: "The programme is presented by Brüno. In cinemas from 10th July" and the caption "From the man behind Borat" and "Brüno – in cinemas from 10th July."

Kanal 5 Sweden

Söndagsparty med Filip & Fredrik (Sunday Party with Filip & Fredrik) sponsored by Pokerstars.se

This talk show was sponsored by Pokerstars.se (a poker website) between 19 April 2009 and 12 June 2009.

The sponsorship campaign consisted of various credits of differing durations (15 seconds and 7 seconds). The visuals were people playing poker around a poker table, playing cards flitting through people's fingers and poker chips falling and spinning. The following voiceover and caption appeared within each credit:

Voiceover: *"Söndagsparty med Filip & Fredrik is presented by the world's largest poker site – PokerStars.se."*

Caption: *"This programme is presented by PokerStars.se. Find the poker star in you."*

Various programmes sponsored by Blå Band

A variety of factual entertainment programmes and sitcoms including *Ugly Betty*, *One Tree Hill* and *Gordon Ramsay's The 'F' Word* were sponsored by Blå Band (a sauce for meatballs) between 30 March 2009 and 13 June 2009.

The credits consisted of a father pouring Blå Band sauce over the food on the plates in front of his three small children. The Blå Band logo was also on screen. This was accompanied by the voiceover: *"The sauce of life! This programme is served by Blå Band."* and the caption: *"With no added flavour enhancers. Free from trans fats."*

Wipeout sponsored by Voltaren

The game show *Wipeout* was sponsored by Voltaren (a non-prescription anti-inflammatory drug) between 22 March 2009 and 17 May 2009.

Ofcom viewed the following credit:

Visual: Three children are jumping on a trampoline. Their father is prevented from getting on to the trampoline due to the pain in his back.

Voiceover: Children - *"Come on Dad, jump with us!" "Come on Dad." "It's great fun!"*

Visual: Father jumping up and down on trampoline with a pack shot of the product in foreground.

Voiceover: Narrator - *"Don't let pain hold you back. Wipeout is presented by Voltaren – for a life in motion."*

Caption: *"Novartis 08-732 32 00. Voltaren. For a life in motion. Voltaren is a non-prescription medication Voltaren T and Voltaren Gel contain diclofenac. Voltaren T starts to work within 30 minutes. Voltaren Gel starts to work after 1 hour. Product approved on 04.10.2007 and 13.11.2008. For more information and prices, see www.fass.se."*

Various programmes sponsored by Bet365

Various films and programmes including *Fight Club*, *The Last Samurai*, *Ugly Betty* and *Supernatural* were sponsored by Bet365 (a gaming website) between 23 March 2009 and 2 May 2009.

Ofcom viewed the following credit:

Visual: Each of the letters and numbers which spell Bet365 represent football players playing football. This is followed by the Bet365 logo.

Voiceover: *"This programme was presented by bet365 – the leader in live odds."*

Text: *"bet365.com For responsible gaming."*

Ofcom sought the broadcaster's comments on all of the above credits under Rule 9.13 (sponsorship credits must not contain advertising messages or calls to action).

Response

SBS said that it was aware that Rule 9.13 of the Code reflects the requirement of Article 17(1)(c) of the Television Without Frontiers (TWF) Directive that sponsorship “must not encourage the purchase or rental of the products or service of the sponsor or a third party, in particular by making special promotional references to those products or services.”

However, SBS explained that it had misinterpreted the ‘European Commission’s interpretive communication on certain aspects of the provisions on televised advertising in the Television Without Frontiers Directive’ (“Interpretive Communication”). Due to its misinterpretation, it had concluded that a distinction could be drawn between sponsorship announcements made at the beginning and end of the sponsored programme and other announcements made at other times.

Following Ofcom’s request for comments on the sponsorship credits detailed in the introduction to this Finding, the broadcaster reconsidered its interpretation of Rule 9.13 of the Code and stated that it now agreed with Ofcom’s interpretation of the Rule which was set out in the ‘Introduction to the sponsorship credit findings’ in Bulletin 130¹. It had therefore issued revised instructions to its staff regarding the criteria they must apply when assessing the suitability of sponsorship credits.

With regards to the individual sponsorship credits, the broadcaster said that it had reviewed each of the credits against the criteria set out in Broadcast Bulletin 130, and acknowledged that when considered in that context, many of the credits could be found to breach Rule 9.13. In particular, SBS accepted that the text or voiceovers “may push certain credits beyond the limits of acceptability for the purposes of Rule 9.13”, however it argued that this was marginal in some instances.

With regards to the Voltaren sponsorship credits, SBS said that it understands that it is a requirement of the Swedish Medicine Act that the Voltaren sponsorship credit contains text stated in the credit, i.e. “*VoltarenT and Volatren Gel contain diclofenac. VoltarenT starts to work within 30 minutes. Voltaren Gel starts to work after 1 hour. Product approved on 04.10.2007 and 13.11.2008. For more information and prices, see www.fass.se.*” It continued that it would be irresponsible for it not to provide information which the Swedish medical authorities regard as necessary, and as such it did not believe that this credit had breached Rule 9.13 of the Code.

Decision

Irrespective of any differences of interpretation of the relevant provisions of the TWF Directive, Rule 9.13 of the Code clearly states that “Sponsorship must be clearly separated from advertising. Sponsorship credits must not contain advertising messages or calls to action. In particular, credits must not encourage the purchase or rental of the products or service of the sponsors or a third party.”

Ofcom’s conclusion on each of the sponsorship campaigns is set out below:

Kanal 4 Denmark

Various programmes sponsored by Nivea

Ofcom found that the voiceover “*Denmark’s best seller*” and the caption “*No. 1 Nivea: Denmark’s most sold body lotion*” were claims about the sponsor’s product which

¹ http://www.ofcom.org.uk/tv/obb/prog_cb/obb130/issue130.pdf

were capable of objective substantiation. The claims amounted to advertising messages, in breach of Rule 9.13.

Kanal 5 Denmark

Various programmes sponsored by Brüno

Ofcom considered that these credits contained an excessive amount of footage from the film. The credits also included the voiceover and caption, "*In cinemas from 10th July*". As stated in previous findings², including an excessive amount of film footage and specific information, such as a cinematic release date, in a sponsor credit, shifts the focus of the credit from the sponsorship arrangement to the sponsor's product and purchase information about that product. As a result, there is insufficient distinction between advertising and sponsorship.

In this case because the credits included the cinematic release date, consisted entirely of extracts from the film, and were presented in full screen format, they appeared more like advertisements than sponsorship credits, and were therefore found in breach of Rule 9.13.

Kanal 5 Sweden

Söndagsparty med Filip & Fredrik (Sunday Party with Filip & Fredrik) sponsored by *Pokerstars.se*

Ofcom found that the voiceover "*world's largest poker site – PokerStars.se*" was a claim about the sponsor's product which was capable of objective substantiation. The claim amounted to an advertising message, in breach of Rule 9.13.

Various programmes sponsored by Blå Band

Ofcom considered that the caption "*With no added flavour enhancers. Free from trans fats.*" provided detailed information about the attributes of the sponsor's product which amounted to an advertising message, in breach of Rule 9.13.

Wipeout sponsored by *Voltaren*

Ofcom considered that the text "*Voltaren T starts to work within 30 minutes. Voltaren Gel starts to work after 1 hour.*" was a clear advertising message. Ofcom noted the broadcaster's submission that the inclusion of this information is a requirement of Swedish Medicine Act.

In Ofcom's view, if the relevant legislation is such that credits for a particular product must include information that exceeds standard generic disclaimers (such as "Always read the label") and must include a message that amounts to a product claim, then the broadcaster will need to consider whether the sponsorship is suitable under the Code. In this case, Ofcom judged the claims to be advertising messages, in breach of Rule 9.13.

Various programmes sponsored by Bet365

Ofcom considered the voiceover referring to the sponsor as "*the leader in live odds*" to be a market leadership claim which was capable of objective substantiation. The claim amounted to an advertising message, in breach of Rule 9.13.

² See finding regarding sponsorship of *Milkshake* on Five, published in Broadcast Bulletin 76 on 15 January 2007 (http://www.ofcom.org.uk/tv/obb/prog_cb/obb76/issue76.pdf); and also finding regarding sponsorship of *Dexter* on FX, published in Broadcast Bulletin 136 on 22 June 2009 (http://www.ofcom.org.uk/tv/obb/prog_cb/obb136/Issue136.pdf).

Sponsorship of various programmes, Kanal 4 Denmark – Breach of Rule 9.13
Sponsorship of various programmes, Kanal 5 Denmark – Breach of Rule 9.13
Sponsorship of various programmes, Kanal 5 Sweden – Breaches of Rule 9.13

Ofcom is concerned that SBS appears to have insufficient procedures in place to ensure compliance with Rule 9.13 of the Code. In light of this, Ofcom is requiring the broadcaster to attend a meeting to discuss its compliance processes and procedures. Further, Ofcom is putting the licensee on notice that any further breaches of Rule 9.13 will be taken extremely seriously and in such circumstances Ofcom is likely to consider further regulatory action.

In Breach

Sponsorship of various programmes

TV3 (Sweden), 6 January 2009 to 29 August 2009, various dates and times

Introduction

TV3 is a Swedish language channel licensed by Ofcom to Viasat Broadcasting UK Limited ("Viasat") which controls and complies the channel's content. Viasat holds 26 Ofcom licences for separate television channels which broadcast from the United Kingdom to various Scandinavian and Eastern European countries, including Sweden. The Viasat compliance department is based in London and manages compliance for all these licensees centrally.

Ofcom viewed the following sponsorship campaigns broadcast on TV3:

Stockholm Arlanda and Scrubs sponsored by 118100

Between 6 January 2009 to 5 July 2009, *Stockholm Arlanda* (a documentary series following life in Stockholm's airport) and *Scrubs* (an American sitcom) were sponsored by 118100 (a directory enquiries service).

Ofcom viewed the following credits from the sponsorship campaign:

Credit 1

Caption: *"This entertainment is presented by 118100. How many countries are there in the world?"*

Voiceover: *"You can now text absolutely any question to 118100".*

Caption: *"You can now text absolutely any question to 118100. Answers to everything"*

Credit 2

Caption: *"This entertainment is presented by 118100. How can 118100 provide answers to everything?"*

Voiceover: *"You can now text absolutely any question to 118100".*

Caption: *"You can now text absolutely any question to 118100. Answers to everything"*

Navy NCIS sponsored by Citibank

Between 8 January 2009 and 25 July 2009, *Navy NCIS* (an American drama series about the Naval Criminal Investigative Service) was sponsored by Citibank.

The credit consisted of a man sitting on a sofa next to a stranger's belongings. The stranger's mobile phone made a sound to indicate that a text message had been received. The man picked up the phone and read the text message which said "*Can you call Citibank*". The man says "*Citibank!*"

The accompanying voiceover stated: "*This programme is sponsored by Citibank*" and the caption stated: "*Don't change your bank. Get another one. Citibank Loan applications to citibank.se*".

Days of Our Lives, How I Met Your Mother and Two and a Half Men sponsored by McDonalds

Between 20 February 2009 and 29 August 2009, an American soap opera, *Days of Our Lives* and two American sitcoms, *How I Met Your Mother* and *Two and a Half Men* were sponsored by McDonalds.

Ofcom viewed the following credit:

- Visual: A Happy Meal box, a plate containing the elements of a Happy Meal that comply with the 'plate model'¹ and the McDonalds logo.
- Voiceover: *"Happy Meals are available in accordance with the 'plate model' AND contain fruit or vegetables. But don't tell the kids. OK?"*
- Caption: *"This programme is sponsored by Happy Meal. New Happy Meals in accordance with the 'plate model'. [McDonalds logo] I'm loving it. Top secret".*

The Tyra Banks Show, The Oprah Winfrey Show, Grannfejden and Gangster Wives sponsored by Nyheter24.se

Between 16 April 2009 and 9 June 2009, the American talk shows, *The Tyra Banks Show* and *The Oprah Winfrey Show* as well as *Grannfejden* (a reality series about feuding neighbours) and *Gangster Wives* (an observational documentary series) were sponsored by Nyheter24.se (a 24 hour news website).

The credit consisted of the text *"Nyheter24.se Sweden's most modern news website"* which spun around and landed in the middle of the screen and the voiceover *"This programme is presented by Nyheter24.se – Sweden's most modern news website"*.

Sjukhuset sponsored by SB12

Between 20 March 2009 and 30 April 2009, *Sjukhuset* (a documentary series about a Swedish hospital) was sponsored by SB12 (an oral care product). Ofcom viewed the following credit:

- Visual: A blurred image of a woman gargling with the product in the background and a pack shot in the foreground.
- Voiceover: *"This programme is presented in association with SB12 – an oral care preparation for bad breath"*.
- Caption: *"Fresh breath for up to 12 hours"*.

Ofcom sought the broadcaster's comments on all of the above credits under Rule 9.13 (sponsorship credits must not contain advertising messages or calls to action).

Response

Viasat said these sponsorship campaigns were in place before the sponsorship credit findings and guidance which were published in Broadcast Bulletin 130². The broadcaster honoured these campaigns for the duration of the campaign period because at the time it believed that the credits were compliant with its interpretation of Rule 9.13 of the Code. It continued that following publication of Broadcast Bulletin

¹ The 'plate model' illustrates the relative proportions of different food groups which should be in a healthy meal, and is recommended by the National Food Administration (Sweden's central administrative authority for matters concerning food).

² http://www.ofcom.org.uk/tv/obb/prog_cb/obb130/issue130.pdf

130, it had attempted to ensure that all new sponsorship credits followed Ofcom's guidance on Rule 9.13.

Stockholm Arlanda and Scrubs sponsored by 118100

Viasat explained that a variety of different credits were produced for 118100's sponsorship campaign during this period, and that they were all produced with specific programmes in mind. Each credit began with a question which made an association with the programme being sponsored, for example in the credits surrounding *Stockholm Arlanda*, a documentary series about Stockholm's airport, the question "Why is the sky blue?" appeared in the credits. In another example, the credits surrounding *Scrubs*, an American sitcom based in a hospital, contained the questions "Can jelly fish hear?" and "do batteries last longer if you keep them in the fridge?" which Viasat said reflected the "comic and juvenile nature of the programme."

With regard to the voiceover "You can now text any question to 118100" and caption "You can now text any question to 118100. Answers to everything", the broadcaster said these provided a brief description of the sponsor's business and contact details with the minimum information necessary.

Navy NCIS sponsored by Citibank

Viasat said that the credit made it clear to the viewer that the programme was sponsored by Citibank. With regards to the text which follows the sponsorship message: "Don't change your bank. Get another one. Citibank loan applications to Citibank.se" the broadcaster explained that at the time the credits were agreed, its interpretation was such that it believed that the statement informed the viewer of the sponsor's business and product activities and did not overshadow the sponsor message.

Days of Our Lives, How I Met Your Mother and Two and a Half Men sponsored by McDonalds

Viasat said that the sponsor arrangement was clear because the caption: "The programme sponsors are..." remained in the top left-hand corner for the duration of the credit.

It continued that the voiceover was a description of the sponsor and its product and that it considered that the inclusion of "plate model" was a concept that is not widely understood by viewers and therefore "in its essence was not an advertising message". Viasat said that this was a new type of an existing McDonalds product and therefore it required a brief description of how the product differed from viewers' previous expectations.

Viasat did not consider that this description directly encouraged the purchase of the product but "merely updated the viewers to the activities of McDonalds business and their responsibility in providing healthy meals for children."

The Tyra Banks Show, The Oprah Winfrey Show, Grannfeiden and Gangster Wives sponsored by Nyheter24.com

Viasat said that the voiceover "The programme is presented by Nyheter24.se" immediately made it clear that the programme was sponsored by Nyheter24.se. It added that only the logo of the sponsor was present in the credit and therefore "there [could] be no doubt that the sponsor message [was] not overshadowed".

Viasat continued that “the use of the line ‘*Sweden’s most modern new site*’ [was] a clear description of the product and ‘*most modern*’ is used subjectively and would not in itself encourage viewers to visit the website”.

Sjukhuset sponsored by SB12

Viasat said that “the sponsor credit immediately [made] the sponsorship arrangement known to the viewer by showing an image of the sponsor’s product and the voiceover, ‘*The programme is presented in association with SB12*’”. It continued that the voiceover finished with a brief description of the sponsor’s product, (i.e. “*Oral care for bad breath*”). Viasat considered that this was not an advertising message nor did it overshadow the sponsorship arrangement.

Viasat also argued that the caption “*Fresh breath for up to 12 hours*” was used to help link the sponsor’s product to the sponsored programme, because it “reflected the working hours of the hospital nurses [in the programme] (07:00 – 19:00) and also explained the name of the product i.e. SB12”. It added that this text was secondary to the sponsorship credit itself and made a link to the programme to strengthen the sponsorship connection between the programme and sponsor.

Decision

Ofcom was concerned that Viasat continued to broadcast the credits, in some cases for a further four or five months, following the publication of Broadcast Bulletin 130 on 23 March 2009. In any event, Ofcom considers that Rule 9.13 and the associated guidance that had been published prior to March 2009 made it clear that calls to action and claims (particularly those capable of objective substantiation) were not compliant with Rule 9.13.

Stockholm Arlanda and Scrubs sponsored by 118100

Ofcom noted Viasat’s argument that the questions which were part of the credits created an association between the sponsor and the sponsored programmes. However, the voiceover “*You can now text any question to 118100*” and the caption “*You can now text any question to 118100. Answers to everything*”, while brief descriptions of the sponsor’s service, were considered to be promotional descriptions, in breach of Rule 9.13

Navy NCIS sponsored by Citibank

Ofcom considered that the caption “*Don’t change your bank. Get another one. Citibank loan applications to Citibank.se*” was a call to action in breach of Rule 9.13.

Days of Our Lives, How I Met Your Mother and Two and a Half Men sponsored by McDonalds

The ‘plate model’ illustrates the relative proportions of different food groups which should be in a healthy meal. By stating “*Happy Meals are available in accordance with the ‘plate model’*”, the credits were claiming that the sponsor’s product met a nutritional standard recommended by Sweden’s National Food Administration³. Ofcom considered this claim to be one that is capable of objective substantiation and therefore considered it to be an advertising message, in breach of Rule 9.13.

³ See footnote 1

The Tyra Banks Show, The Oprah Winfrey Show, Grannfeiden and Gangster Wives
sponsored by Nyheter24.se

Ofcom considered that the line “Sweden’s most modern news site” suggested that the website was up-to-date with the latest technologies and was therefore promotional in breach of Rule 9.13.

Sjukhuset sponsored by SB12

Ofcom considered that the link between the caption “*Fresh breath for up to 12 hours*” and the programme (i.e. “it reflected the working hours of the hospital nurses”) was not strong enough to justify the inclusion of this claim. It was therefore considered to be an advertising message, in breach of Rule 9.13.

Breaches of Rule 9.13

Ofcom is concerned that Viasat appears to have insufficient procedures in place to ensure compliance with Rule 9.13 of the Code. In light of this, Ofcom is requiring the broadcaster to attend a meeting to discuss its compliance processes and procedures. Further, Ofcom is putting the licensee on notice that any further breaches of Rule 9.13 will be taken extremely seriously and in such circumstances Ofcom is likely to consider further regulatory action.

In Breach

Sponsorship of various programmes

ARY Digital, 20 June 2008 to present

Sponsorship of Ba Khabar Savera

ARY News, 1 April 2009 to 30 July 2009

Introduction

ARY Digital (a general entertainment channel) and ARY News are aimed at a UK Pakistani audience. Both channels are operated by ARY Digital (UK) Limited (“ARY”).

Veena sponsored by Pakeeza Dairies

Veena (a serial drama) has been sponsored by Pakeeza Dairies since 16 May 2009.

The content of the sponsorship credit consists of what appears to be an advertisement with the voiceover *“This drama is sponsored by”* added to the beginning. The credit features images of people consuming a variety of the sponsor’s products, accompanied by the voiceover *“Healthy, tasty, everything combined”*. The credit concludes with various Pakeeza Dairies products rotating on screen with the Pakeeza logo and the text: *“For National Trade Enquiries Contact 01706 641 551”*.

Loose Talk sponsored by Citizenship Training School

Loose Talk (a comedy chat show) was sponsored by Citizenship Training School (which provides courses for people applying for UK citizenship) between 17 June 2009 and 8 July 2009

The content of the credits consisted of what appeared to be an advertisement with the voiceover *“Loose Talk brought to you in association with”* added to the beginning.

Credit 1

The credit contained an image of a UK passport with the text *“Indefinite Leave to Remain in UK?” / “Citizenship Training School” / “we can help you pass THE LIFE IN THE UK TEST!”*

The voiceover stated *“Visit the Citizenship Training School or call 020 8532 8462 for more information”*. Throughout the majority of the credit, the text: *“Call CTS head office now 0208 532 8462”* appeared.

The final frame of the credit contained the sponsor’s address, telephone number, website address and at the bottom of the screen in small text: *“terms and conditions apply + crèche and accommodation also available”*.

Credit 2

The credit contained an image of a UK passport with the text *“Applying for British Citizenship?” / “Indefinite Leave to Remain in UK?” / “Citizenship Training School” / “we can help you pass THE LIFE IN THE UK TEST!” / “5 Day Intensive ESOL with Citizenship Course”*. The voiceover stated *“Come to the Citizenship Training School where we will help you pass the Life in the UK test and help you pass.”*

The sponsor’s website address appeared throughout the credit.

Good Morning Pakistan sponsored by Jeet international calling cards

Good Morning Pakistan (a breakfast show focussing on the entertainment industry) was sponsored by Jeet international calling cards between 11 May 2009 and 30 July 2009.

The content of the sponsorship credits consisted of what appeared to be an advertisement with the voiceover *"Good Morning Pakistan is brought to you in association with Jeet calling cards"* added to the beginning. The credit featured an image of three calling cards of differing denominations with the text: *"Talk even more"* and *"Daily Charges"* with a red cross shown through it. The accompanying voiceover stated: *"Talk to your loved ones when you wish, and keep on talking"*. The final frame consisted of six different calling cards with the text: *"Jeet International Calling Card"*, the telephone number and website address.

Dil Dard Dhuan sponsored by Euroglazing

Dil Dard Dhuan (a serial drama) has been sponsored by Euroglazing (a double-glazing company) since 1 July 2009.

The content of the sponsorship credit consists of what appears to be an advertisement with the voiceover *"This drama is sponsored by"* added to the beginning. The credit features a woman informing viewers that *"Euroglazing sets itself apart from other double glazing suppliers as we offer quality double glazing at competitive prices. Feel the difference!"*, while images of windows appear behind her. The credit also contains the sponsor's logo, telephone number and website address.

Shehzadi sponsored by Flightcatchers.com

Shehzadi (a serial drama) has been sponsored by Flightcatchers.com (a flight finder website) since 20 June 2008.

The content of the credits consists of what appears to be an advertisement with the voiceover *"This drama is sponsored by"* added to the beginning.

Credit 1

The credit contains an image of a paper aeroplane flying through the sky, which is accompanied by the voiceover: *"Whatever your next destination, reach for the sky at flightcatchers.com. Find a quote in seconds. For the world's leading airlines to all major destinations"* and the telephone number and website address of the sponsor provided in text captions.

Credit 2

The credit contains an image of a paper aeroplane flying through the sky and is accompanied by the voiceover: *"Whatever your next destination – flightcatchers.com. For the world's leading airlines to all major destinations"* and the website address of the sponsor provided in text captions. The final frame of the credit consists of an image of a paper aeroplane with the text: *"flightcatchers.com a division of the Polani Group of Companies soaring high, above the rest..."*

Ba Khabar Savera sponsored by K2 calling cards

Ba Khabar Savera is a magazine show containing lifestyle elements such as fashion, health and celebrity guests. It also contains current affairs elements, such as the poll of the day and discussion of current news stories. The programme was sponsored by K2 international calling cards between 1 April 2009 and 30 July 2009.

The content of the sponsorship credit consisted of what appeared to be an advertisement with the voiceover *"Ba Khabar Savera is brought to you in association*

with” added to the beginning. The credit featured animated calling cards running on a race track with the K2 calling card winning the race. The voiceover stated: “*It’s not difficult, it’s impossible to beat K2 calling card*”. The final frame showed calling cards of differing denominations and the sponsor’s telephone number and website address.

Ofcom sought the broadcaster’s comments on all of the above sponsorship credits under Rule 9.13 (sponsorship credits must not contain advertising messages or calls to action).

In the case of the programme *Ba Khabar Savera*, Ofcom also requested the broadcaster’s comments with regards to Rule 9.1 of the Code (news and current affairs programmes may not be sponsored).

Response

Rule 9.13

ARY said that it had monitored the sponsorship credits broadcast on other channels as a reference point. It continued that it had referred to the published guidance and had “tried to keep as little information in the sponsorship credits as [it] thought was possible” and had therefore tried to comply with Rule 9.13.

Rule 9.1

ARY said that the programme *Ba Khabar Savera* covers an “eclectic mix of daily social issues, entertainment and topical celebrities and provides an introspective look into their personal and professional lives” as well as “the latest national and international happenings”. However, the broadcaster added that because the segment presented by a journalist was only included in the programme on Mondays and Fridays, it did not consider the programme to be a political and/or current affairs show. It also added that no other programme on the ARY News channel is sponsored and it is fully aware that political and current affairs programmes cannot be sponsored.

ARY said that the sponsorship of this programme had ended and it had decided to await Ofcom’s decision on the matter before considering allowing the programme to be sponsored in the future.

Decision

Ofcom notes that the broadcaster used the sponsorship credits broadcast on other channels as a guide for what information is acceptable in a credit. As stated in a note to broadcasters published in Ofcom’s Broadcast Bulletin 130¹ “Compliance decisions should not be based on material previously broadcast - by the licensee or any other licensee - which Ofcom has not considered” and that we “strongly advise broadcasters not to make assumptions about the compliance of their material on the basis that similar content may have already been broadcast.”

The recurring issues with the ARY sponsorship credits which Ofcom viewed, were calls to action for the viewer to contact the sponsor and the use of advertising messages. Ofcom’s published guidance to Rule 9.13 states “Contact details may include a description of the means of contact (e.g. tel:, text:) but must not invite or exhort viewers to contact the sponsor”.

¹ http://www.ofcom.org.uk/tv/obb/prog_cb/obb130/issue130.pdf

With regard to advertising messages, Ofcom noted that in many cases it appeared that the broadcaster had taken an advertisement and added a sponsorship message to the beginning of it. While broadcasters are permitted to use advertising footage in sponsorship credits, they must ensure that all advertising messages are removed and that the focus of the credit is on the sponsorship arrangement rather than the sponsor's products and services.

Veena sponsored by Pakeeza Dairies

Ofcom considered that the voiceover: *"Healthy, tasty, everything combined"* promoted the positive attributes of the sponsor's products, and that this combined with the clear call to action for viewers to contact the sponsor i.e. *"For National Trade Enquiries Contact 01706 641 551"* resulted in the credit breaching of Rule 9.13.

Loose Talk sponsored by Citizenship Training School

Ofcom's published guidance to Rule 9.13 states that "if sponsor credits contain contact details, these should include the minimum information necessary to allow viewers to make initial contact with the sponsor should they so wish". Ofcom noted that one of these sponsorship credits contained the address, telephone number and website of the sponsor which we considered to be an excessive amount of contact information. In addition, we considered the voiceover: *"Visit the Citizenship Training School or call 020 8532 8462 for more information"* and the text: *"Call CTS head office now 0208 532 8462"* to be clear calls to action for the viewer to contact the sponsor.

Ofcom also considered that the text which appeared in the credits such as *"We can help you pass THE LIFE IN THE UK TEST!", "5 Day Intensive ESOL with Citizenship Course"* and *"terms and conditions apply – crèche and accommodation also available"* were both detailed and promotional descriptions of the services that the sponsor provides. We judged therefore that the overall effect of the credits was a promotion for the sponsor's business.

For the various reasons set out above, the credits were in breach of Rule 9.13.

Good Morning Pakistan sponsored by Jeet international calling cards

Ofcom considered the text: *"Talk even more"* and *"Daily Charges"* with a red cross shown through it, as well as the accompanying voiceover: *"Talk to your loved ones when you wish, and keep on talking"* to be promotional statements about the sponsor's product, in breach of Rule 9.13.

Dil Dard Dhuan sponsored by Euroglazing

Ofcom found that the emphasis of this credit was on the sponsor's products and services rather than the sponsorship arrangement. This together with the voiceover: *"Euroglazing sets itself apart from other double glazing suppliers as we offer quality double glazing at competitive prices. Feel the difference!"* which was a clear promotional statement about the sponsor's business, resulted in Ofcom finding the credit in breach of Rule 9.13.

Shehzadi sponsored by Flightcatchers.com

We considered that the voiceovers in the credits: *"For the world's leading airlines to all major destinations"* and *"Find a quote in seconds"* exceeded a brief description of the sponsor's business and were promotional. The emphasis of the credit was on the sponsor's business rather than the sponsorship arrangement and this along with the promotional language used in the voiceovers, was considered to be in breach of Rule 9.13.

Ba Khabar Savera sponsored by K2 calling cards

Rule 9.13

We considered the voiceover: *"It's not difficult, it's impossible to beat K2 calling card"* to be a claim about the sponsor's product which would require objective substantiation. The claim amounted to an advertising message, in breach of Rule 9.13.

Rule 9.1

Sponsorship of news and current affairs programmes is prohibited. As the programme contained current affairs elements and was sponsored, it was found in breach of Rule 9.1 of the Code.

Sponsorship of various programmes, ARY Digital - Breaches of Rule 9.13
Sponsorship of *Ba Khabar Savera*, ARY News - Breach of Rules 9.1 and 9.13

Ofcom is concerned that ARY Digital (UK) Ltd. appears to have insufficient procedures in place to ensure compliance with Rule 9.13 of the Code. In light of this, Ofcom is requiring the broadcaster to attend a meeting to discuss its compliance processes and procedures. Further, Ofcom is putting the licensee on notice that any further breaches of Rule 9.13 will be taken extremely seriously and in such circumstances Ofcom is likely to consider further regulatory action.

In Breach

Sponsorship of A Wednesday

B4U Movies, 28 June 2009, 20:00

Introduction

B4U Movies is a specialist movie channel that broadcasts Bollywood films and related programming.

A Wednesday (a film) was sponsored by Ginco (supplier of nuts, sweets and snacks). The credits consisted of an image of three different products each with the text “99p” visible on them. The accompanying voiceover stated: “*Ginco - wholesalers of finest quality products*” and the sponsor’s telephone number.

Ofcom sought the broadcaster’s comments under Rule 9.13 (sponsorship credits must not contain advertising messages or calls to action).

Response

The licensee, B4U Network Europe Limited (“B4U”), said that the credits were commissioned specifically as sponsorship credits and did not contain any advertising messages or calls to action that encouraged viewers to purchase specific products or services. It continued that it believed the voiceover “*wholesalers of finest quality products*” was a brief description of the sponsor’s services and the voiceover did not actively encourage viewers to purchase the product.

B4U accepted that the reference to the price of the product, i.e. “99p” was an “oversight on the part of the broadcaster and said that it would remove this in future. However, the broadcaster argued that this was only a small element of the sponsorship credit, and that overall the credit identified the sponsorship arrangement and did not contain any direct appeal to viewers to buy the sponsor’s product.

Decision

Ofcom acknowledged that the pricing information was a small element of the credit, nevertheless price information is considered to be an advertising message, whether it is the focus of the credit or not.

Ofcom went on to consider the overall focus of the credits and took into account the combination of the pricing information with the voiceover, “*wholesalers of finest quality products*”, and the lack of emphasis on the sponsorship arrangement. Ofcom considered that the overall effect of these elements was to focus on the sponsor’s business, rather than on the sponsorship arrangement.

Ofcom therefore found the credit in breach of Rule 9.13 of the Code.

Breach of Rule 9.13

In Breach

Sponsorship of NASA: Greatest Missions

Discovery Channel (France), 27 June 2009 to 21 July 2009, various dates & times

Introduction

Discovery Channel (France) is a French language channel licensed by Ofcom and broadcast in France by Discovery Communications Europe Limited (“Discovery”).

The programme *NASA: Greatest Missions* was sponsored by ‘In the Shadow of the Moon’ (a DVD). The visual was a brief series of clips from the DVD, which were not shown in full screen, but were displayed in a smaller box. The last clip from the DVD was accompanied by a pack shot of the DVD. The on-screen text “*IN THE SHADOW OF THE MOON*” and “*EN DVD LE 2 JUILLET*” (translated as ‘on DVD on 2nd July’) appeared throughout the credit. The broadcaster told Ofcom that the French voiceover translated as “*Go and conquest the moon on Discovery. With the DVD of the must-see movie ‘In the Shadow of the Moon’*”.

Ofcom sought the broadcaster’s comments under Rule 9.13 (sponsorship credits must not contain advertising messages or calls to action).

Response

Discovery said that “in the main” it believed that the credit was distinct from advertising and did not contain advertising messages or calls to action. The broadcaster said that the predominant message in this credit was that of the sponsorship arrangement.

The broadcaster considered “*Go and conquest the moon on Discovery*” was not a call to action to contact the sponsor, but a link to the Discovery moon-landing content that was being sponsored.

Whilst the broadcaster accepted that in translation, “*must-see*” did sound “slightly promotional”, it stated that the French word (‘événement’) from which it was translated is not so promotional in tone, and is perhaps more similar in meaning to ‘event’.

In relation to the DVD release date, Discovery said that it had believed that it was a description of the product.

The broadcaster assured Ofcom that it would implement additional training to ensure that the relevant staff “have a clear understanding of the relevant codes.”

Decision

Ofcom noted that the on-screen text indicating the name of the product and the date on which the DVD would be available appeared throughout the credit, while the sponsorship arrangement was only communicated briefly in the voiceover. Ofcom therefore disagreed with the broadcaster that the sponsorship arrangement was the predominant focus of the credit.

As stated in previous findings¹, Ofcom considers product release dates to be advertising messages and therefore unsuitable for inclusion in sponsorship credits. It was a matter of concern to Ofcom that it published the first of the previous findings referred to (see the footnote below) some two and a half years in advance of the first broadcast of the content in this case.

Ofcom found that the credit appeared more like an advertisement than a sponsorship credit and was therefore in breach of Rule 9.13 of the Code.

Breach of Rule 9.13

¹ See finding regarding sponsorship of *Milkshake* on Five, published in Broadcast Bulletin 76 on 15 January 2007 (http://www.ofcom.org.uk/tv/obb/prog_cb/obb76/issue76.pdf); and also finding regarding sponsorship of *Dexter* on FX, published in Broadcast Bulletin 136 on 22 June 2009 (http://www.ofcom.org.uk/tv/obb/prog_cb/obb136/Issue136.pdf).

In Breach

Sponsorship of Geekdom

SCI FI Channel (France), 4 July 2009 to 24 August 2009, various dates & times

Introduction

SCI FI Channel (France) is a French language channel licensed by Ofcom and broadcast in France by SCI FI Channel Europe LLC (“SCI FI”).

The programme *Geekdom* was sponsored by Playstation. The sponsorship credit showed images of a television, a Playstation3 (a games console) and a PSP (a portable games console), with symbols representing photographs, music, video and games moving from the television screen via the Playstation3 to the PSP. Small on-screen text stated: “*WI FI connection necessary*” while the accompanying voiceover stated: “*Playstation presents Geekdom. Share your multimedia content from your Playstation3 to your PSP*”.

Ofcom sought the broadcaster’s comments under Rule 9.13 (sponsorship credits must not contain advertising messages or calls to action).

Response

SCI FI explained that *Geekdom* “is a documentary styled series focussing on the lives and passions of ‘geeks’, and... that the sponsor message content – with its emphasis on technical gadgetry – was deliberately selected to create a strong thematic link to the sponsored programming”.

However the broadcaster acknowledged that the “voice-over message ‘*share your multimedia content from your Playstation3 to your PSP*’ could be construed as a statement about the positive attributes of [its] sponsor’s products and could therefore be considered unduly promotional in its tone.” As a result the broadcaster immediately removed the credit from transmission.

The broadcaster assured Ofcom that it provides regular training for its commercial and production teams on the subject of sponsorship, and that its compliance team circulated detailed guidance notes on the subject following the publication of Broadcast Bulletin 130 in March 2009¹. In addition, SCI FI has informed Ofcom that it has scheduled refresher training sessions and additional one-on-one training for the personnel involved.

Decision

Ofcom considered that the voiceover “*share your multimedia content from your Playstation3 to your PSP*” was an advertising message about the positive attributes of the sponsor’s products in breach of Rule 9.13.

Breach of Rule 9.13

¹ http://www.ofcom.org.uk/tv/obb/prog_cb/obb130/issue130.pdf

In Breach

Sponsorship of Talking Telly

GMTV, 29 June 2009 to present, various dates & times

Introduction

Talking Telly is an item on GMTV during which the presenters discuss that evening's television highlights. *Talking Telly* is sponsored by Thirst Pockets (kitchen roll).

Ofcom viewed the following sponsorship credit:

- Visual: A family are eating breakfast on the patio. A small boy knocks a bowl off the table and its contents spill on the floor. An elephant comes running towards them. The boy's father runs into the kitchen and grabs the Thirst Pockets kitchen roll and throws it to the boy's mother who uses one sheet to clean up the spillage.
- Voiceover: "*Clean up your morning spills with one sheet of Thirst Pockets*".
- Visual: The mother and father both appear relieved when the elephant turns to walk away. The final shot is of an elephant walking away and a pack shot of the product
- Caption: "*Talking Telly sponsored by Thirst Pockets*".

Ofcom sought the broadcaster's comments on the credit under Rule 9.13 (sponsorship credits must not contain advertising messages or calls to action).

Response

GMTV said that "taken in context with the whole credit, the voiceover '*one sheet of Thirst Pockets*' represent[ed] a brief description of the sponsor's product and [was] not promotional or a credible advertising message. It [did] not compare the product to competitors or mention the best/most absorbent and contain[ed] no calls to action."

The broadcaster continued, "The credit feature[d] a family acting out a morning drama while having their breakfast. The majority of the credit create[d] the association with the programme and time of day."

Decision

It is acceptable for brief references to be made to a sponsor's products and/or services in sponsor credits, as a means of helping to identify the sponsor and/or sponsorship arrangement. However, these brief references should not be used as a means for sponsors to refer in a promotional way to the benefits of their products or services.

In this case, Ofcom considered that the voiceover "*Clean up your morning spills with one sheet of Thirst Pockets*" promoted the absorbency of the product by referring to its ability to clean up a spill with a single sheet.

Ofcom therefore found the credit in breach of Rule 9.13 of the Code.

Breach of Rule 9.13

In Breach

Sponsorship of various programmes

The History Channel, 22 June 2009 to 30 June 2009, various dates & times

Introduction

The programmes *Brits Who Made the Modern World*, *Extreme Trains*, *Ancient Discoveries* and *Thomas Telford: The Man Who Made Britain* were sponsored by Screwfix (a supplier of tools, accessories and hardware products) when they were broadcast on The History Channel between 22 June 2009 and 30 June 2009.

The sponsorship was identified by the following credits:

Opening/closing credits (broadcast at the beginning and end of the programmes)

- Visual: A man is seen hurriedly attempting to diffuse a bomb which is due to explode in 30 seconds.
- Voiceover: *"Brought to you in association with Screwfix.com."*
- Visual: A parcel from Screwfix arrives containing wire cutters, which the man uses to cut a wire which diffuses the bomb, a second before it is due to explode. This is followed by an image of the Screwfix catalogue.
- Voiceover: *"Screwfix – when you need it fast."*
- Caption: *"brought to you by www.screwfix.com"*.

Internal break credits

Each of these five second credits contained very brief shots of the bomb disposal element of the opening/closing credits. All of these credits included the image of the catalogue with the voiceover *"Screwfix – when you need it fast."* and the caption *"brought to you by www.screwfix.com"*.

Ofcom sought the broadcaster's comments on the above credits under Rule 9.13 (sponsorship credits must not contain advertising messages or calls to action).

Response

The licensee, AETN UK ("AETN"), said that *"Screwfix – when you need it fast"* is a generalised factual statement, as Screwfix's business is to deliver their products fast. It continued that the credits contained no description of 'fast' i.e. references to delivery times for example delivered "in 24 hours" or "next day". The broadcaster said that it is not possible to substantiate the word 'fast' and that it can have different meanings and therefore can be viewed in different ways.

Decision

When making judgements on sponsorship credits, words cannot be judged in isolation. Depending on the context, the use of the word 'fast' in sponsor credits may be acceptable. However, in the context of this particular credit, Ofcom considered that the statement *"when you need it fast"*, would be viewed solely as a promotional statement about a specific attribute of the sponsor's business (i.e. its delivery service).

Ofcom therefore found the above credits in breach of Rule 9.13 of the Code.

Breach of Rule 9.13

In Breach

Sponsorship of Imagine Blockbusters

NDTV Imagine, 23 April 2009 to 18 July 2009, various dates & times

Introduction

NDTV Imagine is a Hindi general entertainment channel. Its film strand “Imagine Blockbusters” was sponsored by Himalaya Carpets. The sponsorship credit included the text: “*Free underlay - £8.40 sq.m*” and “*Free Fitting*”. The website “*www.himalayacarpets.com*” as well as the addresses and telephone numbers of the Southall and Slough branches of Himalaya Carpets appeared on screen in the end frame of the credit.

Ofcom sought the broadcaster’s comments under Rule 9.13 (sponsorship credits must not contain advertising messages or calls to action).

Response

NDTV Imagine Limited (“NDTV”) told Ofcom that it realised that the sponsor credit was problematic because it featured the promotional messages “*Free underlay £8.40*” and “*Free Fitting*”. It considered that while not articulated verbally, the messages may be construed as advertising messages. As a result it immediately ceased broadcasting the credit.

The broadcaster advised that it has since received specific training on sponsorship and commercial references in programmes from a compliance consultant, and as a result assured Ofcom that it has improved its compliance processes in this area.

Decision

The credit contained clear advertising messages i.e. “*Free underlay - £8.40 sq.m*” and “*Free Fitting*”.

In addition, Ofcom’s published guidance on Rule 9.13 states “If sponsor credits contain contact details, these should include the minimum information necessary to allow viewers to make initial contact with the sponsor should they so wish”.

Ofcom considered that providing the addresses and telephone numbers of two of Himalaya Carpets branches as well as the company’s website address in the end frame of the credit, exceeded the minimum information necessary to allow viewers to make initial contact with the sponsor.

Ofcom therefore found this sponsorship credit in breach of Rule 9.13 of the Code.

Breach of Rule 9.13

Other Standards cases

In Breach

Scrolled advertisement for Manchester College of Higher Education and Media Technology

DM Digital, 19 August 2009, 09:30 and 20 August 2009, 12:30

Introduction

A viewer was concerned that an advertisement for Manchester College of Higher Education and Media Technology (“Manchester College”) was scrolled across the screen during programmes broadcast on DM Digital with which the college had no connection.

Ofcom noted that the scroll in which the advertisement was placed was clearly separated (in a banner) from the broadcaster’s scheduled programmes. However, the scroll itself also contained the broadcaster’s programme schedule and, on 20 August 2009, “*breaking news*”.

We therefore sought the broadcaster’s comments with regard to Rule 10.2 of the Code, which states:

“Broadcasters must ensure that the advertising and programme elements of a service are kept separate.”

Ofcom also noted that, between 09:30 and 10:00 on 19 August 2009, two advertising breaks (of approximately six minutes fifty seconds and five minutes twenty-five seconds) were broadcast. When the scrolled advertisements for Manchester College were added, the total amount of advertising during this half hour period was approximately fourteen minutes and thirty seconds.

We therefore sought the broadcaster’s comments on this matter with regard to Rule 4 of Ofcom’s Code on the scheduling of television advertising (“COSTA”), which states, among other things, that:

“...time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes...”

Response

DM Digital acknowledged that the total amount of advertising included in any hour included both scrolled and spot advertising. It added that, on 20 August 2009, the twelve minutes of advertisements permitted in any one hour of broadcasting had not been exceeded in the programmes Ofcom had noted.

The broadcaster made no reference to:

- the mixed editorial and advertising content of the scrolled information it broadcast on 19 and 20 August 2009; or
- the amount of advertising it broadcast between 09:30 and 10:00 on 19 August 2009.

Decision

Advertisements may be separated spatially from scheduled programmes by, for example, being scrolled in a banner. However, where broadcasters choose to do this, they must also maintain separation of editorial from advertisements within the scrolled material.

In this case, the content of the scroll broadcast on DM Digital during programmes contained both editorial content (i.e. the broadcaster's programme schedule and, on 20 August 2009, "*breaking news*") and advertising (i.e. an advertisement for Manchester College), in breach of Rule 10.2 of the Code.

The amount of advertising DM Digital broadcast in the clock hour 09:00 to 10:00 on 19 August 2009 was clearly in excess of twelve minutes. This was in breach of Rule 4 of COSTA (as it had broadcast approximately fourteen minutes and thirty seconds of advertising between 09:30 and 10:00).

Ofcom notes that DM Digital chose not to provide any comments or explanation for:

- the mixed editorial and advertising content of the scrolled information it broadcast on 19 and 20 August 2009; and
- the amount of advertising it broadcast between 09:30 and 10:00 on 19 August 2009.

The broadcaster has previously been found in breach of both Rule 10.2 of the Code and Ofcom's maximum television advertising minutage requirement¹.

Licensees should note that the repetition of breaches of any Ofcom codes is a condition under which Ofcom may consider the imposition of statutory sanctions, in accordance with its published procedures.

The repeated breaches recorded in this finding are serious and will be held on DM Digital's record. Ofcom puts DM Digital on notice that it may consider further regulatory action in the event of any recurrence or any other serious compliance failure in the future.

Breach of Rule 10.2 of the Code **Breach of Rule 4 of COSTA**

¹ Finding available at: http://www.ofcom.org.uk/tv/obb/prog_cb/obb121/. At the time of broadcast (February 2008) the maximum advertising minutage requirement was reflected in Rule 1.2 of the Rules on the Amount and Distribution of Advertising (RADA, which was replaced by COSTA on 1 September 2008).

In Breach

The Morning Show

Radio Hartlepool, 22 July 2009, 10:00

Introduction

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

A listener was concerned that a "...100% nicotine product that is known to be 100% addictive ... was given free advertising."

Ofcom noted that the material to which the complainant referred did not appear to be advertising but an interview in *The Morning Show*, promoting electronic cigarettes. We also noted material in the programming that appeared to promote other products and services.

The material broadcast included, for example:

1) During a discussion concerning financial advice:

Guest: *"The good news is that we can start shopping about for you again so give me a call, 2xxxxxx ... we're independent which means we look at the whole of the market ... If you come to a broker like myself, we shop around to give you the best deal ... We do all the donkey work..."*

Presenter: *"Is this a thing that could be done over the telephone or is it a thing that people need to call along to an independent advisor's premises and discuss?"*

Guest: *"We do have a website and you could fill in an online enquiry form but it's really better if people either pop in and see me or alternatively, I'm quite happy to go and visit people in their homes."*

Presenter: *"From a person's point of view that doesn't understand the market of house buying ... you can give advice on that as well."*

2) During a discussion concerning electronic cigarettes¹:

Guest: *"... you'd be amazed on how much you can save on these ... It looks like a normal cigarette, when a smoker tries it, it tastes like a normal cigarette but the thing is it's 100% legal to use in clubs, pubs, almost anywhere."*

¹ An electronic cigarette is a battery-powered device that provides inhaled doses of nicotine by heating a nicotine-chemical solution into a vapour. It is an alternative to smoked tobacco products. Unlike tobacco products, electronic cigarettes may be advertised. In principle, therefore, their apparent promotion in programming raises issues under Section 10 (Commercial References...) of the Code but not necessarily Section Two (Harm...).

Presenter: *"You've got no nicotine stains on your finger from this. What it looks like is it looks just exactly like a cigarette and if you puff on this thing ... if you go to the webcam you'll be able to see Jim is actually smoking this and the end lights up ... Let's cut the chase, how much and where can we get these from?"*

Guest: *"These will retail at £19.99 ... The refill cartridges are the equivalent of a packet of cigarettes and you will be able to buy these retail for less than £2 ... if you switch to the electronic cigarette, not only can you legally smoke it indoors, you're going to cut your smoking bill by at least 50%."*

Presenter: *"Absolutely fantastic... absolutely brilliant device there..."; and*

3) During a discussion with a local firm of solicitors about a free will-making scheme:

Presenter: *"Have you had cases of people coming to [company name] and is it a normal thing to do to leave money ... to charities? ... When does the offer last until?"*

Guest: *"Well, we have vouchers at the moment that are only valid until end of this month..."*

Presenter: *"These vouchers, I've got one here, it's really really simple. Would people call along to [company name] and say I heard [guest name] on the radio this morning ... and turn around say how would we get involved in free will making or indeed, leaving things to a charity?"*

Guest: *"That's right ... Either call into our office on York Road, speak to our receptionist and mention the radio or alternatively, ring up, mention that you heard me on Hartlepool Radio, you are interested in making the free will under the institute scheme and an appointment can be arranged."*

Presenter: *"After having you last week calling on the programme and starting the ball rolling with reference wills and how important it is and what have you, I went out on Thursday evening...and at least three people in the public house I was in asked me questions and I said "I'm not the solicitor here – get yourselves along to [company name] for goodness sake" ... just to clarify a few things for our listeners: There is conditions to this free will on a first come first served basis ... and the offer ends on what date?"*

Guest: *"The ones we have at the moment is the 31st of July."*

Presenter: *"For any other issues, I do know that [company name] are offering that free advice session on a Thursday is it? Just call in along to [company name]."*

Guest: *"That's right ... it's an advice clinic and it's open from nine o'clock in the morning 'til seven o'clock at night, to cater for people that work and don't want to take the time off work to come along to the solicitors."*

Presenter: *"And that's on a Thursday isn't it?"*

Guest: *"It's every Thursday, yes."*

Presenter: *"Have a pop along and a have a free chat."*

We therefore sought Radio Hartlepool's comments with regard to the following Code Rules:

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

Response

Radio Hartlepool said that, in the Community Radio context, its morning show regularly featured representatives of public services, charities and voluntary organisations, who talked about their work and initiatives. The broadcaster added that it also interviewed representatives of local businesses, including solicitors, retailers and financial institutions/advisors, and that, during the past year, it had featured more than 250 such interviews in the programme.

The broadcaster said that, in a small area such as Hartlepool, there was a tendency for local people to "identify local businesses with individuals well known in the community, and vice versa." It recognised that this could lead to "a blurring of the distinction between an individual's personal expertise, which [Radio Hartlepool] might wish to exploit in a programme feature, and their commercial activities in the same field."

Radio Hartlepool said that, on this occasion, it had not adequately distinguished "between the legitimate role of these interviewees as featured "expert guests", discussing matters of interest to many of [its] listeners, and the on-air promotion of their personal commercial offerings." However, the broadcaster added that no payment or any other valuable consideration had ever been received by Radio Hartlepool, or anyone involved in, or associated with, the station, for the inclusion of such material in the programme.

The broadcaster "appreciated that, in retrospect, these individuals were allowed too great an opportunity to promote their individual businesses." It said that Radio Hartlepool had been wrong "to adopt the same tone and attitude as that commonly applied to community events and cultural activities", references to which it considered to be "regarded as a naturally acceptable part of the interview."

Radio Hartlepool said that it had taken considerable steps to tighten its compliance procedures and increase its "appreciation of ... Ofcom guidelines and relevant legislation", noting that it was about to meet Ofcom to discuss such matters.

Decision

Ofcom notes Radio Hartlepool's assurance that the references to products and services under consideration were not broadcast in return for payment or any other

valuable consideration. On the basis of the available evidence, Ofcom therefore found no evidence that the broadcast was in breach of Rule 10.5 of the Code.

Ofcom welcomed Radio Hartlepool's acknowledgement concerning its references to, and promotion of, products and services in programming. Nevertheless, we were particularly concerned by the presenter's apparent natural tendency to:

- promote products (e.g. *"Let's cut the chase, how much and where can we get these from?"*) and services (e.g. *"For any other issues, I do know that [company name] are offering that free advice session on a Thursday is it? Just call in along to [company name]"*);
- offer open endorsement through his enthusiasm (e.g. *"Absolutely fantastic... absolutely brilliant device there..."*); and
- allow his guests to promote themselves (e.g. *"The good news is that we can start shopping about for you again so give me a call 2xxxxxx ... we're independent which means we look at the whole of the market"*).

The programme clearly promoted products and services on a number of occasions, in breach of Rule 10.3 of the Code.

Broadcasters may find editorial justification for referring to products and services in programming. This is particularly the case for Community Radio stations, where the broadcast of such material may contribute to their social gain objectives.

In this instance, there may have been editorial justification for references to some of the products or services featured – for example, to acknowledge briefly and incidentally, the name of the business an interviewee represented or to discuss objectively a new product that was of interest and/or relevance to the radio station's target audience. Generally, however, references to products and services in this broadcast appeared not to focus on their relevance to Radio Hartlepool's audience but more on offering interviewees and their businesses extended exposure for promotional purposes.

The programme therefore also gave undue prominence to products and services on a number of occasions, in breach of Rule 10.4 of the Code.

Ofcom considers the extent of the breaches in the case to be serious. This is the third serious breach of the Code recorded by Ofcom against Radio Hartlepool². The broadcaster is therefore on notice that, in the event of any repeat breach of the Code, or another serious breach of the Code, Ofcom may consider further regulatory action.

Ofcom has now met the broadcaster to discuss compliance and welcomes the comprehensive procedures and staff/volunteer training it has put in place to address its recent shortcomings in this area.

Breaches of Rules 10.3 and 10.4

² Ofcom's other published Findings can be found at:
http://www.ofcom.org.uk/tv/obb/prog_cb/obb140/ and
http://www.ofcom.org.uk/tv/obb/prog_cb/obb142/.

In Breach

Promotion of Lionheart Radio's local charity auction

Lionheart Radio, 31 August 2009, 15:00

Introduction

Lionheart Radio is part of Alnwick Community Development Trust, which is a registered charity. It operates a community radio service for the people of Alnwick, Northumberland.

On 5 September 2009, the broadcaster ran an off-air charity fund-raising event – an auction of donated products and services to raise money for Lionheart Radio and the Royal National Lifeboat Institution. In the days preceding the auction, the station occasionally promoted the event in editorial, giving details of the products/services for sale in the auction, which had been donated by local businesses.

A listener believed that, on one occasion, the references in programming to the donating businesses were overly-promotional and tantamount to advertising.

The on-air promotion of the event included, for example:

- a reference to a local photography firm, which donated a landscape workshop: *"That workshop is done by [company name]. If you want to check out some of his photos that he's already done for a lot of corporate businesses and magazines, check out his website at [company web address]. You will be impressed, there are some fantastic images"*; and
- a reference to a local chocolatier: *"I can't remember the name of it ... it's the chocolate shop at the end of Fenkle Street, where the bus station is. I did go in there and they donated a fantastic prize. I tried one of their chocolates, it cost me about a pound ... and I tell you what, they are gorgeous ... you should definitely go and check them out"*.

Ofcom therefore asked the broadcaster for its comments with regard to the following Code Rules:

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

Response

Lionheart Radio said that it had not received payment or any other valuable consideration for describing donated auction products or crediting their donators on air.

The broadcaster added that the promotion of the charity auction in programming was to raise awareness of it and to recognise the donations that had been made. It added that it was its understanding that Code guidance not only allowed promotion of charitable events and its own fund raising activities, but also permitted on-air crediting of benefactors.

However, while it intended these acknowledgements to be brief, Lionheart Radio admitted that, owing to the exuberance of the relatively inexperienced presenter, some of his comments could be perceived as active endorsements of local businesses.

The broadcaster said that the presenter had been selected to promote the event in this instance because of his involvement in its organisation. However, Lionheart Radio added that, upon being made aware of the issue by Ofcom, it had briefed the presenter about Code requirements. The broadcaster added that, should it repeat a similar fund raising activity in the future, a senior producer would be present throughout the broadcast of any editorial relating to the event, to ensure compliance.

Decision

Ofcom notes Lionheart Radio's assurance that the references to products and services under consideration, or their donators, were not made in return for payment or any other valuable consideration. On this basis, Ofcom found no evidence that the broadcast was in breach of Rule 10.5 of the Code.

Section Ten of the Code permits a broadcaster to conduct on-air charity appeals (and/or appeal for funds to produce programmes or run its service) in programming.

Generally, broadcasters are likely to find editorial justification for the occasional promotion in programming of a broadcaster's off-air charity event. Similarly, in the case of a charity auction, the event is likely to offer editorial justification for the occasional aired reference to products and services that have been donated for auction, together with a simple acknowledgement of their donators.

Rule 10.4 of the Code, however, prohibits undue prominence being given to products and services. In this instance, the presenter went beyond making passing references to products and services for auction in the charity event and the local businesses that had donated them. His personal endorsement of a number of the businesses exceeded what was editorially justified in these circumstances. Further, he provided additional details about them (e.g. their web address or location), for which there was no editorial justification. These references were therefore in breach of Rule 10.4 of the Code. They also clearly promoted the businesses in programming, in breach of Rule 10.3 of the Code.

Ofcom welcomes Lionheart Radio's assurance that the Code breaches were unintentional and the action it has taken to avoid recurrence.

Breaches of Rules 10.3 and 10.4

In Breach

Miley Jab Hum Tum

Star One, 16 August 2009, 12:00

Introduction

Star One is a Hindi general entertainment channel. During this episode of *Miley Jab Hum Tum*, a drama series, an on-screen caption promoted a non-broadcast event hosted by the broadcaster. A viewer objected to the promotion on the grounds that it constituted advertising within programming.

Ofcom sought the broadcaster's comments on the complaint under Rule 10.3 of the Code (products and services must not be promoted in programmes).

Response

Star TV advised that, upon notification of the complaint and following a discussion with its compliance consultant, it voluntarily removed the caption from broadcast on 20 August 2009.

Star TV explained that the promotion referred to the appearance of two of its most popular stars at an event it was hosting. The purpose of the event was to allow viewers to meet and see many of the personalities that appear on Star channels. The broadcaster said that it had believed the event to be a broadcast-related service and, as such, acceptable to promote in this way. However, it now accepted that the promotion was incompatible with the requirements of the Code.

Star TV assured Ofcom that it took its compliance obligations very seriously. It conducted a number of training sessions to help its staff ensure that it complied with relevant Codes. Star TV also advised that it had instructed its staff to contact its compliance consultant before initiating any new promotional campaigns.

Decision

The Code requires that advertising and programming should be distinct and clearly separated. As a general rule, products and services should not be promoted in programming. There are limited exceptions to this rule. For instance, programme-related material may be promoted in or around the programme from which it is derived (Rule 10.6). Broadcasters may also cross-promote their own broadcasting-related services within promotion time. Ofcom's Cross-promotion Code makes clear that "Broadcasting-related Services" are services with a 'broadcasting feel', that is, services that deliver content similar to that delivered on a television or radio service.

In this case, Ofcom judged that the event promoted was neither programme-related material nor did it satisfy the definition of a Broadcasting-related Service. There was no justification for promoting the event during the programme and the promotion was therefore in breach of the Code.

Ofcom welcomed Star TV's swift response in removing the promotion when it became aware that it did not comply with the Code.

Breach of Rule 10.3

In Breach

Soccer AM

Sky 1, 10 October 2009, 09:00

Introduction

Soccer AM is a live soccer-based magazine programme broadcast on Sky 1 on Saturday mornings. The programme regularly features special guests including sporting celebrities, comedians and musicians. This edition of the programme featured the musician Peter Hook, formerly with the band “New Order”. During his interview, while recounting a conversation he had once had with footballer Ryan Giggs, Mr Hook said: “I said ‘Oi, get off!’ and he went ‘Fuck off!’”

Ofcom received four complaints about the strong language used at this time of the day. Ofcom asked the broadcaster, British Sky Broadcasting (“Sky”), to comment with regard to Rule 1.14 of the Code (the most offensive language must not be broadcast before the watershed).

Response

Sky acknowledged that this use of the most offensive language may have infringed the Code and apologised for any offence caused to viewers. It explained its compliance procedure for all pre-watershed live shows, which includes a briefing to all guests prior to their appearance, expressly asking them to refrain from swearing. The presenters are also briefed to react swiftly to any inappropriate language or behaviour, and to ensure an apology is given as quickly as possible.

Sky confirmed that Peter Hook had been briefed in accordance with its compliance procedures. It also noted that following Mr Hook’s use of the word “fuck” the presenter immediately said “Oh no, oh no!” reflecting clear disapproval of the language and this was echoed by others in the studio. Sky said that Mr Hook then directly apologised for using the word, followed by another apology by both of the programme presenters. Two further apologies were given by the presenters, at the conclusion of the interview and finally at the end of the programme. Sky said the programme followed its compliance procedure fully, and had taken all reasonable steps to minimise offence to viewers.

Sky said that it had investigated implementing a short time delay to the transmission of this programme in the future to provide a small window for Sky to block out any offensive language in future broadcasts..Sky confirmed that it has since implemented this transmission-delay.

Decision

Rule 1.14 of the Code states that the most offensive language must not feature before the watershed. “Fuck” is a clear example of the most offensive language.

Ofcom acknowledges the various apologies made by the guest, the presenters and Sky. It also welcomes the introduction of the transmission-delay. However, earlier this year Ofcom published a finding in relation to a separate edition of *Soccer AM* in which a guest had used the word “fuck” during a live interview¹. On that occasion

¹ http://www.ofcom.org.uk/tv/obb/prog_cb/obb132/, published on 27 April 2009.

Ofcom resolved the matter. However, because this latest incident occurred in almost identical circumstances (i.e. a guest on the programme using the most offensive language during an interview after apparently being thoroughly briefed by the production team about the need to avoid using such language), Ofcom has found the broadcaster in breach of Rule 1.14.

Ofcom appreciates the challenges associated with ensuring 'live' broadcasts comply with the Code. However, Ofcom expects all broadcasters of live output to implement robust procedures that ensure compliance.

Breach of Rule 1.14

Not in Breach

The X Factor

ITV1, 10 and 11 October 2009, 20:00

Introduction

The X Factor is a popular talent show contest broadcast weekly from late summer until Christmas. A panel of four judges and viewers' votes decide which act wins the prize of a recording contract. The early stages of the series are pre-recorded with the final stages broadcast live. The live performance stage of *The X Factor* in the 2009 series began on Saturday, 10 October 2009, and will be broadcast on Saturday and Sunday nights from 20:00 until early December 2009.

During the first programme, broadcast on Saturday 10 October 2009 from 20:00, the contestant Danyl Johnson ("Danyl") performed part of the song 'And I'm telling you I'm not going' which was originally composed as a female lead vocal for the musical *Dreamgirls*¹. The introduction to Danyl's performance included a set of video-taped interviews with Danyl, the judges and one member of the 'behind the scenes' team which supports the performers. These interviews made clear that Danyl was going to perform a song originally written for a woman:

Simon Cowell: *"I've chosen a big big girl diva song for Danyl"*

Danyl Johnson: *"When I first got the song I thought 'what are they doing?'"*

Cheryl Cole: *"He's singing a woman's song - I think it's absolutely ridiculous"*

Yvie Burnett
(Vocal coach): *"It is really interesting to have a male sing a song like this"*

Louis Walsh: *"Maybe it's something to do with hitting fifty but Simon has definitely lost the plot this week"*

Simon Cowell: *"I'll either look stupid or I'm going to be a hero (pause) and I'm going to be a hero"*

Danyl Johnson: *"I'm going to have to put everything that I have in this song, it's one of the biggest challenges, it's the biggest song that I have ever sung in my entire life".*

Danyl began his performance and opened with the lyric: *"And I am telling you, I'm not going, you're the best girl I've ever known..."* This differed from the original version which is written as *"...you're the best man I've ever known..."*

In her critique of Danyl's performance, X-Factor judge Dannii Minogue made the following remarks ("the remarks"):

¹ The contestants in the X-Factor sing 'edited' versions of the songs which are much shorter than the original. As a consequence, in this case, there was only one gender reference in the part of the song which Danyl sang.

Dannii Minogue: *“Danyl, a fantastic performance, a true X Factor performance turning a girl’s song into a guy’s song but, if we’re to believe everything we read in the papers, maybe you didn’t need to change the gender reference in it?”*

In response to this another judge, Simon Cowell (the ‘mentor’ of Danyl), said:

Simon Cowell: *“What? What did you say?”*

Dannii Minogue then turned to Simon Cowell and repeated what she had just said:

Dannii Minogue: *“I said if we’re to believe everything we read in the papers then he didn’t need to change the gender reference in it”. Turning to the audience seated behind her she said: “No? Don’t believe it?”*

Simon Cowell did not respond immediately to Dannii Minogue’s remarks. Instead, Cheryl Cole gave Danyl her critique of his performance after which Simon Cowell then said:

Simon Cowell: *“I think I’m missing something here? I think I just heard one of the best performances I ever heard in my life...”* (turning to Dannii and pointing a pen at her) *“you can forget playing any of those games with him, I’m not having that, this guy deserves a break. He sung his heart out, give him some credit.”*

During the following evening’s Sunday ‘Results’ programme, the judges were provided with the opportunity to comment on the previous night’s events. Dannii Minogue and Simon Cowell said the following:

Dannii Minogue: *“I just want to say sorry to anyone that I may have offended last night with my comments. They were only said with humour and Danyl and I had been joking about it before the show...he definitely was not upset by my comments and I just wanted to let everyone know”.*

Simon Cowell: *“...I’ve got to say, I probably over-reacted a bit in the moment. You get very, very protective about your artists. I can say this on behalf of Dannii, she is the last person in the world who would ever do anything offensive like that, seriously...I spoke to Danyl afterwards, he took it in the spirit, it was fun, there was no offence intended and I think back to the show, it’s over.”*

In total Ofcom received 3,964 complaints about the Saturday night broadcast. In summary, the majority of the complainants were primarily concerned that the remarks made by Dannii Minogue to Danyl were malicious and homophobic and based on newspaper reports about Danyl’s sexuality. Others were concerned that Danyl was publicly embarrassed and humiliated on television. Finally some complainants expressed concerns about the fact that Dannii Minogue seemed to make a reference to a contestant’s sexuality in a family programme broadcast before the watershed.

In light of these complaints Ofcom wrote to Channel TV (“Channel”), who complied the programme on behalf of the ITV Network for ITV1, and asked it to comment in light of Rule 2.3 of the Code:

“In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context. Such material may include, but is not limited to...humiliation, distress...violation of human dignity.”

Ofcom reminded Channel that offence can be caused to members of the public by the broadcast of humiliating and/or distressing material, or material which violates human dignity, which may arise from the unfair treatment of others and/or the unwarranted infringement of the privacy of others. Ofcom then asked Channel:

- what consideration was given to the potential offence to the audience that may have been caused arising from Dannii Minogue's remarks;
- whether the remarks by Dannii Minogue and Simon Cowell were pre-planned;
- whether, if the remarks were made spontaneously during the live programme, any steps were taken at the time of broadcast once the issue had arisen, to limit the potential offence. In particular, Ofcom asked whether consideration was given to the possibility of making it clear to the audience at the time that Danyl was not offended by Dannii's remark to him; and
- how the potentially offensive remarks were justified by the context.

In respect of this last question Ofcom asked Channel to detail the extent to which information about Danyl's sexual orientation was public; whether Channel considered that Danyl's sexuality was *sufficiently* in the public domain prior to the broadcast of the remarks to justify by context the references to it in the broadcast; and, whether Channel considered that the remarks were justified by the context *irrespective* of whether Danyl's sexual orientation was already sufficiently in the public domain.

Response

As regards the potential offence that may have been caused by Danii Minogue's comments, Channel said that a discussion was held immediately following the live broadcast, involving senior management from Channel Television, ITV and the programme producers. It was agreed that Dannii's comments and the on-screen discussions that followed were capable of being misinterpreted by viewers and likely to cause upset and even offence to many of them. It was agreed that swift action was needed to mitigate the possible offence caused and that every opportunity should be taken to apologise to the audience.

Channel pointed out that during *The Xtra Factor*², what it described as Danyl's "gracious demeanour" did much to relieve viewer concerns that he might have been upset. On the Sunday edition of *The X Factor* the following evening, Dannii Minogue formally apologised for any offence she may have caused to viewers. Simon Cowell attempted to put matters into context by responding to her on-screen apology:

"I got to say, I probably overreacted a bit in the moment, you get very defensive of your acts and I've got to say about Dannii – she's the last person in the world who would ever do anything offensive. I spoke to Danyl after and he took it in the spirit, no offence intended, back to the show - it's over now."

Channel also referred to the fact that Dannii Minogue had made a full public apology on her personal website at the earliest opportunity on the Sunday morning. A further statement on Danyl's behalf was also issued by the programme's producers and Channel prioritised replying to those viewers who had contacted them. Channel pointed out that many viewers responded to Channel's e-mail of apology and explanation by withdrawing their complaint, or by indicating that Dannii Minogue's on-screen apology had addressed their concerns.

Channel confirmed that none of the remarks complained about were pre-planned and emphasised that *The X Factor* is a live and unscripted show. It said that Dannii Minogue's

² The follow up programme to the live show broadcast on ITV2 immediately after the main *X Factor* show on ITV1.

comments were inspired by her reaction to the discussions as to 'changing the gender' in the video-taped introduction shown before Danyl's song (see Introduction above) as well as by some of her light hearted off-air chats with Danyl at rehearsals the day before.

Channel then turned to Ofcom's enquiry about the steps taken at the time of the broadcast, once the remarks had been made to limit the potential offence. It pointed out that Dannii Minogue's comments came towards the end of the programme, so there was no opportunity to clarify her remarks at the time. There had been several points of contention between the judges during the live show concerning other acts, and it was deemed more appropriate to discuss these on *The Xtra Factor* which followed immediately on ITV2. As there was no time to raise the matter of the remarks about Danyl with the judges before going 'live' on ITV2 and, given concerns regarding upsetting viewers any further, it was felt that the matter needed to be discussed and clarified by all parties involved before any further on-screen mention was made. Channel added that Danyl did much immediately to reassure viewers by his cheerful and active participation in the ITV2 show.

Concerning justification for the comments, Channel referred to how information about Danyl's sexuality was in the public domain before the broadcast. It said the producers of the programme had set up some interviews with Danyl and another contestant at the time of the first audition show, broadcast in August 2009, in which both appeared. Danyl wanted to discuss his sexuality openly because of rumours that were circulating on some internet forums. Channel said that Danyl had stood out as an early favourite to win the competition and he wanted to set the record straight before inaccurate gossip appeared in the press.

As a result, Danyl was interviewed by the *Sunday Mirror* and the *News of the World* and both subsequently published pieces referring to his sexuality on 23 August 2008. Channel pointed out that these publications both have large readerships for their print versions, with their on-line versions (where Danyl's interview was also carried) attracting further readers. Danyl freely discussed his sexuality with both journalists and other publications, including the *Daily Mail*, then referred to him as 'bisexual' in subsequent articles about *The X Factor* contestants. In summary, Channel argued that the information about Danyl's sexuality had been passed freely into the public domain in circumstances he chose and controlled.

As to whether Dannii Minogue's comments were justified by the context, irrespective of whether Danyl's sexual orientation was in the public domain, Channel said that they were, and did not go beyond the expectations of the likely audience. This was for a number of reasons. The comments were made around 21:50, almost an hour after the watershed. They were brief, inexplicit and contained no bad language or inappropriate detail. Channel also pointed out that *The X Factor* live shows are well-established as being unpredictable and the judges known for their unrehearsed outbursts. Given that Dannii Minogue knew it was public knowledge that Danyl discussed his sexuality openly she did not believe that she was revealing private information of a sensitive nature. Channel also referred to Danyl's response to the remarks in his statement published through the programme's producers. He said:

"I was not at all offended by Dannii's comment. We're completely cool about it and chatted after the show. I wasn't upset, it's just so overwhelming being up there on the stage and having Simon be so positive."

Channel argued that Dannii Minogue's comments were pertinent in that they raised an interesting editorial point. Channel acknowledged however that it is entirely understandable, with such a high viewing audience, that some viewers would have no knowledge of Danyl's sexual preferences. It added that it is now evident that most viewers would have preferred this topic of conversation to have been kept off-screen entirely. Channel suggested that Dannii Minogue's error was in assuming that the audience were all aware of Danyl's sexuality, not in the actual comments she made. These – Channel argued – would have

been entirely unremarkable if broadcast later in the series when the vast majority of the audience would have a much greater knowledge of the contestants.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for the content of broadcast television programmes in a Code, which broadcasters must comply with. In deciding whether broadcasters have breached its Code, Ofcom must also take account of the right to freedom of expression set out in Article 10 of the European Convention on Human Rights. In setting standards for the content of broadcast television programmes, Ofcom requires broadcasters to ensure that “generally accepted standards” are applied so as to provide adequate protection from offensive and/or harmful material. Rule 2.3 of the Code requires broadcasters – in applying these generally accepted standards – to “ensure that material which may cause offence is justified by the context”.

The Code therefore does not prohibit the broadcast of potentially harmful or offensive material in all circumstances. Rather, if a broadcaster decides to broadcast such material, Ofcom will decide whether the material was appropriately handled by the broadcaster so as to ensure that any potential offence is justified by the context. Context includes a variety of matters set out under Rule 2.3 such as the editorial content of the programme, the time of broadcast and the degree of harm likely to be caused. In addition, it should be noted that under Rule 2.3 of the Code, offence can be caused to members of the public by the broadcast of humiliating and/or distressing material, or material which violates human dignity, which may arise from the alleged unfairness to, or infringement of the privacy of, others. Such matters relating to the alleged infringement of privacy can therefore in some very limited circumstances be judged under Section 2 of the Code and not Sections 7 or 8³. We examine this issue in more detail below.

Ofcom noted that the complaints about Dannii Minogue’s remarks on this edition of *The X Factor* fell into three categories: some complainants were offended by what they said was the homophobic nature of Dannii Minogue’s comments; some viewers were offended on behalf of Danyl; and others were concerned that the subject of Danyl’s sexuality was referred to at all on a programme like *The X Factor*.

Remarks allegedly homophobic and malicious

In considering these complaints under Rule 2.3, Ofcom considered whether in its view any potential offence caused by the broadcast of the remarks was justified by the context. In considering the context of the remarks made by Dannii Minogue, Ofcom had regard first to the editorial content of the programme. The *X Factor* is a competition in which performers voluntarily submit themselves to a critique each week by a panel of judges. This format is well established and often exposes contestants to criticism by the judges, sometimes accompanied by the audience’s response. Ofcom also notes that when participating in the finals of the programme contestants voluntarily share to some extent certain aspects of their life stories with viewers.

In Ofcom’s view, it was not outside the established nature of the programme for an *X Factor* judge to make such a comment as Dannii Minogue’s, especially in circumstances where the performer had placed information about his sexuality in the public domain. In Ofcom’s view Dannii Minogue’s remark queried whether there was any need for him, as someone who had openly discussed his sexuality, to change the lyrics to the song. Ofcom did not discern a pejorative or homophobic intent behind her comment. Ofcom did not therefore consider that

³ Sections 7 and 8 of the Code deal with issues relating to Unfairness and Privacy respectively and apply to how broadcasters treat individuals or organisations directly affected by programmes rather than to what the general public sees and/or hears as viewers or listeners.

the degree of offence likely to be caused by the broadcast of the remarks was sufficient to bring into question compliance with the Code.

Viewers offence on behalf of Danyl.

A number of viewers were concerned that the remarks made by Dannii Minogue caused Danyl public embarrassment and humiliation and were unfair to him. In effect these complaints appeared to have been made *on behalf* of Danyl. While Ofcom's Code contains rules to protect people participating in programmes from unfair treatment and breaches of privacy (see Sections 7 and 8 of the Code), such complaints can only be brought by 'the person affected', i.e. the person or organisation alleged to have been treated unfairly or to have had their privacy infringed. In this case, because Danyl, or someone acting on his behalf, has not made a complaint to Ofcom, it has no grounds to consider the complaints in relation to Sections 7 and/or 8 of the Code. However, Rule 2.3 of the Code envisages that offence can be caused to members of the public by the broadcast of humiliating and/or distressing material (or material which violates human dignity), which may arise from the alleged unfairness to, or infringement of the privacy of, others. Such matters relating to the alleged unfairness to, or infringement of privacy of a third party, can therefore, in some circumstances be considered under Section 2 of the Code without a complaint from the person involved as required under Section 7 or 8.

The subject of an individual's sexual orientation is one of great sensitivity and is of an extremely private nature. It is not a topic which is generally the subject of debate on a primetime entertainment programme like *The X Factor*. In this respect Ofcom wishes to draw the attention of broadcasters to the references in Rule 2.3 to "violation of human dignity" and "sexual orientation". Broadcasters need to exercise caution in this area, particularly when the subject of sexual orientation may foreseeably arise in the context of a live programme. In no way should the 'outing' of participants in television programmes be encouraged, condoned or legitimised.

In her critique of Danyl's performance, Dannii Minogue referred to the recent news reports about his sexual orientation which indicated that he may not have needed to alter the original gender reference in the song. Channel confirmed to Ofcom that the newspaper reports Dannii Minogue referred to were interviews given by Danyl Johnson to the *Sunday Mirror* and *The News of the World* in August 2009 in which he explained that he had dated "both men and women" and that he "wouldn't rule out someone just because of their gender." It was clear therefore to Ofcom that by referring to Danyl Johnson's sexual orientation, Dannii Minogue's comment touched on a subject that the performer had already voluntarily spoken about publicly.

In considering Rule 2.3, Ofcom regarded the confirmation by Channel that the remarks by Dannii Minogue were not in any way pre-planned and were completely unscripted, as significant. Any evidence that there had been a concerted attempt by the programme makers to raise the issue of Danyl's sexuality on the live programme would have concerned Ofcom. It would have revealed a failure to consider the potential offence to viewers that such a discussion could cause. In the event, once the remarks were made, Ofcom found that Channel, the broadcaster and the programme makers were immediately alert to the potentially offensive nature of the material and took steps to limit the offence. These steps included the apology the following evening by Dannii Minogue, the statement the following day by Danyl assuring viewers that he personally had not been offended by the remarks and the apology issued by Channel to viewers who contacted them.

Further, it is the case that *The X Factor* is a well established programme, watched by millions of people. Contestants, particularly those who perform well and reach the final stages, become well known overnight. Details of their performances and personalities are analysed both on television and online, in chatrooms and webforums. Contestants can

expect to undergo a degree of personal scrutiny which will become increasingly intense the further they progress in the competition. Ofcom does not accept the point made by Channel that in her remarks Dannii Minogue was making an interesting editorial point. In this case however Ofcom accepts that, although not obvious to every viewer, details of Danyl's sexuality were sufficiently in the public domain before the remarks were made by Dannii Minogue to justify her references by context.

Taking these factors into account, in the particular circumstances and context of this edition of *The X Factor*, the comments by Dannii Minogue were justified.

Reference to Danyl's sexuality

Ofcom considered that the remark by Dannii Minogue referred to Danyl Johnson's sexuality only indirectly. In Ofcom's view this reference was not likely to cause widespread offence, be understood by any young children who were watching, or shock viewers who came across this material unawares. Ofcom makes no distinctions based on sexual orientation or preference. It would not normally intervene regarding broadcast references to sexual orientation or preference unless additional circumstances (e.g. the *manner* in which a discussion of sexual preference was handled) indicated that 'generally accepted standards' were not applied by the broadcaster. This was not the case here.

In conclusion, taking all the circumstances into account, including public comments by Dannii Minogue and Danyl, Ofcom did not consider that Dannii Minogue's reference to Danyl's sexuality was in breach of the Code.

Not in breach of Rule 2.3

Not in Breach

Britain's Got Talent, Semi Finals and the Live Final

ITV1, 24 to 30 May 2009, various times

Introduction

Britain's Got Talent ("BGT") is a talent series, broadcast on ITV1, which aims to find an 'unknown star' from the general public to perform at the annual *Royal Variety Performance*. The auditions stage of the series comprises a number of episodes that are pre-recorded. The final stages of the series, the semi-finals and the final, are broadcast live every night. For the 2009 series, this was between Sunday, 24 and Saturday, 30 May 2009.

In total Ofcom received 409 complaints from viewers, in response to the following incidents during the final stages:

- (i) On 24 May 2009, ten year-old Natalie Okri ("Natalie") participated in a live semi-final broadcast. At the end of the programme the telephone vote results were announced. One by one each act was told they had not got through (to the final) until only Natalie and the dance act Diversity were left on stage. When Diversity was announced as the winner, Natalie appeared visibly upset.
- (ii) On 29 May 2009, during another live semi-final, ten year-old singer Hollie Steele ("Hollie") broke down on stage after forgetting the words to the song 'Edelweiss'. After being comforted by her mother and one of the judges, Amanda Holden, at a later point in the same programme, Hollie was given another opportunity by the producers of the programme and the judges to sing the song again.
- (iii) On 30 May 2009 during the live final, 12 year-old dancer Aidan Davis ("Aidan") appeared visibly upset when judge Simon Cowell remarked that his performance in the final had not been as good as his performance in the previous evening's semi-final. Simon Cowell remarked:

"If I'm being honest with you Aidan, it wasn't as good as last night. The problem is you had 24 hours and it kind of felt you had a limited time to put it together...you still have your charisma, you still have your talent, I think that whatever happens you've got a huge future ahead of you. But I have to talk to you like I would anybody else Aidan and I'm going to be honest with you, I just didn't quite feel the impact it had last night."

- (iv) At the conclusion of the live final on 30 May 2009, the adult singer Susan Boyle was awarded second place in the competition after the dance act Diversity who won. Ms Boyle appeared, on stage, to be shaken and behave unexpectedly. It had previously been reported widely in the media that she was experiencing problems dealing with the publicity generated by her participation in the programme.

Summary of the complaints:

- The largest group of complaints (259) were from viewers who considered that Hollie should not have been given a second chance to perform in the final because (it was alleged) this gave her an unfair advantage over the other contestants.
- The majority of the rest of the complaints were largely concerned about the welfare of the younger child contestants involved overall in the programme (in particular those aged under 13) who to varying degrees became upset, including Aidan, Natalie and Hollie as described above, and their treatment, especially when being assessed by the panel of

judges. The complainants questioned whether the broadcaster had fulfilled its duty of care towards the children as regards their participation in the series.

- A number of viewers were also concerned for the welfare of Ms Boyle and questioned the broadcaster's duty of care towards her as a contestant in the programme.

The programme was compiled by Channel TV ("Channel") on behalf of the ITV network for ITV1. Ofcom therefore asked Channel to comment in respect of Rules 1.26 (due care must be taken over the physical and emotional welfare and the dignity of people under eighteen) and Rule 1.27 (people under eighteen must not be caused unnecessary distress or anxiety by their involvement in programmes) of the Code. Ofcom also suggested to Channel that it provide any background information it considered useful for Ofcom to take account of regarding safeguards it had put in place to ensure due care was taken of the children who took part and on whether Hollie being given a second chance to perform was unfair to the other contestants.

There is legislation ("the Regulations")¹ requiring children who perform in certain circumstances to be licensed by the local authority. Ofcom's role does not extend to investigating potential breaches of this licensing legislation. It nonetheless asked Channel to provide any information it deemed relevant to Ofcom's investigation of this case.

Ofcom did not request comments from Channel regarding either complaints about the alleged unfair advantage given to Hollie Steel or complaints about Susan Boyle's welfare. Please refer to the Decision section below for an explanation and Ofcom's decision on these issues.

Response

The duty of care regarding child performers under the age of 13

Channel responded that the production company responsible for producing *BGT* received 50,000 applications from children – over 75% of the total applications made to appear on the 2009 programme. It continued that *BGT* is aimed at a family audience with a stated aim to provide people of all ages and from all walks of life with the opportunity to demonstrate a talent that would otherwise remain unseen.

Channel pointed out that the Guidance notes on Section One of the Code² provide help for producers and broadcasters who wish to feature children in programmes. It said that in the case of child performers, talkbackTHAMES ("Talkback") (the company which produced *BGT*) ensures:

- the appropriate licence is sought from each child's local education authority to cover their appearance on the live shows;
- each child's parent(s) remains with them from the day of their audition until the conclusion of their participation in the series;
- each child is assigned a researcher and a registered professional chaperone who is dedicated to them for the duration of their time with the programme which allows for a

¹ The Children (Performances) Regulations 1968 stipulate: the duration for which a child may attend a venue for a performance or rehearsal; the length of time a child may perform for a continuous period; and the maximum time a child may be on stage. The Regulations require that a child between nine and twelve years may only be on stage until 19:00, and a child of thirteen years and above must leave the stage by 22:00. These requirements were both potentially relevant to the children performing in *BGT* in this series.

² <http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/guidance1.pdf>

- good relationship to develop between the chaperone, researcher and the child and its parent(s) so that the children feel both comfortable and valued by the production team;
- liaison with, and inspection visits from, Brent local education authority's child welfare department (the local authority in whose area the performances in the finals took place); and
- liaison with, and (for the 2009 series) an inspection visit from, the Department of Children, Schools and Families ("DCSF").

Channel said that there are numerous anomalies with the Regulations which cause inconsistency in licensing. In direct contrast to the broadcast performance times specified (see footnote 1 above), children of any age are able to perform on a theatrical stage until as late as 23:00. It said that Talkback had worked closely with the local education authorities involved ("LEAs") to try to balance licensing constraints with the understandable desire of children to appear as contestants in the programme. As a consequence, the broadcaster said both it and Talkback had received a great deal of support and cooperation from the authorities, including the National Network for Children in Employment and Entertainment ("NNCEE"), the majority of whose members are child licensing officers from the LEAs, and from the DCSF. Channel added that the current Regulations are under review by the DCSF to include possible proposed revisions to performance times so that the requirements for *broadcast* would be more aligned with those in place regarding *theatre* performances.

Channel said that the format of *BGT* is not one that relies for its impact on conflict or crisis. However, it acknowledged that despite this, some children might experience anxiety when being 'judged'. It continued that the judges are briefed to ensure they make constructive comments based on a child's performance rather than any personally directed criticism. They are also expected to balance any points of criticism with positive comments. It continued that the guidance notes on Section One of the Code provide help for producers and broadcasters who wish to feature children in programmes, and that Channel refers to these whenever a new commission is made by ITV. In addition it said that the detailed brief given to the judges is not only based on this guidance but on guidance both Channel and Talkback sought from the NNCEE (as detailed above).

With regard to the way children are likely to handle the competitive element of the programme, Channel said that it understood that taking part in *BGT* can be a very emotional time for children. It also accepted that it is a natural consequence that those children who proceed no further than the semi finals or do not win may become upset. It said that it had taken account of the sensible guidance provided by Ofcom (i.e. "under eighteens may benefit from the presence of a familiar person with whom they have a positive attachment") by ensuring that a child performer's parent(s) is with them throughout their experience on the programme along with a professional chaperone and dedicated researcher. In addition, Channel pointed out that the duty of care to the child contestants continues after their leaving the programme to ensure that any problems they may experience as a consequence of their participation are addressed and resolved. For instance, Channel said that after the live final the contestants were in demand for interviews with the media. The broadcaster ensured that the researchers remained on duty throughout those interviews. In addition it was made clear to all the contestants and their families that if they had any queries or issues arising from their experience on the programme they could contact their researcher and that all efforts would be made to resolve any problems they might be experiencing following their exit from the show.

The complaints that providing Hollie Steele with another opportunity to perform was unfair
Channel said that the stated Terms and Conditions (the "Terms"), which were made clear at each stage of the competition, explained to performers that the producers were able to change the rules at any time and that the decision of the judges was final. In addition, the official programme rules stated that: "the producers reserve their right in their sole discretion

to change, amend or supplement the Rules for any reason and at any point during the competition.” The contestant release form (signed by all participants) also stated: “...the interests of the Programme will override those of any contestant and in the event of any dispute concerning the operation of any element of the Competition or the Rules the decision of the company will be final.” All those who participated in *BGT* signed to acknowledge their understanding of these rules at the point of their first audition and again before they took part in the live shows. Channel said that the decision to give Hollie Steele a second chance was taken live and made very quickly at the producer’s and judges’ discretion. It did not consider the audience was misled by this decision and the full circumstances which led to the decision were very clear to the audience.

Concerns that Hollie Steele became visibly distressed when she forgot the lyrics to the song she was singing

The broadcaster said that during Hollie’s performance (as with all child performances) a chaperone was placed at the side of the stage (just off camera) to give her reassurance if needed, whilst her mother sat in the front row clearly in her line of vision. It continued that once Hollie became upset her mother moved to comfort her at once along with the judge Amanda Holden. Once she left the stage, after Simon Cowell had promised her that she could have another attempt at performing the song, Hollie was comforted by two researchers who had been assigned to look after her during the live show. Channel said the researchers helped to calm Hollie’s nerves so that she was able to perform “brilliantly” on her second attempt.

Channel also pointed out that the programme received an inspection visit from Brent Local Education Authority the day before Hollie performed. The Authority had confirmed that it was happy with the child welfare arrangements that were in place. In addition, on the night that Hollie performed a research team from the DCSF was at the studio. Channel said that after the programme the representatives from the DCSF expressed their satisfaction as to how the situation regarding Hollie had been handled and that they complimented the production company on the way she had been looked after at the end of the evening. Channel concluded its response by stating that it is not uncommon for children to ‘freeze’ even in school assemblies. Further, Channel provided Ofcom with a copy of a letter that Hollie had sent to the production team, thanking them for the second chance that she was given to perform her song, and expressing how much she had enjoyed taking part.

The allegation that Aidan Davis was upset by Simon Cowell’s comments

Channel accepted that Aidan Davis (aged 12) was understandably upset when his performance in the live final (on 30 May 2009) did not receive the same acclaim from judge Simon Cowell as his performance in the semi-final the night before. Channel said that it was important however to understand that participation in the programme can be emotional as well as very exciting and that Simon Cowell’s comments to Aidan were positive apart from one minor criticism that, in his view, Aidan’s final dance routine was not as good as it had been in the semi-final the night before. Channel said that Simon Cowell made a point of speaking with Aidan during the commercial break immediately following his performance to ensure that Aidan knew how much Simon admired his talent and how sorry he was that he had become upset. Simon Cowell also then subsequently publicly expressed his regret in a number of print and television interviews that his comments when judging contestants can sometimes be too pointed. Channel also said that in an interview in the family’s local newspaper, the Birmingham News, Aidan’s mother acknowledged that the final of the programme had been an emotional day, that Simon Cowell had spoken with Aidan and that her son was feeling great. In addition, after the final, Aidan took part successfully in the *Britain’s Got Talent* nationwide tour.

Channel asked for it to be noted that a number of other children who were *BGT* semi-finalists (Hollie Steele and Natalie Okri) also participated subsequently with Aidan Davis in the

Britain's Got Talent nationwide tour, and it said this was an experience all the performers enjoyed.

Channel said that, in conclusion, due care was taken of the welfare of the children who participated, and it did not consider that they had been caused any unnecessary distress or anxiety by their involvement in the programme, in compliance with Rules 1.26 and 1.27 of the Code.

The allegation that Natalie Okri was upset when she did not go through to the final
Channel said, like many of the other children who performed in *BGT*, Natalie was supported by her mother and a dedicated researcher and chaperone to ensure her welfare. It said it was the duty of the researcher to take Natalie onto and off stage and that her mother was seated, in view, at the front of the audience during her performance. It continued that as soon as it became evident that Natalie was disappointed at not reaching the final, her mother moved to the front of the stage to comfort her. However, on this occasion the cameras did not show Natalie's mother at the front of the stage and so the impression might have been given that a small child was left alone and un comforted which was very far from the case.

Channel accepted that for children taking part in a show such as *BGT* it can be an emotional time and it accepted that it is a natural consequence that those not proceeding further in the competition may become upset. To deal with this, it said that parents are always close at hand to offer their children support if needed along with their dedicated researcher who remains a friendly and familiar face throughout.

Decision

Ofcom considers the standards it has set for the protection of children, as set out in Rules 1.26 and 1.27 of the Code, to be extremely significant. These rules require that broadcasters take due care over the physical and emotional welfare and the dignity of children who take part or are otherwise involved in programmes, and that children are not caused any unnecessary distress or anxiety as a result of being involved in a programme or by its broadcast. Ofcom must however also have regard to the need for these 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. This is the right of a broadcaster to impart information and ideas and the right of the audience to receive them.

The duty of care regarding child performers

It is important to note that Ofcom does not prohibit the broadcast of entertainment programmes featuring children provided such programmes comply with the Code. The issue for Ofcom here was whether the programmes breached Rules 1.26 and 1.27. For participants aged under-sixteen, the Code requires that broadcasters should normally obtain consent from a parent, guardian or other person over eighteen or *in loco parentis*. However, broadcasters' obligations under Rules 1.26 and 1.27 apply irrespective of such consent. Ofcom also understands, on the basis of expert advice, that from an early age, depending on the individual, children are capable of indicating their willingness to participate or be involved in a programme.³ Therefore, as part of its considerations, Ofcom took into account that all the children who took part in these programmes had been given detailed information about the programme's rules and had gone on to give their assent to participate. Ofcom also took into account that informed consent was given by all of the parents of the children who took part. Ofcom further notes that, to date, it has not received any complaint or contact from any parents of the children involved in the programmes that the children had been treated unfairly under Section Seven of the Code. In addition, Ofcom noted that neither Channel nor

³ See Section 1 of Ofcom's detailed Guidance on Rules 1.26 and 1.27.

the production company, Talkback, had received any negative feedback from the children who took part in the series or their families.

Ofcom has conducted research⁴ on the participation of children in factual programmes, and has published detailed guidance to accompany Rules 1.26 and 1.27⁵. This research has demonstrated that both adults and children value and enjoy under-eighteens being represented in programming. However, the ability of participants to weigh up the potential long-term consequences of participation can vary widely depending on age, maturity and individual circumstances.

Central to Rule 1.26 is the concept of “due care”. Ofcom’s guidance makes clear that “due” is used in the same way as in other areas of the Code. It indicates that the level of care must be “appropriate to the particular circumstances”. Responsibility for compliance rests with the broadcaster, who will need to decide what measures are appropriate in the particular circumstances of individual programmes, genres and formats. Relevant factors also include a participant’s age, maturity and capacity to make judgements about participation and its likely consequences. With regard to Rule 1.27, Ofcom’s guidance recognises that some genres and formats focus on competition and judgment of individual children’s performance and that these can feature experiences that have caused, or may cause, distress and anxiety. Therefore, broadcasters need to make very careful decisions about how to handle the involvement of children in such programmes.

Ofcom considers that it would be disproportionate and inappropriate for the Code to be applied in such a way as to forbid children from performing in talent shows such as *BGT*. Clearly very many children wish to take part and can find it a positive and fulfilling experience. *BGT* is a family programme and the involvement of talented children is an anticipated and enjoyed element of it. Ofcom must therefore consider not whether children should have been involved at all, but whether they were treated with “due care” and spared any unnecessary distress as required by the Code.

As explained above, the Regulations require children who perform in certain circumstances to be licensed by the local authority. Clearly all broadcasters must comply with applicable legislation. While Ofcom’s role does not extend to investigating potential breaches of the Regulations, it nonetheless had regard to Channel’s detailed explanation regarding the efforts it and Talkback undertook to liaise with and receive guidance from the relevant LEAs, the NNCEE and Brent Council⁶ regarding the performances of the children involved in order to comply with the applicable legislation.

Ofcom took into account the evidence provided by the broadcaster pointing to the various measures it put in place to ensure that due care was provided to the children throughout their participation in the programmes. Ofcom noted in particular the actions taken by the broadcaster, production team, chaperones, carers and parents to ensure the welfare and dignity of the children throughout the audition process and through to the live televised shows. Ofcom is mindful that the full range of measures put in place by the broadcaster, and particularly those behind the scenes, would not have been apparent to the audience. This care was also supplemented by oversight from Brent Council. In correspondence from Brent Council to Talkback (a copy of which was provided to Ofcom by Channel) Brent Council indicated that it was satisfied that the producers of the show had made appropriate arrangements in terms of the children’s supervision. In addition, representatives from the

⁴ “*Children in programmes: An independent research report for Ofcom*” (2007) by Sherbert Research is available at: http://www.ofcom.org.uk/research/tv/reports/children_in_programmes/.

⁵ <http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/>.

⁶ Brent Council is the local authority in whose area the performances took place (at the Fountain Studios in Wembley).

DCSF also attended the venue (during the semi-final on Friday, 29 May 2009) who were, according to Channel, “very impressed” with the care and support offered to the children and families at the studios.

Ofcom also took into account that many, if not all, of the children who featured in the programme were performing as dancers or singers and were likely, in Ofcom’s view, to have had some previous experience of performing and the competitive environment of contests. It was also clear that the majority of the children displayed maturity and courage in facing the judges and the live audiences – characteristics, acquired or otherwise, that not all young children possess.

Having taken account of the measures that had been put in place, as set out above, it was Ofcom’s view that the broadcaster took sufficient steps to ensure as far as possible that the children and their families were appropriately looked after throughout their participation with the programme.

Concerns that Hollie Steele, Natalie Okri and Aidan Quinn became upset and/or distressed on stage

Ofcom noted that Hollie became visibly upset at having forgotten the words to the song she was attempting to sing. In Ofcom’s opinion, Hollie did not appear frightened or upset at being on stage but frustrated and shocked that she had stumbled over the lyrics. This was shown by the fact that she only became upset when the presenters Ant and Dec initially told her that she could not have another chance to sing the song again because of time constraints. However, after the judge Simon Cowell told her that they would find the time and she would have another chance to sing the song, she was visibly grateful and relieved. She later returned to the stage to applause and performed the song without any mistakes. The reaction from the audience was very positive and all of the judges praised her for the courage and maturity she exhibited in returning to the stage to face the audience after forgetting the words during her first performance.

Having taken into account the way in which the programme makers dealt with this particular incident, we concluded that due care, as regards the treatment of Hollie Steel, was provided by the broadcaster in terms of the measures taken to protect her welfare and dignity before, during and after her performance in the semi-final.

Whilst Ofcom noted that it appeared that Natalie Okri was left alone on stage (albeit briefly) after she was announced the runner-up, it was clear that this was in fact not the case. Her mother was at the front of the stage and the researcher dedicated to her care was standing just to the side of the stage off camera. Ofcom noted the very brief amount of time that Natalie was on stage after the results were announced and, whilst it was clear that she was disappointed, it did not consider that her treatment or the care she had received throughout her participation with the programme was likely, or in fact had caused her any unnecessary harm or distress.

With regard to Aidan Davis, Ofcom noted that Simon Cowell expressed regret in the media about some of the remarks he made to Aidan in the final. For example, Simon Cowell, said in an interview broadcast by GMTV, that: *“The time I felt really bad, I’ve got to be honest with you, is when I made Aidan cry on the final. That’s when I thought I’d gone a bit too far...I made the wrong call, it was the most important night of his life and I upset him...that really, really hurt me because I hurt him and I felt terrible and I apologised to him straight afterwards...”* Ofcom also noted that in an interview with the Birmingham News local newspaper, Aidan’s mother acknowledged that the final of the programme had been an emotional day, that Simon Cowell had spoken with Aidan and that her son was feeling great. In addition, after the final, Aidan successfully took part in the *Britain’s Got Talent* nationwide tour.

In conclusion, Ofcom has not found any evidence to suggest that any of the children involved in the programme had anything other than a positive overall experience through their involvement, and notes in particular that the children who complainants were particularly concerned about (Hollie Steele, Aidan Davis and Natalie Okri) all went on to participate successfully in the *BGT* tour.

As regards Rules 1.26 and 1.27, Ofcom is therefore satisfied, on the basis of the evidence it assessed during this investigation, that due care was taken by the broadcaster over the physical and emotional welfare and dignity of the children involved in these programmes and they were not caused unnecessary distress or anxiety by their involvement in or the broadcast of the programmes.

However, whilst Ofcom does not consider that the Code was breached in this case, Ofcom urges broadcasters to take appropriate care with regard to the participation of children in programmes with a competitive element – particularly in relation to the judging of performances. Assessments and decisions must clearly be made by judges in such programmes, and broadcasters should therefore take care to make children aware of the likelihood of constructive criticism as well as positive comments. However, when judging child participants, due care must be taken in respect of their welfare and dignity to ensure they are not caused any unnecessary distress or anxiety.

Not in breach of Rules 1.26 and 1.27

The complaints that providing Hollie Steele with another opportunity to perform was unfair
Ofcom noted that the Terms and the rules for the competition made it clear that the rules could be changed at the discretion of the producers; and that all of the performers agreed to these rules. Ofcom is not in a position to determine whether Hollie Steele's second full performance garnered her any special advantage and it received no complaints of unfair or unjust treatment from any of the other semi-finalists competing in the same programme with her. No issues therefore arose under the Code.

Susan Boyle

A number of viewers were concerned for Ms Boyle's welfare. Ofcom received 53 complaints regarding the alleged exploitation of Susan Boyle whom some complainants considered too vulnerable to participate in a live talent contest.

Ofcom's remit however does not extend to protecting the welfare and dignity of those aged 18 or over who take part in programmes unless the individual concerned, or someone acting directly on their behalf, makes a formal complaint to Ofcom regarding alleged unjust or unfair treatment. Ofcom did not receive a complaint from Susan Boyle regarding her participation in the programme. We have therefore not investigated complaints made by members of the public that related to Ms Boyle's welfare as a participant on the programme.

In some cases the broadcast of a programme may cause offence to the audience in relation to Rule 2.3 of the Code ("generally accepted standards") through humiliation, distress or violation of human dignity. Under the Code, a programme which causes potential offence in these circumstances must then justify the offence by the context. Ofcom decided however that Rule 2.3 did not apply in this case. Ofcom took into account that this was a talent contest where participation by adults was voluntary. Disappointment to all but the winner was therefore likely to be inevitable. Susan Boyle did not appear humiliated or particularly distressed, and when the result was announced on air at the end of the final she swiftly congratulated Diversity for their win. Ofcom therefore considered that as regards the programmes as broadcast there was nothing which called into question compliance with Rule 2.3 of the Code.

Fairness and Privacy cases

Partly Upheld

Complaint by Miss Alexandra Casson

Hotel Trubble, BBC2, 18 April 2009

Summary: Ofcom has partly upheld this complaint of unwarranted infringement of privacy.

This children's programme included hidden camera footage of two characters, played by actors dressed as "secret agents", surprising people walking along the street and questioning them about whether they felt protected. Miss Alexandra Casson was one of the people stopped and questioned and she complained that footage of her was surreptitiously filmed and subsequently broadcast without her consent.

Ofcom found the following:

- Although Miss Casson was surreptitiously filmed, the filming took place in a public place, when she was not engaged in any particularly private or sensitive activity. Miss Casson therefore did not have a legitimate expectation of privacy in relation to the making of the programme.
- Having refused to give her consent for the surreptitiously filmed footage to be included in the programme, Miss Casson had a legitimate expectation of privacy in relation to the broadcast of the material. Her privacy was infringed by the use of images of her in the programme which rendered her identifiable. There was no public interest or other justification for the use of the footage in the broadcast. Miss Casson's privacy was therefore unwarrantably infringed in the broadcast of the programme.

Introduction

On 18 April 2009, BBC2 broadcast an episode of *Hotel Trubble*, a programme broadcast as part of its children's programming.

This episode featured a storyline about the fictional hotel's centenary celebrations and its preparation for a visit from the "Queen" who would be opening the festivities. In their quest to prove that the hotel was fit to "*protect posh people*" like the "Queen", the three main characters took to the streets in an attempt to meet "*posh people*" and to practice "*protecting*" them. This part of the programme involved two of the characters, played by actors, surprising people walking along the street and questioning them about whether they felt protected. The reactions of the people stopped were filmed by a hidden camera. Miss Alexandra Casson was one of the people stopped and questioned by the actors.

Miss Casson complained to Ofcom that her privacy was unwarrantably infringed in the making and broadcast of the programme.

The Complaint

Miss Casson's case

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

- a) She was stopped on a public street and was unaware that she was being secretly filmed for the programme. The obtaining of this footage infringed her privacy.

In summary, Miss Casson complained that her privacy had been unwarrantably infringed in the programme as broadcast in that:

- b) Footage of her walking on a public street and being surprised by the actors was broadcast against her wishes and without her consent. Miss Casson said that she had refused to sign a release form because she did not wish to appear in the programme.

The BBC's case

In summary, the BBC responded to Miss Casson's complaint that her privacy was unwarrantably infringed in the making of the programme as follows:

- a) The BBC said that secret filming for entertainment purposes was allowed for if it was intrinsic to the entertainment and did not amount to a significant infringement of privacy such as to cause significant annoyance, distress or embarrassment. It said that the filming complained of fell within this category. The BBC said that while Miss Casson was unaware that she was being filmed and may have preferred that she was not, the BBC considered that the act of filming and the interaction with the actors did not cause significant annoyance, distress or embarrassment to her and therefore could not be said to impinge upon her privacy. The BBC also said that Miss Casson was filmed in a busy public thoroughfare where she would have had a very limited expectation of privacy.

In summary, the BBC responded to Miss Casson's complaint that her privacy was unwarrantably infringed in the programme as broadcast as follows:

- b) The BBC said that it accepted that that footage of Miss Casson was broadcast without her consent. It said that it regretted this serious error and that it had taken steps to ensure that this type of error was not repeated again in any future programming. The BBC said that it conveyed its apologies to Miss Casson for failing to properly record and act on her wishes, and confirmed that the footage included of her would not be re-broadcast.

Decision

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

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

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

- a) Ofcom considered Miss Casson's complaint that her privacy was unwarrantably infringed in the making of the programme in that she was surreptitiously filmed without her knowledge or consent.

Ofcom's recognises that the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about 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 took into account Practices 8.13 and 8.15 of the Code. These Practices state that programme-makers should not normally obtain or seek information through misrepresentation or deception, except where the disclosure is reasonably believed to serve an overriding public interest. When deception is used for the purposes of entertainment, surreptitious filming may be warranted if it is intrinsic to the entertainment and does not amount to a significant infringement of privacy such as to cause significant annoyance, distress or embarrassment.

Ofcom first considered whether or not Miss Casson had a legitimate expectation of privacy in the circumstances in which she was filmed. The Code explains that "legitimate expectations of privacy will vary according 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 noted that Miss Casson was not aware that she was being filmed when approached by the actors; no attempts were made to alert her to the filming and the camera was not positioned in a clear vantage point. It took the view that Ms Casson was therefore surreptitiously filmed for the programme. This meant that Miss Casson had no opportunity to raise concerns about the filming or to refuse consent before filming began. The surreptitious nature of the filming heightened any expectation of privacy she had.

However, Ofcom also noted that the filming took place on a public street and in full view of members of the public. Moreover, although Miss Casson was not aware that she was being filmed, her actions were not particularly sensitive in nature. She was walking with a friend on a public street. We also recognized that the surreptitious filming carried out in this case was intrinsic to the entertainment purpose of the programme being made. The footage of Miss Casson being approached and questioned by two actors dressed in character as "secret agents" (that is, in dark suits and sunglasses) indicated that, although she appeared to be surprised and slightly uncomfortable with the way she was approached by the actors, this did not amount to causing her significant annoyance, distress or embarrassment.

Taking all the factors referred to above into account, Ofcom was satisfied that any expectation of privacy Miss Casson had in relation to being surreptitiously filmed was significantly diminished by the fact that she was filmed in a public place and was not engaged in any particularly private or sensitive activity. In these circumstances, Ofcom considered that Miss Casson did not have a legitimate expectation of privacy in the making of the programme.

Having concluded that that Miss Casson did not have a legitimate expectation of privacy in this regard, Ofcom found that her privacy was not infringed in the making of the programme and that it was therefore not necessary for it to further consider whether any infringement of privacy was warranted or not.

- b) Ofcom then considered whether the broadcast of the footage of Miss Casson unwarrantably infringed her privacy.

In considering this head of complaint Ofcom took account of Practice 8.6 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. It also took into account of Practice 8.15 as already set out above, which also states that if material is obtained for entertainment purposes by surreptitious filming, it should not be broadcast without the consent of those involved.

Ofcom first considered whether Miss Casson had a legitimate expectation of privacy in respect of the footage of her that was broadcast in the programme.

We acknowledged that, as stated in head a) above, Miss Casson was shown walking down a public street and was not engaged in a particularly sensitive activity. We considered she had limited expectation of privacy in respect of the material broadcast.

However, we also noted that the footage was obtained surreptitiously which heightened her expectation of privacy considerably. Where footage is obtained in this way for the purposes of entertainment it should not normally be broadcast without the consent of those involved, unless they are not identifiable.

After Miss Casson had been filmed being approached by the actors, the programme makers had made themselves known to her and had asked her to sign a consent form for the footage to be broadcast in the programme. Miss Casson had refused to give her consent, but the programme makers had failed to accurately record her wishes, which led to the footage of her being mistakenly included in the programme.

In the circumstances of this particular case it was clear to Ofcom that Miss Casson's refusal to sign a release form was unequivocal. It should have been apparent to the programme makers that she did not consent for the footage of her to be included in the programme. Given this refusal to give her consent, Miss Casson had a legitimate expectation of privacy in relation to the broadcast of the footage.

Ofcom then considered whether or not Miss Casson's privacy was infringed in the broadcast of the programme. Ofcom noted that although Miss Casson was shown only briefly in the programme, the side of her face was clearly shown. Although she was not shown in close up in the programme, the footage of her was sufficient, in Ofcom's view, to render her identifiable. In the absence of consent, Ofcom concluded that the broadcast of this footage of Miss Casson in the programme did infringe her privacy.

Ofcom finally considered whether or not the inclusion of the footage of Miss Casson in the programme was warranted. Ofcom took account of the content and context of the programme, namely a children's entertainment programme. Ofcom did not consider that there was any public interest in the broadcast of this material, or any other justification, which would have outweighed Miss Casson's right to privacy. Ofcom therefore found that Miss Casson's privacy was unwarrantably infringed in the broadcast of the programme.

Accordingly, Ofcom has not upheld Miss Casson's complaint of unwarranted infringement of privacy in the making of the programme but has upheld her complaint of unwarranted infringement of privacy in the broadcast of the programme. The broadcaster was found in breach of Rule 8.1 of the Code.

Not Upheld

Complaint by Ms Heidi Boulton

Inside Out, BBC1 (North East), 22 October 2008

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

An edition of *Inside Out* investigated complaints about the Ironopolis Film Company (“Ironopolis”), financed by Mr Geoff Stalker. The programme included an interview with Miss Lyndsey Fox, who had successfully taken sex discrimination proceedings against Mr Stalker and another. She explained that she became pregnant while working for Ironopolis and that Ms Heidi Boulton, Mr Stalker’s partner, had told her to “*just get rid of the baby*”.

The programme included footage of a notice board showing Mr Stalker’s photograph on either side of which the address of the home he shared with Ms Boulton was visible.

Ms Boulton complained to Ofcom that she had been treated unfairly in the programme and that her privacy had been unwarrantably infringed in both the making and broadcast of the programme.

In summary Ofcom found the following:

- That the BBC were entitled to broadcast a brief summary of the conversation between Ms Boulton and Miss Fox without the right of reply as it had previously been a published finding of fact in a court of law, namely an Employment Tribunal.
- That the BBC’s use of the term “*wannabe*” was justified in the circumstances and was not used pejoratively. In these respects there was therefore no unfairness to Ms Boulton.
- That because Ms Boulton had knowingly participated as an actress in a film production intended for public viewing, she had no legitimate expectation of privacy over footage of herself in the film. Consequently, the BBC did not unwarrantably infringe her privacy by broadcasting the footage.
- Finally, Ofcom found that because the main story referred to the dealings of Mr Stalker and that his address was in the public domain as a Companies House document, Ms Boulton had no legitimate expectation of privacy over this information.

Introduction

On 22 October 2008, BBC1 (North East) broadcast an edition of its regional current affairs programme, *Inside Out*. The programme investigated complaints about the Ironopolis Film Company (“Ironopolis”), financed by Mr Geoff Stalker, which had promised to make Teesside the “*Hollywood of the north*” and to “*plough millions*” into the local film industry. The programme said that, instead, Ironopolis had left “*a trail of debt*” and left staff and film crew out of pocket.

The programme included an interview with Miss Lyndsey Fox, who had successfully taken sex discrimination proceedings against Mr Stalker and another. She explained that she became pregnant while working for Ironopolis and was nervous about how the news

would be received. The presenter said that Miss Fox had confided in Ms Heidi Boulton, Mr Stalker's partner and a clip of Ms Boulton from a film in which she appeared was included. Miss Fox then said that Ms Boulton had suggested she "*get rid of the baby*".

The programme included, on a number of occasions, footage of a notice board showing Mr Stalker's photograph on either side of which the address of the home he shared with Ms Boulton was visible. Footage of Ms Boulton and Mr Stalker's home, shot from a distance, was broadcast and a statement from Mr Stalker was read out.

Ms Boulton complained to Ofcom that she had been treated unfairly in the programme and that her privacy had been unwarrantably infringed in both the making and broadcast of the programme.

The Complaint

Ms Boulton's case

In summary, Ms Boulton complained that she had been treated unfairly in the programme as broadcast in that:

- a) She was portrayed unfairly in that the programme falsely accused her of telling Miss Fox to abort her child.

By way of background, Ms Boulton said she only met Miss Fox on a few occasions, and never had a detailed conversation with her. Furthermore, Ms Boulton said she had a clear history of being opposed to abortion.

- b) The programme unfairly portrayed her as a "useless wannabe" actor and illustrated the allegation with footage of her from a film that was never released and which was the subject of an ongoing police enquiry into allegations that the film was stolen.
- c) Ms Boulton was not contacted by the BBC prior to the broadcast, received no warning that the programme was to be transmitted and was given no right of reply to the allegations.

In summary, Ms Boulton complained that her privacy had been unwarrantably infringed in the making of the programme in that:

- d) The programme makers obtained untrue information that she had told Miss Fox to abort her child.

By way of background, Ms Boulton said she had nothing to do with Ironopolis and was not a director, officer or employee of the company.

- e) The programme makers obtained footage of Ms Boulton from a film that was never released and which was the subject of an ongoing police enquiry into allegations that the film was stolen.

In summary, Ms Boulton complained that her privacy had been unwarrantably infringed in the broadcast of the programme in that:

- f) Ms Boulton's name and footage of her, from a film that had never been released, were included in the programme as broadcast in connection with a false allegation that she had told Miss Fox to abort her child.

- g) Footage of Ms Boulton's full home address on a notice board and footage of her house were included in the programme as broadcast.

The BBC's case

In summary, the BBC responded to Ms Boulton's complaint of unfair treatment as follows:

- a) In relation to Ms Boulton's complaint that she was portrayed unfairly in that the programme falsely accused her of telling Ms Fox to abort her child, the BBC said that the reference to the conversation between Ms Boulton and Miss Fox relied on the account contained in the Employment Tribunal's published judgement in Miss Fox's case against Ironopolis. The BBC said that this judgment found, as a matter of fact, that the account of the conversation described by Miss Fox in the programme took place.

The BBC said that the hearing into Miss Fox's case went ahead, after several delays, in the absence of representatives of Ironopolis. The judge said:

"They (the respondents) have thrown away their chance to be heard by truly vexatious and unreasonable conduct of the proceedings".

Furthermore, the judgment recorded that, despite the non-attendance of the respondents:

"...we did test the evidence of the claimant. Her evidence however more than withstood that test".

The BBC said that, in a unanimous judgement, which identified Mr Stalker's wife as being Heidi Boulton-Stalker, the tribunal found in Miss Fox's favour and she was awarded a total of over £50,000. As part of the Tribunal's Findings of Fact, the judge had recorded that:

"Such was the general hostility to her (Miss Fox's) pregnancy that Mr Stalker's wife suggested in the presence of others including some or all of the respondents 'why don't you get rid of it?'"

The BBC said that the programme makers were entitled to rely upon the findings of the tribunal, which provided sufficient evidential basis for accepting Miss Fox as a truthful witness and her account of this conversation as being accurate.

- b) In relation to Ms Boulton's complaint that the programme unfairly portrayed her as a "useless wannabe" actor, the BBC said the programme made no comment on Ms Boulton's acting ability and did not describe her as "useless". She was described simply as Mr Stalker's "other half" and as a "wannabe film star".

The BBC said the term "wannabe" was commonly used to describe someone with strong ambitions in a particular direction and was regularly used in the context of acting ambitions without any derogatory connotations. The BBC said that Ms Boulton's previous career was as a businesswoman and that she had only two listed acting credits, *Six Bend Trap* and *Witch House*, the second of which was made by Ironopolis. The BBC said that the term "wannabe" was intended to describe her ambition to move from running her own business to being a successful film actress and that it did not carry any unfavourable meaning.

Furthermore, the BBC said that *Six Bend Trap* was released and was on show to the paying public for two weeks in March 2007 in Middlesbrough. There was also a premier for invited guests, including the press, in Middlesbrough on 16 April 2006.

As regards the alleged theft of a copy of the film, the BBC said they were aware that the company had complained to the police about this, but understood police enquiries were no longer active.

- c) In relation to Ms Boulton's complaint that she was not contacted by the BBC prior to the broadcast, received no warning that the programme was to be transmitted and was given no right of reply to the allegations, the BBC said that the reference to Ms Boulton as a "wannabe actress" was not an allegation and that the programme makers did not, therefore, need to offer her an opportunity to respond.

The BBC said that, as set out in its response to head a) of the complaint, the allegation about Ms Boulton's conversation with Miss Fox was included in the *Findings of Fact* that formed part of the judgement obtained by Miss Fox when she took proceedings for sex discrimination against Ironopolis Films. The BBC said that such a finding was equivalent, for instance, to a conviction at court, where there would be no requirement to extend a right of reply to the person who stood convicted. The BBC said that the finding of fact in relation to Ms Boulton was broadly comparable to situations in which the findings of a tribunal could be reported without a requirement of right of reply and that, therefore, there was no requirement to offer her a right of reply in this case.

The BBC said that, although there was no requirement to offer Ms Boulton a right of reply, the programme did include, in full, a statement from Mr Stalker which addressed the allegation about Ms Boulton's remark to Miss Fox.

In summary, the BBC responded to Ms Boulton's complaint of unwarranted infringement of privacy in the making of the programme as follows:

- d) In relation to Ms Boulton's complaint that the programme makers obtained information that she had told Miss Fox to abort her child, the BBC said that, as set out in its response to head a) above, this information had already, at the time of broadcast, been accepted as fact by an Employment Tribunal and placed on the public record. In these circumstances, the BBC said that obtaining the information could not have been an infringement of Ms Boulton's privacy.

The BBC also said that it was not the case that Ms Boulton had no connection with Ironopolis Films. In the published credits of *Six Bend Trap*, Ms Boulton (as Heidi Boulton-Stalker) was listed as an executive producer and Ironopolis Films listed as the production company. Ms Boulton is also credited as the producer of *Six Bend Trap* on production call sheets seen by the programme makers. Furthermore, Miss Fox had told the programme makers that Ms Boulton was regularly present in the Ironopolis office, that she met her dozens of times and that she was described as Head of Public Relations for the company.

- e) In relation to Ms Boulton's complaint that the programme makers obtained footage of her from a film that was never released and which was the subject of an ongoing police enquiry into allegations that the film was stolen, the BBC said that by consenting to appear in the film, which could only have been produced with an intention that it be released, Ms Boulton consented to her performance being placed in the public domain. In these circumstances, she could not have had any reasonable expectation of privacy in relation to the material.

In summary, the BBC responded to Ms Boulton's complaint of unwarranted infringement of privacy in the programme as broadcast as follows:

- f) In relation to Ms Boulton's complaint that her name and footage of her, from a film that had never been released, were included in the programme as broadcast in connection with a false allegation that she had told Miss Fox to abort her child, the BBC said that, as set out under head e) above, Ms Boulton's privacy could not have been infringed by the use in the programme of material in which she appeared by consent and in relation to which she had consented to it being made public. The BBC also reiterated that they did not accept that the allegation concerning Ms Boulton's conversation with Ms Fox was false.
- g) In relation to Ms Boulton's complaint that her full home address on a notice board and footage of her house were included in the programme as broadcast, the BBC said that the address and exterior shot of Mr Stalker's house were not shown simultaneously but were separated by about 10 minutes in the film.

The BBC said the address was visible at a point in the programme where various documents and photographs, including one of Mr Stalker, were on display. The address was an incidental part of an information board used to illustrate the network of companies to which Mr Stalker was connected. The BBC said that the document shown bearing his home address was part of Ironopolis' Companies House records and was, therefore a public document. The information was placed in the public domain by Ms Boulton's partner, Mr Stalker. As set out in its response to head d) of the complaint, the BBC said that Ms Boulton was also involved in Ironopolis Films, at least as an executive producer, and so could not claim to have no connection with the company or to have any reasonable expectation of privacy in relation to the information.

As regards the footage of Mr Stalker's and Ms Boulton's home which was used later in the programme, the BBC said this was taken from the public highway from which the house was visible. The programme then disclosed that in a promotional video the Ironopolis logo was superimposed upon a picture of the Middlesbrough FC football stadium without the club's permission, giving the false impression that Ironopolis was a major sponsor of Middlesbrough FC.

The BBC said the picture was used as part of a sequence to demonstrate that Ironopolis attempted to exploit the fact that Mr Stalker was a neighbour of the Middlesbrough FC chairman. In these circumstances, the BBC believed that Mr Stalker's activities justified the inclusion of this shot of his home.

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 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.

Ms Boulton's complaint was considered by Ofcom's Executive Fairness Group. In reaching its decision, the Group carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript, both parties written submissions.

Ofcom first considered Miss Boulton's complaint of unfair treatment.

- a) Ofcom first considered the complaint that Ms Boulton was unfairly portrayed in that the programme falsely accused her of telling Miss Fox to abort her child.

In the context of this head of complaint, and heads b), c) and d) below, Ofcom noted that Rule 7.1 of Ofcom's Broadcasting Code ("the Code") provides that broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes. In considering this part of the complaint, the Committee took account of, in particular, Practice 7.9 of the Code, which states that broadcasters must take reasonable care to satisfy themselves that material facts have not been presented in a way that is unfair to an individual or organisation.

Ofcom first noted the relevant passage of the programme, as follows:

Commentary *"As she later told a court, they'd only ever paid Lyndsey cash and never gave her a contract. That was illegal for a start. But she really got the message when she confided in Heidi – Geoff Stalker's other half, and wannabe film star....."*

Miss Fox *"Heidi just said to me, 'Why don't you just get rid of the baby, surely it'd make life easier, especially with your work and everything'. And I just thought, 'Hang on a second, did I hear that right' and the conversation went on and I thought, 'You did mean it the way you phrased that'."*

Ofcom noted that Miss Fox gave a similar account to the Employment Tribunal during her sex discrimination case against Ironopolis. Ofcom further noted that the judge included Miss Fox's account of the conversation in the findings of fact in the Tribunal's judgment, after testing her evidence. Ofcom accepted that Ms Boulton did not give her version of events to the Tribunal, as she was not a party to the proceedings. As no representative of Ironopolis attended the Tribunal, Miss Fox's recollection of the conversation was not challenged. While Ms Boulton may not agree that the conversation took place as recalled by Miss Fox, the judge found as fact that the conversation did take place. In these circumstances, Ofcom took the view that the programme makers were entitled to rely on the Tribunal's finding and present the conversation as fact in the programme. As a result, Ofcom concluded that the programme makers took reasonable steps to satisfy themselves that they considered and fairly presented the material facts.

Ofcom therefore found that Ms Boulton was not treated unfairly treatment as a result of Miss Fox's account of the conversation being given in the programme.

- b) Ofcom then considered the complaint that Ms Boulton was unfairly portrayed as a "useless wannabe" actor and that the programme illustrated the allegation with footage of her from a film that was never released and which was the subject of an ongoing police enquiry into allegations that the film was stolen.

In considering this part of the complaint, Ofcom took particular account of Practice 7.8 of the Code, which states that broadcasters should ensure that the re-use of material, i.e. use of material originally filmed or recorded for one purpose and then used in a programme for another purpose or used in a later or different programme, does not create unfairness.

Ofcom first noted that the word “useless” was not used in the programme with reference to Ms Boulton.

As regards the use of the word “*wannabe*”, Ofcom considered that it was an accurate and justifiable description of Ms Boulton, who had clearly pursued an acting career at some point. In Ofcom’s view the word is often used to refer, in a factual way, to a person’s ambitions. Ofcom considered that the word would widely be understood to mean that and would not be considered by viewers to be pejorative. Nor did Ofcom consider that the word carried with it any implication that Ms Boulton was “useless”.

With reference to Ms Boulton’s suggestion that the film from which the clip of her was taken, *Six Bend Trap*, was never released, Ofcom noted that it was released, albeit briefly, and had therefore been available for members of the public to view.

As regards the allegation that the film was the subject of an on-going police enquiry, this is not a matter for Ofcom to consider in relation to whether Ms Boulton was treated unfairly.

Taking all the above factors into account, Ofcom found no unfairness to Ms Boulton in this respect.

- c) Ofcom next considered the complaint that Ms Boulton was not contacted by the BBC prior to the broadcast, received no warning that the programme was to be transmitted and was given no right of reply to the allegations.

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

In relation to Ms Boulton’s right to reply to the term “*wannabe*”, as set out under decision head b) above, the use of the term “*wannabe*” was not pejorative and therefore, in Ofcom’s view, it did not constitute an allegation. Consequently, Ofcom concluded that the BBC was not required to extend a right of reply to Ms Boulton in relation to this comment.

In relation to Ms Boulton’s right to reply to the assertion that she advocated abortion, as set out under decision head a) above, Ofcom took the view that the BBC was entitled to rely on Miss Fox’s account of her conversation with Ms Boulton, as her account formed part of the findings of fact in the Employment Tribunal’s judgement. Ofcom noted that this was a significant allegation and that would normally warrant an opportunity to respond. However, in these circumstances Ofcom took the view that the programme makers were not required to offer Ms Boulton an opportunity to respond to the allegation as they had taken reasonable steps to satisfy themselves that they did not present material facts unfairly.

Nevertheless, Ofcom noted that Mr Stalker gave a statement to the BBC, which was read out on the programme and addressed the allegation about Ms Boulton, as follows:

“He vehemently denied all of Lindsey’s allegations, including those about his partner Heidi Boulton. He and McCarthy are appealing the tribunal’s decision”.

In Ofcom’s view, this statement served as an opportunity for Ms Boulton’s position to be included in the programme.

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

Ofcom next considered Miss Boulton’s complaint of unwarranted infringement of privacy in the making of the programme.

- d) Ofcom considered the complaint that Ms Boulton’s privacy had been unwarrantably infringed in the making of the programme in that the programme makers obtained information that she had told Miss Fox to abort her child.

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

Ofcom first noted that, as regards the background information provided by Ms Boulton that she had no connections with Ironopolis films, she was listed as an executive producer on *Six Bend Trap*. She therefore did appear to be connected with the company. In Ofcom’s view, this matter did not directly affect the complaint of unwarranted infringement of privacy.

As set out under decision head a) above, Ofcom noted that the programme makers obtained the information about the conversation between Ms Boulton and Miss Fox both from Miss Fox and from the findings of fact in the Employment Tribunal judgement. Although, as noted above, Ms Boulton was not party to those employment proceedings, the programme makers were entitled to rely on the Tribunal findings. Ofcom further noted that the Tribunal’s findings were published and thus in the public domain. In these circumstances, Ofcom concluded that Ms Boulton had no legitimate expectation of privacy in relation to the programme makers using this information.

Having found no legitimate expectation of privacy, Ofcom found that Ms Boulton’s privacy was not infringed in the making of the programme. It was not therefore necessary for Ofcom to further consider whether any infringement of privacy was warranted.

- e) Ofcom then considered Ms Boulton’s complaint that the programme makers obtained footage of her from a film that was never released and which was the subject of an ongoing police enquiry into allegations that the film was stolen.

In considering whether Ms Boulton had a legitimate expectation of privacy in relation to the programme makers obtaining the clip from *Six Bend Trap*, Ofcom noted that she participated in a film which was produced for public showing or distribution and had therefore consented to her performance being placed in the public domain. Ofcom further noted that the character of the information that was disclosed, i.e. an actress appearing in a film, was not of a private nature. With reference to Ms Boulton’s suggestion that the film was never released, Ofcom noted that, as set out under decision head b) above, the film was released briefly and had therefore been available for members of the public to view.

Ofcom found that, in these circumstances, Ms Boulton had no legitimate expectation of privacy in relation to the obtaining of the footage.

Having found no legitimate expectation of privacy, Ofcom found that Ms Boulton's privacy was not infringed in the making of the programme. It was not therefore necessary for Ofcom to further consider whether any infringement of privacy was warranted.

Ofcom next considered Miss Boulton's complaint of unwarranted infringement of privacy in the programme as broadcast.

- f) Ofcom considered the complaint that Ms Boulton's privacy was unwarrantably infringed in the programme as broadcast in that her name and footage of her, from a film that had never been released, were included in the programme as broadcast in connection with a false allegation that she had told Miss Fox to abort her child.

In considering whether Ms Boulton had a legitimate expectation of privacy in relation to the programme makers including her name and the clip from *Six Bend Trap* in the programme, Ofcom noted that, as set out under decision head e) above, she participated in a film which was produced with the intention of public consumption and had consented to her performance and her name being placed in the public domain. As noted above, the film was released briefly and had therefore been available for members of the public to view. Ofcom also noted that, as set out under decision head a) above, the Employment Tribunal found as a fact that Ms Boulton had the conversation referred to by Miss Fox. The programme makers were therefore entitled to refer to the conversation and Ms Boulton could not contend that it was a wrongly attributed false allegation. Ofcom again noted that the Tribunal's findings were published and placed in the public domain. Ofcom therefore found that, in all these circumstances, Ms Boulton had no legitimate expectation of privacy in relation to the use of her name and footage from the film.

Having found no legitimate expectation of privacy, Ofcom found that Ms Boulton's 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.

- g) Ofcom considered the complaint that Ms Boulton's full address on a notice board and footage of her house were included in the programme as broadcast.

In considering this complaint Ofcom took into account Practice 8.2 of the Code, which states that information which discloses the location of a person's home or family should not be revealed without permission, unless it is warranted.

In considering whether Ms Boulton had a legitimate expectation of privacy in relation to the inclusion in the programme of her address and footage of her home, Ofcom first noted that the story focused on Mr Stalker and that Ms Boulton was not central to it. Ofcom then noted that the address that was shown on the programme was part of a Companies House dossier and so was a document in the public domain. As regards the inclusion of footage of Ms Boulton's house, Ofcom noted that the footage was taken from a public highway from which the house was visible and that the house itself was relevant to the story, albeit it in relation to Mr Stalker's activities rather than those of Ms Boulton. Ofcom concluded that, in these circumstances, Ms Boulton did not have a legitimate expectation of privacy in relation to the inclusion of footage of the house she shared with Mr Stalker.

Having found no legitimate expectation of privacy, Ofcom found that Ms Boulton's 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 Ms Boulton's complaint of unfair treatment in the programme and unwarranted infringement of privacy in both the making and broadcast of the programme.

Not Upheld

Complaint by Mrs Jacqueline Goodridge on behalf of Mr David Goodridge (deceased)

Motorway Cops: Fatal Consequences, BBC1, 6 October 2008

Summary: Ofcom has not upheld this complaint of unwarranted infringement of privacy made by Mrs Jacqueline Goodridge on behalf of Mr David Goodridge.

The BBC broadcast an edition of its factual, observational documentary that followed the work of traffic police on motorways around the country. The programme was produced by an independent production company, Folio TV. Footage was included of the aftermath of a major traffic accident in Humberside where a lorry had driven into stationary traffic. Mr Goodridge was seriously injured in the accident and later died from his injuries. Brief footage of fire fighters working to release Mr Goodridge from his car and of him being taken on a stretcher to an ambulance was shown, having been blurred to obscure his identity. Footage of Mr Goodridge's car and registration number were also included.

Ofcom found as follows:

- Given that footage which included private information about Mr Goodridge in an extremely vulnerable state was recorded without his consent, Ofcom found that Mr Goodridge had a legitimate expectation of privacy and that his privacy was infringed in the making of the programme. However, in light of the public interest in recording footage of motorway police undertaking their work and in demonstrating the reality of serious road traffic accidents, Ofcom considered that the infringement of Mr Goodridge's privacy in these circumstances was warranted. Ofcom therefore found that his privacy was not unwarrantably infringed in the making of the programme.
- Mr Goodridge had a legitimate expectation of privacy in relation to the broadcast of footage which revealed private information about him in an extremely vulnerable state. Although Ofcom had some concerns about the programme makers' dealings with Mrs Goodridge, it considered that they were entitled to consider that she had given informed consent to broadcast of the footage of Mr Goodridge. Ofcom therefore found that Mr Goodridge's privacy was not infringed as a result of the inclusion of the brief, blurred footage of him in the broadcast.

Introduction

On 6 October 2008 the BBC broadcast an edition of *Motorway Cops* on BBC1. The series followed the work of traffic police on motorways around the country. This edition of the series was entitled *Fatal Consequences* and included footage of a motorway accident in which three people died. One of the deceased was Mr David Goodridge. Footage of his car was included in the introduction to the programme. Later in the programme there was footage of fire fighters working to release Mr Goodridge from his car. Brief footage of Mr Goodridge was shown, having been blurred to obscure his identity. There was then footage of Mr Goodridge being taken on a stretcher to an ambulance and, again, this footage had been blurred. A police officer said that Mr Goodridge was being taken to hospital, with "serious, life-threatening injuries". Later in the programme a police officer stated that Mr Goodridge had died from his injuries. Footage was also included of Mr Goodridge's car being inspected following the accident. An interview with Mrs Jacqueline Goodridge was included in the programme.

Mrs Goodridge complained to Ofcom that Mr Goodridge's privacy was unwarrantably infringed in the making and the broadcast of the programme.

The Complaint

Mrs Goodridge's case

In summary, Mrs Goodridge complained that Mr Goodridge's privacy was unwarrantably infringed in the making of the programme in that:

- a) Mr Goodridge was filmed without his permission and his dignity was compromised throughout the filming.

By way of background, Mrs Goodridge said that Mr Goodridge would have considered the filming to be an infringement of his privacy and would not have allowed his situation to be filmed. He would not have given an interview during the event or afterwards and would not have agreed to the making of the programme. Mrs Goodridge said that when she was consulted during the making of the programme, she asked for the programme not to go ahead, but was told that other families involved had given their permission and that the programme would go ahead with or without her involvement. She said that she participated in the programme making process because this would enable her to ensure that the broadcast images of her husband were blurred.

In summary, Mrs Goodridge complained that Mr Goodridge's privacy was unwarrantably infringed in the programme as broadcast in that:

- b) Footage of what was clearly Mr Goodridge and his vehicle was shown.

By way of background, Mrs Goodridge said that footage of Mr Goodridge during the last moments of his life and of the aftermath of the accident was broadcast. At the time of the filming, Mr Goodridge was in the worst possible state of injury and control. Mrs Goodridge said that her husband would have been devastated if he had known that the footage would be broadcast. Mrs Goodridge said that, having taken legal advice, her involvement in the programme making process was simply to ensure that the images of Mr Goodridge were sufficiently blurred to avoid his full face and torso being shown. However, Mr Goodridge would not have given permission for his situation to be broadcast and would have requested that any images of himself or his vehicle be removed. Mrs Goodridge said that her husband would not have considered the programme to be a tribute to the victims of the accident or to be a public safety documentary.

The BBC's case

By way of background, the BBC said that *Motorway Cops* was a factual, observational documentary, which allowed the audience to follow the work of police officers working on the UK motorway system. The episode complained of included a report of a major road traffic accident in which a lorry had driven into stationary traffic. Mr Goodridge and two other people travelling in a different car were killed in the incident, as a consequence of which the lorry driver received a substantial term of imprisonment.

In summary the BBC responded to Mrs Goodridge's complaint of unwarranted infringement of Mr Goodridge's privacy in the making of the programme as follows:

- a) The BBC said that when the accident occurred, police officers who attended were being filmed by a programme making team for an episode of *Motorway Cops*. They filmed

extensively throughout the incident, aware that this was an unusually serious one, that it had resulted (at that stage) in at least two fatalities, and that the indications were that the lorry driver had caused death and widespread damage by an act of particularly careless driving. Their footage included film of Mr Goodridge being cut from his vehicle and taken to an ambulance which transported him to hospital.

The BBC said that it accepted that each case must be judged on the basis of the individual facts, and that the facts in this case were particularly traumatic. However, it believed in this instance that the filming gathered material which served the important public purpose of alerting viewers to the potentially devastating consequences of careless driving.

In summary the BBC responded to Mrs Goodridge's complaint of unwarranted infringement of privacy in the broadcast of the programme as follows:

- b) The BBC said that the programme makers contacted Mrs Goodridge through her Family Liaison Officer ("FLO"), appointed by Humberside Police. The FLO arranged a meeting between Mrs Goodridge and the producer. Two friends of Mrs Goodridge also attended the meeting. The BBC said that the producer explained to Mrs Goodridge that, as the family of the two other victims who had died in the crash had agreed to take part in the programme, it would be going ahead. The producer told Mrs Goodridge that he was not there to persuade her to take part if she did not wish to, that it was a matter for her, but that he would be glad if she did take part. The BBC said the producer explained that the programme would make it clear that driving without proper care could have devastating consequences.

The BBC said that the producer sensed that Mrs Goodridge was uneasy about participating and thought this was because her husband had been filmed whilst in distress at the scene of the accident. The producer explained to Mrs Goodridge that any images of her husband used in the final programme would be blurred so that he would not be recognisable and that she would have an opportunity to view the material before transmission.

The BBC said that at no time during that meeting did Mrs Goodridge, or any of those accompanying her, suggest that she was being put under pressure to participate in the film. Mrs Goodridge was not pressed to make a decision at the meeting and did not do so. Mrs Goodridge and the producer spoke on the telephone some days later and Mrs Goodridge said that she had decided she would take part and was prepared to be interviewed. The BBC said that Mrs Goodridge expressed no reservations about her participation and gave no indication that she felt herself to be under duress.

The BBC said that the filming took place at Mrs Goodridge's home. One of her friends who had been at the earlier meeting was again present. An interview lasting 50 minutes was recorded and sequences of Mrs Goodridge in her garden were also filmed. The producer asked Mrs Goodridge if it might be possible to have some still images of her husband to use in the programme and she agreed to the suggestion that she might be filmed looking at those photographs on her laptop. Mrs Goodridge also agreed that the producer could take copies of photographs of her husband and select pictures for use in the programme. The BBC said that, when the filming was completed, Mrs Goodridge signed a consent form.

The BBC said that, while editing the programme, the producer realised that he had given Mrs Goodridge an unusual undertaking that she could view the entire programme in advance. He sent her a DVD containing only the section of the film in which she appeared. Mrs Goodridge contacted the producer by phone to say that she felt he was

renegeing on his undertaking to show her the complete film. The producer then sent Mrs Goodridge a DVD containing an offline version of the complete, edited programme. The BBC said that the producer made clear to Mrs Goodridge that, given the stage at which the film was in the editing process, this version would contain images filmed of her husband at the crash scene which would not be blurred, though they would be blurred in the final version.

The BBC said that the producer spoke to Mrs Goodridge again a few days later. Although she had found viewing the film very upsetting, Mrs Goodridge had thanked the producer for approaching the subject sensitively, said she was happy with the way her contribution had been edited and did not ask for any changes to be made.

The BBC said that at no stage did Mrs Goodridge convey any sense that she felt she was being put under undue pressure to participate. The producer was unaware that Mrs Goodridge had been advised that her only alternative to expensive litigation was to participate in the programme against her will to mitigate a distressing outcome. If he had been aware of this, he would have explained that these were not the only courses of action open to her. The BBC said that, if Mrs Goodridge had said at any stage that she did not want to participate or to have images of her husband used, the programme makers would have agreed to her request.

Furthermore, the BBC said that the full transcript of the interview with Mrs Goodridge showed that the interview was lengthy and considered and that it offered no clue that Mrs Goodridge may have been an unwilling interviewee.

The BBC said it believed that the requirement to ensure that there was no unwarranted breach of privacy in the broadcast of the material was met by the consent which Mrs Goodridge implicitly gave to its use after she had viewed the programme in its entirety. The BBC said that the programme makers were entitled to rely on her signed consent form and apparently unfettered co-operation as indicating her consent to use of the footage in the programme.

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.

Mrs Goodridge's complaint was considered by Ofcom's Executive Fairness Group. In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript and written submissions from each party.

In Ofcom's view, the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about unwarranted infringement of privacy both in relation to the making and the broadcast of the programme, Ofcom must consider two distinct questions: First, has there been an infringement of privacy? Secondly, if so, was it warranted? This is in accordance with Rule

8.1 of Ofcom's Broadcasting Code ("the Code"), which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

- a) Ofcom first considered the complaint that Mr Goodridge's privacy was unwarrantably infringed in the making of the programme.

In considering this head of the complaint Ofcom took account of 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. The Code indicates that the word "warranted" in the context of justifying an infringement of privacy has a particular meaning. It means that a broadcaster must be able to demonstrate why the infringement was justified and, if the justification put forward is in the public interest, why in the particular circumstances of the case, the public interest outweighed the complainant's right to privacy.

In considering whether Mr Goodridge's privacy was infringed in the making of the programme, Ofcom considered first whether he had had a legitimate expectation of privacy in the circumstances in which he was filmed. Ofcom noted that the filming took place during the course of the programme makers accompanying motorway officers as they went about their duty. This included being called to the scene of a very serious road accident. Ofcom observed that Mr Goodridge was filmed being released from his badly damaged car by fire fighters and then being taken on a stretcher to an ambulance. It was clear from other footage filmed at the time, including interviews with police officers and drivers of other vehicles involved in the accident, that Mr Goodridge had suffered life threatening injuries. Ofcom noted that it was clear that Mr Goodridge had not given his consent for the filming, nor had he been in a position to do so. Although the filming was carried out in a public place, namely a motorway, Ofcom considered that this factor was outweighed by the fact that footage recorded of Mr Goodridge included material of a very private nature, i.e. images of him while he was in an extremely vulnerable state in the aftermath of a horrific road accident. In these circumstances, Ofcom took the view that Mr Goodridge had a legitimate expectation of privacy in relation to the filming and that his privacy had been infringed as a result of the filming of footage of him in this situation.

Ofcom then went on to consider whether this infringement was warranted. Ofcom considered whether the filming of the footage of Mr Goodridge was justified in the public interest. Ofcom considered that the subject matter of the programme, which followed the motorway police as they carried out their duties and demonstrated the reality of serious road traffic accidents, was in the public interest.

Taking account of the factors noted above, Ofcom found that the decision to record the material in this case was warranted by the public interest in the subject matter. Therefore the infringement of Mr Goodridge's privacy as a result of the recording of the material was warranted.

In addition, Ofcom recognised that there may be pressures on programme makers in certain situations which make it difficult to judge at the time whether filming or recording is likely to unwarrantably infringe the subject's privacy. In these circumstances what is important is that the broadcaster takes steps to ensure that the subsequent broadcast of material recorded in such circumstances does not result in an unwarranted infringement of privacy. This issue is dealt with in the decision at head b) below.

- b) Ofcom next considered the complaint that Mr Goodridge's privacy was unwarrantably infringed in the programme as broadcast.

In considering this part of the complaint Ofcom took account of Practice 8.6 of the Code. This 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. The Foreword to Section 8 (Privacy) of the Code sets out that where consent is referred to in Section 8, it refers to informed consent. Therefore in considering this part of the complaint, Ofcom also took into account each of the measures set out in Practice 7.3 of the Code, which provides that where people are invited to make a contribution to a programme they should normally, at an appropriate stage:

- be told the nature and purpose of the programme, what the programme is about, and be given a clear explanation of why they were asked to contribute and when (if known) and where it is likely to be first broadcast;
- be told what kind of contribution they are expected to make;
- be informed about the areas of questioning and, wherever possible, the nature of other likely contributions;
- be made aware of any significant changes to the programme as it develops which might reasonably affect their original consent to participate, and which might cause material unfairness;
- be told the nature of their contractual rights and obligations and those of the programme maker and broadcaster in relation to their contribution; and
- be given clear information, if offered an opportunity to preview the programme, about whether they will be able to effect any changes to it.

Practice 7.3 of the Code then states that taking the measures listed above is likely to result in the consent that is given being “informed consent”.

In considering whether Mr Goodridge’s privacy was infringed in the broadcast of the programme, Ofcom first considered whether he had had a legitimate expectation of privacy in the circumstances in which footage of him was broadcast.

Ofcom first noted that brief shots of Mr Goodridge were shown in the programme and that a number of shots of his vehicle were shown, with the registration plate clearly visible on one occasion. Later in the programme, during the interview with Mrs Goodridge, Mr Goodridge was also named. In these circumstances, he was therefore clearly identifiable to viewers.

Ofcom then noted that the programme showed Mr Goodridge being released from his badly damaged car by fire fighters and then being taken on a stretcher to an ambulance. It was clear from other footage included in the programme, including interviews with police officers and drivers of other vehicles involved in the accident that Mr Goodridge had suffered life threatening injuries and later in the programme it was stated that he had died as a result of those injuries. Although the footage broadcast was filmed in a public place, namely a motorway, Ofcom considered that this factor was outweighed by the fact that footage shown of Mr Goodridge included material of a very private nature, i.e. images of him while he was in an extremely vulnerable state in the aftermath of a horrific road accident.

Ofcom then considered whether Mrs Goodridge’s consent had been obtained before the material was broadcast. Specifically, Ofcom considered whether sufficient measures had been taken so as to entitle the broadcaster to consider that it had *informed* consent for the broadcast of the footage of Mr Goodridge in the programme.

Ofcom noted that it appeared that Mrs Goodridge sought legal advice which suggested that it would only be possible for her to retain some control over how the images of her husband were used in the programme if she agreed to take part. It was also clear to Ofcom that Mrs Goodridge was under the impression that the programme would go ahead, including footage of Mr Goodridge, whether she agreed to this or not. Ofcom also noted the BBC's assertion that if Mrs Goodridge had asked for footage of her husband not to be included in the programme, that would have been respected. It appears to Ofcom therefore that there was a misunderstanding between Mrs Goodridge and the programme makers. Given that Mrs Goodridge had experienced the traumatic loss of her husband, it was incumbent on the programme-makers to ensure they took every reasonable step to ensure Mrs Goodridge understood what was being asked of her and that they had her informed consent.

In Ofcom's view it was extremely regrettable that the programme makers, Folio TV, sent Mrs Goodridge by post an unfinished version of the programme, showing images of Mr Goodridge in the aftermath of the accident and during the last moments of his life before they had been blurred. It was also regrettable that the programme makers appeared to have given Mrs Goodridge an assurance they did not intend to give her, with regard to her viewing the programme in its entirety before broadcast; and that initially they did not provide her with the programme, as they promised. In Ofcom's view, this suggested that their dealings with her were not of the high standard to be expected, particularly in such a traumatic situation.

However, Ofcom viewed a recording of the full interview with Mrs Goodridge. It appeared from this that Mrs Goodridge took part in the interview willingly and her demeanour did not suggest that she was uncomfortable with the interview. Ofcom noted that she also gave the producer photographs of her husband to use in the programme. Following the interview, Mrs Goodridge signed a consent form. Notwithstanding the concerns set out above about the manner in which the programme was sent to Mrs Goodridge before broadcast, Ofcom noted that, having viewed the programme, she did not ask for any changes to be made. In these circumstances, Ofcom took the view that the programme makers were entitled to consider that they had Mrs Goodridge's informed consent for the footage of Mr Goodridge to be included in the programme.

Although sensitive images of this type included of Mr Goodridge would be likely to give rise to a significant expectation of privacy, in these particular circumstances, Ofcom took the view that Mrs Goodridge gave informed consent for the use of the images in the programme and that Mr Goodridge therefore did not have a legitimate expectation of privacy in relation to the broadcast.

Having found that there was no legitimate expectation of privacy, it was not necessary for Ofcom to further consider whether Mr Goodridge's privacy was infringed or whether any infringement of his privacy was warranted.

Accordingly Ofcom has not upheld Mrs Goodridge's complaint that Mr Goodridge's privacy was unwarrantably infringed in the making and the broadcast of the programme.

Not Upheld

Complaint by Mrs Susan Lumley on behalf of Mrs Freda Whitwell (deceased)

Panorama: Britain's Homecare Scandal, BBC1, 9 April 2009

Summary: Ofcom has not upheld this complaint made by Mrs Susan Lumley on behalf of Mrs Freda Whitwell of unwarranted infringement of privacy either in the making or the broadcast of the programme.

This edition of *Panorama*, entitled *Britain's Homecare Scandal*, investigated mistreatment of the elderly by some care organisations around the country. Two undercover reporters obtained positions with such organisations and worked as carers for them and secretly filmed their activities. Whilst working for them, they secretly filmed their activities. One of the reporters worked for the company, Carewatch. In her first assignment she accompanied an experienced carer to the home of Mrs Freda Whitwell.

Footage of the top of Mrs Whitwell's head and the interior of her home were shown in the programme.

Mrs Susan Lumley (Mrs Whitwell's daughter) complained to Ofcom on her mother's behalf that her mother's privacy was unwarrantably infringed in both the making and the broadcast of the programme.

In summary Ofcom found that:

- Mrs Whitwell's privacy was infringed in the making of the programme. However, the strong public interest attached to reporting the poor treatment administered to the elderly warranted this infringement.
- Mrs Whitwell's privacy was not, however, infringed in the broadcast of the programme because the brief and partial nature of her appearance would have rendered her identifiable only to the very small circle of people who knew her intimately.

Introduction

On 9 April 2009, the BBC broadcast an edition of *Panorama*, its current affairs documentary. This edition, entitled *Britain's Homecare Scandal*, investigated mistreatment of the elderly by some care organisations around the country.

The programme used two undercover reporters who obtained positions with care organisations and worked as carers for them. Whilst working for them, they secretly filmed their activities. One of the reporters worked for the company, *Carewatch*. In her first assignment she visited the home of Mrs Freda Whitwell. She worked alongside an experienced carer who explained that she was too busy to train her properly.

The programme included secretly filmed footage of the interior of Mrs Whitwell's home and the top of her head when being helped onto a commode in her bathroom.

Mrs Susan Lumley, Mrs Whitwell's daughter, complained to Ofcom on her mother's behalf that her mother's privacy was unwarrantably infringed in both the making and the broadcast of the programme.

The Complaint

Mrs Lumley's case

In summary, Mrs Lumley complained on behalf of her mother that her privacy had been unwarrantably infringed in the making of the programme in that:

- a) The programme makers filmed Mrs Whitwell undercover in her own home without her consent or that of her family. Mrs Lumley said that her mother's privacy and dignity should have been maintained at all times whilst in the care of the local authority and Carewatch. Instead, the programme makers accessed the property and filmed footage of Mrs Whitwell in her bathroom without permission.

In summary, Mrs Lumley complained on behalf of her mother that her privacy had been unwarrantably infringed in the programme as broadcast in that:

- b) The secretly filmed footage was broadcast without her consent or that of her mother.

The BBC's case

In summary, the BBC responded to Mrs Lumley's complaint of unwarranted infringement of her mother's privacy in the making of the programme as follows:

- a) In response to the complaint that the programme makers filmed Mrs Whitwell undercover in her own home without her consent or that of her family, the BBC said that while it accepted that, in the making of the film, Mrs Whitwell's privacy was breached it believed that the breach was warranted by the considerable public interest in bringing this particular aspect of deficient care to public notice.

It said that investigations of this kind, if they were to obtain conclusive evidence that standards of care were poor or worse, would often involve unavoidable breaches of the privacy of those to whom care is being delivered. The BBC said that it believed that the significant public interest involved in exposing practices such as those which were revealed in this programme, and exposing the regulatory failings which allowed such practices to continue, warranted the breaches of privacy involved, provided that the breaches were kept to the minimum necessary, that sufficient safeguards were built into the filming to ensure that this was so and that consent, where necessary and possible, was obtained.

The BBC said that this was the case in relation to this investigation and this particular complaint. It said the programme makers at all times worked to a detailed and carefully considered protocol to ensure that breaches of privacy were kept to the minimum necessary and that, as far as possible, privacy was respected. The BBC said that this was drawn up in consultation with the BBC's Editorial Policy Unit and Head of Multi Media Programmes.

The BBC said that the secret filming in Mrs Whitwell's home took place during the first visit made by one of the undercover reporters, "Hayley". It said that she was accompanying another carer who was responsible for this phase of her training. The BBC said that their conversation, perhaps inevitably at this stage in their working relationship, turned to training and to tasks – such as using a hoist which they were supposed to carry out together. The sequence unfolded as follows:

Commentary: "It was Hayley who was first to get work...at a company in York...where our research indicated systemic failings. It's called

Carewatch....and claims to be the fastest growing social care provider in the land...with around fifteen thousand elderly clients...It doesn't know Hayley's already been trained...it gives her four 'twenty minute' dvds...and a ninety minute tutorial...before declaring her ready for work...She began on a chilly winter's night...coupled with an old hand..."

Hayley: "Should I have had some like training and that or something?"

Carer: "You'll get to watch a video and you should get...I basically should be training you up but because we've got so many calls I can't train you up properly, so you're just gonna have to just watch, and grasp it."

Commentary: "Her partner is 21 years old. Before she became a carer she trained as a hairdresser... She's going to teach Hayley everything she knows... using a hoist will be crucial...that normally requires two carers..."

Hayley: "I've not been told how to move anyone or anything..."

Carer: "No that's fine I'm telling you."

Carer: "If you knew a little bit about it, like a little bit how to put a sling in, a little bit about how, which hook goes on what, and a little bit about hoisting and pushing and what you can and can't do. Then at least you would feel a little bit more comfortable with what you were doing."

Hayley: "Yeah well I was told that I would no way do hoisting until after I've been trained which is after January. And this is my first night."

Carer: "So am I gonna hoist up everyone 'cos then I shouldn't really be hoisting on my own."

The BBC said that a few days later, the conversation returned to the subject of training, and shed further significant light on the earlier conversation in Mrs Whitwell's house.

Commentary: "Days later, the carer giving on-the-job training, isn't the old hand she seems..."

Carer: "I ain't done my manual handling. It's like how can I teach them when I don't properly know why we do things – that's what frustrates me so much."

Carer: "Every time I say something about training: "I can't do it just for you I'll have to wait till there's a few months 'cos I'm not wasting my time"."

Hayley: "How long you been working now without training?"

Carer: "Seven months."

The BBC said that this segment recorded in Mrs Whitwell's home recorded the clear admission by Hayley's colleague that because of their workload she would not be able to train Hayley as she was supposed to. The BBC said that it believed that the reality exposed by these sequences taken together is that vulnerable people are exposed to considerable risk by the fact that those delivering their care may have received

insufficient training. It said that this belief was supported in the programme, by Dr Rosemary Leonard, a general practitioner with a particular interest in elderly care. After viewing this footage, she said in the programme:

"I hadn't realised the extent to which these carers are just going on the experience of the previous carer that's gone in, or the carer that they're with - who might be very good but on the other hand, may well have picked up some shockingly bad habits, or may be doing things completely wrong. And it seems to me that training's on the never, never here - it just never seems to happen..."

The BBC said that it believed that the issue which the conversation recorded in Mrs Whitwell home raised, namely that the training provided to staff delivering care to vulnerable elderly people was seriously inadequate, was fundamental to the quality of care, and to the safety of those receiving it. It said that the public interest served by showing this segment of conversation was considerable and self-evident. The BBC said that the fact that this conversation took place in Mrs Whitwell's house was the sole reason for showing the footage which was filmed there. It said that there was nothing in the segment which revealed anything about Mrs Whitwell – she was not named, nor was information given about her individual care or needs. The BBC said that she was effectively anonymous.

In summary, the BBC responded to Mrs Lumley's complaint of unwarranted infringement of her mother's privacy in the programme as broadcast as follows:

- b) In response to the complaint that the secretly filmed footage was broadcast without her or her mother's consent, the BBC said that there was no material breach of Mrs Whitwell's privacy in the broadcast of the footage. It said the footage was used because it contained the conversation between the undercover reporter and the carer who was supposed to be training her, which happened to take place while they were attending at Mrs Whitwell's house. The BBC said that the sequence filmed there did not reveal anything about Mrs Whitwell's care, her condition or her needs. It said that all that could be seen of Mrs Whitwell was a small section of the top of her hair from which she was completely unrecognisable. The BBC said all that was seen of the inside of her house was patterned wallpaper on the kitchen wall and a flower arrangement on the bathroom wall. It said that neither the wallpaper nor the flower arrangement was in any way unique or distinctive. The BBC said that only people with an intimate knowledge of the interior Mrs Whitwell's flat could have recognised the particular decorative features shown, and that the broadcast footage revealed nothing of Mrs Whitwell or her circumstances which would not already have been known to such people. The BBC said that, for all practical purposes, Mrs Whitwell was anonymous in the programme and thus the issue of consent in the broadcast of the footage did not arise.

The BBC said that if, however, Ofcom took the view that there was a breach of privacy in the broadcast of the programme, it believed that any breach, which must be considered minimal in nature, was warranted by the public interest in revealing the conversation between the undercover reporter and her trainer which was taking place and which it has set out in detail above.

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.

Mrs Lumley's complaint was considered by Ofcom's Executive Fairness Group. In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript and both parties written submissions.

Ofcom first considered Mrs Lumley's complaint that her mother's privacy had been unwarrantably infringed in the making of the programme.

- a) Ofcom considered the complaint that the programme makers filmed Mrs Whitwell undercover in her own home without her consent or that of her family.

In Ofcom's view, the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about the unwarranted infringement of privacy both in relation to the making and the broadcast of the programme, Ofcom must consider two distinct questions: First, has there been an infringement of privacy? Secondly, if so, was it warranted? This is in accordance with Rule 8.1 of Ofcom's Broadcasting Code "the Code" which states that any infringement of privacy in programmes or in connection with obtaining material included in programmes must be warranted.

In particular, Ofcom had regard to Practices 8.13 and 8.21 of the Code. Practice 8.13 states that surreptitious filming or recording should only be used where it is warranted. Practice 8.21 states that where a programme features an individual under sixteen or a vulnerable person in a way that infringes privacy, consent must be obtained from a parent, guardian or other person of eighteen or over in loco parentis; and wherever possible, the individual concerned; unless the subject matter is trivial or uncontroversial and the participation minor, or it is warranted to proceed without consent.

Ofcom first considered whether Mrs Whitwell had a legitimate expectation of privacy in the circumstances in which she was filmed.

Ofcom noted that the footage was filmed inside Mrs Whitwell's home whilst she was receiving care and that she was 98 years old at the time of filming. Ofcom took into account that Mrs Whitwell had been filmed whilst she was being attended to by her carers and assisted on to her commode. Ofcom also noted that the footage of Mrs Lumley had been obtained surreptitiously by an undercover reporter posing as a trainee carer using a hidden camera. Ofcom considered that the location of the filming (i.e. her home and her bathroom); the age and vulnerability of Mrs Whitwell; and the surreptitious nature of the filming were all factors that would have significantly heightened her expectation of privacy. In the circumstances, Ofcom considered that Mrs Whitwell had a legitimate expectation of privacy in the circumstances in which she was filmed.

In light of the above considerations, Ofcom took the view that the actions of the programme makers in obtaining footage of Mrs Whitwell whilst inside her home without the knowledge or consent of her guardians, through surreptitious means, infringed the her privacy.

Having found an infringement of Mrs Whitwell's privacy in the making of the programme, Ofcom went on to consider whether the infringement was warranted.

Ofcom noted that prior to filming the programme makers had received information that raised significant concerns about the care being received by the elderly from private sector organisations in different areas of the country. Ofcom noted that in response to this information an undercover reporter had applied for and had successfully secured employment with Carewatch. Ofcom also noted that the footage of Mrs Whitwell was taken on the reporter's first home visit.

Ofcom considered that there was a legitimate public interest justification in reporting on the standards and quality of care provided by private sector organisations, especially by those entrusted with the care of the elderly. Ofcom also considered that the programme makers had reasonable grounds to believe that further evidence could be obtained, on the basis of the material gathered they had gathered prior to the reporter's first visit to a home.

Ofcom was satisfied that the surreptitious nature of the investigation (including surreptitious filming by undercover reporters) was essential to its authenticity and credibility. In Ofcom's view, by alerting the relevant care organisations, its staff, its clients or the guardians of the clients to the investigation in advance, the programme makers would have been unable gain an accurate picture of the standard and quality of care given. Ofcom noted the BBC's argument that Mrs Whitwell was filmed solely in order to record the reporter's conversation with her fellow carer, and considered the BBC were justified in believing that this fellow carer might reveal key information while she was going about her work.

In all the circumstances of this particular case, Ofcom therefore found that the surreptitious nature of the filming was warranted and proportionate.

Ofcom then considered whether or not the infringement of Mrs Whitwell's privacy was warranted in the making of the programme in light of the factors discussed above. Ofcom carefully weighed a vulnerable, elderly person's right to privacy against the public interest served by the filming of her care in these circumstances. As stated above, Ofcom considered that an investigation into the quality of care provided by those responsible for the elderly was one that was certainly in the public interest. It also considered that the investigation could not have succeeded in showing the actual practices of these care organisations without surreptitious filming.

While Ofcom acknowledged that the filming infringed the privacy of Mrs Whitwell, and that the programme makers did not seek her consent, it found that the infringement was warranted by the strong public interest served by the investigation.

Therefore, Ofcom found that Mrs Whitwell's privacy was not unwarrantably infringed in the making of the programme.

- b) Ofcom then considered Mrs Lumley's complaint of unwarranted infringement of her mother's privacy in the broadcast of the programme.

Ofcom considered the complaint that the secretly filmed footage of Mrs Whitwell was broadcast without consent and took into account Practice 8.14 of the Code which states that material gained by surreptitious filming and recording should only be broadcast when it is warranted.

In deciding whether Mrs Whitwell's privacy had been infringed in the programme as broadcast, Ofcom first considered whether she had a legitimate expectation of privacy in respect of the footage that was broadcast of her.

Ofcom noted that the footage showed the interior of Mrs Whitwell's home. It considered that within one's home, one can expect to attract the highest expectation of privacy. Ofcom therefore took the view that Mrs Whitwell had a legitimate expectation of privacy in respect of the footage of the inside of her home.

Ofcom then considered whether or not Mrs Whitwell's privacy was infringed in the programme as broadcast. Ofcom noted that the footage of Mrs Whitwell included in the programme contained only a fleeting glance of the top of Mrs Whitwell's head, together with glimpses of the interior of her home. Having viewed the programme carefully, Ofcom took the view that only those who knew Mrs Whitwell very well might have been able to identify her and that this would have been a very small constituency of people. Ofcom also considered that for those who were capable of identifying Mrs Whitwell in the programme, the footage of her would not have revealed information that was of a private or sensitive nature.

In Ofcom's view, therefore, the information disclosed in the programme about Mrs Whitwell was not particularly private or sensitive or likely to have infringed her privacy if revealed to those capable of identifying her from the footage.

Ofcom therefore found the broadcast of the programme did not infringe Mrs Lumley's privacy. Having found no infringement of privacy in relation to this part of the complaint, Ofcom was not required to decide whether any infringement had been warranted.

Accordingly, Ofcom has not upheld Mrs Lumley's complaint made on behalf of her mother of unwarranted infringement of privacy in the making and broadcast of the programme.

Not Upheld

Complaint by Ms Chantel Wyse on her own behalf and on behalf of Ms Tracey Pancaldi (deceased), Ms Jade Pancaldi (deceased) and Ms Shenelle Pancaldi, Ms Chenise Pancaldi, Mr Daniel Pancaldi, Mr Norman Wyse, Ms Lisa Audrey Wyse, Ms Cindy Wyse and Ms Katrina Hooper

Harry Hill's TV Burp, ITV1, 17 January 2009

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

This edition of *Harry Hill's TV Burp* was a "best of" programme which featured and satirised footage from a reality programme in which Ms Tracey and Ms Jade Pancaldi had participated in November 2004. In the intervening period, both Tracey and Jade Pancaldi had passed away.

Ms Wyse complained to Ofcom on her own behalf, on behalf of her sister and niece, Tracey and Jade Pancaldi, and on behalf of members of her family of unfair treatment and unwarranted infringement of privacy in the programme as broadcast.

In summary Ofcom found the following:

- Neither Tracey nor Jade Pancaldi was treated unfairly as a result of Harry Hill's comments on the original footage, which were in keeping with the established format of the programme and were unlikely to have materially affected viewers' understanding of them.
- Both Tracey and Jade Pancaldi had consented to the broadcast of the original footage as part of a reality programme and they had no legitimate expectation of privacy in relation to the re-use of the footage in the later broadcasts.
- As the footage disclosed no information of a personal or sensitive nature about Ms Wyse or members of her family, they had no legitimate expectation of privacy in respect of the information disclosed by the footage.

Introduction

On 17 January 2009, ITV1 broadcast an edition of *Harry Hill's TV Burp*. The show presents a satirical look at the previous week's television, including footage from TV shows with sketches, observational voice-overs and guest appearances. This particular episode of the show, *The Best of Harry Hill's TV Burp 3*, was a collection made up of excerpts from previous series.

One of the excerpts, which had originally featured in *Harry Hill's TV Burp* on 5 November 2004, focused on the Sky 1 Mix channel dating show, *The Real Mrs Robinson*, a programme in which a mother and daughter dated the same man before he had to choose which of them to take on holiday. Extensive footage from *The Real Mrs Robinson* was included and Harry Hill made jokes about the participants, Tracey and Jade Pancaldi (who were not named in the programme) and the show itself.

Between the broadcast on 5 November 2004 and the broadcast on 17 January 2009, both Tracey and Jade Pancaldi had passed away.

Ms Chantel Wyse, Tracey Pancaldi's sister and Jade Pancaldi's aunt, complained to Ofcom that she, Tracey and Jade Pancaldi and Shenelle Pancaldi, Chenise Pancaldi, Daniel Pancaldi, Lisa Audrey Wyse, Cindy Wyse, Norman Wyse and Katrina Hooper ("members of her family") were treated unfairly in the programme and that their privacy was unwarrantably infringed in the programme as broadcast.

The Complaint

In summary, Ms Wyse complained on behalf of Tracey and Jade Pancaldi, that they were treated unfairly in the programme as broadcast in that:

- a) They were mocked and ridiculed in the programme.

In summary, Ms Wyse complained that her privacy, that of Tracey and Jade Pancaldi and that of members of her family was unwarrantably infringed in the programme as broadcast in that:

- b) Insufficient checks were performed before the programme was broadcast. If the broadcaster had performed basic research it would have discovered that both Tracey and Jade Pancaldi had passed away since the excerpt was first broadcast.
- c) The family would not have given consent to the broadcast of the excerpt on prime-time television if the programme makers had requested it.

By way of background, Ms Wyse stated that the deaths of both her relatives who were featured in this programme were well publicised in the national and local press and would have been easy to research. No research was performed and as a result the family had been deeply distressed.

Channel TV's case

In summary, Channel Television ("Channel TV"), an ITV licence holder, which was responsible for the compliance of the programme on behalf of the ITV network ("ITV"), responded to the complaint made by Ms Wyse on behalf of Tracey and Jade Pancaldi that they had been treated unfairly in the programme as follows:

- a) Channel TV said that the excerpt complained of was originally broadcast on the 5 November 2004 edition of *Harry Hill's TV Burp* in a much longer form using extracts from *The Real Mrs Robinson* on the Sky 1 Mix channel. No complaints about the tone of the item on the original *Harry Hill* programme were made by any of the three participants at that time either to Channel TV or to the programme makers.

Channel TV said it did not believe that anything included in Harry Hill's commentary over the excerpt shown was in excess of what was generally acceptable in the context of the well-established comedy show, nor the expectations of the likely audience.

In summary, Channel TV responded to the complaints of unwarranted infringement of privacy in the programme as broadcast as follows:

- b) Channel TV said that Tracey and Jade Pancaldi took part in *The Real Mrs Robinson* and that footage from the November 2004 episode in which they appeared was featured in *Harry Hill's TV Burp* the same week.

Channel TV said that, when *The Best of Harry Hill's TV Burp 3* was being compiled, the programme makers contacted BSkyB to re-license the footage. Channel TV said that BSkyB gave no indication to the programme makers that there were any sensitive issues or any other restrictions regarding the footage to be licensed, possibly because they were not aware of the tragic deaths of Tracey and Jade Pancaldi. Channel TV said that BSkyB gave permission for the footage to be used again.

In response to the complaint that insufficient checks were made before *The Best of Harry Hill's TV Burp 3* was broadcast, Channel TV said that unfortunately the programme makers did not know Tracey and Jade's surname, as they were referred to only by their first names in the footage from *The Real Mrs Robinson* and the licence from BSkyB did not give their names. Channel TV said that the programme makers proceeded in good faith, relying on the licence from BSkyB and therefore believing that they were able to use the footage as they wished. Channel TV provided a copy of the original licence from 2004 and a copy of the more recent licence obtained for the re-use of the footage. Channel TV said that the only reference at all to Tracey and Jade Pancaldi in either licence was in the form of an "additional note" in the second licence:

"(xii) The contributors were bought out".

- c) Channel TV said that the excerpt complained of would not have been included in the programme had the programme makers been aware of the tragic circumstances regarding Tracey and Jade Pancaldi. Channel TV said that, given that the only information available to the programme makers and Channel TV was that the contributors had been "bought out" and thus signed away all rights in perpetuity, there was no obligation on them to seek permission to include the excerpt.

Channel TV said that "Pancaldi" was an unusual name and, given the press coverage of Tracey's death in 2008, it was very unfortunate that the licences obtained made no reference to the names of the contributors to *The Real Mrs Robinson*. However, with no such information available, Channel TV said that there was no possibility of researching further and the fact that Tracey and Jade Pancaldi had both signed full release forms meant that there was no obligation to do so. Channel TV said that the material used was in itself uncontroversial and had been broadcast previously without any adverse viewer or regulatory reaction or comment.

Channel TV said that as soon as it was made aware of the circumstances, *The Best of Harry Hill's TV Burp 3* was re-edited to remove the entire excerpt in which Tracey and Jade Pancaldi appeared. Channel TV said the edit was completed on Monday 19 January 2009, the first working day after the programme was broadcast and before it was repeated on Tuesday 20 January 2009 in its new form. Channel TV stressed that the footage of Tracey and Jade Pancaldi would never be used again by the programme makers and that any further repeats of *The Best of Harry Hill's TV Burp 3* would be of the edited version. Channel TV said that a thorough search was also made of sites such as YouTube and the programme makers invoked their right as copyright owner to have any clips of the excerpt removed. Channel TV also confirmed that the excerpt had not been, and would not be, included in any DVD of *The Best of Harry Hill's TV Burp 3*.

Channel TV said that it was never its intention to upset or offend its viewers, but obviously through circumstances beyond its reasonable control, upset and offence was caused by the broadcast of *The Best of Harry Hill's TV Burp 3*.

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.

Ms Wyse's complaint on her own behalf, on behalf of Tracey and Jade Pancaldi and on behalf of other members of her family was considered by Ofcom's Executive Fairness Group. In reaching its decision, Ofcom carefully 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. In its considerations, Ofcom also took account of its Broadcasting Code ("the Code").

Ofcom found the following:

- a) Ofcom first considered the complaint that Tracey and Jade Pancaldi were treated unfairly in the programme as broadcast in that they were mocked and ridiculed in the programme.

Ofcom had particular regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals, as set out in Rule 7.1 of the Code, and whether in re-using material, the broadcaster had ensured that it did not create unfairness (as set out in Practice 7.8 of the Code).

Ofcom noted that Tracey and Jade Pancaldi had agreed to participate in a reality show, *The Real Mrs Robinson*, which was broadcast on the Sky 1 Mix channel in November 2004 and that, in the same week that *The Real Mrs Robinson* was broadcast, footage from it was licensed for use in *Harry Hill's TV Burp*. While Ofcom did not view either of those programmes, it took into account that the established format for *Harry Hill's TV Burp* is for Harry Hill to review the previous week's television, particularly soaps and reality television shows, and to highlight and satirise aspects of them.

Ofcom also noted Channel TV's statement that, following the broadcast of *Harry Hill's TV Burp* on 5 November 2004, which included and satirised footage of Tracey and Jade Pancaldi from *The Real Mrs Robinson*, no complaints were received by Channel TV or the programme makers about the tone of the programme.

In reaching its decision, Ofcom also took into account that in 2008 a further licence was obtained for the use of footage of Tracey and Jade Pancaldi in *The Best of Harry Hill's TV Burp 3*, which was broadcast on 17 January 2009, at which time the programme makers were unaware of the tragic deaths of Tracey and Jade Pancaldi. The programme included and satirised footage of Tracey and Jade Pancaldi from *The Real Mrs Robinson*.

Ofcom also took account of the apologies issued and the immediate and comprehensive steps taken by both Channel TV and the programme makers once they were alerted to the situation to ensure that the excerpt would not be shown again.

In considering whether Tracey and Jade Pancaldi were treated unfairly as a result of the re-use of footage, Ofcom took into account the fact that the footage had originally been broadcast on the reality television programme *The Real Mrs Robinson* and that clips from that footage were then re-used in *The Best of Harry Hill's TV Burp 3*, a different type of programme. Ofcom considered that although the type of programme in which the footage was originally broadcast differed from the subsequent broadcast, the footage was unaltered and its context was explained. In the circumstances, Ofcom considered that the re-use of the material did not in itself result in unfairness to Tracey or Jade Pancaldi. Ofcom also considered Harry Hill's comments upon the re-used footage and concluded that they were in keeping with the established nature of the programme and did not unfairly misrepresent Tracey or Jade Pancaldi or their views. The re-used material was therefore unlikely to have materially affected viewers' understanding of Tracey or Jade Pancaldi.

Ofcom appreciated that the broadcast of the programme without prior notice was undoubtedly distressing for the friends and family of Tracey and Jade Pancaldi and that the footage would not have been broadcast had the programme makers been aware of their deaths in the intervening period. In addition, while it was regrettable that the programme makers did not learn of the circumstances prior to broadcast, Ofcom was satisfied that the broadcaster had complied with its obligation to ensure that the re-use of the material did not create unfairness. Therefore, for the reasons given above, Ofcom considered that neither Tracey nor Jade Pancaldi was treated unfairly in the programme as broadcast.

Accordingly, Ofcom has not upheld head a) of this complaint.

- b) & c) Ofcom next considered both of the complaints that the programme as broadcast unwarrantably infringed the privacy of Ms Wyse, Tracey and Jade Pancaldi and members of her family.

In Ofcom's view, the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about unwarranted infringement of privacy in relation to the broadcast of a programme, Ofcom must consider two distinct questions: First, has there been an infringement of privacy? Secondly, if so, was it warranted? This is in accordance with Rule 8.1 of the Code which states:

"Any infringement of privacy in programmes ... must be warranted".

Ofcom also took into account Practice 8.6 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. It also considered Practice 8.10 which states that broadcasters should ensure that the re-use of material filmed or recorded for one purpose and then used in a programme for another purpose or used in a later or different programme does not create an unwarranted infringement of privacy.

Ofcom again noted the background to the broadcast of the excerpt as set out under decision head a) above.

Ofcom then considered whether Tracey and/or Jade Pancaldi had a legitimate expectation of privacy in respect of the programme as broadcast. In Ofcom's view, information contained in the programme, such as the nature of Tracey and Jade Pancaldi's relationship and their thoughts about the person they dated, would normally be considered to be private. However, as both Tracey and Jade Pancaldi had consented

to being filmed for *The Real Mrs Robinson* and to the broadcast of the footage, thereby placing the footage in the public domain, Ofcom considered that neither of them had a legitimate expectation of privacy in respect of the information disclosed by the footage in the programme as broadcast.

Having concluded that neither Tracey nor Jade Pancaldi had a legitimate expectation of privacy in this regard, Ofcom found that their privacy was not infringed in the programme as broadcast. As a result, it was neither necessary for the programme makers to obtain the consent of Ms Wyse or members of her family to the broadcast of the programme nor for Ofcom to further consider whether any infringement of privacy was warranted.

Ofcom then considered whether Ms Wyse and/or members of her family, none of whom had participated in the programme or were referred to in it, had a legitimate expectation of privacy in respect of the programme as broadcast.

Ofcom recognised that the broadcast of the footage of Tracey and Jade Pancaldi without any prior warning would have been extremely distressing for Ms Wyse and members of her family. However, Ofcom found that no information of a personal or sensitive nature about Ms Wyse or members of her family was included in or disclosed by the programme. Moreover, the footage had already been broadcast on two previous occasions and so was already in the public domain. In light of these factors, and despite the fact that Channel TV accepted it had made no enquiries, first because it did not think it had an obligation to do so and secondly, without the participants' surname, it was not possible to do so, Ofcom considered that Ms Wyse and members of her family had no legitimate expectation of privacy in respect of the information disclosed by the footage.

Having concluded that Ms Wyse and members of her family did not have a legitimate expectation of privacy in this regard, Ofcom found that their privacy was not infringed in the programme as broadcast. As a result, it was neither necessary for the programme makers to obtain the consent of Ms Wyse or members of her family to the broadcast of the programme nor for Ofcom to further consider whether any infringement of privacy was warranted.

In Ofcom's view, the re-use of some material, particularly after a number of years, could in some cases raise issues of unjust or unfair treatment or give rise to a legitimate expectation of privacy. For example, if a traumatic event was revisited, the material revealed an embarrassing or criminal past or the participant's circumstances had changed in the intervening period (impacting upon the consent originally provided). Even though participants would normally have assigned all rights, Ofcom considers broadcasters should be mindful that on some occasions it may be appropriate, in the interest of fairness or to avoid an unwarranted infringement of privacy, to make appropriate enquiries or to contact a participant to discuss the proposed further use of material, rather than simply relying on the licence to use the footage obtained from another broadcaster.

Notwithstanding these comments and for the reasons set out above, Ofcom has not upheld heads b) and c) of this complaint.

Accordingly Ofcom has not upheld Ms Wyse's complaint made on her own behalf, on behalf of Tracey and Jade Pancaldi and other members of her family, of unfair treatment and unwarranted infringement of privacy in the programme as broadcast.

Not Upheld

Complaint by Ms Pauline Goode on her own behalf and on behalf of Mr Femi Salam, her son

In the Line of Fire, ITV1, 10 February 2009

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

The programme included footage of an incident involving a shooting in Peckham, South London. Whilst searching for the gunman, police officers came across Ms Pauline Goode and her son Mr Femi Salam by the back door of their home, asking to come out. Ms Goode told the officers that a man matching the description of the gunman was in their house. Acting on this information, the police officers surrounded Ms Goode's house and arrested the gunman.

Ms Goode and her son were not named in the programme, however they were shown being led to a police van with their faces obscured. Footage of the area around Ms Goode's home and the exterior of her house was shown.

Ms Goode complained to Ofcom that she and her son were treated unfairly in the programme and that their privacy was unwarrantably infringed in the making and the broadcast of the programme.

In summary Ofcom found the following:

- Ms Goode and her son were clearly portrayed as being victims of the crime and not as perpetrators.
- The filming of Ms Goode and her son being led to safety was warranted given the public interest in following police operations tackling gun crime and ensuring the safety of innocent civilians caught up in situations of this nature.
- Ms Goode and her son did not have a legitimate expectation of privacy in respect of the inclusion of the footage of them in the programme as the footage was filmed in a public place, their identities were obscured and the programme did not reveal any distinguishing information that would have rendered them or their home identifiable to viewers.

Introduction

On 10 February 2009, ITV1 broadcast an edition of *In the Line of Fire*, in which police officers from the Metropolitan Police's specialist firearms unit, CO19, were shown carrying out their duties throughout London.

The programme explained the role of CO19 and included footage of its members attending incidents involving firearms. One of the incidents featured had occurred in Peckham, South London, when plain-clothes police officers had been shot at in the street. In an attempt to catch the gunman, police officers from CO19 cordoned off the surrounding area and began a house to house search. When the police officers were at the last house in the search, they found Ms Pauline Goode and her son, Mr Femi Salam, by the back door asking to come out. Once Ms Goode and her son had been escorted away from the house, Ms Goode told the police that a man matching the description of the gunman was in her house. Acting on this

information, police officers from CO19 forcibly entered Ms Goode's house and arrested the gunman. After searching the house, the police found hidden incriminating evidence, thought to belong to the gunman.

Ms Goode and her son were not named in the programme, however, they were shown being led into a police van, with their faces obscured. Footage of the exterior of Ms Goode's house and the surrounding area was also shown.

Ms Goode complained to Ofcom on her own behalf and on behalf of her son, that they were treated unfairly in the programme and that their privacy was unwarrantably infringed in the making and the broadcast of the programme.

The Complaint

Ms Goode's case

In summary, Ms Goode complained that she and her son were treated unfairly in the programme as broadcast in that:

- a) It portrayed them as "perpetrators of the crime rather than victims of it".

In summary, Ms Goode complained that her privacy and that of her son had been unwarrantably infringed in the making of the programme in that:

- b) They were unaware that they were being filmed or that a programme was being made when they were leaving their home.

In summary, Ms Goode complained that her privacy and that of her son had been unwarrantably infringed in the programme as broadcast in that:

- c) Their identities and Mrs Goode's family home were documented in the programme without their knowledge or consent. The footage contained clear pictures of her house and of the surrounding area. Ms Goode said that she and her son were completely unaware the incident was to be broadcast until it appeared in the programme.

ITV's case

In summary, ITV responded to Ms Goode's complaint of unfair treatment as follows:

- a) ITV said that it did not accept that Ms Goode and Mr Salam were portrayed in any way as perpetrators of any crime. ITV said that it was made quite clear throughout the programme that the police were searching for a gunman and that he was identified and was clearly shown being arrested after Ms Goode and her son had been shown leaving the house. ITV said that the programme's commentary did not state or imply that the family was complicit in the gunman's crime or that they had harboured him. The commentary made it clear that the family had co-operated with and had assisted the police, and that they were innocent bystanders caught up in a police operation to arrest a dangerous criminal. ITV said that the commentary suggested that Ms Goode and her son were being taken to safety, not that they were also being arrested. ITV said that the programme would not have led viewers to believe that they were perpetrators of the crime.

In summary, ITV responded to the complaint that Ms Goode's privacy and that of her son had been unwarrantably infringed in the making of the programme as follows:

- b) ITV said that the filming had taken place during a tense and potentially dangerous police operation to apprehend a man who they believed to be armed. It said that for safety reasons, the camera crew had to remain in the street some distance away from the house where the gunman had been discovered. ITV said Ms Goode and her son were filmed briefly from some distance down the street while getting into a police van. ITV said the film crew therefore had no opportunity to notify them about the filming, as they were quickly removed from the scene by the police.

ITV said that the filming had taken place in a public place during a highly visible police operation that those in the neighbourhood at the time would have been aware of. It said that as part and parcel of the filming of that operation, the filming for a few seconds of the complainants in the street was therefore warranted. ITV said that these events were not of a private nature and that in these circumstances it did not believe that the brief filming of Ms Goode and her son in a public street constituted an unwarrantable infringement of their privacy or that the film crew had an obligation to inform them of the filming at the time.

In summary, ITV responded to the complaint that Ms Goode's privacy and that of her son had been unwarrantably infringed in the programme as broadcast as follows:

- c) ITV said that the programme had depicted a large police operation, which took place in a public street and which led to the capture of a dangerous criminal who was found in Ms Goode's house. It said the gunman had pleaded guilty to possessing of a firearm with intent to endanger life and was given a life sentence. ITV said the local community were therefore already aware of the circumstances of his capture and conviction before the programme was broadcast.

ITV said that these events were therefore in the public domain, of a public not private nature, and of public interest in view of the current widespread public concern about gun crime. It said that, given the nature of these events, the programme makers did not require the consent of Ms Goode and her son to include the story in the programme. ITV said that telling that story inevitably involved depicting the circumstances of the gunman's arrest, which included his flight from police and his having sought refuge in Ms Goode's house. It said that it was necessary for the programme to show that the occupants of the house, namely Ms Goode and her son, were not complicit with the gunman and to show that they had asked to leave the house.

ITV said that the programme makers had spoken to the Metropolitan Police over several months about the case, and at no point were they informed that the identities of Ms Goode and Mr Salam needed to be protected.

ITV said that the programme showed due regard for the privacy of Ms Goode and Mr Salam and did not identify them in the manner their complaint suggested. ITV said the complainants appeared in the programme for approximately 11 seconds and that throughout their identities were obscured. ITV said that their names and their relationship to each other were not given, and that the programme did not go into any detail into how and why the gunman had managed to get into the house. ITV said that the film crew did not seek to enter the house with police when it was searched, and had only filmed from a public place in the street. ITV said that whilst the street and surrounding area in which the complainants lived was shown, this was editorially justified and necessary. ITV said the programme was, however, carefully edited so that the shots showing the house itself focused on the activity of the police and did not explicitly refer to the address itself.

ITV accepted that it would have been courteous to have informed Ms Goode and her son that the footage of them and their home would be in the programme prior to transmission

and it regretted the omission. Nevertheless, ITV said that it believed that by obscuring Ms Goode's and Mr Salam's identities, sufficient steps had been taken to protect their privacy, and that the programme did not disclose the precise address and location of their home in a manner that was unwarranted, given the circumstances of the police operation.

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.

The complaint was considered by Ofcom's Executive Fairness Group. In reaching its decision, the group considered all the relevant material provided by both parties. This included a recording of the programme as broadcast, a clip taken from the unedited footage, a programme transcript and both parties' written submissions. In its considerations, Ofcom took account of Ofcom's Broadcasting Code ("the Code").

Fairness

- a) Ofcom first considered the complaint that Ms Goode and her son were unfairly portrayed in the programme as "perpetrators of the crime rather than victims of it".

In considering this complaint, Ofcom took into account Rule 7.1 of the Ofcom Broadcasting Code ("the Code"), which states that broadcasters must avoid unjust or unfair treatment of individuals in programmes. Ofcom also took account of Practice 7.9 which states that broadcasters must take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

Ofcom noted that when Ms Goode and her son were shown leaving their home the programme's commentary said:

"It's the last house, and the last chance they have of finding the suspect. When F-Relief reach the back door, a family ask to come out. As they are brought to the safety of the outer cordon they tell police that a man matching the description of the gunman came into their house 3 hours ago. He's still inside."

Ofcom took the view that the commentary made it sufficiently clear to viewers that the complainants had asked to come out of the house and had informed the police that a man matching the description of the gunman was in it. Ofcom examined the footage and noted that the programme showed the complainants being led willingly into a police van; they were clearly walking freely and under their own volition to the police van, without being handcuffed or treated by police officers in a way that would suggest culpability. Accompanying commentary explained that they were being "brought to safety". This was in contrast with the programme showing the arrest of the gunman and referring to his subsequent conviction and sentence. Ofcom took the view that this depiction of the incident would have made it clear to viewers that Ms Goode and her son were not

associated with the gunman or the crime and that they were innocent bystanders who were caught up in events beyond their control. It therefore considered that they were presented in the programme as helping the police, not as complicit with the gunman.

Taking into account the footage and the accompanying commentary, Ofcom was satisfied that the programme depicted Ms Goode and her son fairly as victims, not perpetrators, of the crime.

Ofcom, therefore, found no unfairness to the complainants in this regard.

Privacy

- b) Ofcom considered Ms Goode's complaint that her privacy and that of her son was unwarrantably infringed in the making of the programme in that they were unaware that they were being filmed or that a programme was being made when they were leaving their home.

Ofcom recognises that the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about the unwarranted infringement of privacy both in relation to the making and the broadcast of the programme, Ofcom must consider two distinct questions: First, has there been an infringement of privacy? Secondly, if so, was it warranted? This is in accordance with Rule 8.1 of the Code which states any infringement of privacy in programmes or in connection with obtaining material included in programmes, must be warranted. Ofcom also took into account 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 and/or organisation's consent or be otherwise warranted.

In considering whether or not there had been an infringement of Ms Goode's and Mr Salam's privacy in the making of the programme, Ofcom first considered whether they had a legitimate expectation of privacy in the circumstances in which the footage being led from their home to a police van was obtained.

Ofcom considered the nature of the footage recorded of Ms Goode and Mr Salam. Ofcom noted that the programme makers had filmed them being led into a police van after they had informed the police that a man matching the description of the gunman was in their house. Ofcom recognised that the events Ms Goode and her son unwittingly found themselves in were distressing for them, and that the information obtained, namely that they were caught up in the search for a gunman and that the gunman was in their house was information that could be understood to be of a personal and sensitive nature and which could attract an expectation of privacy. Ofcom also recognised that some activities may be of such a private nature that filming, even in a public place, could attract a legitimate expectation of privacy. It took the view that given the proximity to the complainants' home and the sensitivity of the situation they found themselves in, notwithstanding that this took place in a public space, that Ms Goode and Mr Salam did have a legitimate expectation of privacy in these circumstances.

Ofcom then considered whether their privacy was infringed in the obtaining of the footage. Ofcom noted that the programme makers had filmed on a public street in full view of those around them, albeit from a distance. Although the public streets in the immediate area of the complainants' house had been cordoned off by the police, Ms Goode and Mr Salam were clearly visible from the edge of the cordoned area. While Ofcom recognised that the complainants were not aware they were being filmed, Ofcom considered that it was apparent from the recording that the footage had been filmed from a clear vantage point and found no evidence to suggest that the programme makers had

concealed the fact that they were filming or that their actions were in any way surreptitious and did not display any of the signs of poor quality that are usually associated with surreptitious filming. Ofcom did however note that Ms Goode and her son were not in the position to have noticed they were being filmed and that they were not told afterwards that they had been filmed.

Ofcom noted that the complainants were filmed in a situation which attracted a legitimate expectation of privacy and their consent was not sought. Ofcom therefore took the view that the complainants' privacy was infringed.

Ofcom then considered whether this infringement was warranted. Ofcom noted that the subject of the filming was how the police dealt with a situation in which an alleged gunman is found and arrested as well as how innocent civilians caught up in such situations are brought to safety. Ofcom recognised that when filming unfolding events such as these, it is impossible for the programme makers to gain consent and that it is not desirable to unduly constrain programme makers in those circumstances where they would not be able to gain consent. Ofcom considered these to be matters of strong public interest, and that filming without their prior consent was therefore warranted.

Ofcom therefore found that there was no unwarranted infringement of privacy in the making of the programme.

- c) Ofcom finally considered Ms Goode's complaint that her privacy and that of her son's was unwarrantably infringed in the programme as broadcast in that their identities and the family home were documented in the programme without her knowledge or consent.

In considering this complaint Ofcom took into account 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 also took into account Practice 8.2 of the Code which states that information which discloses the location of a person's home or family should not be revealed without permission, unless it is warranted.

Ofcom again considered whether the complainants had a legitimate expectation of privacy. Ofcom noted that the footage showed the area immediately surrounding Ms Goode's home, as well as showing her and her son being escorted into a police van after being led from their house. However, it noted that the footage showing the complainants in the programme was brief (approximately 11 seconds in length), was shot at some distance, and the complainants' faces were obscured. Ofcom therefore took the view that Ms Goode and Mr Salam were not likely to be identifiable in the footage. Ofcom took into account that the area, "*Peckham, South London*", was named in the programme and that a number of streets were shown. Ofcom considered whether such information could have amounted to the immediate areas around the complainants' home becoming identifiable, but concluded that only viewers with a pre-existing and intimate knowledge of the area would have been able to identify it. Ofcom also considered that such viewers may well have also had prior knowledge of the police operation given its scale.

Taking all the above factors into account, Ofcom found that Ms Goode and her son had no legitimate expectation of privacy with regard to the programme as broadcast.

Having found no legitimate expectation of privacy, Ofcom found that Ms Goode and her son's 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 Ms Goode and her son's complaint of unfair treatment and unwarranted infringement of privacy either in the making of the programme or in the programme as broadcast.

Not Upheld

Complaint by Mr Alan Thomas

Cops with Cameras, ITV1, 31 March 2009

Summary: Ofcom has not upheld this complaint made by Mr Alan Thomas of unwarranted infringement of privacy in both the making and broadcast of the programme.

This edition included footage of an incident in which police officers in Swansea performed a drugs raid on Mr Alan Thomas' house. Mr Thomas was in the house at the time of the raid and cooperated with the search that ensued. During the search, police officers found a small cannabis plantation, a significant amount of money and a large knife. The police charged Mr Thomas with cultivation and possession of cannabis and he was later convicted of possession of cannabis. Mr Thomas was clearly identifiable in the programme in that his face and a close up of his distinctive tattoo was shown and his voice was heard.

Mr Thomas complained to Ofcom that his privacy was unwarrantably infringed in both the making and the broadcast of the programme.

In summary Ofcom found the following:

- As regards the making of the programme, Mr Thomas had a legitimate expectation of privacy in relation to footage of the inside of his home being filmed. The programme makers failed to obtain his informed consent to film and his privacy was, therefore, infringed. However, due to the public interest in showing how such police operations are conducted, and given that it is impossible for programme makers to gain consent in such circumstances, this infringement was warranted. In respect of the footage filmed outside his home, Mr Thomas did not have a legitimate expectation of privacy as he was filmed in a public and open space.
- Mr Thomas did not have a legitimate expectation of privacy in the footage as broadcast, of either within or outside of his home, because by that time he had been convicted of the offence to which the footage was related.

Introduction

On 31 March 2009, ITV1 broadcast an edition of *Cops with Cameras*, a series which followed police officers from a number of police forces carrying out their duties.

This edition included an incident in which police officers in Swansea performed a drugs raid on Mr Alan Thomas' house. The programme showed police officers battering down the door and carrying out a full search of the property. Mr Thomas was in the house at the time of the raid and cooperated with the search. During the search, police officers found a small cannabis plantation, a significant amount of money and a large knife. Mr Thomas was arrested and was subsequently convicted and fined for possession of cannabis and no further action was taken regarding the weapons found in his house.

Footage of the exterior and interior of Mr Thomas' house was shown in the programme as well as Mr Thomas himself. Mr Thomas was identifiable in the programme in that his face and a close up of his distinctive tattoo was shown and his voice was heard.

Mr Thomas complained to Ofcom that his privacy was unwarrantably infringed in both the making and the broadcast of the programme.

The Complaint

Mr Thomas' case

In summary, Mr Thomas complained that his privacy had been unwarrantably infringed in the making of the programme in that:

- a) During the filming of the raid he did not give his permission for his home or himself to be filmed.

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

- b) Footage of the exterior and interior of his home, and his own identity, was broadcast on the programme without his consent. Mr Thomas said that his face was not obscured in the programme, unlike other participants in the programme whose faces were obscured.

ITV's case

In summary, ITV Broadcasting Limited ("ITV"), responsible for the compliance of the programme on behalf of the ITV Network ("ITV1"), responded to Mr Thomas' complaint of unwarranted infringement of privacy in the making of the programme, as follows:

- a) In relation to the complaint Mr Thomas did not grant permission for his home or himself to be filmed, ITV said that the camera crew initially filmed Mr Thomas inside his house, where it accepted he would normally have a reasonable expectation of privacy. It said the camera crew followed a long-established procedure for filming on such police operations by identifying themselves and explaining their purpose in filming. ITV said that one of the camera crew told Mr Thomas that "we are just doing a documentary for ITV, we're following the police around in Swansea for this weekend, we're just going around with them today." ITV said that Mr Thomas acknowledged this and made no objection to the filming, nor had he made any objection prior to being notified. It said that later on, as officers prepared to escort Mr Thomas out of his house under arrest, the same camera crew member asked him whether he was happy for the process to be filmed. ITV said Mr Thomas then replied "No". The camera crew then left Mr Thomas' house on the understanding that he did not want to be filmed under arrest coming out of it. ITV said that this understanding was reiterated by one of the police officers, who said that "he doesn't want it filmed, being filmed coming out". At this point the camera crew stopped filming as Mr Thomas was led out of his front door.

ITV said that, given that Mr Thomas had been notified of the identity of the camera crew and the purpose of the filming and had made no initial objection, it believed that

Mr Thomas had given his informed consent to the camera crew filming him inside his house and the house's interior.

ITV said that, notwithstanding its belief that Mr Thomas had given his informed consent, it believed the filming of Mr Thomas was warranted, given that:

- the camera crew had notified him of the nature and purpose of filming and he had not objected; and
- the camera crew had filmed Mr Thomas in relation to his arrest, having committed a criminal offence for which he was subsequently convicted. ITV said given the nature of the programme, and the inherent public interest in the public having greater information about the work of the police in detecting and dealing with such offences, it was in the public interest to do so.

ITV said that, after Mr Thomas had been led out of his front door, the camera crew continued to film as officers led him down the street and into the back of a police car. ITV said that it did not believe that Mr Thomas had a legitimate expectation of privacy at this point, given that he was filmed openly in a public place, having been arrested for an offence for which he was later convicted, and given that the camera crew had respected his wish not to be filmed as he came out of his front door.

In summary, ITV responded to Mr Thomas' complaint of unwarranted infringement of privacy in the programme as broadcast as follows:

- b) In relation to the complaint that the exterior and interior of Mr Thomas' home and his own identity were broadcast on the programme without his consent, ITV said that, for the reasons set out above, it believed that Mr Thomas had given his informed consent to the inclusion of his identity and the interior of his home in the programme. ITV said that Mr Thomas was told the nature and purpose of filming and did not object.

ITV said that, even if Ofcom found that Mr Thomas did not give informed consent, it believed that the inclusion of his identity and the interior of his home was, in any event, warranted, given the procedures followed by the camera crew, his response to them and the public interest in reporting Mr Thomas' criminal activity and the police techniques used to detect and deal with it.

ITV said it believed it was not required to disguise Mr Thomas' identity, given that he had been convicted of the offence for which he was arrested and that he had not objected to being filmed (other than in relation to coming out of his front door).

In relation to the broadcast of footage of the exterior of Mr Thomas' house, ITV said that it did not believe that he had a reasonable expectation of privacy. ITV said that Mr Thomas' address was a matter of public record, given his conviction for possession of cannabis two months earlier. ITV said that, when reporting the arrest that led to this subsequent conviction, the programme did contain some shots of the exterior of the house (filmed openly in a public place), but the programme did not give details of its number, street or the area in Swansea where it was located. ITV said that the only viewers who would have been able to identify the precise location of the house were those who knew the relevant area of Swansea well.

ITV said that even if Ofcom considered that Mr Thomas had a legitimate expectation of privacy regarding the exterior of his home, it believed the inclusion of the footage was warranted, given the circumstances of filming and the fact that the address and exact details of the house's location were not given.

In relation to Mr Thomas' complaint that other participants in the programme had their faces obscured, ITV said that it was not required to disguise Mr Thomas' identity in the programme as he had been convicted of the offence for which he was arrested and, with the exception of the front door shot, had not objected to filming. In this programme, six suspects were similarly identified, as they had also been convicted of the offences for which they were arrested. Mr Thomas was therefore not treated differently from other people featured in the programme who were convicted of crimes ITV said that the identities of a number of other suspects were obscured, only because they were involved in active criminal proceedings at the time of broadcast and therefore there was a legal requirement to obscure their identity to avoid prejudice to those proceedings.

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.

Mr Thomas' complaint was considered by Ofcom's Executive Fairness Group. In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript and both parties written submissions. In its considerations, Ofcom took account Ofcom's Broadcasting Code ("the Code").

Ofcom first considered Mr Thomas' complaint of unwarranted infringement of privacy in the making of the programme.

- a) Ofcom considered the complaint that during the filming of the raid Mr Thomas did not give his permission for his home or himself to be filmed.

In Ofcom's view, the line to be drawn between the public's right to information and the citizen's right to privacy can sometimes be a fine one. In considering complaints about the unwarranted infringement of privacy both in relation to the making and the broadcast of the programme, Ofcom must consider two distinct questions: First, has there been an infringement of privacy? Secondly, if so, was it warranted? This is in accordance with 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 8.5 of the Code which states that

any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted.

Ofcom first noted that Mr Thomas was filmed both inside and outside of his home, by a public highway in an open space. Ofcom considered the two instances separately.

Ofcom first considered whether Mr Thomas had a legitimate expectation of privacy in the making of the programme with respect to being filmed while inside his home.

Ofcom recognised that the nature of the footage obtained, namely of Mr Thomas and the interior of his home, may be understood to be personal and sensitive and may therefore attract an expectation of privacy. Although Mr Thomas was subsequently convicted for possession of cannabis found in his house, a circumstance that could be considered to diminish his expectation of privacy, at the time of filming the police had reasonable grounds to suspect that he was in possession of drugs, but Mr Thomas had not been convicted for any offence.

In these circumstances it was important that Mr Thomas' consent to filming was obtained. Ofcom noted that the programme makers did not seek Mr Thomas' consent prior to the raid taking place, but it recognised that when filming unfolding events such as these, it is impossible for the programme makers to gain consent and that it is not desirable to unduly constrain programme makers in those circumstances where they would not be able to gain consent. Ofcom examined the footage taken inside Mr Thomas' home and noted that the camera appeared to be positioned within a relatively close proximity to Mr Thomas and that the footage did not display any of the signs of poor quality that are usually associated with surreptitious filming such as graininess, shaking or obstruction. Consequently, Ofcom took the view that Mr Thomas was likely to be aware that filming was taking place. Ofcom also took note that it took some 27 minutes after filming had started, before a member of the camera crew informed Mr Thomas about the purpose of filming:

Crew Member: *"Sorry, just...we just wanted to let you know we are just doing a documentary for ITV, we're following the police around in Swansea for this weekend, we're just going around around with them today."*

Mr Thomas: *"mmmm"*.

Crew Member: *"We just wanted to let you know."*

Ofcom also noted the following conversation that took place between Mr Thomas and a member of the camera crew while Mr Thomas was being prepared to leave his home:

Crew Member: *"Are you happy to be filmed?"*

Mr Thomas: *"No."*

Ofcom then noted that the filming of Mr Thomas inside his home continued for approximately one minute further.

Ofcom took the view that the first conversation with a member of the programme making team did not amount to seeking adequate consent from Mr Thomas for the filming inside his home. Taking this into account, together with the fact that Ofcom considered that Mr Thomas's expectation of privacy was not sufficiently diminished by the circumstances and that he had a legitimate expectation of privacy with regard to the footage filmed.

Having found that Mr Thomas did have a legitimate expectation of privacy, Ofcom then considered whether his privacy was infringed. Ofcom considered that the filming of Mr Thomas and the interior of his home without his consent and in circumstances where he had not been convicted of any offence, amounted to an infringement of his privacy.

Ofcom then considered whether the infringement was warranted. Ofcom noted that the programme was a documentary series which followed police forces around the country, with a view to revealing to the public police operations to combat crime of various kinds. Ofcom further noted that, on this occasion, the programme focused on how the police combated drug crime, and showed the process by which the police use and act on information received. Also, as noted above, Ofcom considered that it would have been impossible for the programme makers to have gained consent before filming. For these reasons, Ofcom concluded that the infringement of Mr Thomas' privacy incurred whilst being filmed in his home, was warranted.

Ofcom then examined the second instance of filming in the making of the programme, namely the filming of Mr Thomas coming out of his house and being led into an unmarked police car.

Ofcom noted that, once the camera crew were told by a police officer that Mr Thomas did not want to be filmed coming out of his home, they stopped filming him. Ofcom then noted that when Mr Thomas was out of his home the camera crew resumed filming him. Ofcom noted that this filming was carried out by a public highway in an open space.

Ofcom considered that, notwithstanding his refusal of consent for the filming, because the filming took place in public, Mr Thomas did not have a legitimate expectation of privacy in circumstances where he was filmed in public.

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

Ofcom concluded, therefore, that neither the filming of Mr Thomas inside his home, nor by the public highway constituted an unwarranted infringement of privacy in the making of the programme.

- b) Ofcom then considered the complaint that the exterior and interior of Mr Thomas' home and his identity were broadcast on the programme without his consent. Ofcom also considered Mr Thomas' complaint that his face was not obscured in the programme even when others were at this stage.

In considering this head of complaint, Ofcom took into account 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 also had regard to Practice 8.2 which states that information which discloses the location of a person's home or family should not be revealed without permission, unless it is warranted.

Ofcom again noted that footage of Mr Thomas was shown, both inside and outside his home. It therefore considered these two instances separately.

As regards the footage inside Mr Thomas' home Ofcom again considered that the footage showed of a potentially sensitive and personal nature and that within ones home, one can expect to attract the highest expectation of privacy. Ofcom noted that by the time the programme was broadcast, Mr Thomas had been convicted of the offence to which the footage related i.e. possession of cannabis. It took the view that this served to diminish Mr Thomas' expectation of privacy to such an extent that the expectation no longer existed in these circumstances.

Having found no legitimate expectation of privacy, Ofcom found that Mr Thomas' 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.

Notwithstanding Ofcom's decision that Mr Thomas had no legitimate expectation of privacy, it noted that Mr Thomas had complained that his face was not obscured in the programme. In Ofcom's view, these images rendered him identifiable to viewers. However, given Ofcom's finding, Ofcom considered that there was no obligation on the broadcaster to obscure his face.

With regards the filming of Mr Thomas outside of his home, Ofcom again noted that, by the time of filming, Mr Thomas had been convicted of the offence to which the footage related. Ofcom therefore again concluded that Mr Thomas did not find a legitimate expectation of privacy in these circumstances. Ofcom subsequently found that Mr Thomas' privacy was not infringed in the programme as broadcast and therefore did not need to further consider whether any infringement of privacy was warranted.

Accordingly, Ofcom has not upheld Mr Thomas' complaint of unwarranted infringement of privacy in the making or broadcast of the programme.

Not Upheld

Complaint by Mr Graham Anderson on behalf of Mr Daniel Anderson (his son)

Road Wars, Sky One, 7 January 2009

Summary: Ofcom has not upheld this complaint made by Mr Graham Anderson on behalf of his son, Daniel Anderson, of unfair treatment and unwarranted infringement of privacy in the broadcast of the programme.

This programme included an incident in which the police had received complaints about a group of youths causing a disturbance at a warehouse. As the police officer attended the scene he found some youths sitting at a park bench nearby. One member of the group was Daniel Anderson who was 15 years old at the time of filming. The police officer decided the most appropriate course of action to take would be to order the group to tidy the mess they had created.

The group's faces' were clearly identifiable and Daniel Anderson's face was shown in close up.

Mr Graham Anderson complained to Ofcom that his son, Daniel Anderson, was treated unfairly in the programme and that his son's privacy was unwarrantably infringed in the broadcast of the programme.

In summary Ofcom found:

- The programme clearly showed that no arrests were made, that not all of the group were responsible for the disturbance but that the police officer held the entire group responsible and ordered them all to tidy up the mess. The footage was therefore not unfairly edited. Furthermore, it was clear from the unedited footage that the group were aware of why they were being filmed, having been told by the police officer.
- Notwithstanding Daniel Anderson's age, the footage of him included in the programme revealed no sensitive (or potentially private) information about him and Ofcom was not satisfied that he had a legitimate expectation of privacy in relation to this footage which was filmed openly in a public place.

Introduction

On 7 January 2009, British Sky Broadcasting Limited ("BSkyB") broadcast on its channel Sky One an edition of *Road Wars*, a documentary series following the work of police forces around the country.

This edition included an incident in which the police received complaints about a group of youths causing a disturbance at a warehouse. As the police officer attended the scene he found a group sitting at a park bench nearby. One member of the group was Daniel Anderson, who was 15 years old at the time of filming.

Staff at the warehouse informed the police that the group had been smashing pallets at the site and kicking footballs through its windows. The police officers decided the most appropriate action would be to order the group to tidy the mess they had created.

The group's faces' were clearly identifiable and Daniel Anderson's face was shown in close up.

Mr Graham Anderson complained to Ofcom that his son, Daniel Anderson, was treated unfairly in the programme and that his son's privacy was unwarrantably infringed both in the making and broadcast of the programme.

The Complaint

Mr Anderson's case

In summary, Mr Anderson complained that his son was treated unfairly in the programme as broadcast in that:

- a) The programme was unfairly edited, so as to depict his son as being involved in the disturbance, when he was not.

Mr Anderson said that his son had arrived at the scene after the disturbance had taken place but was still filmed by the programme makers, who did not reveal why they were filming.

In summary, Mr Anderson complained that his son's privacy was unwarrantably infringed in the programme as broadcast in that:

- b) Despite his son expressly asking the programme makers not to use any footage of him in the programme or to obscure his identity, a close up of him was shown without any attempt to hide his identity.

BSkyB's case

In summary, BSkyB responded to Mr Anderson's complaint of unfair treatment in the programme, as follows:

- a) BSkyB said that it was made clear in the programme that the group were asked to clear up damage that had been caused on a previous occasion and that no criminal charges would be made in relation to the damage at that time. It said that the police officer took the names of three members of the group present, but explained that no further legal action would be taken unless there were reports of further incidents. BSkyB said that it would not have been possible to ascertain which of the youths, including Daniel Anderson, was or was not involved in causing the damage. BSkyB said that, as a consequence, to protect the identity of some and not all of the members of the group involved would, itself have been unfair.

BSkyB said that it was clear from the unedited footage provided to Ofcom that one of the members of the group asked the police officer why there was a camera present, to which the police officer explained that he was being filmed as part of a documentary and that the footage may be broadcast.

In summary, BSkyB responded to Mr Anderson's complaint of unwarranted infringement of privacy in the programme as broadcast as follows:

- b) BSkyB said that Daniel Anderson, and the other youths concerned, were on a public road prior to being stopped and that police officers had received reports of

nuisance and anti-social behaviour in the location where the youths were stopped. It said that the youths were stopped in public view in the same location where the anti-social behaviour had been reported and that the circumstances in which the youths were reprimanded, and the reconciliation exercise in which the youths participated, were not of an unduly sensitive nature. BSkyB said that this would have suggested, at the time of the incident, that any filming should be stopped on the basis that a legitimate expectation of privacy had arisen. BSkyB said that the film crew was clearly visible to Daniel Anderson at the time of filming was not conducted surreptitiously. BSkyB said that there was no suggestion that the programme makers concealed the fact that they were filming Daniel Anderson or any of the other members of the group.

BSkyB said that, contrary to Mr Graham Anderson's complaint, Daniel Anderson made no attempt during filming to request that the filming be stopped or object to the footage being broadcast or request that his identity be obscured.

BSkyB said that *Road Wars* was a programme that followed police officers attending real-life incidents as and when they occurred. It said it was not possible or appropriate in such circumstances to seek prior consent for filming such a programme. BSkyB said that the programme makers must also be aware of the fact that, given that the filming taking place is of a real-life police incident, to seek express confirmation in each case that the subject in question has no objections to continued filming may risk disrupting the work of the police.

BSkyB said that, in any event, there was a clear public interest in the production of programmes which depicted the work of the police and in particular portray the real-life situations they face. It said that there was also a clear public benefit in highlighting the creative and proactive ways in which the police resolve community conflicts and discourage criminal behaviour, as was the case in relation to Daniel Anderson, who participated in a reconciliation exercise to clean up damage caused by anti-social behaviour. Accordingly, BSkyB said that the public interest in including this footage in the programme outweighed any right to privacy that Mr Daniel Anderson might have had.

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.

Mr Anderson's complaint made on his son's behalf was considered by Ofcom's Executive Fairness Group. In reaching its decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript and both parties written submissions. In its considerations, Ofcom took account of Ofcom's Broadcasting Code ("the Code").

Unfair treatment

- a) Ofcom considered the complaint that the programme unfairly edited the footage of Daniel Anderson so as to depict him as being involved in the disturbance, when he was not.

Ofcom had particular regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals, as set out in Rule 7.1 of the Code. It took into account Practice 7.9 of the Code which states that broadcasters must take reasonable care to satisfy themselves that material facts have not been presented in a way that is unfair to an individual or organisation.

Ofcom noted that Daniel Anderson said that he was not present at the time the disturbance was caused. Ofcom's remit is not to consider whether or not Daniel Anderson took part in creating the mess at the warehouse, but to adjudicate on whether the complainant was treated unfairly in the programme as broadcast. Therefore, it was only necessary for Ofcom to examine whether the programme fairly portrayed the events as they unfolded.

Ofcom therefore examined the programme as broadcast and compared it with all relevant unedited footage provided to it by the broadcaster to ascertain whether there was a material discrepancy between what appeared to happen in the unedited footage and the version of events presented by the programme as broadcast. It also considered whether those being filmed (specifically the group of youths) were aware of the reason why they were being filmed.

Ofcom noted that the unedited footage showed the police officer receiving and responding to a call regarding nuisance behaviour by a group of youths. It then showed the police officer finding the group and talking to the warehouse staff who had made the complaint. The police officer then asked the whole group to remain where they were and told them that they were going to clear the mess that had been made on the warehouse site.

Ofcom noted that further into the police officer's discussion with the group, the following dialogue took place, which did not feature in the programme as broadcast:

Boy: *"Can I just say, can I just say, why is there like a camera there?"*

Officer: *"Camera, because he's filming me as part of a documentary. So."*

Boy: *"Are we going to be on TV? Are we going to be on Tele?
[INAUDIBLE]"*

Officer: *"Possible."*

Boy: *"Oh sick... [INAUDIBLE] Can I just say one thing? There's a few people here that haven't actually been when we were causing, him for instance."*

Girl: *"And me."*

Ofcom then noted that the police officer's response to the girl, was included in the programme, and was as follows:

Officer: *“I don’t care, you’re all here now, you can come across the road and tidy up and then next time, hopefully, we’ll sort out...come across then, young lady.”*

Both the unedited footage and the programme then went on to show all the members of the group complying with the police officer’s instructions and tidying up the mess.

Ofcom was therefore left to consider whether the editing of this dialogue amounted to an unfair depiction of Daniel Anderson as being involved in the disturbance. Ofcom took into account that the statement from one boy saying not all of the group were involved was omitted from the programme. However, Ofcom took the view that, as the programme included the officer saying *“I don’t care, you’re all here now”*, viewers would have understood that not all of the group were involved in the disturbance notwithstanding the omission of some dialogue.

Ofcom therefore concluded that it would have been clear to viewers that the members of the group shown in the programme were not necessarily those individuals who had caused the disturbance at the warehouse, but were the group the police officer came across at the site and whom, in his capacity as the officer attending the scene, he had decided to hold collectively responsible for all of the anti-social activities that were alleged to have taken place there. In Ofcom’s view, there was no material discrepancy between the filming of the events as they unfolded and the way that those events were presented in the programme as broadcast.

Furthermore, Ofcom noted that the programme showed that no arrests were made and that no individual was singled out by the police officer as responsible for the mess at the warehouse (in fact, the unedited footage showed five names, one being Daniel Anderson’s, being taken, but the programme makers chose to omit this sequence from the programme as broadcast.)

Ofcom also found from the unedited footage detailed above, that the group were made aware that the filming was for a television documentary, and that there was a possibility that what was being filmed would be broadcast.

Ofcom therefore found no unfairness to Daniel Anderson.

Privacy

- b) Ofcom considered the complaint that, despite Daniel Anderson expressly asking the programme makers not to use any footage of him in the programme or to obscure his identity, a close up of him was shown without any attempt to hide his identity.

In Ofcom’s view, the line to be drawn between the public’s right to information and the citizen’s right to privacy can sometimes be a fine one. In considering complaints about the unwarranted infringement of privacy both in relation to the making and the broadcast of the programme, Ofcom must consider two distinct questions: First, has there been an infringement of privacy? Secondly, if so, was it warranted? This is in accordance with Rule 8.1 of Ofcom’s Broadcasting Code “the Code” which states that “any infringement of privacy in programmes or in connection with obtaining material included in programmes must be warranted”.

Ofcom 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 also paid regard to Practice 8.21 of the Code which states that where a programme features an individual under sixteen or a vulnerable person in a way that infringes privacy, consent must be obtained from the relevant person, unless the subject matter is trivial or uncontroversial and the participation minor, or it is warranted to proceed without consent.

In considering whether Daniel Anderson's privacy had been infringed, Ofcom first determined whether he had a legitimate expectation of privacy in relation to the footage that was broadcast.

Ofcom examined the footage that was included in the programme as broadcast and assessed the nature of the information, actions and events disclosed as well as the context of the disclosure.

Ofcom acknowledged that Daniel Anderson was filmed on a public highway, in public view. It considered that the filming was carried out openly and that the group were aware that the incident was being recorded (as discussed in decision head a) above).

Expectations of privacy will vary according to the place and nature of the information, activity or condition in question. Normally, people in a public place will have a very limited expectation of privacy. However, there may be circumstances where people can reasonably expect privacy, even in a public place. Some activities may be of such a sensitive or private nature that filming or broadcasting footage of them could amount to an infringement of privacy. Ofcom took the view that the fact that Daniel Anderson was filmed in a public place had a considerable limiting effect on his expectation of privacy.

Ofcom next assessed whether or not the actions or events being filmed were such that they could give rise to a legitimate expectation of privacy despite being carried out in a public place. Ofcom noted that the footage showed Daniel Anderson, amongst others, being dealt with by the police. Ofcom took the view that such a situation could arguably be described as sensitive for persons of any age and in particular for minors. However, Ofcom noted that Daniel Anderson was 15 years old at the time of filming and did not appear to be particularly vulnerable. Further, the footage revealed no sensitive (or potentially private) information about him, beyond the fact that he was with a number of other young people in a public place and was being spoken to by the police. Ofcom was therefore not satisfied that the actions or information was such that it would give rise to a legitimate expectation when filmed in a public place and would not require the broadcaster to seek the consent of Daniel Anderson to broadcast the footage.

Taking all of the above factors into account, Ofcom concluded that Daniel Anderson did not have a legitimate expectation of privacy in these circumstances.

Having found no legitimate expectation of privacy, Ofcom found that Daniel Anderson's 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 Mr Anderson's complaint of unfair treatment and unwarranted infringement of privacy in the broadcast of the programme.

Other Programmes Not in Breach

Up to 2 November 2009

Programme	Transmission Date	Channel	Categories	Number of Complaints
118 118 Sponsors of ITV4 Movies	17/10/2009	ITV4	Generally Accepted Standards	1
50 Greatest Magic Tricks	18/10/2009	Watch	Offensive Language	2
7 Days on the Breadline	20/10/2009	ITV1	Dangerous Behaviour	1
A Bridge Too Far	12/10/2009	The 'Bridge (Stourbridge)	Sex/Nudity	1
Absolute Radio	15/09/2009	Absolute Radio	Competitions	1
Absolution With Tim Shaw	09/10/2009	Absolute Radio	Generally Accepted Standards	1
Ahlulbayt TV	10/09/2009	Ahlulbayt TV	Generally Accepted Standards	1
All Star Family Fortunes	25/10/2009	ITV1	Generally Accepted Standards	5
Around the World in Eighty Days	27/10/2009	BBC 1	Offensive Language	1
BBC News at Ten	23/10/2009	BBC 1	Generally Accepted Standards	1
Beacon Radio	20/10/2009	Beacon Radio	Generally Accepted Standards	1
Benidorm	16/10/2009	ITV1	Offensive Language	1
Brainbox	15/08/2009	UTV	Commercial References	1
Brainiac: Science Abuse	29/10/2009	Sky1	Generally Accepted Standards	1
Brainiac: Science Abuse	26/10/2009	Sky1	Sex/Nudity	1
Breakfast	11/09/2009	BBC 1	Flashing images	1
Carpet Right sponsorship	various	Sky1	Generally Accepted Standards	12
Channel 4 News	19/10/2009	Channel 4	Due Impartiality/Bias	1
Channel 4 News	26/10/2009	Channel 4	Offensive Language	7
Coronation Street	23/10/2009	ITV1	Dangerous Behaviour	6
Coronation Street	12/10/2009	ITV1	Generally Accepted Standards	1
Coronation Street	19/10/2009	ITV1	Generally Accepted Standards	2
Criminal Justice	07/10/2009	BBC 1	Generally Accepted Standards	2
Criminal Justice	05/10/2009	BBC 1	Sex/Nudity	1
Daredevils	20/10/2009	Channel 4	Animal Welfare	1
Derren Brown: Trick of the Mind	20/10/2009	Channel 4	Generally Accepted Standards	1
Don't Get Screwed	01/11/2009	BBC 3	Generally Accepted Standards	1
Dreams sponsorship of Night-time on ITV	07/08/2009	ITV1	Other	1
E News	21/10/2009	E! Entertainment	Generally Accepted Standards	1

E! News	20/10/2009	E! Entertainment	Generally Accepted Standards	1
Find Me the Funny	16/10/2009	BBC 1 Northern Ireland	Generally Accepted Standards	1
Flashforward (trailers)	17/10/2009	Five	Unconscious influence/hypnosis/subliminal	1
Friday Night with Jonathan Ross	23/10/2009	BBC 1	Generally Accepted Standards	4
Genie in the House	28/10/2009	Nickelodeon	Offensive Language	1
Gigglebiz	06/10/2009	Cbeebies	Generally Accepted Standards	1
Globo Loco	25/10/2009	CITV	Sex/Nudity	1
Gymnastics: World Championships	16/10/2009	BBC 2	Generally Accepted Standards	1
Harry Hill's TV Burp	25/10/2009	ITV1	Generally Accepted Standards	1
Hell's Kitchen USA	12/10/2009	ITV2	Offensive Language	1
Hidayat TV	04/10/2009	Hidayat TV	Violence	2
How to be a Property Developer	23/10/2009	Five	Offensive Language	1
Iain Lee (trailer)	15/10/2009	Absolute Radio	Religious Offence	1
Inside Out	12/10/2009	BBC 1 (South West)	Generally Accepted Standards	1
Inside the Body of Henry VIII	13/10/2009	History	Generally Accepted Standards	1
ITV News	16/10/2009	ITV1	Generally Accepted Standards	1
Jacob's Creek sponsorship credit	07/10/2009	Kanal 9	Sponsorship	1
Jay Ratchet Show	12/10/2009	Fire 107.6	Offensive Language	1
Jez Welham	13/10/2009	Kiss 100	Offensive Language	1
Katy Brand's Big Ass Show	19/10/2009	ITV2	Generally Accepted Standards	1
Life	25/10/2009	BBC 1	Sex/Nudity	1
Live at Five With Andrew Wilson	18/10/2009	Sky News	Inaccuracy/Misleading	1
Live from Studio Five	26/10/2009	Five	Generally Accepted Standards	1
Live from Studio Five	27/10/2009	Five	Generally Accepted Standards	1
Live from Studio Five	21/10/2009	Five	Offensive Language	1
Man With Mission	03/10/2009	Peace TV	Religious Offence	1
Mark Dover	20/10/2009	Time 107.5 FM	Generally Accepted Standards	1
Mark Edwards in the Morning	12/10/2009	Sunshine FM (Hereford)	Generally Accepted Standards	1
Meridian Tonight	13/10/2009	ITV1 Meridian	Generally Accepted Standards	1
Mumford & Sons "Little Lion Man"	28/10/2009	Absolute Radio	Offensive Language	1
Mumford & Sons "Little Lion Man"	29/10/2009	Absolute Radio	Offensive Language	1
Murderland	26/10/2009	ITV1	Other	1

Never Mind the Buzzcocks	22/10/2009	BBC 2	Generally Accepted Standards	1
New You've Been Framed!	24/10/2009	ITV1	Dangerous Behaviour	2
News	13/10/2009	LBC 97.3 FM	Generally Accepted Standards	1
News and Weather	24/09/2009	UTV	Inaccuracy/Misleading	1
News at Ten	08/10/2009	ITV1	Due Impartiality/Bias	1
Old Speckled Hen sponsor credit	various	Dave	Dangerous Behaviour	1
Panorama	19/10/2009	BBC 1	Generally Accepted Standards	1
Panorama	12/10/2009	BBC 1	Offensive Language	1
Paris Hilton's Best Friend (trailer)	26/08/2009	ITV2	Flashing images	1
Politics and Media	26/10/2009	Islam Channel	Elections/Referendums	1
Postal Gold sponsors afternoon dramas on Five	25/10/2009	Five	Sponsorship	1
Psychic Interactive	22/07/2009	Psychic TV	Use of Premium Rate Numbers	1
Pull Up To The Bumper	12/10/2009	Radio Cardiff 97.7FM	Crime (incite/encourage)	1
Question Time	22/10/2009	BBC 1	Generally Accepted Standards	29
Red Bull Rivals	10/10/2009	Channel 4	Commercial References	1
Robbie Williams "Bodies"	various	BBC Radio 1	Religious Offence	2
Rosemary and Thyme	18/09/2009	ITV1	Offensive Language	1
Ross Kemp: A Kenya Special	23/09/2009	Sky 2	Generally Accepted Standards	1
Rude Tube	30/10/2009	Channel 4	Animal Welfare	1
Rude Tube	16/10/2009	Channel 4	Sex/Nudity	1
Rudy's Rare Records	21/10/2009	BBC Radio 4	Generally Accepted Standards	1
Rudy's Rare Records	21/10/2009	BBC Radio 4	Sex/Nudity	1
Saw III	22/10/2009	Channel 4	Generally Accepted Standards	1
Sexcetera	03/09/2009	Virgin 1	Sex/Nudity	1
Sky News	24/10/2009	Sky News	Generally Accepted Standards	1
Sky Sports News	23/10/2009	Sky Sports News	Other	1
Soccer A.M.	24/10/2009	Sky1	Generally Accepted Standards	1
Strictly Come Dancing	17/10/2009	BBC 1	Generally Accepted Standards	3
Strictly Come Dancing	17/10/2009	BBC 1	Sex/Nudity	1
Sunday with Adam Boulton	18/10/2009	Sky News	Due Impartiality/Bias	2
Sunday with Adam Boulton	13/09/2009	Sky News	Religious Offence	1
The Alan Titchmarsh Show	27/10/2009	ITV1	Crime (payment)	1

The Alan Titchmarsh Show	20/10/2009	ITV1	Generally Accepted Standards	1
The Alan Titchmarsh Show	26/10/2009	ITV1	Sex/Nudity	1
The Armstrong and Miller Show	23/10/2009	BBC 1	Offensive Language	1
The Bigamist Bride: My Five Husbands	22/10/2009	Channel 4	Generally Accepted Standards	1
The Enemy Within	12/10/2009	Channel 4	Crime (incite/encourage)	3
The Enemy Within	12/10/2009	Channel 4	Inaccuracy/Misleading	3
The Force	20/10/2009	Channel 4	Generally Accepted Standards	3
The Genius of Charles Darwin	11/10/2009	Channel 4	Due Impartiality/Bias	2
The Home Show	21/10/2009	More4	Offensive Language	1
The Hour	07/10/2009	STV	Inaccuracy/Misleading	1
The Inbetweeners	15/10/2009	E4	Generally Accepted Standards	1
The One Show	07/10/2009	BBC 1	Animal Welfare	1
The Paul O'Grady Show	26/10/2009	Channel 4	Animal Welfare	2
The Paul O'Grady Show	19/10/2009	Channel 4	Dangerous Behaviour	1
The Simpsons	25/10/2009	Channel 4	Generally Accepted Standards	1
The Simpsons	14/10/2009	Channel 4	Religious Offence	1
The Simpsons	22/10/2009	Sky1	Advertising	2
The Simpsons	29/10/2009	Sky1	Advertising	1
The Thick of It	24/10/2009	BBC 2	Offensive Language	2
The Whole Show	22/09/2009	LBC 97.3FM	Due Impartiality/Bias	1
The X Factor	17/10/2009	ITV1	Advertising	1
The X Factor	25/10/2009	ITV1	Advertising	1
The X Factor	18/10/2009	ITV1	Generally Accepted Standards	1
The X Factor	17/10/2009	ITV1	Generally Accepted Standards	3
The X Factor	24/10/2009	ITV1	Generally Accepted Standards	2
The X Factor	25/10/2009	ITV1	Generally Accepted Standards	11
The X Factor	31/10/2009	ITV1	Generally Accepted Standards	3
The X Factor	01/11/2009	ITV1	Generally Accepted Standards	1
The X Factor	29/08/2009	ITV1	Inaccuracy/Misleading	1
The X Factor	18/10/2009	ITV1	Inaccuracy/Misleading	4
The X Factor	25/10/2009	ITV1	Inaccuracy/Misleading	1
The X Factor	24/10/2009	ITV1	Offensive Language	1
The X Factor	11/10/2009	ITV1	Religious Offence	1
The X Factor	24/10/2009	ITV1	Sex/Nudity	3
The X Factor	18/10/2009	ITV1	Substance Abuse	4
The X Factor	10/10/2009	ITV1	Use of Premium Rate Numbers	1

The X Factor	18/10/2009	ITV1	Use of Premium Rate Numbers	9
This Morning	26/10/2009	ITV1	Generally Accepted Standards	1
Thought For The Day	22/10/2009	BBC Radio 4	Generally Accepted Standards	1
Thrifty Ways for Modern Days: Tonight	16/10/2009	ITV1	Commercial References	1
Toonattik	01/11/2009	ITV1	Inaccuracy/Misleading	1
Top Gear	18/10/2009	BBC 2	Sex/Nudity	1
True Blood	21/10/2009	Channel 4	Advertising	1
True Blood (trailer)	14/10/2009	E4	Generally Accepted Standards	1
University Challenge	19/10/2009	BBC 2	Generally Accepted Standards	1
Waybuloo	15/09/2009	CBeebies	Religious Issues	1
Waybuloo	14/08/2009	CBeebies	Religious Issues	1
When Boris Met Dave	07/10/2009	More4	Due Impartiality/Bias	2